

Overview of Nonprofit Organizations

American Society for Quality, Section 509

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Types of Nonprofits

- Philanthropic Organizations
- Trade Associations
- Professional Associations



Philanthropic Organizations

- Philanthropic organizations are organizations that give or receive support from money allocated for humanitarian purposes.
- These organizations can be charitable, scientific, educational, public service, engineering, and religious organizations.



Trade Associations

- Trade associations are organizations that are established and financed by businesses within a particular industry
- Trade associations create opportunities for those businesses to connect with each other for their benefit of all parties concerned.

Professional Associations

- Professional associations are organizations that are established to further a certain profession and the interests of those who are employed within that profession.
- Membership of professional associations is comprised of individual members within the profession who share a common belief or purpose.



Nonprofit v. For-Profit

- Ownership
- Formation
- **Forming a nonprofit organization does not result in automatic tax exemption**
- Federal tax exemption
 - Must meet requirements set forth in the Internal Revenue Code
 - Must apply to get IRS determination letter as proof
 - State tax exemption usually requires federal tax exemption first



Tax Exemption

- Section 501(c)(6) trade and professional associations
 - Serve an industry or line of business
 - Unlimited lobbying
 - Can form political action committees
 - Fees not taxable, but no charitable contribution deductions
- Section 501(c)(3) charitable organizations; can receive tax deductible contributions
- Complex organization structures are common, e.g., Section 501(c)(3) Foundation, 501(c)(6) certification body



Apply for Federal Tax Exemption

- Which form to use?
 - Form 1023 for public charities, supporting organizations and private foundation – known as 501(c)(3)
 - Form 1024 for everyone else
- How long do you have to file?
 - 27 months from formation for 501(c)(3)

Maintaining Federal Tax Exempt Status For 501(c)(3) Organizations

- Must on an annual basis file Form 990, Return of Organization Exempt from Income Tax, with the IRS.
- The Form 990 IRS return is an annual reporting return that helps to verify compliance with tax-exempt rules. It provides information on the filing organization's mission, programs, and finances, and it is open to public inspection. – Disclosure



Form(s) 990

- Form 990-N (“ePostcard”) is an eight-question, electronic return that nonprofits may file if their incomes were less than \$50,000 for the tax year.
- Form 990-EZ (“Short Form Return”) is a two-page return that nonprofits may file if their incomes were less than \$200,000 *and* their assets were less than \$500,000 for the tax year.
- Form 990 is the “long form” that all other 990 filers must file if their incomes are equal to \$200,000 *or* assets are equal to \$500,000 for the tax year.



The Structure of Nonprofits

- A Governance structure typically involves the following:
 - Board of Directors
 - Executive Committee
 - Staff
- Generally supported by:
 - Committees
 - Volunteers

Directors

- Directors, Officers, Staff, Committee Members (“Directors”) have Fiduciary Duties of Care, Loyalty, and Obedience
- Compliance with Duties protects from personal liability
- Important to understand Duties and comply
- Board member Code of Conduct supplements
- Focus on broad policies and strategy; delegates implementation and policy detail to Executive Director

Duty of Care

- Most important duty under common law
- Directors must act
 - Honestly, reasonably, in good faith and in
 - Best Interests of the corporation
 - Diligently, on an informed basis
 - “With the care an ordinarily prudent person in like position would exercise under similar circumstances.”
 - *Revised Model Nonprofit Corporations Act*



Duty of Loyalty

- Common law duty, also referenced in Bylaws
- Directors must act -
 - Only in best interests of corporation
 - To avoid **conflicts of interest**
- Should not -
 - Usurp corporate opportunity
 - Directly compete with corporation
 - Act in own personal interest versus corporation
- Loyalty to corporation trumps friendship

Rules Regarding Conflicts of Interest

- A conflict of interest is when a director participates in the corporation work and at the same time has other professional, business, or volunteer responsibilities that could bias the director one way or another.
- Association has Conflict of Interest Policy
- Actual or potential conflicts must be disclosed
- Recusal from deliberation and/or vote may be advisable or necessary
- Resignation may be advisable or necessary
- Board can enforce these rules



Other Legal Principles

- Confidentiality
- Defamation
- Due Process
- Tax exemption
- Tort and antitrust Liability



Defamation

- Statements that another is dishonest, fraudulent, immoral, etc.
- Slander = spoken
- Libel = written
- Truth and opinions are defenses
- Publication or Re-publication
- “Qualified Privilege”
- Be cautious when speaking as an Officer or Director



Tort, Contract, and Antitrust Liability

- Torts are “wrongful acts”
- Negligence/malpractice
- Claim could arise from breaching Duties
- Can be claims for breach of contract
- Antitrust liability if price agreements or anticompetitive exclusion from association (or revocation of credential)
- Usually will not be claims against Directors personally



Legal Risk Management and Liability Protections

- Observe Fiduciary Duties
- Corporate status
- Insurance – General and D&O policies
- Contractual protection (waivers and releases)

Legal Issues Concerning Nonprofits

- Copyright and Trademark
- Social Media
- Event Contracts

Copyright and Trademark

- Copyright v. Trademark v. Patent & other intellectual property
- Notice and Registration for protection
Ex. Copyright (c) 2013 ASQ509, Inc.
All rights reserved
- Police your IP

Social Media

- Terms of use – website v. social media platforms
- Posting guidelines
- Privacy policy—evolving area/compliance

Event Contracts

- Force Majeure
- No competing groups



Credits

- “Review of Legal Issues for Association Board of Directors”
 - By Jefferson C. Glassie
 - Attorney at Whiteford, Taylor & Preston, LLP
- “Tax-Exempt Organizations in the District of Columbia, Maryland & Virginia”
 - By Eileen Morgan Johnson, 2013
 - Attorney at Whiteford, Taylor & Preston, LLP