
Nonprofit Compliance and Best Practices “To Do” List

Description

Whether you run a nonprofit or serve on the Board, you have a responsibility to make sure the organization is in compliance. There never seems to be enough time to step back, take stock, and launch that preventative compliance review. At a minimum, there are things that any nonprofit can do – and every nonprofit should do:

1. Update Conflict of Interest Disclosures. Ensure that every Board member and key officer has a current conflict of interest disclosure form on file.

2. Review Internal Policies for Best Practices. Under the new 990 guidelines, several written policies are required. Check to see whether the nonprofit has, or needs, a written policy on:

- Audit
- Conflict of interest
- Cybersecurity protections and policies
- Document retention/destruction
- Executive compensation (including use of comparability data)
- Employee policies, especially related to sick leave
- Finance, including debt obligation review
- Gift acceptance and gift documentation
- Grant-making
- Investments
- Joint venture controls and review
- Whistleblower protection

3. Prepare for Filing 990. Make sure to provide a copy of your 990 to your entire Board, and to review the 990 at a Board meeting with a quorum, particularly with regard to financial health, executive compensation, private inurement/excess benefits, unrelated business activity, relationships among board members and officers, and lobbying and political activity.

4. Update and Review Corporate Documents. Ensure your mission statement complies with Section 501(c). In the post COVID-19 era, your mission may be altered, diminished, or redirected. Make sure that your articles of organization and bylaws have been reviewed and updated in accordance with state law and (perhaps more importantly) with actual practice. Make sure that any amendments are sent to the IRS and remain consistent with your exemption.

5. Exercise Fiduciary Oversight of Third Parties. If you haven't sent contracts out to bid or reviewed for professionals – especially auditors, attorneys, and investment professionals taking care of your charitable assets – in 3 years or more, consider doing so.

6. Review Liability Protection and Insurance. Look (or have your broker review) at the organization's professional liability, director and officer insurance, property insurance, cyber liability, general liability, and insurance coverage related to social services.

7. File Charitable Solicitation Registrations. Review requirements in states in which you fundraise, whether by mail, in person or via email.

8. Annual Filings. Depending on where your organization is registered to do business, there may be other annual state filings due to various regulators. For example, Massachusetts requires Form PC annually for

Massachusetts charities.

9. Have a Well-Rounded Charitable Giving Program. Review the diversity of funding streams and strategically plan. Many nonprofit organizations have canceled fundraising events or should consider the risk of planning such events in the upcoming weeks and months due to the pandemic. Review fundraising strategies to move away from relying on a single source of funding, and building comprehensive strategies, including a planned giving program.

10. What is the Financial Position of the Organization? The COVID-19 pandemic created financial uncertainty for many organizations. When in the zone of insolvency, directors should take all efforts to avoid the following: failing to collect receivables diligently; allocating funds to new, major capital projects; entering into new lines of services on a speculative basis; providing unreasonably lucrative pay or benefits to management; taking actions for the sole benefit of the parent entity in a multi-corporate nonprofit system; entering into transactions that principally benefit individual directors; or approving loans on nonmarket terms. Failure to be cautious may result in personal liability for directors, as it has in certain precedent.

11. Review Opportunities to Align or Merge with Organizations. Nonprofits can and should consider using mergers as an effective tool to achieve their goals, advance their mission, and increase their impact. Mergers should not necessarily be a “last ditch” effort, but rather part of thoughtful strategic planning. Joint venture or commercial co-venture partnerships with nonprofits and for-profit entities to access additional or unavailable capabilities, capital and resources may also be beneficial for the nonprofit.

Charities should take this time to review governance related to gifts, communication tactics, strategic planning, policies, and agreements. Positioning your institution appropriately now will assist with sustaining your future.

[Partridge Snow & Hahn's Charitable & Nonprofit Organizations Group](#) is ready to answer questions and to provide advice.

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