



# Top Ten Legal Checklist: Keys to Strengthening Your Nonprofit Organization

Tuesday, March 17, 2015, 12:30 – 2:00 PM ET  
Venable LLP, Washington, DC

Speakers:

**Jeffrey S. Tenenbaum, Esq.,**  
Partner and Chair of the Nonprofit Organizations Practice, Venable LLP

**Anita K. Drummond, Esq.,**  
Associate General Counsel, The Nature Conservancy



# Presentation





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## Agenda

- Preserving and protecting key assets (#1 - #3)
- Revenue (#4 - #5)
- Controlling liabilities (#6 - #7)
- Governance (#8 - #9)
- Growth and innovation (#10)



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## Assets

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## Preserving and Protecting Key Assets

- #1 People
- #2 Information and intellectual property
- #3 Cash, tangible and real property



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## Scenario



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## #1 People

- Human resource policies
  - Hiring processes
  - Performance management
  - Preventing discrimination and harassment
  - Termination processes
- Training board, management and staff
- Volunteer policies, agreements and training
- Key vendor agreements
  - Payroll
  - Benefits providers



## Scenario



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## #2 Intellectual Property and Data

- Register, manage and protect trademarks and service marks
- Secure content rights for digital media, publications and educational materials
- Data security and operational redundancy in vendor agreements
  - Corporate records and governance documents
  - Key services
  - Donor lists
  - Financial data and management
  - Operational systems



## #3 Money, Real and Tangible Property

- Investment advisors, broker and investment vehicle agreements
- Loans
- Independent auditors, tax preparation, and other finance service agreements
- Core technology systems
- Real property acquisition, selling or leasing



# Revenue

## Revenue

- #4 Sources of Revenue
- #5 Protecting Core Organizational Services



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## #4 Protecting Regular Revenue

- Policies for receipt and control of revenue for revenue from various sources
  - Membership dues
  - Donations – individuals, corporations and foundations
  - Government grants and contracts
  - Royalties, sponsorships, trade shows, educational programs
  - Service fees
  - Taxable income (e.g., advertising)
  - Jurisdiction of revenue source
- Agreements for major income



## Scenario



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## #5 Protecting Core Organizational Services

- Payment processing services
- Trade show contracts
- Publishing contracts for educational materials
- Copyright licenses on key publications
- Lobbying registration and reporting compliance, and lobbying tax compliance
- Accreditation and certification programs
- Agreements with related entities that provide services or products to membership and others
- Agreements related to providing services to members or the public



## Controlling Liabilities



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## Controlling Liabilities

#6 Business basics

#7 Crisis management



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## #6 Business Basics

- Review and maintenance of insurance policies
- Long-term critical contracts for core services and functions (e.g., payroll, data source hosts, etc.)
- Agreements for major income sources
- Liabilities associated with particular core functions
- Corporate records – current, accurate and organized
- Records and information management
- State and local business registration and licensing (and international if operating overseas)



## #7 Crisis Management

- Review with legal counsel possible scenarios
  - Reputational
  - Financial
  - Tax-exempt compliance challenges
  - Other legal liabilities
- Established process for management team, board and legal counsel when crises occur
- Role of public relations and other third-party contractors, and ensuring coverage under the attorney-client and work-product privileges



# Governance

## Governance

#8 Corporate basics

#9 Tax-exempt organization basics



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## #8 Corporate Basics

- Policies and procedures for basic corporate governance matters
- Orientation on fiduciary duties, policies and procedures for board and senior leaders
- Annual legal update for board and senior leaders
- Bylaws and other governing document review
- Board and committee meeting minutes
- Financial oversight
- Corporate public filings
- Relationship with related entities
- Crisis-management plans
- Whistleblower protection



## #9 Tax-Exempt Organization Basics

- IRS Form 990
- Lobbying implications for a TEO
- Political activities
- Structuring related vs. unrelated activities
- Affiliates and subsidiaries
- Unrelated business income
- Sponsorships, royalties, trade shows, advertising
- Private benefit
- Private Inurement
  - Conflict of interest policy
  - Other inurement safeguards
  - Executive compensation



## Scenario



## Growth and Innovation

## Scenario



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## #10 Growth and Innovation

- New products and services
- Joint ventures and partnerships
- Vetting business partners
- International activities
- New branding efforts
- New forms of revenue
- Property damage and personal-injury risk
- Industry standards, accreditations and certifications
- Don't let tax, legal and regulatory compliance be the tail that wags the dog – be smart and creative

## Questions

**Jeffrey S. Tenenbaum, Esq.**  
**Partner and Chair of the Nonprofit Organizations Practice**  
**Venable LLP**

[jstenenbaum@Venable.com](mailto:jstenenbaum@Venable.com)  
t 202.344.8138

**Anita K. Drummond, Esq.**  
**Associate General Counsel**  
**The Nature Conservancy**

[adrummond@tnc.org](mailto:adrummond@tnc.org)  
t 703.841.4192

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# Speaker Biographies





## Jeffrey S. Tenenbaum

Partner

Washington, DC Office

T 202.344.8138 F 202.344.8300

[jstenenbaum@Venable.com](mailto:jstenenbaum@Venable.com)

### AREAS OF PRACTICE

Tax and Wealth Planning  
 Antitrust  
 Political Law  
 Business Transactions Tax  
 Tax Controversies and Litigation  
 Tax Policy  
 Tax-Exempt Organizations  
 Wealth Planning  
 Regulatory

### INDUSTRIES

Nonprofit Organizations and Associations  
 Credit Counseling and Debt Services  
 Financial Services  
 Consumer Financial Protection Bureau Task Force

### GOVERNMENT EXPERIENCE

Legislative Aide, United States House of Representatives

### BAR ADMISSIONS

District of Columbia

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media. He also has served as an expert witness in several court cases on nonprofit legal issues.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was an inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was one of only seven "Leading Lawyers" in the Not-for-Profit category in the prestigious 2012 *Legal 500* rankings, one of only eight in the 2013 rankings, and one of only nine in the 2014 rankings. Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in the 2012-15 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was selected for inclusion in the 2014 edition of *Washington DC Super Lawyers* in the Nonprofit Organizations category. In 2011, he was named as one of Washington, DC's "Legal Elite" by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

### REPRESENTATIVE CLIENTS

AARP  
 Air Conditioning Contractors of America  
 Airlines for America  
 American Academy of Physician Assistants  
 American Alliance of Museums  
 American Association for the Advancement of Science  
 American Bar Association  
 American Bureau of Shipping  
 American Cancer Society  
 American College of Radiology  
 American Friends of Yahad in Unum  
 American Institute of Architects  
 American Institute of Certified Public Accountants

## EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

## MEMBERSHIPS

American Society of Association Executives

California Society of Association Executives

New York Society of Association Executives

American Society for Microbiology  
American Society of Anesthesiologists  
American Society of Association Executives  
America's Health Insurance Plans  
Association for Healthcare Philanthropy  
Association for Talent Development  
Association of Corporate Counsel  
Association of Fundraising Professionals  
Association of Global Automakers  
Association of Private Sector Colleges and Universities  
Auto Care Association  
Biotechnology Industry Organization  
Brookings Institution  
Carbon War Room  
The College Board  
CompTIA  
Council on Foundations  
CropLife America  
Cruise Lines International Association  
Design-Build Institute of America  
Endocrine Society  
Ethics Resource Center  
Foundation for the Malcolm Baldrige National Quality Award  
Gerontological Society of America  
Global Impact  
Goodwill Industries International  
Graduate Management Admission Council  
Habitat for Humanity International  
Homeownership Preservation Foundation  
Human Rights Campaign  
Independent Insurance Agents and Brokers of America  
Institute of International Education  
International Association of Fire Chiefs  
International Sleep Products Association  
Jazz at Lincoln Center  
LeadingAge  
Lincoln Center for the Performing Arts  
Lions Club International  
March of Dimes  
ment'or BKB Foundation  
Money Management International  
National Association for the Education of Young Children  
National Association of Chain Drug Stores  
National Association of College and University Attorneys  
National Association of Manufacturers  
National Association of Music Merchants  
National Athletic Trainers' Association  
National Board of Medical Examiners  
National Coalition for Cancer Survivorship  
National Council of Architectural Registration Boards  
National Defense Industrial Association  
National Fallen Firefighters Foundation  
National Fish and Wildlife Foundation  
National Propane Gas Association  
National Quality Forum  
National Retail Federation  
National Student Clearinghouse  
The Nature Conservancy  
NeighborWorks America  
Peterson Institute for International Economics  
Professional Liability Underwriting Society  
Project Management Institute  
Public Health Accreditation Board  
Public Relations Society of America  
Recording Industry Association of America

Romance Writers of America  
Telecommunications Industry Association  
Trust for Architectural Easements  
The Tyra Banks TZONE Foundation  
U.S. Chamber of Commerce  
United Nations High Commissioner for Refugees  
University of California  
Volunteers of America  
Water Environment Federation

## HONORS

Recognized as "Leading Lawyer" in *Legal 500*, Not-For-Profit, 2012-14  
Listed in *The Best Lawyers in America* for Non-Profit/Charities Law, Washington, DC (Woodward/White, Inc.), 2012-15  
Selected for inclusion in *Washington DC Super Lawyers*, Nonprofit Organizations, 2014  
Served as member of the selection panel for the inaugural *CEO Update* Association Leadership Awards, 2014  
Recognized as a Top Rated Lawyer in Taxation Law in *The American Lawyer* and *Corporate Counsel*, 2013  
Washington DC's Legal Elite, *SmartCEO Magazine*, 2011  
Fellow, Bar Association of the District of Columbia, 2008-09  
Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006  
Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004  
Recipient, The Center for Association Leadership Chairman's Award, 2004  
Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997  
Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95  
AV® Peer-Review Rated by *Martindale-Hubbell*  
Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

## ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

## PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, now in its second edition, published by the American Society of Association Executives. He also is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. Mr. Tenenbaum is a frequent author on nonprofit legal topics, having written or co-written more than 700 articles.

## SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer on nonprofit legal topics, having delivered over 700 speaking presentations. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *NBC News*, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *ESPN.com*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal topics on Fox 5 television's (Washington, DC) morning news program, Voice of America Business Radio, Nonprofit Spark Radio, and The Inner Loop Radio.



**Anita Drummond**

Anita is the Associate General Counsel of Corporate Services at The Nature Conservancy. Corporate Services serves the organization's legal needs for various client groups including finance, technology, human resources, development, marketing, external affairs, public funding, core science and global strategies programs. Anita has been at the Conservancy since 2007, and before coming to the Conservancy, she served as director of legal affairs at a tax-exempt organization and in private practice. She is a graduate of George Mason University School of Law. Before attending law school, Anita was in public affairs at various tax-exempt organization and served in government.

# Additional Information



# 2015 LEGAL REVIEW

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## ASSOCIATION LEGAL ISSUES FROM THE PAST YEAR



By George E. Constantine and  
Jeffrey S. Tenenbaum

FROM THE INTERNAL REVENUE SERVICE TO THE Federal Trade Commission to state and federal labor agencies, federal and state regulators are taking a close look at association activities in 2015. In light of changes to the law and enhanced enforcement efforts, association executives should take a close look at existing policies, procedures and practices regarding employment, member discipline, and tax compliance to minimize their associations' legal and tax risks in these areas.

Below are five key legal developments over the past year for association executives to keep in mind when evaluating legal and tax compliance efforts in the months ahead:

### I. Association membership restrictions and antitrust

The FTC has been looking closely at association rules governing member activities, particularly those that regulate conduct related to members' competition with one another. Most recently, the agency announced consent orders on Dec. 23, 2014, requiring the Professional Lighting and Sign Management Companies of America and the Professional Skaters Association to eliminate their bylaws provisions that limited competition among each association's members. These orders, along with two similar actions earlier in 2014 involving the California Association of Legal Support Professionals and the Music Teachers National Association, are important reminders that trade and professional association codes of ethics and membership restrictions can present significant antitrust risk if not structured properly.

PLASMA, an association representing about 25 member firms that specialize in commercial lighting, and electrical sign installation and maintenance, had bylaws provisions that, according to the FTC:

- Prohibited members from providing services in the designated territory of another member, unless the other member first declines to perform the work;
- Included a price schedule for any work performed in the designated territory of another member; and
- Barred any member, for one year following termination of membership, from soliciting or competing for the customers (or prospective customers) of another member.

Although the FTC challenged the first provision, the proposed consent order does not prohibit PLASMA from requesting that its members identify any geographic region(s) within which the members can quickly respond for service, so long as there are no restrictions on the number of members that may identify a particular geographic region as a "quick response" region.

In the PSA matter, the FTC raised similar concerns regarding a "no-solicitation" provision prohibiting member coaches from soliciting business from skaters who are signed onto other coaches.

The FTC's actions regarding these associations show a strong focus on activities that may restrict competition and, thus, in the eyes of the FTC, have an effect of causing prices to be artificially high. Associations should pay close attention to existing bylaws, codes of ethics, and other membership restrictions that seek to address competitive conduct such as advertising.

*See ISSUES, next page*

## Associations: Break some trademark rules!

By Andrew D. Price and Justin E. Pierce

UNDER THE TRADITIONAL RULES OF PROPER trademark use, brands must be used as adjectives and in a consistent manner. While this standard works for many brands, it is too restrictive when it comes to strong brands. Nonprofits with strong brands, especially famous ones, may break these rules when their culture, tradition and policy allow.

Recent trends suggest there are ways strong brands can use their marks as a noun or verb without substantial risk of genericide (i.e., when use of the term becomes so prevalent it is no longer uniquely tied to the brand-owning organization). A number of organizations have used their key trademarks as verbs in advertising campaigns without genericide. In recent months, for example, Google launched its advertising campaign "Play your heart out" to entice consumers to visit its PLAY store online.

To mitigate risk of genericide, we suggest that nonprofits take a few precautionary steps, such as:

- **Make clear to consumers** that the action suggested by the verbed-up brand use cannot be accomplished without using the branded product or service – the verbed-up brand can be built into taglines, slogans, and/or logos that reinforce this point;
- **Register the verbed-up brand** or the tagline, slogan, or logo containing the verbed-up brand; and
- **Monitor the public's use** and view of the verbed-up brand – ultimately, it is the consuming public that determines, through its use, whether a verbed-up brand has lost distinctiveness through genericide.

Next, traditional thinking says that a mark should be represented in a consistent manner. Brand owners fear the loss of rights that can occur when they cannot "tack" rights from an updated version of a mark onto rights from the original mark. Google did something disruptive when it started to morph its Google logo on a regular basis into so-called Doodles. The Doodles have enhanced goodwill in the Google brand by making it come to life in the eyes of consumers, and Google has conditioned consumers to believe that strong brands can change.

To mitigate risk, we suggest that nonprofits take a few precautionary steps, such as:

- **Make sure the subject design** or stylization has substantial goodwill;
- **Gauge how much to play** with the design

*See TRADEMARK, next page*

**ISSUES,** *from previous page*

ing, solicitations, bids, market allocation, and, of course, pricing. Such restrictions very well may give rise to significant antitrust risk.

**2. New state employment laws**

In recent months, states have been quite active in enacting statutes that affect all employers in their jurisdictions, including associations, and may require changes to existing policies. For instance, the District of Columbia recently became the 14th jurisdiction to enact a law that prohibits employers from asking applicants if they have ever been arrested. This “ban the box” law would permit an employer only to seek information about prior criminal convictions (not merely arrests) after it makes a conditional offer of employment to the individual. If an employer discovers a criminal conviction after the conditional offer is made, that conditional offer may only be revoked in narrow situations having to do with, for example, the nature of the conviction and its relation to the applicable position.

Also in the nation’s capital, the D.C. Wage Theft Protection Act was passed recently to require numerous notices to employees, increase penalties for employers who retaliate against employees who report labor violations, and revise record-keeping procedures. The new law has been the source of much confusion among D.C. employees and, in fact, has twice been modified by emergency amendments. It is expected to become effective after a mandatory congressional review period concludes; as of the time of this writing, that effective date was expected to be Feb. 26, 2015.

Finally, in California, employers are now required to guarantee employees at least three paid sick days per year. The law includes requirements for notice to employees about their sick leave accrual and right to use sick leave. No accrual or carry-over is required if an employer provides the full amount of sick leave at the beginning of each year, allowing the employee to take sick leave before he or she would have otherwise accrued it.

**3. Obamacare employer mandate begins**

The employer mandate provisions of the Affordable Care Act began to take effect on Jan. 1, 2015. This imposes a mandate on large employers to offer minimum essential coverage to full-time employees and their dependent children (up to age 26) or pay a penalty tax. Further, if that minimum essential coverage is not affordable or does not provide minimum value, the employer also will be subject to a penalty tax. The mandate in 2015 applies to employers that have employed an average of at least 100 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year. In future years, the definition of an applicable large employer will be 50 full-time employees.

Associations in the 100-plus employee range certainly should already have been reviewing their healthcare offerings in light of this new requirement; those with 50 or more employees should prepare for next year if they have not already done so.

# Nonprofits with federal awards face new Super Circular compliance

By Dismas Locaria and Melanie Jones Totman

**N**OW, A YEAR AFTER ITS RELEASE, NONPROFITS that receive federal awards (including federal grants and cooperative agreements) must begin implementing the new requirements of the U.S. Office of Management Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super Circular). Through the Super Circular, an effort more than two years in the making, OMB sought to streamline eight federal regulations applicable to nonprofits and others into a single, comprehensive policy guide. Despite OMB’s intent, the Super Circular notably imposes a set of regulations on the federal award community that is more akin to the heavily regulated federal procurement/contracting arena, a stark departure from the previous regime. In particular, the Super Circular materially changes how federal awards are administered, how such organizations may subaward or subcontract with federal funds, and how those awards/contracts should be monitored. A number of provisions were added to prevent and eliminate waste, fraud and abuse, including mandatory disclosure requirements and a prohibition of organizational conflicts of interest. Accordingly, the implementation of the Super Circular will have important implications for all nonprofit recipients of, and applicants for, federal awards.

**4. New developments from the IRS**

With the scandals from the IRS Exempt Organizations Division slowly fading into history, the division’s new leaders have begun to implement changes to how associations and other tax-exempt organizations interact with the agency. Of note for 2015: the IRS has implemented significant cost increases for organizations seeking private letter rulings and has realigned its operations so that such letter rulings and technical advice memoranda are issued by a different office than had previously issued such documents. As a practical matter, this means that associations seeking a ruling from the IRS (for example, if the association is undertaking a new activity and wishes to know if the IRS will treat the revenue from that activity as taxable) will need to go to the Chief Counsel, an IRS office that does not work exclusively on tax-exempt matters. Notably, those associations will need to pay a \$28,300 fee to the IRS to obtain such a ruling.

Other recent developments include the new availability of an IRS Form 1023-EZ application for small organizations that wish to obtain 501(c)(3) tax-exempt status recognition. This new application, introduced in July, is far less burdensome than the full form. Filers must complete an eligibility worksheet certifying, among other things, that the organization’s total assets are less than \$250,000 and that actual gross receipts were less than \$50,000 for the past three years and are projected to remain the same or decrease over the next three years. The activities in the applications are described with codes, and no corporate documents are submitted.

In other IRS news, a federal judge on Jan. 30, 2015, handed the IRS a significant defeat in its fight against releasing IRS Form 990 information returns in a digitally readable format. The ruling will have a significant impact on the IRS as well as all tax-exempt organizations required to file the annual Form 990. Assuming this ruling is upheld or not challenged by the IRS, organizations that e-file their annual Form 990 will likely be the first

to feel the effects of this ruling. With members of the public having searchable versions of the forms, it will be easier for the media and others to search the documents for red flags and other areas of concern.

**5. Payroll taxes and nonprofit compliance**

The Treasury Inspector General for Tax Administration published the results of a study last year highlighting rampant noncompliance among tax-exempt organizations in the area of payroll tax withholding and payment. The study found that more than 64,000 nonprofits have not paid taxes owed since 2012; of those, about 1,200 owed more than \$100,000 in unpaid taxes.

Studies like this often serve as a launching point for IRS enforcement efforts. Payroll tax noncompliance may not present risk to an organization’s tax-exempt status, but it can expose individual directors to penalties. Further, noncompliance in this area is viewed by the IRS as a potential indicator of noncompliance in other nonprofit activities; as such, an IRS audit of an organization suspected of not meeting its payroll tax obligations will almost certainly involve a broader review of other compliance areas. Association executives should take this time to review their compliance with withholding and related payroll matters and, in particular, should review whether they are properly treating individuals as independent contractors (versus as employees).

**TRADEMARK,** *from previous page*

or stylization based on the strength of the mark (e.g., famous marks can be changed the most);

- **Change only the design or stylization,** not the corresponding word mark; and
- **Continue regular use and registration** of the original design or stylization.

Nonprofits should not be afraid to break the old rules of proper trademark use when it comes to strong brands, especially famous ones, when their culture, tradition, and policy allow.

## Cybersecurity and antitrust: Guidance for assn-sponsored information exchanges

By Andrew E. Bigart and Jeffrey S. Tenenbaum

ON OCT. 2 THE U.S. DEPARTMENT OF JUSTICE issued a business review letter advising CyberPoint International LLC that its True Security Through Anonymous Reporting cyberintelligence data-sharing program does not raise antitrust concerns. Although focused on the company's cybersecurity service, the DOJ letter provides a helpful reminder to trade and professional associations of the need to be cognizant of and review any proposed information exchange or benchmarking program for potential antitrust risk.

Although such programs offer numerous benefits for participating industry members and the public, any association-sponsored exchange of competitively sensitive information will draw heightened antitrust scrutiny because of the risk that the sharing of information can lead to anticompetitive agreements. Below is a brief summary of the DOJ letter and recommended best practices for any trade or professional association interested in managing a similar program.

### DOJ's business review letter

Under the federal Sherman Act and the Federal Trade Commission Act, information exchanges are analyzed under the rule of reason, which balances the procompetitive benefits of the conduct against the potential anticompetitive harm to determine the likely overall effect on competition. The main competitive concern with information exchanges is the potential for participating industry members to use the information exchanged to further a price-fixing or other anticompetitive conspiracy.

In reviewing CyberPoint's TruStar program, the DOJ applied the standard "rule of reason" analysis by reviewing (1) the business purpose and nature of the program, (2) the type of information shared, and (3) the safeguards implemented to minimize the risk that participants (members) will exchange competitively sensitive information. With respect to the first two points, the DOJ found that the focus of the program was procompetitive – it allows members to share accurate and timely intelligence on potential cyber threats, best

practices, and remediation solutions. In addition, the TruStar program offers members a "community forum" that allows them to discuss cyber threats and collaborate on best practices. In this regard, the DOJ noted that CyberPoint had implemented procedures to obtain commitments from members that they would not share competitively sensitive information.

Thus, for all three factors, the DOJ found that the TruStar program was procompetitive and unlikely to raise antitrust concerns.

### Recommended best practices for information exchanges

The DOJ business review letter, along with a prior joint DOJ/FTC statement on a similar cybersecurity proposal, reinforces that properly structured information exchanges and benchmarking programs can provide significant procompetitive benefits. To minimize potential risk, any trade or professional association seeking to develop such a program should keep the following safeguards in mind:

- **The proposed exchange should be reviewed** by antitrust counsel in advance.
- **Clearly articulate the purpose and procompetitive benefits** of the information exchange, and keep it closely focused on those criteria.
- **Participation should be voluntary**, and the program should include instructions cautioning participants on potential antitrust risk and prohibiting discussions of competitively sensitive information with other participants.
- **Participants should not be involved** in the collection or compilation of data for programs that involve the exchange of data. In addition:
  - **Any data provided by participants should be at least three months old** (no current or future information). Data should be provided by a minimum of five participants, with no individual participant's data representing more than 25% on a weighted basis.
  - The trade or professional association or third party managing the program should **treat specific data provided by participating members as confidential** and not disclose it in its raw form to any other participant or third party.
  - **The program should not identify the individual members** who participated in the survey/exchange.
  - **Any data published should be in aggregate form only.**
  - **Joint discussion and analysis of the data should be avoided.** Each participant should separately analyze the data and make independent business decisions based on the data.

## Investigating nonprofit fraud, embezzlement and charitable diversions

By Edward Loya, Stephanie Montano, Doreen Martin and Jeffrey S. Tenenbaum

ON OCT. 26, 2013, THE WASHINGTON POST reported that from 2008 through 2012, more than 1,000 nonprofit organizations disclosed hundreds of millions of dollars in losses attributed to theft, fraud, embezzlement, and other unauthorized uses of organizational funds and assets. According to a study cited by the Post, nonprofits and religious organizations suffer one-sixth of all major embezzlements – second only to the financial services industry.

While the numbers are shocking, the underlying reasons for nonprofit susceptibility to fraud and embezzlement are easy to understand. Many nonprofits begin as underresourced organizations with a focus on mission rather than strong administrative practices. As organizations established for public benefit, nonprofits assume the people who work for them, especially senior management, are trustworthy. Often these factors result in less stringent financial controls than implemented by their for-profit counterparts.

Of course, nonprofit employees are not immune to the vulnerabilities of economic distress, including financial difficulties, overspending and even gambling. Further, high-level employees and their close associates have significant access to organizational funds and financial records, causing them to believe they can successfully commit the fraud and embezzlement, and conceal their conduct from outside scrutiny. Employees may rationalize their unlawful conduct as just compensation for lower salaries or unfair treatment, or as legitimate financial arrangements whereby the employee is simply "borrowing" money from the organization.

In light of the disturbing numbers reported by the Washington Post, Congress and numerous state attorneys general have pledged to launch

investigations, and reportedly, some have. This will likely lead to even greater scrutiny by government regulators. External audits are necessary to ensure that effective financial controls and fraud prevention measures are being followed, but a standard audit is not the method by which nonprofit organizations should expect to detect fraud. The Association of Certified Fraud Examiners reports that less than 4 percent of frauds are discovered through an audit of external financial statements by an independent accounting firm.

Nonprofits may no longer elect to handle instances of fraud or embezzlement quietly to avoid unwanted attention and embarrassment. As of 2008, a larger nonprofit must publicly disclose any embezzlement or theft exceeding \$250,000, 5 percent of the organization's gross receipts, or 5 percent of its total assets. A tax-exempt organization whose gross receipts are greater than or equal to \$200,000 – or whose assets are greater than or equal to \$500,000 – is subject to additional public disclosure requirements on its IRS Form 990 concerning the embezzlement or theft.

Nonprofit boards of directors should facilitate establishment and supervision of strong policies that support the best practices explained above. Nonprofit organizations should put policies and procedures in writing to clearly communicate the organization's stance. While the board should not micromanage the day-to-day operations of an organization with paid staff, neither should it be complacent about its fiduciary obligation to "act with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances." Periodic review of financial reports and the IRS Form 990 return, appointment of an audit committee, and hiring a strong chief staff executive who is in sync with all of these risk management measures are all actions a board can take to fulfill its duty of care and protect the charitable funds and other assets entrusted to it.

# Enforceability of online terms of use

## Guidance for nonprofits from a federal appeals court

By A.J. Zottola and Robert Parr

IN A RECENT DOJ BUSINESS REVIEW LETTER to STARS Alliance LLC, the U.S. Department of Justice reviewed a joint purchasing arrangement proposed by an association of several nuclear utility operators. As a starting point, the DOJ noted that the proposal likely qualified for the safety zone for collaborations that account for less than 20 percent of the relevant market. Nevertheless, the DOJ went on to conduct a rule of reason analysis to determine whether the anticompetitive effects outweighed the procompetitive benefits.

Starting with potential anticompetitive effects, the DOJ found that it was unlikely the arrangement would “restrict competition in either the upstream markets for goods and services or the downstream markets for electricity” because the STARS members were generally located in different geographic areas and did not compete against each other. At the same time, DOJ found that the arrangement had the potential for procompetitive benefits through increased efficiencies and lower costs.

Further, DOJ noted that STARS had implemented numerous safeguards to limit the potential for anticompetitive coordination among its members, including that the joint purchasing activities would be voluntary for members, that members would not discuss prices for procuring goods and services, and that STARS would require antitrust compliance training for its members.

This ruling confirms the general rule that, absent extraordinary circumstances, the enforcement agencies are unlikely to challenge an association joint purchasing program where members are not required to purchase a particular product or service, each member makes its own independent decision to participate, and there is significant competition in the relevant market.

Associations looking to implement a joint purchasing program should implement safeguards, as appropriate, to prevent members from sharing competitively sensitive information, such as downstream sale prices, the timing of price increases or purchase orders, and margins. Suggested precautionary measures include:

- **Check your association’s governing documents** and evaluate its tax-exempt status to confirm that a joint purchasing program is a permissible association activity.
- **Consult with antitrust counsel** before establishing a joint purchasing program and periodically throughout the process to ensure compliance with antitrust laws.
- **Monitor the buying group’s market share** in the input and output markets to stay within the safeguards set forth in the enforcement agencies’ Antitrust Guidelines for Collaborations Among Competitors (e.g., 35 percent share for total purchases in the relevant input market and 20 percent share in the relevant output market).
- **The association or an independent agent should handle joint buying activity** and negotiate with suppliers on behalf of the purchasing group, or require each member to contract individually with the supplier offering a group discount.
- **The program should not impose minimum** purchasing requirements on members.
- **Participation in the joint purchasing arrangement should be available to all association members** and should not be limited by the size, type or location of a member.
- **Joint purchasing should not be used** to raise, lower or stabilize prices, or to boycott suppliers.
- **Members should not share competitively sensitive information** or enter into any agreement or understanding on prices or other competitive conduct in the downstream output market.
- **Any meetings of a joint purchasing group should have an agenda** and minutes. All discussions should be limited to the purposes of the joint purchasing group.
- **Antitrust counsel should be present at all meetings** where competitively sensitive information is discussed.

# VENABLE LLP

## Nonprofit Organizations Practice

With more than 600 nonprofit clients nationwide, Venable has the largest concentration of attorneys in the country providing counseling and advocacy for trade and professional associations, charities, foundations and other types of nonprofit organizations. Our clients call on us for assistance with matters of general nonprofit law and matters unique to their industries, professions, causes and issues.

As a result of our extensive experience representing nonprofit organizations, virtually no legal issue or problem is new to us. Experience with the most common and the most unusual nonprofit issues enables us to provide precise answers and workable solutions with a legal style marked by ingenuity and pragmatic judgment. Our understanding of the nature and business of nonprofits – derived not only from our legal practice, but also from our deeply rooted participation in the nonprofit community – enables us to offer broader and more useful counseling that recognizes practical management, political and business considerations. Our clients frequently remark how much they appreciate Venable’s ability to serve as a “one-stop shop” for all of their legal needs. Our deep bench in virtually every legal area and issue affecting nonprofits enables us to tap into the experience required to deal with the most complex and sophisticated legal challenges.

Highly regarded by its nonprofit clients, Venable is steeped in the nuances, challenges and opportunities of nonprofit law – as well as the distinct culture, governance and politics of nonprofit organizations. Here is a partial listing of Venable’s nonprofit team:



JEFFREY S. TENENBAUM  
jstenenbaum@Venable.com



GEORGE E. CONSTANTINE  
geconstantine@Venable.com



RONALD M. JACOBS  
rmjacobs@Venable.com



BROCK R. LANDRY  
brlandry@Venable.com



LISA M. HIX  
lmhix@Venable.com



ROBERT L. WALDMAN  
rlwaldman@Venable.com



LAWRENCE H. NORTON  
lhnorton@Venable.com



WILLIAM N. HALL  
wnhall@Venable.com



THORA A. JOHNSON  
tajohnson@Venable.com



YOSEF ZIFFER  
yziffer@Venable.com



HARRY I. ATLAS  
hiatlas@Venable.com



MATTHEW T. JOURNEY  
mtjourney@Venable.com



WALTER H. CALVERT  
whcalvert@Venable.com



DAVIS V.R. SHERMAN  
dvsherman@Venable.com

Carrie Garber Siegrist, cgsiegrist@Venable.com Andrew E. Bigart, abigart@Venable.com

Mark S. Goodrich, msgoodrich@Venable.com Andrew L. Steinberg, alsteinberg@Venable.com

Audra J. Heagney, ajheagney@Venable.com Janice M. Ryan, jryan@Venable.com

Margaret C. Rohlfling, mcrohlfling@Venable.com

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## ARTICLES

January 14, 2015

### A COLLECTION OF VENABLE'S NONPROFIT LEGAL ARTICLES, PRESENTATIONS, AND RECORDINGS FROM THE FOURTH QUARTER OF 2014

**Venable's Nonprofit Organizations Practice Group** is pleased to share below these articles, presentations, and recorded webinars by our attorneys. These quarterly digests are a collection of our most interesting and useful materials to help your organization as you tackle the always-challenging array of legal issues facing nonprofits. In case you missed it, please [click here](#) for the Collection of Venable's Nonprofit Legal Articles, Presentations, and Recordings from the Third Quarter of 2014.

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*To read or listen to any of these articles, presentations, or recordings, please click on the title.*

**Cross-Border Money Transfers: Key Requirements Every U.S.-Based Nonprofit Needs to Know** (Presentation) (Recorded Webinar)

**Two More FTC Cases Demonstrate the Antitrust Risk of Association Codes of Ethics** (Article)

**Updates on Fax Laws: Opt-Out Notices Required for All Fax Advertisements (Retroactive Waivers Recommended for Previous Noncompliant Faxes)** (Article)

**Federal Grant and Contract News for Nonprofits - December 2014** (Article)

**Enforceability of Online Terms of Use: Guidance for Nonprofits from a Federal Appeals Court** (Article)

**LGBT, Religion, and Diversity in the Nonprofit Workplace** (Presentation) (Recorded Webinar)

**DC Nonprofits Subject to New Notice Requirement and Bigger Penalties under New Wage Theft Prevention Act** (Article)

**Legal Issues for Associations: Updated Best Practices for Speaker Management in a Virtual World** (Presentation) (Recorded Webinar)

**Nonprofits May Need to Amend Their Qualified Retirement Plans by Year-End to Recognize Same-Sex Spouses Retroactively – 403(b) Plans May Need to Be Amended Later** (Article)

**Groundbreaking (or Not) Ruling Holds Form 1023 Not Required upon Incorporation** (Article)

**Federal Grant and Contract News for Nonprofits - November 2014** (Article)

**Enhancing the Nonprofit Governance Model: Legal Pitfalls and Best Practices** (Presentation) (Recorded Webinar)

**The ACA's Impact on Nonprofits: Preparing Your Group Health Plan** (Presentation)

**Nonprofit Fundraising: Top Ten Things to Know about Charitable Solicitation Regulation** (Article)

**Federal Grant & Contract News for Nonprofits - October 2014** (Article)

**Active Overseas? What Every Nonprofit Needs to Know and Do to Minimize the Risk of Terrorist Financing** (Article)

**Legal Issues Pertaining to Philanthropy** (Presentation)

**Five Vital Legal Considerations for Nonprofits Developing a Mobile App** (Article)

**Fundraising 201: An Update on Managing the Legal Risks of Nonprofit Fundraising** (Presentation) (Recorded Webinar)

## AUTHORS

Jeffrey S. Tenenbaum

## RELATED INDUSTRIES

Nonprofit Organizations  
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**Privacy and Data Security for Your Nonprofit: Understanding Your Client's Legal Obligations and Minimizing Legal Risk** (Presentation)

**DOJ Letter on Cybersecurity Offers Guidance for Association-Sponsored Information Exchanges** (Article)

**Nonprofits and Intellectual Property: What Every State Regulator Needs to Know** (Presentation)

**Best Practices for Enhancing the Nonprofit Governance Model** (Presentation)

**Executive Employment Contracts: Getting Compliant and Creative** (Presentation)

**Fraud and Embezzlement: The Executive Team's Role in Detecting, Reporting, and Preventing Fraud** (Presentation)

**Nonprofit Tax Issues: Where the IRS Is Today, and Where Congress Is Headed** (Presentation)

**New California Law Will Require Nonprofits to Provide California Employees with Paid Sick Leave** (Article)

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### **Upcoming Events**

February 10, 2015: **"Basics of Forming a Nonprofit for Entrepreneurs" for George Washington University School of Business**

February 18, 2015: **One Year Later: Time for Nonprofits to Implement the Super Circular**

April 23, 2015: **Electronic Recordkeeping: Operating in a Paperless World**

## AUTHORS

Jeffrey S. Tenenbaum

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## ARTICLES

October 7, 2014

### A COLLECTION OF VENABLE'S NONPROFIT LEGAL ARTICLES, PRESENTATIONS, AND RECORDINGS FROM THE THIRD QUARTER OF 2014

**Venable's Nonprofit Organizations Practice Group** is pleased to share below these articles, presentations, and recorded webinars by our attorneys. These quarterly digests are a collection of our most interesting and useful materials to help your organization as you tackle the always-challenging array of legal issues facing nonprofits. In case you missed it, please [click here](#) for the Collection of Venable's Nonprofit Legal Articles, Presentations, and Recordings from the Second Quarter of 2014.

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*To read or listen to any of these articles, presentations, or recordings, please click on the title.*

**Federal Grant & Contract News for Nonprofits - September 2014** (Article)

**DC's New "Ban-the-Box" Law: Nonprofits May No Longer Question Applicants about Arrests** (Article)

**Cross-Border Money Transfers: Key Requirements and Pitfalls Every U.S.-Based Nonprofit Needs to Know** (Presentation) (Recorded Webinar)

**What's Ahead for 2015: Preparing Your Nonprofit's Group Health Plan for the Employer Mandate** (Presentation) (Recorded Webinar)

**Federal Grant and Contract News for Nonprofits - August 2014** (Article)

**Privacy and Data Security for Your Nonprofit: Understanding Your Legal Obligations and Insuring against Risk** (Presentation) (Recorded Webinar)

**Drafting and Revising Bylaws: Common Pitfalls, Best Practices, and Maximizing the Effective Governance of Your Nonprofit** (Presentation)

**If You've Got a BYOD Policy, You've Got Legal Risks** (Article)

**Federal Grant and Contract News for Nonprofits - July 2014** (Article)

**Key Trademark and Copyright Rules for Nonprofits to Follow – and Break!** (Presentation) (Recorded Webinar)

**Hotel Meeting Contracts: Navigating Legal Issues for Successful and Profitable Meetings** (Presentation)

**Antitrust Issues for Associations** (Presentation)

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## Upcoming Events

October 7, 2014: **"Nonprofits and Intellectual Property: What Every State Regulator Needs to Know" at the 2014 National Association of Attorneys General/National Association of State Charity Officials Conference**

October 14, 2014: **Legal Quick Hit: "Privacy and Data Security for Your Nonprofit: Understanding Your Client's Legal Obligations and Minimizing Legal Risk" for the Association of Corporate Counsel's Nonprofit Organizations Committee**

October 21, 2014: **Fundraising 201: An Update on Managing the Legal Risks of Nonprofit Fundraising**  
*Complimentary monthly nonprofit luncheon/webinar*

November 11, 2014: **Legal Quick Hit: "Fundraising 201: An Update on Managing the Legal Risks of Nonprofit Fundraising"** for the Association of Corporate Counsel's Nonprofit Organizations Committee

November 13, 2014: **Association TRENDS Webinar: "What's Ahead for 2015: Preparing Your Nonprofit's Group Health Plan for the Employer Mandate"**

November 19, 2014: **Enhancing the Nonprofit Governance Model: Legal Pitfalls and Best Practices**

*Complimentary monthly nonprofit luncheon/webinar*

December 11, 2014: **LGBT, Religion, and Diversity in the Nonprofit Workplace**

*Complimentary monthly nonprofit luncheon/webinar*

December 18, 2014: **"Perfecting the Charitable Promotion: Legal, Financial and Practical Considerations for Commercial Co-Ventures"** at the GWSCPA 2014 Nonprofit Finance and Accounting Symposium

## ARTICLES

### AUTHORS

Jeffrey S. Tenenbaum

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## A COLLECTION OF VENABLE'S NONPROFIT LEGAL ARTICLES, PRESENTATIONS, AND RECORDINGS FROM THE SECOND QUARTER OF 2014

**Venable's Nonprofit Organizations Practice Group** is pleased to share below these articles, presentations, and recorded webinars by our attorneys. These quarterly digests are a collection of our most interesting and useful materials to help your organization as you tackle the always-challenging array of legal issues facing nonprofits. In case you missed it, please [click here](#) for the Collection of Venable's Nonprofit Legal Articles, Presentations, and Recordings from the First Quarter of 2014.

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*To read or listen to any of these articles, presentations, or recordings, please click on the title.*

[Federal Grant & Contract News for Nonprofits - June 2014](#) (Article)

[Your Nonprofit's Next Big Event: Spotting and Solving the Most Common Meeting Contract Pitfalls](#) (Presentation) (Recording Available)

[Multi-Entity Organizations](#) (Presentation)

[Performance Management and Discipline in Nonprofits: Common Pitfalls, Unique Challenges, Effective Solutions](#) (Presentation) (Recording Available)

[Canada's New Anti-Spam Legislation: What Does It Mean for U.S. Nonprofits?](#) (Article)

[Developing Your Government Investigations Playbook: What Your Nonprofit Should Be Doing Now to Prepare for the Future](#) (Presentation)

[Federal Grant & Contract News for Nonprofits - May 2014](#) (Article)

[The New York Non-Profit Revitalization Act](#) (Presentation)

[Surviving a Governmental Investigation without a Black Eye: Key Legal, Communications and Crisis Response Considerations for Nonprofits](#) (Presentation) (Recording Available)

[When Is It Appropriate to Divert Designated Funds for General Fund Uses?](#) (Article)

[Nonprofits and Celebrity Endorsements: Common Legal Pitfalls and Practical Tips](#) (Article)

[Federal Grant & Contract News for Nonprofits - April 2014](#) (Article)

[Focus on Nonprofit Employee Misclassification: Are Your Workers "Employees," "Volunteers" or "Contractors?"](#) (Presentation)

[Election-Year Advocacy: Maintaining Your Nonprofit's Clear Message in Cloudy Legal Seas](#) (Presentation) (Recording Available)

[Two Recent FTC Cases Demonstrate the Antitrust Risk of Association Codes of Ethics](#) (Article)

[Considerations for Nonprofits when Using Getty's New "Free" Images](#) (Article)

[The Case for Effective "Policing" of Nonprofit Funds](#) (Article)

[Everything You Wanted to Know about Nonprofit Tax Law](#) (Presentation) (Recording Available)

[Prohibited Discrimination in Hiring: Disparate Treatment and Disparate Impact – Considerations for Nonprofits](#) (Article)

[IRS Proposed Rules for Political Activity of 501\(c\)\(4\) Organizations](#) (Presentation) (Recording Available)

[Election-Year Activities for Your Nonprofit: Avoiding the Legal Pitfalls and Understanding the](#)

**Evolving Landscape** (Presentation)

**BYOD for 501(c)s: Pros and Perils of "Bring Your Own Device"** (Presentation)

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#### **Upcoming Events**

July 8, 2014: **Legal Quick Hit: "Key Trademark and Copyright Rules for Nonprofits to Follow – and Break!"** for the Association of Corporate Counsel's Nonprofit Organizations Committee

July 17, 2014: **Key Trademark and Copyright Rules for Nonprofits to Follow – and Break!**

August 10, 2014: **"Comparing Compensation: Effective Approaches to Benchmarking Pay and Perks"** at the 2014 ASAE Annual Meeting & Exposition

August 11, 2014: **"Association Law Review for Aspiring CAEs"** at the 2014 ASAE Annual Meeting & Exposition

August 11, 2014: **"Get the Most out of Your Trusted Advisors"** at the 2014 ASAE Annual Meeting & Exposition

August 12, 2014: **Legal Quick Hit: "Drafting and Revising Bylaws: Common Pitfalls, Best Practices, and Maximizing the Effective Governance of Your Nonprofit"** for the Association of Corporate Counsel's Nonprofit Organizations Committee

August 13, 2014: **Privacy and Data Security for Your Nonprofit: Understanding Your Legal Obligations and Insuring against Risk**

August 15, 2014: **"Drafting and Revising Nonprofit Bylaws: Common Pitfalls and Best Practices"** for the National Business Institute

September 16, 2014: **What's Ahead for 2015: Preparing Your Nonprofit's Group Health Plan for the Employer Mandate**

December 18, 2014: **"Perfecting the Charitable Promotion: Legal, Financial and Practical Considerations for Commercial Co-Ventures"** at the 26th Annual Greater Washington Society of CPAs Non Profit Finance & Accounting Symposium

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April 2014

### A COLLECTION OF VENABLE'S NONPROFIT LEGAL ARTICLES, PRESENTATIONS, AND RECORDINGS FROM THE FIRST QUARTER OF 2014

**Venable's Nonprofit Organizations Practice Group** is pleased to share below the best articles, presentations, and recordings of our monthly in-house nonprofit luncheon programs/webinars by our **attorneys**. These quarterly digests are a collection of our most interesting and useful materials to help your organization as you tackle the always-challenging array of legal issues facing nonprofits. In case you missed it, please **click here** for the Collection of Venable's Nonprofit Legal Articles, Presentations, and Recordings from the Fourth Quarter of 2013.

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*To read any of these articles, alerts, or presentations, please click on the title.*

**Federal Grant & Contract News for Nonprofits - March 2014** (Article)

**Association TRENDS 2014 Legal Review** (Article)

**Top Five Nonprofit Legal Issues of the Past Year** (Article)

**Preventing and Investigating Fraud, Embezzlement, and Charitable Asset Diversion: What's a Nonprofit Board to Do?** (Article)

**The OMB Super Circular: What the New Rules Mean for Nonprofit Recipients of Federal Awards** (Presentation) (Recording Available)

**The Affordable Care Act and Nonprofit Organizations: An Overview** (Article)

**Nonprofit Insurance Coverage: You Need More Than a Directors and Officers Policy** (Article)

**Federal Grant & Contract News for Nonprofits - February 2014** (Article)

**Key House Committee Chairman Releases Long-Awaited Tax Reform Overhaul: Major Changes Proposed for Nonprofits** (Article)

**The Impact of IRS Recognition of All Legal Same-Sex Marriages on Nonprofit Organizations' Employee Benefit Plans** (Presentation)

**Informing Regulators When You Alter Your Mission** (Article)

**Conducting Operations Overseas: What Every Nonprofit Should Know** (Presentation)

**Implementing a Bring-Your-Own-Device Policy: What Your Nonprofit Needs to Know** (Presentation) (Recording Available)

**Nonprofits and HIPAA Violations: An Overview** (Article)

**Bring-Your-Own-Device Programs: Steps to Minimize Nonprofits' Legal Risks** (Article)

**Federal Grant & Contract News for Nonprofits - January 2014** (Article)

**Is Your Nonprofit Selling Goods Online? U.S. Supreme Court Provides Reminder of Potential Sales Tax Liability** (Article)

**How to Safeguard Your Nonprofit against Fraud and Embezzlement: Best Practices, Common Pitfalls, and Practical Strategies** (Presentation) (Recording Available)

**Nonprofit Interns: IRS Regulations and Liability** (Article)

**Employment Law Litigation Trends: How Your Nonprofit Can Avoid Common Family-Oriented Lawsuits** (Presentation)

### Upcoming Events

April 8, 2014: **Legal Quick Hit: "Election-Year Activities for Your Nonprofit: Avoiding the Legal Pitfalls and Understanding the Evolving Landscape"** for the Association of Corporate Counsel's Nonprofit Organizations Committee

April 17, 2014: **GuideStar Webinar: "Everything You Wanted to Know about Nonprofit Tax Law"**

April 29, 2014: **Election-Year Advocacy: Maintaining Your Nonprofit's Clear Message in Cloudy Legal Seas**

April 30, 2014: **Association TRENDS Webinar: "Focus on Nonprofit Employee Misclassification: Are Your Workers 'Employees,' 'Volunteers' or 'Contractors?'"**

May 20, 2014: **Surviving a Governmental Investigation without a Black Eye: Key Legal, Communications and Crisis Response Considerations for Nonprofits** (details coming soon)

June 18, 2014: **"Does Your Social Media Policy Pass the 'Sniff Test'?" at the American Society of Association Executives' (ASAE) 2014 Marketing, Membership & Communications Conference**

June 18, 2014: **Performance Management and Discipline in Nonprofits: Common Pitfalls, Effective Solutions** (details coming soon)

July 17, 2014: **Key Trademark and Copyright Rules for Nonprofits to Follow – and Break** (details coming soon)

August 10, 2014: **"Comparing Compensation: Effective Approaches to Benchmarking Pay and Perks" at the 2014 ASAE Annual Meeting & Exposition**

August 11, 2014: **"Association Law Review for Aspiring CAEs" at the 2014 ASAE Annual Meeting & Exposition**

August 11, 2014: **"Get the Most out of Your Trusted Advisors" at the 2014 ASAE Annual Meeting & Exposition**

August 15, 2014: **"Drafting and Revising Nonprofit Bylaws: Common Pitfalls and Best Practices" for the National Business Institute**