

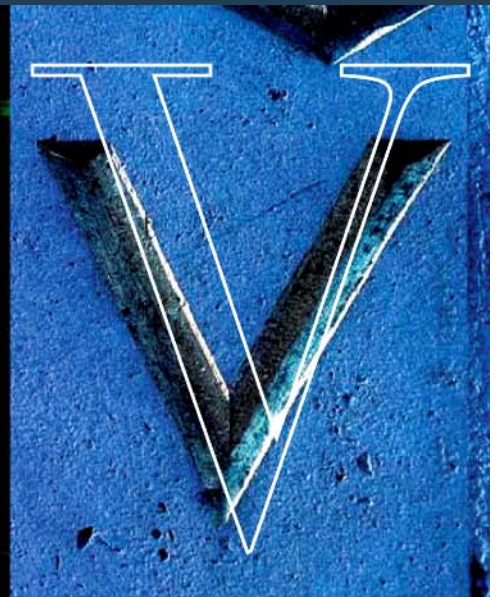
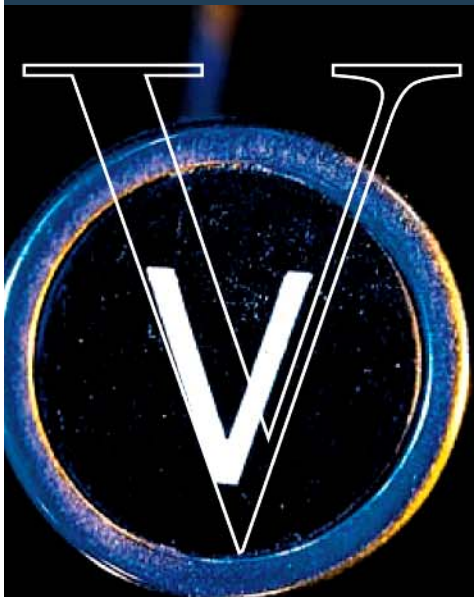
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Related Foundations of Associations: Top Five Legal and Tax Pitfalls to Avoid

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11:30 a.m.-1:30 p.m. EDT

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Today's Program

- Introduction—Review of Basic Nonprofit Legal Issues
- Top Five
 1. Know the Differences between 501(c)(3) and 501(c)(6)
 2. Know What Type of Foundation You Are and Act Accordingly
 3. Honor the Separateness of the Two Entities
 4. Have a Solid Shared Services Agreement in Place
 5. Stay Close
- Conclusion—Q&A



Introduction-Review of Basic Nonprofit Legal Issues

- Corporate Governance
 - Hierarchy of Authority
 - State Nonprofit Corporation Law (statute and common law)
 - Articles of Incorporation
 - Bylaws
 - Board Policies and Procedures
 - Unwritten Common Practices



Introduction-Review of Basic Nonprofit Legal Issues (continued)

- Corporate Governance
 - Governance Structure
 - Fiduciary Duties
 - Care
 - Loyalty
 - Obedience



1. Know the Differences between 501(c)(3) and 501(c)(6)

- 501(c)(3)
 - Reserved for entities that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or education purposes (among other types)
 - No private inurement
 - No political activities
 - Limited lobbying
 - No substantial “private benefit”



1. Know the Differences Between 501(c)(3) and 501(c)(6) (continued)

- 501(c)(3)
 - Charitable contributions
 - Private foundation or government grants
 - Appearance of having a separate entity with more focused mission



1. Know the Differences Between 501(c)(3) and 501(c)(6) (continued)

- 501(c)(6)
 - Business leagues, chambers of commerce, real estate boards, boards of trade (among other types of organizations) qualify for 501(c)(6) recognition
 - No private inurement
 - No particular services
 - Unlimited lobbying
 - Some political activity permitted



1. Know the Differences Between 501(c)(3) and 501(c)(6) (continued)

- 501(c)(3) vs. 501(c)(6)
 - IRS Focus
 - Certification?
 - Market research?
 - Scholarships?
 - Members-only programs?
 - Higher nonmember rates?
 - Practical/Business Considerations
 - Branding
 - Ease of Administration



2. Know What Type of Foundation You Are and Act Accordingly

- Private Foundation vs. Public Charity
- 509(a)(1)—publicly supported by donations (33 1/3%)
- 509(a)(2)—publicly supported by program service revenue (33 1/3%, also includes limit on investment income and UBI)
- 509(a)(3)—supporting organization that supports a publicly supported organization; this may include a 501(c)(6) organization
 - Types I, II or III or supporting organizations
 - Most foundations are Type I
 - Control required



3. Honor the Separateness of the Two Entities

- Strong presumption in the law that separateness should be honored
- Still, Association and Foundation are separate legal entities and should be treated as such by the organization leaders
- Must be mindful of corporate formalities
- Must maintain an independent purpose
- Must not be a “mere instrumentality” of another entity.



3. Honor the Separateness of the Two Entities (continued)

- Specific considerations
 - Board meetings and minutes
 - Tax filings
 - Bank accounts
 - Transfer of funds
 - From Association to Foundation
 - From Foundation to Association
 - Shared services
 - Shared space
 - Board overlap
 - Similar names
 - Public perception
 - Internet presence (note recent IRS memo)



4. Have a Solid Shared Services Agreement in Place

- Address all business terms
- Allocate space and resources properly
- Create time-keeping obligations
- Track direct expenses where possible
- Long term or automatic renewal
- Trademark license
- Can have association “donate” services/space but should still track value



5. Stay Close

- More practical than legal
- Legal separateness can be maintained and risk can be managed while keeping a close relationship
- Dispute resolution mechanisms in place



Questions?

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