

Philadelphia VIP/LawWorks Nonprofit Legal Assessment Checklist

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I. Introduction

There are numerous laws that govern the operations of nonprofits, from federal tax law reporting requirements to state and local tax requirements. It is important that both board members and nonprofit staff become familiar with the laws that govern nonprofits to ensure that a nonprofit organization operates legally and complies with the law. Failure to comply with laws and regulations can result in administrative actions, civil and criminal penalties, and a possible loss of a nonprofit's tax exemption. While this manual provides only a snapshot of some of the most relevant laws in areas where nonprofits commonly struggle, it should serve as a starting point to understand the complex framework that governs nonprofit organizations.

II. Document Retention Check List

Does the Organization maintain, in either a secured electronic or hard copy form, a corporate record book with current, legible copies of the following:

- a. Articles of Incorporation and any amendments and other reports filed with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations
- b. Current Bylaws
- c. Determination letter from the IRS regarding exemption from federal income tax
- d. Application to the IRS for tax-exempt status (Form 1023, Form 1023-EZ or Form 1024)
- e. Annual filings under Solicitation of Funds for Charitable Purposes Act
- f. Names, addresses, and terms of office of all officers and directors
- g. *For Membership Organizations*- List of current members and their addresses
- h. Insurance Policies
- i. Contracts or Leases
- j. Minutes of all meetings of the members, board and committees of the board
- k. IRS Forms 990 (and other federal tax filings) for the 3 most recent tax years
- l. Copies of all state tax filings
- m. List of contributors

Notes: _____

III. Legal Form and Corporate Governance

1. Bylaws

Bylaws of a nonprofit organization contain the rules and procedures that the nonprofit organization should follow and are typically adopted at the organizational meeting. They may be amended either by the board or by the members depending on the type of nonprofit organization. They include requirements for giving notices, holding meetings, holding elections, the roles of the corporate officers, avoiding conflicts of interest, indemnification, etc. The Bylaws should:

- a) Accurately describe the Organization's current structure and procedures
- b) Comply with Pennsylvania Nonprofit Corporation Law of 1988¹
- c) Contain provisions allowing the nonprofit organization to indemnify the officers and directors in the event of a lawsuit
- d) Be reviewed every couple of years

2. Board Meetings and Minutes

The board secretary is responsible for seeing that the minutes of board meetings are taken and maintained with the Organization's records. Minutes are important because they provide a history of the board's activities, and reflect the board's formal actions on behalf of the corporation. Minutes may be reviewed by the IRS, the Attorney General's office, and the courts, to confirm that the organization is acting in the manner required by law, and in compliance with its mission. In addition, anyone performing due diligence on the organization, including funders and lenders, may ask to see the minutes, and they should remain open to inspection by the members of the board. The minutes should include the name of the organization, date and time of meeting, who called the meeting to order, who attended the meeting, all motions made, any conflicts of interest or abstentions from voting, when the meeting ended and who recorded the minutes. Then once the meeting minutes are prepared, they should be circulated to the board, reviewed, and then voted for approval at the following board meeting. Once they are approved by the board, they must be included in the corporate record book.

- a) Prior to each board meeting, prepare and circulate a meeting notice, proposed agenda, and other relevant materials for the meeting
- b) Ensure compliance with quorum and voting requirements

¹ 15 Pa. C.S. §5101 *et seq.*

See also <https://www.attorneygeneral.gov/wp-content/uploads/2018/02/nonprofitbooklet.pdf>

3. Annual Board Meeting

The board must meet at least once a year although the board should meet on a more frequent basis (i.e., quarterly, bi-monthly, monthly). At the annual board meeting and in keeping with the bylaws, items a board should discuss and/or vote on include:

- a) Election of directors and officers
- b) Presentation of an annual report reflecting the activities and accomplishments of the Organization
- c) Review of financial statements
- d) Review board members' responsibilities and ensure that board members are adhering to them
- e) Review executive compensation
- f) Review corporate policies

Notes: _____

4. Board Manual

To ensure that all board members are familiar with the governing corporate documents, each board member should have a board manual containing the following documents:

- a) Articles of Incorporation (and any amendments)
- b) Bylaws
- c) Conflict of Interest policy
- d) Current fiscal year budget
- e) Mission Statement and Vision Statement
- f) Names, addresses and terms of office of all officers and directors
- g) Copy of IRS Determination Letter

Notes: _____

IV. Internal Controls and Procedures

- a) _____ The Organization should have an appropriate Conflicts of Interest Policy²
- b) _____ The Organization should have an appropriate Whistleblower Policy³
- c) _____ The Organization should have an appropriate Document Retention Policy⁴
- d) _____ The Organization should have appropriate audit procedures
- e) _____ Gift Acceptance Policy⁵
- f) _____ Code of Conduct and Ethics Policy⁶

Notes: _____

V. Employment Practices⁷

- a) _____ The Organization has properly categorized volunteers, independent contractors, employees, and interns and is treating them appropriately for their category.
- b) _____ If the Organization's staff members work overtime or have unusual hours, must comply complying with wage and hour standards that govern overtime.
- c) _____ The Organization has considered whether it should adopt written personnel policies that include, for example, a description of employee benefits, a process for handling a harassment complaint or other grievances, termination procedures, the process for performance management or employee reviews and other employment practices.

² <http://www.councilofnonprofits.org/conflict-of-interest>

³ <http://www.councilofnonprofits.org/resources/resources-topic/boards-governance/whistleblower-protection-policies>

⁴ <http://www.councilofnonprofits.org/document-retention-policies>

⁵ <http://www.councilofnonprofits.org/nonprofit-gift-acceptance-policy>

⁶ <http://www.councilofnonprofits.org/resources/resources-topic/ethics-accountability>

⁷ In general see: <https://www.eeoc.gov/> (Federal) and <http://www.dli.pa.gov/laws-regs/laws/Pages/default.aspx> (Pennsylvania)

- i. _____ If you have policies and procedures, follow them.
- ii. _____ If have an Employee Handbook enforce it.⁸
- d) _____ If employees are “at-will,” meaning they may be terminated or quit at any time, protect the organization by documenting all discipline issues and conducting regular performance reviews.
- e) _____ The Organization verifies that all employees are eligible to work in the United States by having all employees complete form I-9⁹ which the Organization retains on file for three years after the date of hire or one year after the date of termination of employment, whichever is later.
- f) _____ The Organization does not discriminate in employment on the basis of race, age, sex, disability, marital status, national origin or creed, or sexual orientation
- g) _____ If the Organization collects or uses personal information (social security numbers, bank account, health care plan number) about its clients, the Organization should have a privacy policy and train its employees and volunteers on its confidentiality and information security policies.

Notes: _____

⁸ The same holds true if the Organization has a Volunteer Handbook –the policies in it should be reviewed regularly and enforced.

⁹ <http://www.uscis.gov/sites/default/files/files/form/i-9.pdf>

VI. Tax Matters

1. Annual Exempt Organization Return with IRS¹⁰

- a) IRS Form 990 (if gross receipts are greater than or equal to \$200,000 OR if assets are greater than or equal to \$500,000)
- b) IRS Form 990-N (if gross receipts are normally less than or equal to \$50,000, although organizations may still choose to file)
- c) IRS Form 990-EZ (if gross receipts are normally greater than \$50,000 and less than \$200,000)

2. Corporate, Employment and Sales Tax

- a) IRS Form 990-T¹¹
- b) Any applicable state or local income tax
- c) Federal Income Tax Withholding (Form W-4)¹²
- d) Miscellaneous Income (Form 1099-MSC)¹³
- e) The Organization prepares Form W-2¹⁴ for employees.
- f) The Organization withholds federal income and FICA¹⁵ taxes from employees' paychecks, deposits these withheld funds, along with the employer's share of FICA taxes, with the IRS on a regular basis, and files a Form 941¹⁶ quarterly with the IRS
- g) Federal Unemployment Tax Act (FUTA) (Form 940)¹⁷

Notes: _____

¹⁰ Most tax-exempt organizations must file an annual information return with the IRS.

For 501(c)(3) organizations that are public charities, and most other types of tax-exempt organizations, the return is made on IRS Form 990 or Form 990EZ see: <http://www.irs.gov/uac/Form-990,-Return-of-Organization-Exempt-From-Income-Tax>

¹¹ An exempt organization that has more than \$1,000 of UBI in a taxable year must report such income on Form 990T, which must be filed in addition to the informational Form 990. See: <https://www.irs.gov/pub/irs-pdf/p598.pdf>

¹² Most tax-exempt organizations are required to withhold and pay federal income tax with respect to wages of their employees in the same manner as for-profit organizations. See: <https://www.irs.gov/forms-pubs/about-form-w4>. See also: https://www.stayexempt.irs.gov/se/files/downloads/EmploymentIssues_Print.pdf

¹³ <https://www.irs.gov/forms-pubs/about-form-1099misc>

¹⁴ <https://www.irs.gov/forms-pubs/about-form-w2>

¹⁵ <http://www.irs.gov/taxtopics/tc751.html>

¹⁶ <http://www.irs.gov/taxtopics/tc758.html>

¹⁷ <https://www.irs.gov/individuals/international-taxpayers/persons-employed-by-a-foreign-employer-futa>; <https://www.irs.gov/pub/irs-pdf/f940.pdf>

VII. Insurance

- a) Directors and Officers liability insurance
- b) General liability insurance
- c) Auto Insurance (if necessary)
- d) Property Insurance
- e) Disability and workers compensation insurance
- f) Cyber Security

Notes: _____

VIII. Fundraising Activities

- a) Samples of any fundraising materials regularly used by the Organization to solicit donations.
- b) Samples of donor acknowledgement letters
- c) Note whether contributions received must be used for a specific purposes
- d) Ensure confidentiality of donor information.
- e) Grant record retention, including proposals, and grant compliance checklist
- f) Determine whether organization is required to file Registration Statements or Institutions of Purely Public Charity Registration Statements under the Solicitation of Funds for Charitable Purposes Act, 10 PS. §162 *et seq.*¹⁸
- g) Fundraising professionals contract and compensation
- h) Corporate sponsorship activities are in compliance

¹⁸ The Solicitation of Funds for Charitable Purposes Act requires all organizations soliciting funds for a charitable purpose to file registration statements with the Department of State's Bureau of Charitable Organizations before they solicit contributions in Pennsylvania unless they are specifically excluded or exempt from the Act. See: <http://www.dos.pa.gov/BusinessCharities/Charities/Pages/default.aspx>.

For the Registration Forms see:

http://www.dos.pa.gov/BusinessCharities/Charities/RegistrationForms/Pages/default.aspx#.VZrWw_KEs25.

Notes: _____

IX. Contracts

- a) _____ The Organization should have copies of all service contracts, such as copier services, etc.
- b) _____ If the Organization has any contracts with government requiring Equal Employment Opportunity (EEO) reporting, it should file the proper reports.¹⁹

Notes: _____

X. Real Estate

- a) _____ The Organization should have copies of all mortgages, deeds, and real property leases
- b) _____ If the Organization owns any real property, determine if it is eligible for a property tax exemption²⁰
- c) _____ The Organization should make sure the area in which it is located is zoned for the activities of the Organization
- d) _____ The Organization should have any permits which may be required for any activities it undertakes

Notes: _____

¹⁹ The EEOC collects workforce data from employers with more than 100 employees (lower thresholds apply to federal contractors). Employers meeting the reporting thresholds have a legal obligation to provide the data. See: <http://www.eeoc.gov/employers/reporting.cfm>

²⁰ To apply for exemption from local property taxes, an organization must contact each county in which the charity owns property and request an application. In Philadelphia the relevant information can be found here: <http://www.phila.gov/OPA/AbatementsExemptions/Pages/NonProfits.aspx>

XI. Intellectual Property

- a) _____ Copies of all copyrights and trademarks
- b) _____ Review names and symbols the Organization uses to identify itself
- c) _____ Review copyright protection of material produced by the Organization

Notes: _____

XII. Activities That May Jeopardize Tax Exemption

- a) _____ Failure to file 990 form²¹
- b) _____ Private Inurement²²
- c) _____ Lobbying²³
- d) _____ Political Activity²⁴
- e) _____ Excessive unrelated business income²⁵

Notes: _____

²¹ <http://www.irs.gov/pub/irs-pdf/f990.pdf>

²² Private inurement is "likely to arise where the financial benefit represents a transfer of the organization's financial resources to an individual solely by virtue of the individual's relationship with the organization, and without regard to accomplishing exempt purposes" See <http://www.irs.gov/pub/irs-tege/eotopicc90.pdf>

²³ Lobbying is defined as activity designed to influence legislation or attempting to influence legislation through either contacting the public or urging the public to contact members or employees of a legislative body to propose, support, or oppose legislation. More information on limits on lobbying activities for charities may be found at <https://www.irs.gov/charities-non-profits/lobbying>.

²⁴ All organizations described in Section 501(c)(3) of the Code are prohibited from directly or indirectly participating in or intervening in any political campaign supporting or opposing any candidate for elective public office. More information on restrictions on political activities for charities may be found at www.irs.gov/charities.

²⁵ The IRS grants tax-exempt status to a nonprofit organization on the theory that the nonprofit is providing a public benefit. When the nonprofit organization engages in activities that may be seen as a direct competition to a commercial enterprise, the IRS may re-evaluate its determination of the nonprofit's tax-exempt status. See IRS Publication 598 at <http://www.irs.gov/pub/irs-pdf/p598.pdf>.

XIII. Pennsylvania Requirements For Certain Volunteers

- a) _____ Obtain background clearances for certain volunteers²⁶
- b) _____ Require and document mandated reporter training for certain volunteers²⁷

Notes: _____

**Philadelphia VIP acknowledges and thanks the Law Project of Chicago, Lawyers Clearinghouse of Boston and the Legal Aid Society of New York for providing materials that assisted with compiling this guide.*

²⁶ With the implementation of the amendments to the Pennsylvania Child Protective Services Law (the “CPSL”), Pennsylvania nonprofit organizations must ensure that all employees, independent contractors, and volunteers who have responsibility and direct contact with children are in compliance with the new background reporting and training requirements. For prospective employees, independent contractors, and volunteers of Pennsylvania nonprofit organizations having direct contact with minors, CPSL requires that prior to beginning employment or volunteer services these individuals must provide originals of a: (1) Pennsylvania Criminal History Report from the Pennsylvania State Police; (2) Child Abuse History Clearance from the Department of Human Services (Child Abuse); and (3) Federal Criminal History Report, including a set of fingerprints, if the individual has not lived in Pennsylvania for the past 10 years.

²⁷A mandated reporter is an individual who is required by law to report potential child abuse when he or she has reasonable cause to suspect that a child is a victim of abuse. Under CPSL, the definition of a mandated reporter is expanded to include an individual paid or unpaid, who, on the basis of the individual’s role as an integral part of a regularly scheduled program, activity or service, accepts responsibility for a child. The Pennsylvania Department of Human Services has collaborated with the University of Pittsburgh’s, Child Welfare Resource Center to develop a free, web-based training. This training is approved in accordance with Act 126 of 2012 and Act 31 of 2104, for mandated and permissive reporters and can be found at www.reportabusepa.pitt.edu.