



Whisk in Risk:

Top Legal Risks Facing Nonprofits



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Speaker

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Messy Plating

- Forgetting to fulfill your tax-exempt purposes
- Keeping track of the big picture
- Risk of losing tax-exempt status
- More isn't necessarily better



Staying Focused

- Many nonprofit organizations attempt to do too much – far more than their tax-exempt purposes allow.
- In order to obtain IRS recognition for and maintain their tax-exempt status, 501(c)(3) organizations must be charitable, educational, or religious, in addition to conforming to other IRS requirements, such as the ban on private inurement and impermissible private benefit, the limitation of lobbying activities, and the ban on political campaign activity.
- Pressure from donors, Board members, and others often lead to a nonprofit acting beyond its scope and outside of the legal parameters of a nonprofit.
- Since 2004, many certification organizations that started as 501(c)(3) entities have re-established themselves as 501(c)(6) organizations – or created an affiliated 501(c)(6) entity – to avoid excessive UBIT for certification revenue.
- Having a regular strategic planning session that results in achievable goals can help nonprofits stay focused and work towards their tax-exempt mission and purposes.

Too Many Cooks in the Kitchen

- Conflicts of Interest
- Competing Interests
- Micromanagement of Staff by the Board



Acting in the Best Interests of the Organization

- With so many competing voices (Board, staff, donors, members), nonprofits face serious risks that could jeopardize the organization's tax-exempt status.
- Nonprofit organizations need to have a robust conflict of interest policy that Board members should sign on an annual basis. In addition, the procedures for handling conflicts are critical in the event of an IRS audit or litigation.
- Board members and staff must put the interests of the organization first – even if the Board member serves on another board as well.
- The Board is the strategic overseer of the organization. Getting in the weeds or micromanaging the staff is ineffective and inefficient. Organizational staff will lose motivation and become resentful of the Board and senior leadership.

Use Fresh Ingredients

- Ensure regular turnover on the Board
- Keep focus on diversity in Board and other leadership representation
- Have a defined role for former leadership



That's The Way We've Always Done It

- Many nonprofits fall into the trap of lifetime appointments or lengthy terms for Board members which can put the organization into a programmatic rut.
- New voices representing diverse perspectives are important to ensure a nonprofit's continued success.
- Extended participation for past chairs or other Board leaders can hamstring the organization's forward progression and get stuck in the "that's the way we've always done it" mentality.
- Many donors will now look to the diversity of the Board to find a connection.

Don't Skip the Recipe!

- Nonprofits are required to abide by state and federal laws and their own governing documents.
- It's important to look in the right places and follow the recipe for good governance.
- Order of hierarchy: IRS statutes and rules/state nonprofit corporate law → Articles of Incorporation → Bylaws → Policies and Procedures.



Of Course – The Law

- Tax-exempt organizations are guided by their own mission and purposes, but first and foremost comes the law.
- Failure to follow IRS rules and state nonprofit corporate law can put an organization at serious risk.
- Bylaws and policies and procedures should govern the day-to-day operations of a nonprofit.
- Regular governance reviews are strongly recommended as many nonprofit statutes undergo revisions on an annual basis.

Thank You!

Please take a moment to complete the short
1 question survey when this workshop concludes.



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