

TOP 10 LEGAL CONCERNS FOR NONPROFIT ORGANIZATIONS

Michigan State University College of Law Small Business and Nonprofit Law Clinic

1. Legal Formation

- Management structure
- Name. Be sure you are not copying another entity's name.
- Types of nonprofit organizations
 - Charities
 - Private foundations vs. public charities
 - An organization is assumed to be a private foundation unless indicated otherwise.
 - Charitable trusts vs. unincorporated associations
 - Documents creating the trust or association must contain specific information the Internal Revenue Service (IRS) needs to properly establish the trust and defines the responsibilities.
- Board of Directors
 - The business of a nonprofit organization belongs to the public, not to the board.
- Bylaws. The internal document that establishes management structure.
- Articles of Incorporation
 - Must file with appropriate state agencies.
 - Must include certain provisions in order to qualify as nonprofit under state law
- Is the nonprofit entity a subsidiary or part of a larger for-profit entity? If so, what are the legal ramifications of such a relationship?

2. Planning

- Strategic Planning
 - Write your business plan to include the year's events, goals, etc.
- Operating Plan
 - Annually: A schedule of events and responsibilities that details the actions to accomplish the goals in strategic plan.
 - Must allow for periodic reports on progress towards organizational goals
 - Structure must coincide with the strategic plan

3. Guidance

- Consult an attorney who specializes in forming and assisting nonprofit organizations
- Consult other helpful legal resources
 - small business/nonprofit law clinic at local law colleges
 - websites
 - pamphlets
 - books

4. Tax-Exempt Status

- Acquire appropriate legal forms to complete
- A nonprofit organization does NOT automatically receive tax-exempt status.
- Is your entity qualified for 501(c)(3) tax-exemption status?
 - **Form 1023**
 - <http://www.form1023help.com/> - designed to help new nonprofit organizations complete the Application for Exempt Status Under Section 501(c)(3) of the Internal Revenue Code.
 - If the entity is a charity, determine whether it qualifies for tax-exempt status. Check the definition at www.irs.gov
 - Be familiar with the language the IRS is looking for, and what type of entity it is looking for, before filing a tax exemption form.
 - Check out other entities that have tax-exempt status if necessary.
- Certain provisions must be included in the Articles of Incorporation or Bylaws to be eligible for tax-exempt status.

5. Funding

- Grant Eligibility. Is the entity eligible for private and/or public grants?
- It is important to begin a good rapport with any and all organizations from whom the entity will receive funding (i.e. grants, donations, etc)
 - Draft proposals and continuously use those that are successful in receiving grants.
- Gaming Activities
 - Check legal requirements
- Fundraising events
 - If you sale food, there may be sales tax imposed on the donations given.
- Registration to Solicit Funds
 - Some states require an entity to register to solicit funds in the local area

6. What laws may apply to the entity?

- Laws affecting nonprofit organizations may be updated, amended, or repealed at a congressional session; thus, be aware of changing legislation.

7. Licensing:

- Be aware of zoning ordinances.

8. Annual Filing and Reporting. Visit <http://www.irs.gov/charities/index.html>

- Annual Filing
 - Most states require a Nonprofit Corporation Annual Information Form (as it is called in Michigan)
 - Are there any changes in the nonprofit organization since the last filing?
 - Annual Financing Reports
- Form 990-PF for private foundations
 - IRS requires that every private foundation file a Form 990-PF each year. IRS returns provide detailed financial data, a complete list of grants awarded, the names of the foundation's trustees and officers, and other information on the foundation.
- Form 990-N: Small nonprofits with gross receipts of \$25,000 or less will be required to file Form 990-N starting in 2008. Also known as the e-Postcard, the return must be filed electronically. Organizations that fail to file for three consecutive years will lose their tax-exempt status.
 - IRS will notify small nonprofit organizations of this new requirement.
 - Due at same time as Forms 990-EZ and 990. State and federal agencies want to make sure a nonprofit is not abusing its tax-exempt status.
- Form 990 for public charities
- Maintain registrations
- File and provide reports of fundraising events to relevant state and federal agencies

9. Nonprofit lobbying and the law

- Tax exempt organizations categorized under IRC 501(c)(3) are generally allowed to engage in some lobbying, **however, they are prohibited from engaging in political activity.**
 - A 501(c)(3) entity is allowed to lobby past an insubstantial amount only if it qualifies under 501(h) rules.
- Lobby Law
 - Allows nonprofits to choose to be regulated by a set of lobbying rules
 - If nonprofit elects to be regulated by these rules, it may spend a certain percentage of its budget without threatening its tax-exempt status.
- Be aware of lobbying limits
- Be aware of what constitutes lobbying

10. Employment

- Employees must be reasonably compensated. Excessive compensation is prohibited.
- Be aware of the potential conflict of interest in hiring family members.