

# Nonprofit Law: What You Must Know

UNITED PARTNERS FOR HUMAN SERVICES  
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## Important Information about this Presentation

*This presentation provides general information for educational purposes only. Nothing herein constitutes legal, accounting or tax advice and should not be relied on as such. This presentation does not represent any undertaking to keep recipients advised as to all or any relevant legal developments.*

*For specific information about unemployment taxes for 501(c)(3) organizations, consult an attorney or tax advisor.*

## Common Legal Mistakes Nonprofits Make

- Underestimating what it takes to run a business
- Confusing tax exemption with exemption from all taxes
- Thinking state incorporation means tax exemption
- Failure to follow corporate formalities
- Unfamiliarity with federal and state reporting requirements
- Missing due dates and failing to understand what triggers them
- Failure to properly set expectations with regard to director roles and responsibilities
- Consistently failing to meet quorum at meetings
- Failure to set and follow basic policies and procedures

## Some Unintended Consequences

- Scandals, Negative Publicity
- Deviation from Charitable Purpose
- Compensation-related issues
- Exemption Revocation, Penalties or Sanctions
- Lawsuits, Audits, & Investigations

## Nonprofit Governance Structure

- Articles of Incorporation
  - Bylaws
- Policies & Procedures
  - Board of Directors
    - Officers
    - Members
    - Committees

## Governance from the **IRS** Perspective

- IRS Form 990, Part VI (mainly), also Part VII (compensation disclosure) and Part XII (financial statements and reporting).
  - × Conflict of Interest policy
  - × Independent Directors
  - × Document Retention & Record Destruction
  - × Whistleblower policy
  - × Executive Compensation (& policy)
  - × Joint Ventures
  - × Board Review of Form 990
  - × Chapters of the organization
- No right or wrong answers. Responses are informational.

## Governance from **Florida** Law Perspective

- Fla Stat, Chapter 617 covers:
  - Director Duties (Loyalty, Care)
  - Conflicts of Interest
  - Loans to Directors/officers
  - Corporate records & Inspection
  - Charitable Solicitations Registration
- Other “default” rules:
  - Membership
  - Meetings & Notice
  - Quorum & Voting
  - Board composition
  - Director/Officer qualifications and removal
  - Committees
  - Indemnification

## Signs Your Board May Be in Trouble

- Unclear understanding of roles, duties, and expectations
- Inadequate knowledge of what good governance means
- Ignoring or circumventing bylaws, policies, and procedures
- Poor attendance at, or low-level participation in, board and committee meetings
- Preoccupation with operational detail rather than big picture issues
- Doesn't understand financial statements
- Difficulty recruiting or retaining directors

## STATE Filing & Reporting Requirements

| Purpose and Fee  | Filing Method   | Worth Noting  |
|--|---|---|
| <b>Annual Report</b><br>Florida Department of State<br>\$61.25 Fee   | Online annually, by May 1   | No late fee. But may be subject to administrative dissolution.  |
| <b>Charitable Solicitation Renewal</b><br>FL Department of Agriculture<br><br><i>\$10-400, based on the amount of funds raised in the prior year (\$0 if exempt)</i><br><br><i>See also "Unified Registration Statement" at <a href="http://www.multistatefiling.org">www.multistatefiling.org</a></i> | Annually using pre-printed form; must attach IRS Form 990 and other documentation (i.e., conflict of interest policy) as required | \$25 late fee for each month or part of a month from the date of expiration<br><br>"Final Disqualification Order" for noncompliance<br><br>Standard disclosure language |
| <b>Sales Tax Exemption</b><br>FL Department of Revenue   | Renew every 5 years; supporting docs required (i.e., IRS determ. letter)  |   |
| <b>State Unemployment Taxes</b><br>FL Department of Revenue<br><br><i>Tax rate or reimbursement method</i>   | Register online, by mail, or in person.   | Applies to nonprofits that employ 4+ workers for any portion of a day in 20 different calendar weeks during the current or preceding calendar                           |

## FEDERAL Filing & Reporting Requirements

| What is required?   | When, How?   |
|---|--|
| <b>Form 990 (-N, -EZ, -PF)</b><br>990-N (e-postcard) = <\$50K in gross receipts a year<br>990 or 990-EZ = >\$25K in gross receipts a year | Annually on 15 <sup>th</sup> day of 5 <sup>th</sup> month after end of fiscal year; available online<br><br>Failure to file for 3 consecutive years will result in automatic revocation of tax-exempt status |
| <b>Form 990-T</b> (tax on unrelated business income)  | Annually on 15 <sup>th</sup> day of 5 <sup>th</sup> month after end of fiscal year; plus quarterly payments of estimated tax   |
| <b>Employee Income tax and FICA</b> (social security taxes) withheld by org   | Weekly, monthly, or quarterly basis depending upon organization size   |
| <b>W-2 and 1099</b>   | Annually   |
| <b>Donor Substantiation</b>   | Receipt required for contributions >\$250 or when donor receives something in return for the contribution  |

## Why Record-keeping is So Important

### What may be considered a *Public Record*?

- In general:
  - Articles (and any amendments)
  - IRS Form 990
  - Annual Reports to the state
- By members:
  - Articles, bylaws, minutes, accounting records, financial statements, membership records, contact info for directors, and annual reports to the state
- Others:
  - Court-ordered; Member's agent or attorney

## What Can Jeopardize Your Tax-Exempt Status

- **Any Political Activity**
  - Supporting or opposing a candidate for public office; electioneering
- **Extensive Lobbying**
  - Influencing legislation is a substantial part of activities
- **Private Inurement, Private Benefit & Excessive Compensation**
  - Benefiting individuals/entities for uses not aligned with its purpose OR beyond the value received by the charity from the person
- **Excessive Unrelated Business Income (UBI)**
  - Regularly operating a trade/business not substantially related to its exempt purpose
- **Unmanaged Conflicts of Interest**
- **Non-compliance with annual reporting/disclosure requirements**

## How to Effectively Manage the Risks

- Be clear on Board & Staff roles
- Be educated on the organization
  - Mission, history, purpose, etc.
- Review information and ask questions
- Trust but verify
- Establish appropriate/necessary committees
  - Executive Committee
  - Finance Committee
  - Audit Committee
  - Nominating/Governance Committee
  - Development/Fundraising Committee

## Effectively Managing Risks, *cont'd*

- Exercise appropriate oversight and review of delegates (i.e., committees, officers, staff)
- Establish appropriate policies & procedures
- Record actions and deliberations in minutes
  - Evidence compliance (notice, quorum, attendance, votes/abstentions, etc.)
- Ensure compliance with reporting requirements
- Create a board action calendar

## Other Legal Compliance Matters

*we don't have time to discuss in detail...but you should know about!*



- **Federal law compliance**
  - Title VII, ADA, Affordable Care Act, HIPAA, etc.
- **Employee and Volunteer oversight**
  - Employee v/s Independent Contractor
  - Employees as Volunteers
- **Other Employment laws**
- **Intellectual Property**
- **Insurance coverage**
- **Managing Donated Funds**
- **Meeting, Vendor, and Government Contracts**
- **Technology, Social Media & Electronic Communications**