

# Legal Issues of Not-for-Profit Organizations

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## Organizational Issues

- Corporate Documents
  - Articles of Incorporation
  - Bylaws
  - Minutes
- Application for Tax-Exempt Status (Form 1023)
  - Make Sure Determination Letter is Current

## Information Found in Corporate Documents

- Name of Corporation
- Corporate Purposes
- Board Number and Selection Process
  - Self-Perpetuating
  - Member Selected
  - Term Limits
- Resident Agent and Address
- Committee Structure
- Officers
- Indemnification Procedure
- Public Charity Status (IRS Determination Letter)

## Board Meetings

- Quorum
- Approve Minutes
- Committee Reports
- Accurate Minutes
  - Record Dissents (By Name or Number)
  - Record Votes
  - No unnecessary or irrelevant information

## Rights and Responsibilities of Board Members

- Two Duties
  - Duty of Care
  - Duty of Loyalty



## Duty of Care

- Informed, good faith decisions
- Regular attendance at board and committee meetings
- Can rely on reports and consultants, if reliable
- Delegation is permissible
- Monitor investments

## Duty of Loyalty

- Undivided allegiance
- Disclosure of conflicts/Conflict of Interest Policy
- Intermediate Sanctions



# Operational Issues

- Conflicts of Interest
  - Private Inurement
  - Private Benefit
  - Intermediate Sanctions
    - Applies to Excess Benefit Transactions (including compensation arrangements)
    - 25% Tax on the Self-Dealer (200% if not corrected)
    - 10% Tax on the Board (up to \$20,000)
  - Conflict of Interest Policy
  - Sarbanes-Oxley
  - Best Practices
    - New York Situation
    - California



# Lobbying

- Two Types of Lobbying:
  - Direct Lobbying
  - Grassroots Lobbying



## Direct Lobbying

- Communication with a legislator, legislative staff, or other government official (state, federal or local)
- Refers to specific legislation or legislative proposal
- Takes a position

## Grassroots Lobbying

- Communication with the general public
- Refers to and takes a position on specific legislation
- Includes a “call to action”

## Exceptions to Lobbying

- Nonpartisan Analysis and Research
- Self Defense
- Technical Assistance in Response to a Written Request
- Discussion of Broad Social Issues

## Impermissible Lobbying

- Two tests
- Insubstantial Part
- 501(h) election
  - Expenditure Test (20%)
- 501(c)(4) Alternative

## Political Activity

- Cannot participate or intervene in any political campaign on behalf of any candidate for public office
- Watch out for “indirect” campaign activity (biased voter guides, issue advocacy tied to a candidate, etc.)
- Voter education and candidate forums may be ok.

# Unrelated Business Income Tax (“UBIT”)

- Three elements
  - Trade or Business
  - Regularly Carried On
  - Unrelated to Exempt Purposes



## Exceptions to UBIT

- Passive Income (Rents, Royalties, Interest, Capital Gain)
- Services provided by Volunteers
- Most fundraisers
- Bingo



## Special UBIT Concerns

- Corporate Sponsorships (Acknowledgement vs. Advertising)
- Debt Financed Property
- Mailing Lists
- Royalties vs. Compensation
- Affinity Credit Cards

## Other Hot Legal Areas

- Contracts (Employment Contracts)
- Environmental
- Intellectual Property
  - Trademarks
  - Patents
  - Copyrights

## Liability Protection

- Insurance (D&O, property, E&O)
- Corporate Protection
- Volunteer Protection Acts (State and Federal)
- Indemnification

# Fundraising Issues

- Registration Requirements
- Raffles and Auctions
- Planned Giving Tools
  - Sample Will Language
  - Naming Opportunities
  - Donor Advised Funds
  - Charitable Gift Annuities
  - Charitable Remainder Trusts
  - Pooled Income Funds

## Structure Issues

- Use of Subsidiaries (for profit and nonprofit)
- LLC's
- Title Holding Companies
- Supporting Organizations
- Joint Ventures

## Filing and Disclosure Issues

- Form 990
- Personal Property Tax Returns
- Charitable Solicitation
- Make available 990's, 1023
- Charitable Substantiation Rules (Receipts)
  - What Portion is Deductible