

Corporate Self-Assessment

Checklist of Legal Issues for Non-Profit Organizations

Periodically, a nonprofit corporation and its subsidiaries, if any, should undergo a legal review for compliance with corporate, tax, and other laws. This review might best be conducted to coincide with the corporations' annual audit or annual tax filings. Some of the items for review are:

1. **Payroll Taxes:** If you have employees, is the financial officer making timely deposits of all appropriate federal payroll taxes? Are there any unpaid fines owed to the IRS due to late filings?

2. **Personnel Policies:** If you have employees, has the board adopted adequate written personnel policies ([CLICK HERE](#) to download a sample policy document)?

- If so, are they periodically reviewed to insure that they are being adhered to?
- Are they sufficiently comprehensive so as to give management authority to deal with most routine personnel matters without having to seek additional board authority?
- Are there any "hoops" that must be jumped through before an employee can be fired (such as formal notice, hearings, etc.)? Non compliance can give fired employees grounds for legal action.

3. **Adequate Anti Discrimination Policies:** Has the board adopted sexual harassment and discrimination policies that could help protect the corporation from potential claims being filed by disgruntled former employees? [CLICK HERE](#) to download a sample sexual harassment policy.

4. **Overtime Pay Compliance:** Do you have policies governing non-management staff that occasionally work more than 40 hours per week?

- If so, do such policies require employees to sign weekly time sheets and require them to first obtain written permission before working overtime? Do you require that such policies be strictly adhered to?
- Such policies could help protect the corporation from claims filed by disgruntled former employees with the US Department of Labor (pursuant to the federal "wage and hour" law)

5. **Independent Contractors vs Employees:** Do you have workers that are paid as independent contractors yet are supervised and work roughly in the

same manner as regular employees? If so, you might be at risk if you are audited by the IRS (the IRS might reclassify them as "employees" and charge the corporation with years worth of unpaid FICA tax and penalties). [CLICK HERE](#) for more information.

6. Property and Sales Tax Exemptions: If you are classified as exempt under Sec 501(c)(3), are you taking full advantage of your exemption from state sales and property tax?

7. The Handling of Potential Conflicts of Interest: Are there any agreements, leases, or loans between the corporation and its directors or officers or with companies controlled by a directors or officer? If so,

- were such agreements authorized by the board of directors
- If so, can you locate the minutes of the relevant meetings.
- If so, was it clear in the minutes that the potential participation of the director or officer was disclosed and that the director in question did not vote on the matter?
- Was the transaction objectively fair and reasonable and in the best interest of the corporation at the time it was authorized? If so, is that fact documented in the minutes where the vote was taken?
- Has your board adopted a written conflict of interest policy? ([CLICK HERE](#) to download a sample)

8. Insurance Policies: Do you have copies of all insurance policies? Do you know whether or not the corporation has a general liability insurance policy? How about a board and directors liability insurance policy?

9. Contract Compliance: Does the corporation maintain a separate file folder for each contract that it has entered into (with its employees, consultants, landlords, vendors, funding sources, lenders, tenants, homebuyers, suppliers, etc)?

- are these records kept in a central location so that they are easy to find?
- for each particular contract, are all relevant documents kept together or are the scattered in various locations?
- have these contracts recently been reviewed? Are you familiar with the termination provisions, penalty clauses, payment deadlines, etc?
- Do any of these contracts obligate the nonprofit to perform any act that might jeopardize its tax-exempt status?

10. Check Signing Authority: Have you revoked the check-signing authority of former staff and board members? If so, has the bank been informed?

11. Important Documents: Do you have a current and legible copy of your

- Articles of Incorporation
- Bylaws
- Federal tax exempt recognition letter
- Federal tax exemption application (IRS Form 1023)
- Copies of IRS Form 990 for the past 3 years
- Sales tax exemption form

12. **Filling Board Vacancies Properly:** Do your bylaws accurately describe procedures that you actually following in appointing or electing new persons to serve on the board of directors? Is there documentation in the minute book to show that the requirements of the bylaws are being complied with?

13. **Registered Agent:** Is the address of your registered agent still the same as the address filed with the Secretary of State? Is your registered agent normally physically present at that address during daytime business hours? Can you rely on your registered agent to give you mail that comes to the corporation?

14. **Annual Reports to the State:** Are you filing the required annual reports with the Florida Secretary of State? If not, have you checked to see if your corporation been "administratively dissolved" by Florida Secretary of State for failure to file the annual report?

15. **Original Activities vs Current Activities:** Have your structure, purposes or activities changed significantly since you received your letter of recognition of tax-exempt status from the IRS? If so, have you notified the IRS?

16. **Form 990:** Are you filing Form 990 with the IRS each year as required by law? Did you make paper copies of all such filings for the current and prior years (and can you actually find those copies if you had to)?

17. **Documents Available for Public Inspection:** Are your Form 1023 and Form 990 (for the past three years) available for public inspection at your principal place of business as required by law?

18. **Corporate Records:** Are the corporation's permanent records (minutes, financial records and membership list) available to your directors for inspection?

19. **Adequate Minute Book:** Do you keep as permanent records minutes of all meetings of the board, your members, and committees, including resolutions and other formal actions?

- If so, is there a formal looking "Minute Book" containing the minutes of every official directors meeting (in chronological order) or are minutes of meetings kept in assorted folders, boxes, files, etc?

- If you have a Minute Book is it cluttered with items that are not actually "minutes" (such as miscellaneous documents that might have been handed out at a meeting)?

20. **Validity of Officers:** Is there documentation in the minutes showing the date and manner of the appointment of each of the Corporation's current directors? Are resignations similarly documented?

21. **Director Terms:** Do your bylaws provide that each director shall have a specified "term"? If so, are these terms being kept track of and are the bylaws being followed when replacing or reappointing a director? Does your minute book provide accurate documentation showing that all bylaw mandated terms are being consistently honored?

22. **Delegation of Board Authority to an Executive Committee**

- Has an executive committee been given authority to act on behalf of the corporation?
- If so, where was that authority granted? (in the bylaws? by board Resolution?)
- If it was by board resolution can you to locate the minutes of the meeting where that authority was granted?

23. **Members:** Do the bylaws require that directors be elected by "**members**"?

- If so, is there a current list with the names and addresses of each member?
- If so, do your bylaws clearly describe the procedure for conducting elections? ([CLICK HERE](#) to download sample "membership" type bylaws)
- If so, does the minute book provide accurate and complete documentation showing that all bylaw mandated elections were properly held?

24. **Annual Financial Statements:** Do you prepare an annual financial statement or audit?

- Do you provide a copy of your annual audit or financial statement to members or directors upon request?
- If the annual financial statement is not prepared by a public accountant, does the person who prepares it state whether the statements are prepared on the basis of generally accepted accounting principles and if not, the basis on which they were prepared?

25. **Record Retention:** Are you saving financial records for at least seven years? If so, do you actually know where they are stored? Has your board adopted a written policy regarding record retention that complies with the

requirements of the federal Sabans Oxley law ([CLICK HERE](#) to download a sample of such a written policy)?

26. **Acknowledgment of Gifts:** Do you acknowledge in writing gifts over \$250?

27. **Charitable Registration:** Are you [registered with the state of Florida for Charitable Solicitations](#)?

28. **Real Estate Records:** If the corporation owns real estate, is a separate file folder kept for each parcel - if so, are all relevant documents kept there (tax bills, "Notices to Owner" sent by subcontractors, mortgages, leases, code violation notices, surveys, deeds, etc)?

28. **Property Tax Exemptions:** Have property tax exemptions been obtained for all real estate?