Top 10 Legal Checklist for Non-profits

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Governance
Nonprofit Corporation - State Nonprofit Corporation Law (statute and common law)

Incorporation subjects organization to state corporate laws (defines requirements for organizing documents and decision-making)

- Maintain filings!
- Check governing documents for state law compliance.

Grants organization “corporate shield” so long as operations are consistent with state corporate requirements

State Corporation Requirements
• Board, Ultimate Decision-Making Body

• Business judgment rule — bad decisions are more easily defended than ignorance; it is the (due diligence) process that matters most

Requirements:
- Must Meet and Deliberate
- Act in Best Interests of Organization
  - (Conflicts/Recusal)
- Must Document through Minutes

Issue #3

Documentation of Corporate Requirements
Minutes
Tips for Minutes

- Limit to resolutions and material discussion
- Brief is better
- Record recusals and those in attendance
- Have one set of minutes
- Have all minutes approved by the Board

Issue #4

Corporate Identity
• As long as a board member/employee reasonably appears to be acting with the Association's approval, the Association may be liable for the board member's/employee's actions

• Often it is no defense to say that the board member/employee was not acting within the scope of his/her actual authority

• Limit individuals who have authority to speak on organization's behalf

  Create process for gaining authorization to speak on organization's behalf

  • Set strict parameters on use of Association letterhead

  Hydrolevel Case

  • Set strict parameters on contracting authority, entering into commitments

  • Limit use of Association's name
• Limit use of title, e.g., “Chairman of Board”

• Limit use of logos and trademarks

• Prohibit employees and members from using organization’s name in any online identity (e.g., username, screen name)

Tax-Exemption Basics
BASIC REQUIREMENTS

Religious, charitable, scientific, testing for public safety, literary or educational purposes (among others)
No “private inurement”
No “private benefit”
No substantial part is “carrying on of propaganda” or otherwise attempting to influence legislation
No political activities

Contract Management
• Your negotiation posture will determine your ability to address the points we will discuss today.
  Maximize position by leading with your own contract draft.
  • Know which contract points are central for your organization.
  Competition reaps savings – consider RFPs
  Consider markets, particularly with meeting contracts.
Scope
Payment
Ownership
Responsibility (when things go wrong)
Term and Termination

- **Scope** - litigation arises over lack of clarity:
  - What is being done?
  - When will be done (milestones)?
  - What will be delivered?

- **Payment** - tie payment to satisfactory delivery of deliverables according to the timeline (beware of prepayment and maintain performance incentives)

- **Ownership** - copyright vests in the creator, even if you contracted for the services – so make it clear
  - Do you want the end product, or everything created?
Responsibility (when things go wrong)

- **Reciprocal** - A reciprocal clause is desirable where each party indemnifies the other for (is responsible for) its own negligence (mutual indemnification).
- **Limited to Control/No Third Party Coverage** - What each party is being asked to be responsible for is within its control (or flow downstream)
- **Includes Defense Costs**
- **No “Sole,” “Gross,” or “As determined by a court”**

Term and Termination

- **Beware of “Evergreen Provisions”**
- **Note when notice of non-renewal is due**
- **Note notice period and grounds for termination**

Document What You Own

... and Protect Against Infringement
• Employee Works

• Vendors
  - Website Designers
  - Photographers

• Authors and Speakers
  - Articles
  - Speeches, handouts and PowerPoint presentations

• Volunteers & Committees
  - Standards
  - Position papers
  - Articles

• Four Options

  • **Assignment**
    Transfer of all copyright ownership
    Association may use in any form, at any time
    *ABC hereby assigns all right, title and interest…*

  • **Shared Ownership**
    Approval prior to use?

  • **Implied License**
    Narrowly Construed and Subject to Interpretation

  • **License**
    Limited by scope, but can be very broad
• Define Future Uses
  Create updates and derivative works?
  Publish in magazine and online?

• Define Geographic Area

• Exclusive or Non-Exclusive

• Perpetual or Limited in Duration

• Define Payment (or Non-Payment) Terms

• Obtain Licenses from All Authors and Speakers

• Adopt a standard policy and practice for all volunteer and committee work.
  Volunteers sign from outset of work

• All authors sign standard agreements
  Obtain right to publish AND post online

• Speakers grant rights to post online

• Paid Contractors agree to standard assignment

• Allowing others to use articles
  Clearly define use and duration
  Ensure you have what you give away