



# NONPROFIT BASICS AND LEGAL ISSUES

Legal & Practical

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LAW &

ORDER



# Court Calendar for Today



- We will cover
  - Nonprofit basics and legal issues facing start ups
  - The nonprofit legal check up
  - Duties and responsibilities of serving on a board
  - Liability of directors after Sarbanes-Oxley
  - What nonprofits need to know about government regulations

# Board Members Behavior





# What Are Nonprofits Really

- Nonprofits or Nontax entities
  - Nonprofits suggests to those new to this group that the organization isn't suppose to make money. **WRONG** it is a business
  - NonTax is the appropriate description the federal government has established 501(c)3,4,5,6,7s as well as sub-corporations status of 509 a,b,c as enties without federal or state tax exempt status.



# Brief History

- Church elders began in the 1630s with the Massachusetts Bay Company.
- In the 1960s, the federal government included the rapidly growing universe of charitable as tax-exempt organizations.
- There were 250,000 organized charities registered at that time.
- Today there are over 1.2 Million charities.



# Non-Profit 501(c)(3)

- Must be a public benefit organization
- No shareholders
- Assets belong to the public
- No tax on “related” income
- Liability generally limited to assets of corp; directors have only very limited liability for wrongful conduct
- Ban on political activity
- Limitations on lobbying

# Why Set Up a For-Profit?

- Vehicle for economic development and public support
- Create income stream to further charitable mission
- Protect s 501(c)(3) tax-exempt status
- Protect board from liability
- Increase opportunity to serve the community
- Program requirement
- Enhance board and staff capacity and flexibility





# What Are The Types of NPOs

- 501(c)(1) — Corporations Organized Under Act of Congress (including Federal Credit Unions)
- 501(c)(2) — Title Holding Corporation for Exempt Organization
- 501(c)(3) — Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations
- 501(c)(4) — Civic Leagues, Social Welfare Organizations, and Local Associations of Employees
- 501(c)(5) — Labor, Agricultural, and Horticultural Organizations
- 501(c)(6) — Business Leagues, Chambers of Commerce, Real Estate Boards, etc.
- 501(c)(7) — Social and Recreational Clubs
- 501(c)(8) — Fraternal Beneficiary Societies and Associations
- 501(c)(9) — Voluntary Employees Beneficiary Associations



# Board Responsibilities

- The board has three major functions (small and large).
  - Fundraising (ensuring constant flow of funds)
  - Stewardship and planning (strategic planning, foreseeing potential challenges, setting policies, improving governance)
  - Fiduciary responsibility (managing, budgeting & reporting)

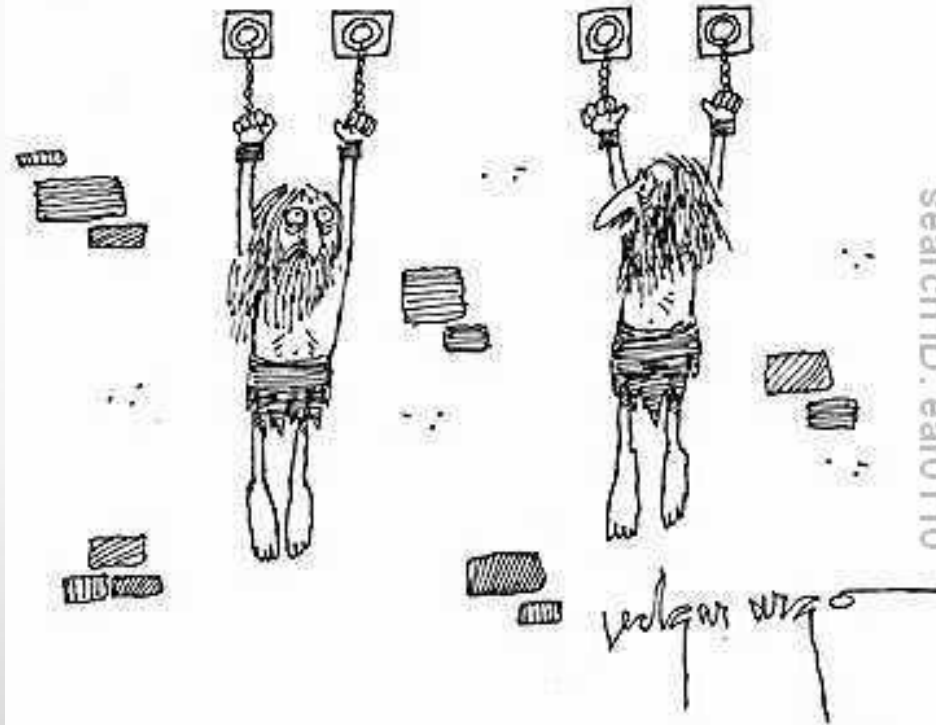


# Role of the Board

- Preserving and when necessary reshaping the mission
- Selection and reviews of chief executive
- Ensuring the organization is well managed
- Representing the external world to the organization
- Protecting the organization from external threats
- Exercising financial stewardship
- Making sure the organization is in compliance with the laws and regulations

# Liabilities of Directors after SOX

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" I THOUGHT 'GOOD ACCOUNTING PRACTICES'  
WAS JUST A SUGGESTION!!! "





# Governance Is Essential

- Financial Responsibilities
  - Having a conflict-of-interest policy
  - Whistleblower policy
  - Records retention policy
- Fiscal Oversight
  - Key tasks is to exercise fiscal stewardship
  - Executive compensation of CEO
- Developing Key Committees



# Committee

- Finance – All nonprofits
  - The Finance Committee is a standing committee of the Board of Directors and is typically chaired by the Board Treasurer. The committee is responsible for reviewing and providing guidance for the organization's financial matters. Specifically, the committee assures internal controls, independent audit, and financial analysis for the organization.





# Committees

- Investment Committee - \$1 million plus
  - The Finance/Investment Committee is a standing committee of the Board of Directors formed to assist the Board in fulfilling its responsibilities to provide oversight relating to fiscal management of the organization. The Committee shall be comprised of a person with appropriate skill sets and the Board Treasurer
  - There may be need for a separate Investment committee



# Committees



- Audit Committee – \$3 million plus
  - Nonprofits that expend more than \$500,000 of federal funds are required to conduct an annual audit.
  - Charitable organization with \$1 million or more in total annual revenues
  - Smaller charities with revenues of at least \$250,000 should choose a review or at least have their financial statements compiled by a professional accountant.
  - In California, the Nonprofit Integrity Act of 2004 requires that any charity registered with the attorney general and receiving annual gross revenues of \$2 million or more must form an audit committee.

# Other Important Responsibilities



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# Committees

- Governance -
  - The Governance Committee is a standing committee of the Board of Directors responsible for board compliance regulations, recruitment and nominations, orientation of new board members, conducting a board self-assessment, and suggesting continuing education for board leadership.





# Committees

- Executive -
  - Sometimes an organization with a large board forms an Executive Committee, which is a smaller group that meets more frequently than the full board. Some Executive Committees are comprised of the board officers; others include committee chairs; and some choose other configurations, such as the board officers and the Fundraising Committee chair.





# Committees

- Other committees might include
  - Ethics: Reviewing the behaviors of both internal and external officers and directors
  - Program: Evaluating the effectiveness and mission directed programs
  - Personnel: Reviewing the personnel and HR functions
  - Nominating: Directors not interested in becoming an officer should preside
  - Fundraising: Directors are responsible for insuring the access and availability to funding
  - Strategic Planning: Anticipating challenges and planning for the future

# Where Does Best Practices Fit



“Financial planning requires long-term thinking. Especially if you get caught.”



# Best Practices



- Tuning up the mission
  - The Board is ultimately responsible for reviewing the Corporation's effectiveness in satisfying its charitable mission. This typically will include:
    - Evaluating and modifying (where necessary, and subject to receipt of any required regulatory and judicial approvals) the charitable mission of the Corporation;
    - A periodic assessment of the Corporation's performance and effectiveness in achieving mission-related goals; and
    - Requesting from management, on a periodic basis, reports identifying specific means to address perceived deficiencies in mission effectiveness.



# Best Practices

- Relationship of board and senior management team
  - Establish an appropriate balance between the CEO and Board Chairman roles, either through separation of offices or establishment of “Lead Independent Director” position
  - CEO manages the day-to-day operations the board is to support and provide council



# Best Practices

- Oversight and stewardship
  - Board of Directors is responsible for setting the mission and strategic direction and oversight of the finances, operations, and policies.
  - The Board and individual directors and officers shall act in accordance with the Board Governance policy, the Conflict of Interest policy and any other policies adopted by the Board related to the appropriate conduct of directors and officers.



# Best Practices

- Ensuring that policies are in effect:
  - A written conflict of interest policy should be adopted that complies with existing state law requirements and Internal Revenue Service non-binding guidance and that recognizes the potential for conflict arising from material financial and non-financial relationships
  - Knowledgeable of and complies with all applicable laws, regulations and professional standards
  - The Board should be certain there are policies employing controls to avoid potential for fraud





# What Protects the Board

- Reduce Risk first
- Volunteer Protection Act (VPA) provides that, if a volunteer meets certain criteria, he or she shall not be liable for simple negligence while acting on behalf of a nonprofit or governmental organization.
- State of California S.543 a bill to provide certain protections to volunteers
- Transfer Risk – Using D&O insurance to protect Directors, I recommend \$3 million

# Questions and Comments



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# Thank You



- References:

- Independent Sector ([www.independentsector.org](http://www.independentsector.org)) and Panel on the Nonprofit Sector ([www.nonprofitpanel.org](http://www.nonprofitpanel.org))
- Association of Governing Boards of Universities and Colleges ([www.agb.org](http://www.agb.org))
- American Society of Association Executives ([www.asaenet.org/](http://www.asaenet.org/))
- National Council of Nonprofit Associations ([www.ncna.org](http://www.ncna.org))
- Center for Philanthropy ([www.philanthropy.iupui.edu](http://www.philanthropy.iupui.edu))
- BoardSource ([www.boardsource.org](http://www.boardsource.org))

This need not be you

