

Legal Structuring for Nonprofit Organizations: Creating Systems, Affiliates, and Subsidiaries

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Reasons for Adding Entities/Creating a System

- Adding a new line of business
- Undertaking an enterprise involving some legal risk
- Desire to separate functions
- Need/desire for additional board(s) of directors
- Undertaking an activity that presents a risk to 501(c)(3) status
- Need for centralized management/vision
- Tax planning

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Issues to Consider

- Liability protection (real or perceived)
- Board structure and governance
- IRS classification of entities
- Tax issues (UBIT)
- Employee issues – payroll, benefits
- IP issues – trademarks
- Costs of maintaining additional entities – accounting, legal, time

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Liability Protection

- Placing a risky enterprise in a separate legal entity may limit liability
- Be careful about “piercing the corporate veil”
- Separate entity must be treated as such- separate board (can be some overlap), separate corporate records, separate meetings



Board Structure and Governance

Issues to Consider:

- Size of board
- Overlapping board membership
- Appointment process
- “Special” qualifications and skills for particular boards (e.g., fundraising, operational knowledge)
- Need to avoid “meeting fatigue”



Roles of Different Corporate “Players”

- 501(c)(3) charitable organizations
- 501(c)(2) or 501(c)(25) title holding companies
- Supporting organizations
- Single-member LLCs
- For-profit subsidiaries



Additional 501(c)(3) Entities

- Useful when separating “charitable” functions (e.g., separate schools or hospitals placed in separate legal entities)
- May want one separate charitable foundation to raise money for the various charitable entities in the “system”
- Separate charitable entity to hold and invest the endowment



Title Holding Companies

- Tax-exempt under 501(c)(2) or 501(c)(25)
- Generally used to hold rental real estate
- Must turn over its income to its tax-exempt parent
- Limited in activities it can pursue
- With some exceptions, must avoid UBIT
- Need to consider eligibility for property tax exemption



Supporting Organizations

- Type of 501(c)(3) organization
- Supports other 501(c)(3) organizations
- Must be “controlled” in some fashion by the organizations it supports
- No need to fundraise to maintain public charity status
- Can be a useful parent organization of a system



Single-Member LLC

- Controlled by another tax-exempt entity in the system
- Treated as a disregarded entity for tax purposes- treated as part of its parent and included on parent's tax return
- Eligible to receive deductible charitable contributions (if sole member is 501(c)(3))
- For corporate purposes, treated as a separate entity with liability protection
- Flexible management
- No IRS exemption application required
- Consider local law for property tax exemption

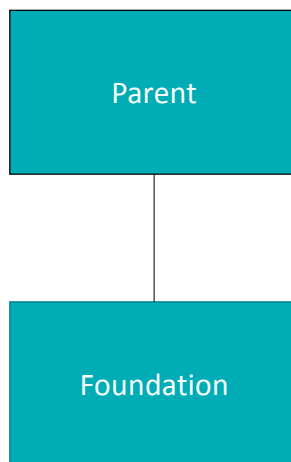


For-Profit Subsidiary

- Useful when entering a commercial business that would produce UBIT if operated within tax-exempt entity and possibly risk tax exemption
- Gives ability for more flexible compensation structures – i.e., equity-based compensation

Possible System Structures

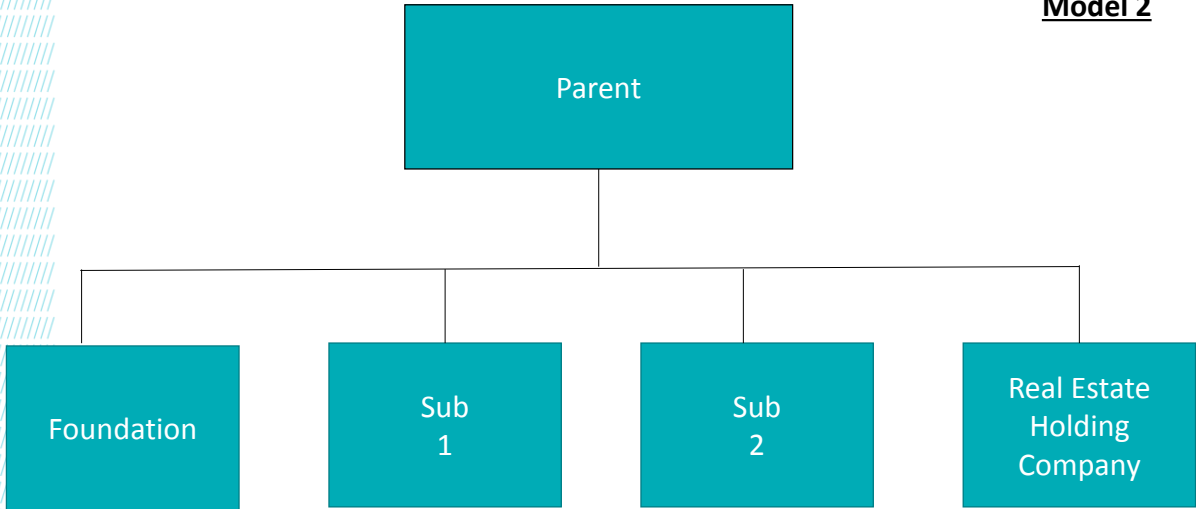
Model 1



Options:

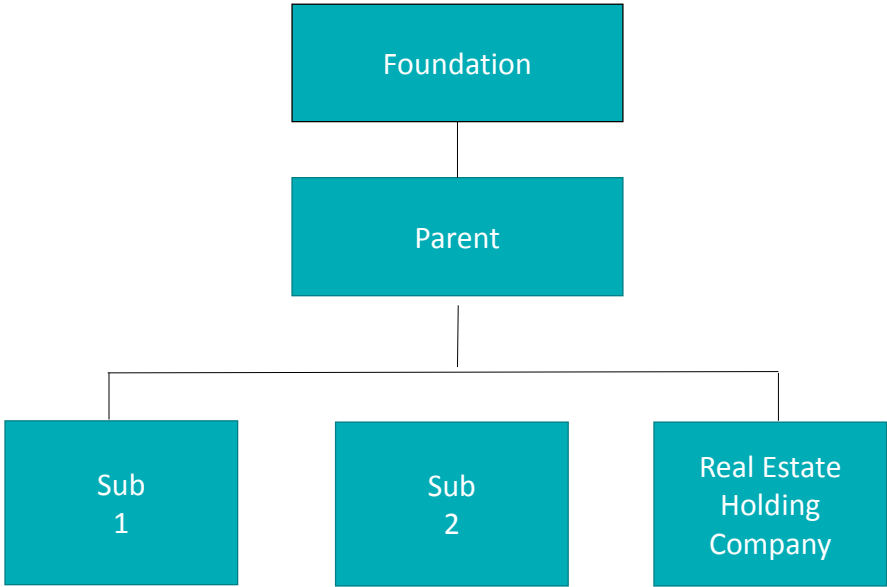
- 1) Member/parent appoints board of foundation
- 2) Overlapping boards – ex officio directors
- 3) “Freestanding” nonprofit populated by “friends” of parent

Model 2



-501(c)(2)
-LLC
-509(a)(3)

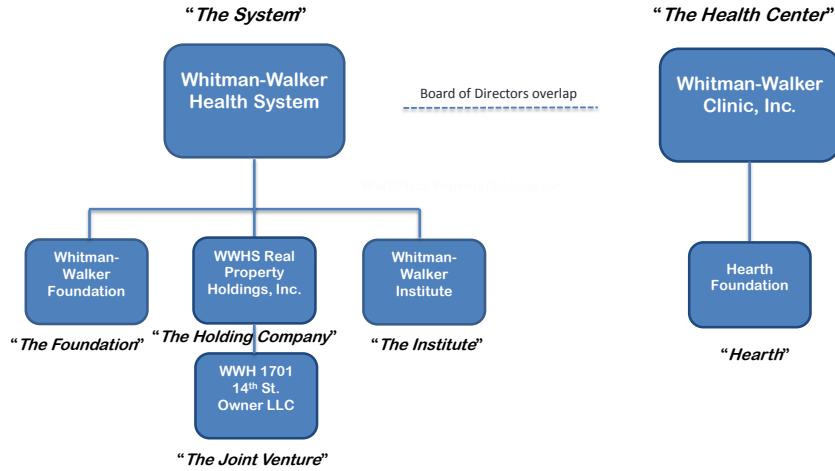
Model 3





Community Health System

(Effective January 1, 2018)



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Cynthia (Cindy) M. Lewin

Partner

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Cindy Lewin is chair of Venable's Nonprofit Organizations practice. Cindy brings extensive experience using risk assessment and analysis, negotiation skills, and practical problem-solving to move mission-driven nonprofit organizations toward their goals. Prior to joining Venable, Cindy served as executive vice president and general counsel for AARP, where she led the organization's legal, ethics and compliance, and enterprise risk management teams.

During her tenure with AARP, she represented the organization in connection with a number of congressional investigations, streamlined governance functions, introduced a new code of conduct, provided creative legal solutions for new initiatives, and managed a variety of litigation matters, including class actions.

Cindy also served as senior vice president and general counsel of the National Wildlife Federation, where she led the legal, information technology, human resources, and office services teams, and served as secretary. Prior to that, she was the executive vice president and general counsel of Volunteers of America, one of the country's 20 largest charities.

At all three nonprofit organizations, Cindy handled acquisitions and other corporate restructurings, corporate sponsorships, cause-related marketing, licensing, fundraising, joint ventures, and a variety of revenue-generating ideas.

Before her in-house work, Cindy was in private practice. As a partner at a boutique nonprofit law firm in Washington, DC, she represented numerous nonprofit organizations, including charities, advocacy organizations, labor unions, and trade associations in matters involving tax, contract negotiation and review, fundraising, and other issues.



Experience

Representative Matters

- Handled numerous mergers, consolidations, and collaborations of multiple organizations, including combining a 501(c)(3) organization into a 501(c)(6) organization, and helping clients navigate the emotional and cultural aspects of combining organizations
- Advised a large national nonprofit regarding splitting into two entities and restructuring operations, finances, and governance accordingly, including counsel regarding control of the well-known brand name
- Designed a detailed plan for a nonprofit to relinquish its tax exemption and to organize its structure and operations accordingly in order to minimize the payment of taxes while utilizing the increased flexibility of for-profit status
- Advised a large organization focused on a particular disease on a range of issues, including background checks for volunteers, the use of social media influencers, receiving donations of intellectual property, and engaging in corporate sponsorships and charitable promotions with corporations
- Advised a national charity on a conflict of interest affecting its CEO, and appropriate disciplinary measures. Handled numerous code of conduct violations of members, directors, officers, and meeting attendees
- Advised a complex trade association with 22 subsidiaries on streamlining its organizational structures while establishing firmer control over remaining subsidiaries; updated governance structures and provided revised articles and bylaws for numerous organizations

Credentials

Education

- J.D., Yale Law School, 1984
- B.A., Wellesley College, 1978



Bar Admissions

- District of Columbia
- Colorado

Professional Memberships and Activities

- Former chair, Exempt Organizations Committee, Taxation Section, District of Columbia Bar
- Former chair, Nonprofit Organizations Committee, Association of Corporate Counsel
- Former member, Ethics and Accountability Advisory Group for Independent Sector, which revised *Principles for Good Governance and Ethical Practice* for charities nationwide (the current version was released in 2015)
- Former chair, National Adjudicatory Council for the Financial Industry Regulatory Authority (FINRA)
- Member, American Bar Association Exempt Organizations Committee

Recognition

Honors

- Received the Career Achievement Award from the Association of Corporate Counsel – National Capital Region, 2018
- Included in *Legal 500*
 - Tax - Not-for-Profit (Fortune 1000 private foundations, and national trade associations and charities), Leading Lawyer, 2019
 - Finance
 - Not-for-Profit (Nonprofit and Tax Exempt Organizations), 2018
- Malcolm Baldrige Executive Fellow, 2017 - 2018
- Named one of "Washington's Most Influential In-House Counsels," *Legal Times*

- Named one of "DC's Top Corporate Counsel," Association of Corporate Counsel, National Capital Region and *Legal Bisnow*
- Recipient, First Chair Award as a Top General Counsel, 2017

Community

Volunteerism

- Vice chair, board of directors, Friends of the National Zoo
- Former chair, CEO search committee and governance committee, board of directors, National Human Services Assembly (nonprofit)

Related Practices

Tax-Exempt Organizations

Corporate

Tax Policy

Tax Controversies and Litigation

Regulatory

Related Industries

Nonprofit Organizations

Colleges, Universities and Professional Schools



George E. Constantine

Partner

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George Constantine is the leader of the associations practice within Venable's Nonprofit Organizations Group and co-chair of the firm's Regulatory Group. George concentrates his practice on providing legal counseling to and advocacy for nonprofit organizations, including trade associations, professional societies, advocacy groups, charities, and other entities. He has extensive experience with many of the major legal issues affecting nonprofit organizations, including tax exemption, antitrust, governance, and lobbying and political activity matters. He is well versed in matters related to association standard setting and enforcement, certification, accreditation, and code-of-conduct reviews.

George assists clients with:

- Critical tax-exemption matters involving Internal Revenue Code (IRS) § 501(c)(3), 501(c)(4), and 501(c)(6)
- Advising nonprofit organization boards of directors on their compliance obligations
- Associations and other nonprofit organizations undergoing mergers, consolidations, joint ventures, and dissolutions
- Ongoing counseling on numerous transactional and operational matters unique to nonprofit organizations

George is the former staff counsel of the American Society of Association Executives (ASAE). As ASAE's sole staff attorney, he gained in-depth experience with the many legal issues facing associations. He has also represented ASAE's interests before Congress and federal agencies.

Credentials

Education

- J.D., University of Maryland School of Law, 1998
 - Recipient, Order of the Coif law school honors society
 - Recipient, Judge R. Dorsey Watkins Award for excellence in torts
- B.A., Loyola College In Maryland, 1989

Bar Admissions

- Maryland
- District of Columbia

Professional Memberships and Activities

- Member and former chair, ASAE Legal Section Council
- Frequent speaker and author of numerous articles regarding legal issues affecting associations and other nonprofit organizations published by ASAE, the Greater Washington Society of Association Executives, the American Chamber of Commerce Executives, the New York Society of Association Executives, and the Texas Society of Association Executives

Recognition

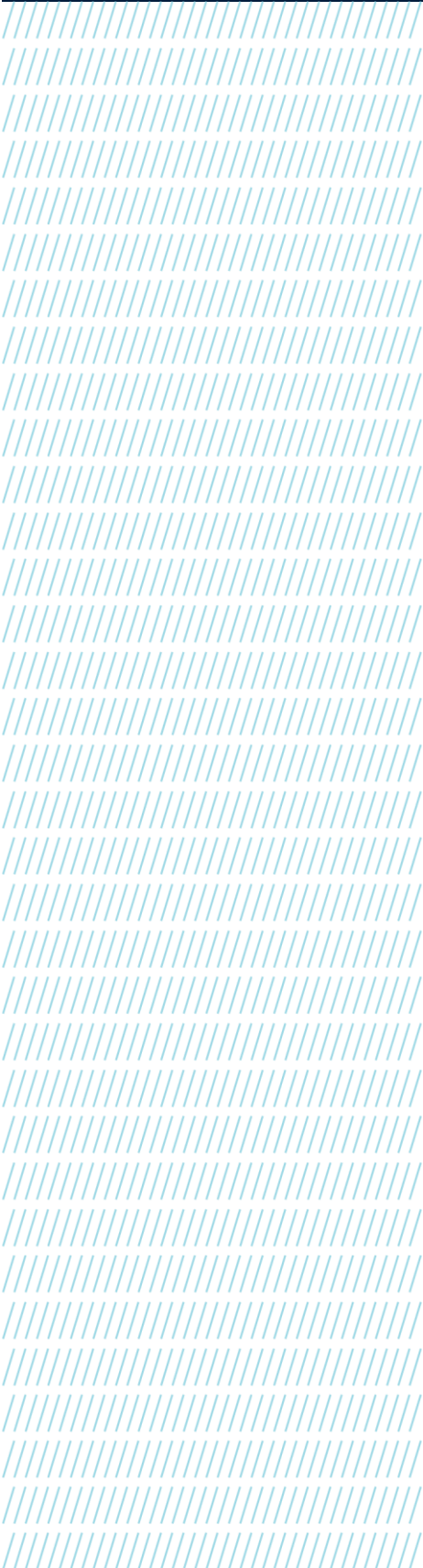
Honors

- Recognized in *Legal 500*, Not-For-Profit (Nonprofit and Tax Exempt Organizations), 2012 - 2019

Community

Pro Bono

- Serves as counsel to DC Central Kitchen and DC Scores



Related Practices

- Political Law
- Tax-Exempt Organizations
- Tax Controversies and Litigation
- Regulatory
- Antitrust
- Communications
- Tax

Related Industries

- Nonprofit Organizations
- Credit Counseling and Debt Services
- Art Law



Robert L. Waldman

Partner

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Bob Waldman is chair of Venable's Business Division and a member of the firm's Tax and Wealth Planning Group. Bob serves as counsel to foundations, hospitals, educational institutions, trade associations, community foundations, and other charitable entities, and counsels companies on corporate social responsibility matters. He represents some of the country's largest nonprofit organizations and has significant experience in international philanthropy. Bob also practices extensively in philanthropic and estate planning, employee benefits, and taxation.

Bob has advised numerous nonprofit clients on corporate governance issues, as well as on tax, compensation, and grantmaking concerns. He has been involved in restructuring nonprofit corporations to minimize liability and achieve program goals by utilizing multiple corporations, boards, and advisory committees. He has also represented nonprofit organizations before the Internal Revenue Service and the Office of the State Attorney General concerning a variety of issues. He has served on many nonprofit boards and is able to provide practical advice based on personal and professional experience.

Bob is vice president of the Venable Foundation and former co-managing partner of the firm.

Credentials

Education

- J.D., Stanford Law School, 1981
- B.A., Haverford College, 1978



Bar Admissions

- Maryland
- Pennsylvania

Professional Memberships and Activities

- Member, American Bar Association, Committee on Tax-Exempt Organizations
- Member, Maryland State Bar Association; former chair, Employee Benefits Subcommittee
- Member, Best Lawyers Advisory Board
- Elected fellow, Baltimore City Bar Foundation

Recognition

Honors

- Recognized as “Lawyer of the Year,” *Best Lawyers*, 2019
- Listed in *The Best Lawyers in America* (Woodward/White, Inc.), Employee Benefits Law, Non-Profit/Charities Law, and Tax Law, 2007 - 2019
- Recognized in *Legal 500*, Not-for-Profit (Nonprofit and Tax Exempt Organizations), 2012 - 2019
- Recipient, Leadership in Law award, *Daily Record*
- Professional Advisor Recognition Society, Baltimore Community Foundation

Community

Volunteerism

- Board member, Downtown Partnership of Baltimore
- Board member, Enoch Pratt Free Library

- Former board member, Maryland Association of Nonprofit Organizations
- Former board chair, Association of Baltimore Area Grantmakers

Related Practices

Tax

Wealth Planning

Tax-Exempt Organizations

Business Transactions Tax

Employee Benefits and Executive Compensation

Related Industries

Nonprofit Organizations

Healthcare

Education

Colleges, Universities and Professional Schools



Yosef Ziffer

Partner

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Yossi Ziffer focuses his practice on the full array of tax, corporate, governance, and strategic needs of tax-exempt organizations. Yossi's clients include public charities, family foundations, company foundations, community foundations, private operating foundations, private schools, universities, museums, and others. He also works with individuals and business entities on various tax planning matters, including transfers of business interests, succession planning, and tax audits.

With private foundation clients, Yossi has extensive experience addressing complex matters to ensure compliance with rules pertaining to self-dealing, excess business holdings, program-related investments, and expenditure responsibility. Yossi also works with several foundations that maintain international grantmaking programs.

In the area of charitable giving, Yossi has assisted numerous organizations and donors with respect to charitable gifts of complex assets. These transactions often involve detailed grant agreements, compliance with the Uniform Prudent Management of Institutional Funds Act (UPMIFA), and gift acceptance policies. Yossi has also worked with organizations and donors on gifts of conservation easements.

Yossi has worked with many nonprofit organizations undergoing significant corporate restructurings or other extraordinary transactions, including mergers, spin-offs, and joint ventures with for-profit businesses or other private interests. In addition to negotiating the terms for such transactions, Yossi has represented organizations in obtaining approvals for such transactions from state attorneys general and from the Internal Revenue Service (IRS).

Yossi regularly assists clients seeking to form new nonprofit organizations and obtain recognition of tax-exempt status from the IRS. These new organizations include grantmakers, private operating foundations,



museums, scholarship programs, supporting organizations, and many others.

In addition to his work with nonprofit organizations, Yossi has worked with numerous entrepreneurs and high-net-worth individuals on business restructuring and estate freeze plans.

Credentials

Education

- J.D., *cum laude*, New York University School of Law, 2005
- B.A., *summa cum laude*, Yeshiva University, 1998

Bar Admissions

- Maryland

Professional Memberships and Activities

- Member, American Bar Association
- Member, Maryland State Bar Association

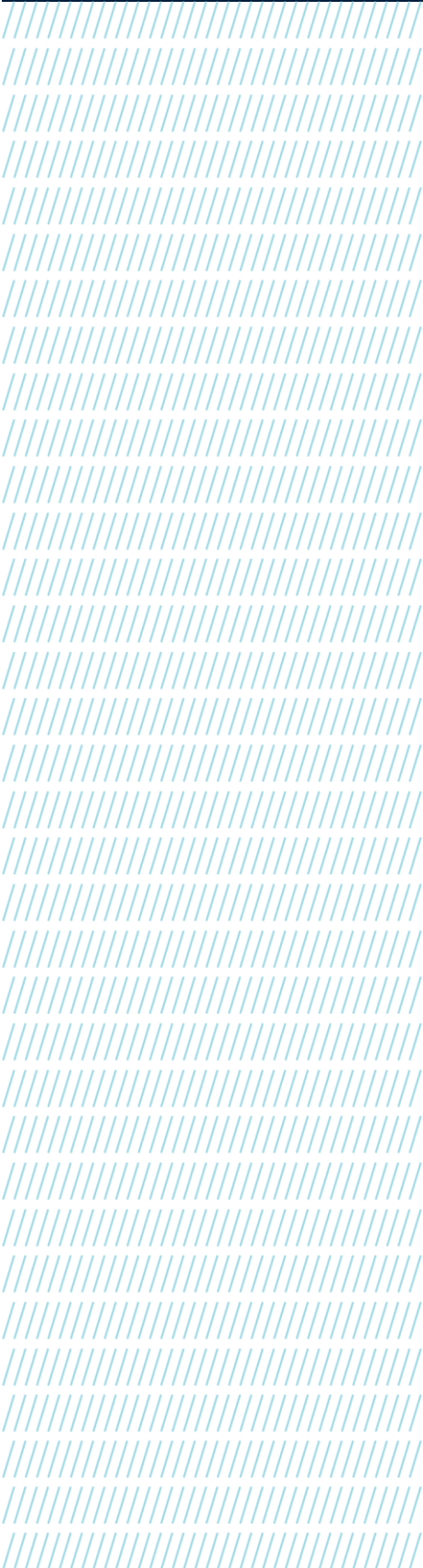
Languages

- Hebrew

Recognition

Honors

- Recognized in *Legal 500*, Tax - Not-for-Profit (Fortune 1000 private foundations, and national trade associations and charities), 2019



Community

Personal Activities

- Organizes and coaches in a local program that promotes volunteerism among community youth

Volunteerism

- Serves as a member on several committees of THE ASSOCIATED: Jewish Community Federation of Baltimore

Related Practices

Tax

Wealth Planning

Business Transactions Tax

Tax Controversies and Litigation

Tax Policy

Tax-Exempt Organizations

Related Industries

Nonprofit Organizations



Don Blanchon

Don Blanchon, Chief Executive Officer
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My name is Don and I joined the Whitman-Walker Health team in 2006. I am humbled and honored to served as CEO for the Whitman-Walker Health System. I believe in a service leadership philosophy where all employees and volunteers extend dignity, respect, and affirmation to those we care for in community. In my role, I work collaboratively with the Board of Directors and community stakeholders to advance Whitman-Walker as the nation's leading LGBTQ health care group. My work is strongly influenced by a simple yet powerful principle—health is a matter of equality and social justice. I have lived in Washington, DC for three decades and am a native of Foxboro, MA (home of the New England Patriots). However, soccer is my first true athletic love.