Overview of Nonprofit Organizations

American Society for Quality, Section 509

October 24, 2013

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Types of Nonprofits

- Philanthropic Organizations
- Trade Associations
- Professional Associations
Philanthropic Organizations

- Philanthropic organizations are organizations that give or receive support from money allocated for humanitarian purposes.
- These organizations can be charitable, scientific, educational, public service, engineering, and religious organizations.
Trade Associations

- Trade associations are organizations that are established and financed by businesses within a particular industry.
- Trade associations create opportunities for those businesses to connect with each other for their benefit of all parties concerned.
Professional Associations

- Professional associations are organizations that are established to further a certain profession and the interests of those who are employed within that profession.
- Membership of professional associations is comprised of individual members within the profession who share a common belief or purpose.
Nonprofit v. For-Profit

- Ownership
- Formation
- Forming a nonprofit organization does not result in automatic tax exemption
- Federal tax exemption
  - Must meet requirements set forth in the Internal Revenue Code
  - Must apply to get IRS determination letter as proof
  - State tax exemption usually requires federal tax exemption first
Tax Exemption

- Section 501(c)(6) trade and professional associations
  - Serve an industry or line of business
  - Unlimited lobbying
  - Can form political action committees
  - Fees not taxable, but no charitable contribution deductions

- Section 501(c)(3) charitable organizations; can receive tax deductible contributions

- Complex organization structures are common, e.g., Section 501(c)(3) Foundation, 501(c)(6) certification body
Apply for Federal Tax Exemption

- Which form to use?
  - **Form 1023** for public charities, supporting organizations and private foundation – known as 501(c)(3)
  - Form 1024 for everyone else

- How long do you have to file?
  - 27 months from formation for 501(c)(3)
Maintaining Federal Tax Exempt Status For 501(c)(3) Organizations

- Must on an annual basis file **Form 990**, Return of Organization Exempt from Income Tax, with the IRS.

- The Form 990 IRS return is an annual reporting return that helps to verify compliance with tax-exempt rules. It provides information on the filing organization’s mission, programs, and finances, and it is **open to public inspection**. – Disclosure
Form(s) 990

- Form 990-N ("ePostcard") is an eight-question, electronic return that nonprofits may file if their incomes were less than $50,000 for the tax year.

- Form 990-EZ ("Short Form Return") is a two-page return that nonprofits may file if their incomes were less than $200,000 and their assets were less than $500,000 for the tax year.

- Form 990 is the “long form” that all other 990 filers must file if their incomes are equal to $200,000 or assets are equal to $500,000 for the tax year.
The Structure of Nonprofits

- A Governance structure typically involves the following:
  - Board of Directors
  - Executive Committee
  - Staff

- Generally supported by:
  - Committees
  - Volunteers
Directors

- Directors, Officers, Staff, Committee Members ("Directors") have Fiduciary Duties of Care, Loyalty, and Obedience
- Compliance with Duties protects from personal liability
- Important to understand Duties and comply
- Board member Code of Conduct supplements
- Focus on broad policies and strategy; delegates implementation and policy detail to Executive Director
Duty of Care

- Most important duty under common law

- Directors must act
  - Honestly, reasonably, in good faith and in
  - Best Interests of the corporation
  - Diligently, on an informed basis
  - “With the care an ordinarily prudent person in like position would exercise under similar circumstances.”

- Revised Model Nonprofit Corporations Act
Duty of Loyalty

- Common law duty, also referenced in Bylaws
- Directors must act -
  - Only in best interests of corporation
  - To avoid conflicts of interest
- Should not -
  - Usurp corporate opportunity
  - Directly compete with corporation
  - Act in own personal interest versus corporation
- Loyalty to corporation trumps friendship
Rules Regarding Conflicts of Interest

- A conflict of interest is when a director participates in the corporation work and at the same time has other professional, business, or volunteer responsibilities that could bias the director one way or another.
- Association has **Conflict of Interest Policy**
- Actual or potential conflicts must be **disclosed**
- Recusal from deliberation and/or vote may be advisable or necessary
- Resignation may be advisable or necessary
- Board can enforce these rules
Other Legal Principles

- Confidentiality
- Defamation
- Due Process
- Tax exemption
- Tort and antitrust Liability
Defamation

- Statements that another is dishonest, fraudulent, immoral, etc.
- Slander = spoken
- Libel = written
- Truth and opinions are defenses
- Publication or Re-publication
- “Qualified Privilege”
- Be cautious when speaking as an Officer or Director
Tort, Contract, and Antitrust Liability

- Torts are “wrongful acts”
- Negligence/malpractice
- Claim could arise from breaching Duties
- Can be claims for breach of contract
- Antitrust liability if price agreements or anticompetitive exclusion from association (or revocation of credential)
- Usually will not be claims against Directors personally
Legal Risk Management and Liability Protections

- Observe Fiduciary Duties
- Corporate status
- Insurance – General and D&O policies
- Contractual protection (waivers and releases)
Legal Issues Concerning Nonprofits

- Copyright and Trademark
- Social Media
- Event Contracts
Copyright and Trademark

- Copyright v. Trademark v. Patent & other intellectual property

- **Notice and Registration** for protection
  - Ex. Copyright (c) 2013 ASQ509, Inc.
    - All rights reserved

- Police your IP
Social Media

- Terms of use – website v. social media platforms
- Posting guidelines
- Privacy policy—evolving area/compliance
Event Contracts

- Force Majeure
- No competing groups
Credits

- “Review of Legal Issues for Association Board of Directors”
  - By Jefferson C. Glassie
    - Attorney at Whiteford, Taylor & Preston, LLP

- “Tax-Exempt Organizations in the District of Columbia, Maryland & Virginia”
  - By Eileen Morgan Johnson, 2013
    - Attorney at Whiteford, Taylor & Preston, LLP