Spring 2011

THE NONPROFIT COMPLIANCE CHECKLIST: STAYING ON TRACK AND OUT OF TROUBLE

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This Checklist provides information but does not provide legal advice regarding actual circumstances. For legal, tax or business advice, please consult a qualified professional.

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I. <u>Introduction</u>

By taking a few simple preemptive steps, a 501(c)(3) nonprofit organization will run more efficiently and within the bounds of the law – making it more attractive to the public and to potential funders, better able to withstand scrutiny from regulators, and, perhaps most important, more likely to efficiently achieve its mission. This Nonprofit Compliance Checklist (the "Checklist") helps nonprofits to take these steps and to remain in compliance.

To stay on track, and out of trouble, a nonprofit 501(c)(3) organization in New York State ("NYS") must take care of its legal and business obligations, including:

- Making annual reports to the IRS (the Form 990) and the NYS Charities Bureau (the CHAR500), and making those reports available to the public.
- Engaging in good governance to create a high-functioning board of directors to effectively review and carry out the organization's mission.
- Knowing and following the organization's own rules, as stated in its bylaws, certificate of incorporation and corporate policies.
- Complying with state and federal laws pertaining to fundraising, compensation, employment, recordkeeping, tax collection and payments, and other relevant legal matters.
- Maintaining business "best practices", such as good financial management and stewardship of resources; effective marketing; and sound employee and volunteer policies.

The Checklist provides information and links to websites that help nonprofits comply with these legal and business obligations. Links are provided to documents from the Community Development Project of the Legal Aid Society and to documents from third parties, which include sample meeting notices, agendas, bylaws, and corporate policies. Although we strive to keep the links up-to-date, we are not responsible for their accuracy, nor for the information or forms provided by the linked websites.

This checklist is intended to be a tool that assists nonprofits with the management of their organizations. Please bear in mind that the checklist contains legal information, but does not provide legal advice. Prior to acting on the information, you are strongly encouraged to consult with an exempt organizations attorney, accountant or other qualified professional. Additionally, this checklist should not be viewed as an exhaustive list of compliance requirements. While we have worked hard to make the checklist as comprehensive as possible, new developments, individual circumstances, and changing regulatory landscapes may present challenges to nonprofit governance not addressed here.

Enjoy using the checklist to get answers to your nonprofit organization legal questions, to perform periodic nonprofit organization compliance reviews (an annual review by the board or its governance committee, is appropriate), and to identify areas where your organization needs help from a legal, tax or other business professional.

II. Corporate Governance

Follow Your Bylaws

Bylaws of a nonprofit organization contain the rules and procedures that the nonprofit organization must follow, and are typically adopted at the organizational meeting. They include requirements for giving notices, holding meetings, holding elections, the roles of the corporate officers, avoiding conflicts of interest, etc. Adopt bylaws that comply with the New York Not-for-Profit Corporation Law * TOOL: Lawhelp.org/NY provides sample bylaws at http://www.lawhelp.org/documents/487501Microsoft%20Word%20-%20Notice%20of%20Organizational%20Meeting.pdf. Ensure that all notices are given in the manner prescribed by the bylaws Ensure that all board members have copies of the bylaws and are familiar with its provisions Periodically review bylaws for relevance and ease of use and make amendments, if necessary Hold Regular Board Meetings and Keep Minutes¹ Prior to each board meeting, prepare a meeting notice and a proposed agenda * TOOL: Lawhelp.org/NY provides a sample agenda at http://www.lawhelp.org/documents/487511Microsoft%20Word%20-%20Organizational%20Meeting%20Agenda.pdf. ★ TOOL: Lawhelp.org/NY provides a sample notice of a meeting at http://www.lawhelp.org/documents/487501Microsoft%20Word%20-%20Notice%20of%20Organizational%20Meeting.pdf. Ensure compliance with quorum and voting rules The board secretary takes notes and prepares the minutes of the meeting. 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 Charities Bureau, 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. (i) Prior to each meeting, written minutes from the previous meeting are distributed to board members for review. Any necessary changes should be made to the minutes and a new

being accepted.

version submitted before the next meeting, when the new version will be reviewed before

¹ 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.

TOOL: The Free Management Library provides a sample of meeting minutes at http://www.managementhelp.org/boards/minutes.htm.

★ TOOL: Microsoft Office provides a template for meeting minutes at http://office.microsoft.com/en-us/templates/meeting-minutes-TC001018411.aspx.

★ TOOL: Lawhelp.org/NY provides a sample of meeting minutes at http://www.lawhelp.org/documents/487531Microsoft%20Word%20-%20Organizational%20Mtg%20Minutes%20without%20exhibits.pdf.

Hold an Annual Board Meeting

| Ensure compliance with quorum and voting rules |
|---|
| ☐ Elect directors ² and officers |
| Review mission to assess its relevance and how effectively it is being carried out |
| Review corporate policies |
| Review board member term limits and ensure that board members are adhering to them |
| Review executive compensation and performance |
| Evaluate board performance |
| ★ TOOL: A sample board evaluation is available on the Free Management Library's website at http://managementhelp.org/boards/brd_eval.htm . |
| Present annual report ³ to assess the success of the organization's mission. The annual report may include the following: |
| 4 |

- Chairperson of the board letter⁴
- Description of the causes, actions, and accomplishments of the organization
- Financial statements
 - CPA opinion letter ⁵

² For a helpful overview of the many duties and responsibilities of a director, consult "<u>Right from the Start</u>" at http://www.charitiesnys.com/pdfs/Right%20From%20the%20Start%20Final.pdf, a publication from the New York State Attorney General's Office, Charities Bureau.

³ An *Annual Report* is a comprehensive report on corporate activities throughout the preceding year. Annual reports are intended to give members and other interested persons information about the organization's activities and its financial performance. Often, potential donors will ask to review your annual report.

⁴ The *Chairperson of the Board Letter* is an introductory statement about the success and continued improvements of the organization, and often includes a determination of what the organization cares about and the direction the Board wants to pursue.

⁵ The *CPA Opinion Letter* is a statement that verifies that the organization has adhered to Generally Accepted Accounting Principles (GAAP) in the keeping of its books and records.

- Income statement
 - Unrelated business income
 - Related business income
- Balance sheet
- Footnotes⁶ and/or miscellaneous information
- List of directors and officers
- Information regarding members (if any)⁷
- Review and sign (if appropriate) corporate policies, including:
 - Conflict of interest form⁸ (should be signed annually)

★ TOOL: A sample Conflict of Interest policy is available at the Internal Revenue Service's website at http://www.irs.gov/instructions/i1023/ar03.html. Another sample Conflict of Interest policy is available at the Lawhelp.org/NY website at http://www.lawhelp.org/documents/487491Microsoft%20Word%20-%20Conflict%20of%20Interest%20Policy.pdf.

Whistleblower protection policy⁹

★ TOOL: The Nonprofit Risk Management Center provides a sample of a Whistleblower Protection Policy at http://nonprofitrisk.org/library/articles/samplewb.pdf. A sample Whistleblower Policy is also available at Lawhelp.org/NY's website at http://lawhelp.org/documents/497681Whistleblower%20Policy.pdf?stateabbrev=/NY/.

⁷ This may include the number of members of the corporation as of the date of the report, with a statement of increase or decrease in that number during the fiscal period.

⁶ If applicable: IRS problems, lawsuits, etc. would be described in the *Footnotes* section of the financial statements.

⁸ A conflict of interest occurs when an individual's obligation to further the organization's charitable purposes is at odds with his or her own financial or other material interests. The nonprofit should develop a written conflict of interest policy that establishes procedures under which conflicted individuals will be excused from voting on such matters when such a conflict exists. A sample conflict is provided by the Internal Revenue Service at http://www.irs.gov/instructions/i1023/ar03.html.

⁹ A *whistleblower* is a person who raises a concern about wrongdoings occurring within an organization or body of people. A whistleblower policy generally protects such a person against retaliation. For more information on whistleblower protection policies, see:

http://nonprofitrisk.org/library/articles/employment091005.shtml.

Document retention and destruction policy¹⁰

★ TOOL: A sample Document Retention and Destruction Policy authored by Authenticity Consulting, LLC through the Free Management Library at http://www.managementhelp.org/misc/Sample-Document-Retention-Destruction-Policy.pdf#search=%22sample%20retention%22 and at Lawhelp.org/NY's website at http://lawhelp.org/documents/497691Document%20Retention%20Policy.pdf?stateabbrev=/NY/

- Code of Conduct and Ethics policy¹¹
 - **(i) REMINDER**: E-mail messages and electronic documents are included in this policy as well.
 - ★ TOOL: A sample Code of Ethics is available at Lawhelp.org/NY's website at http://lawhelp.org/documents/497701Code%20of%20Ethics.pdf?stateabbrev=/NY/.
- Gift acceptance policy¹²

★ TOOL: A sample gift acceptance policy is available from the Brooklyn College Foundation at http://www.brooklyn.cuny.edu/pub/departments/bcf/pdf/giftpolicies.pdf.

• IRS Schedule M (Form 990), if: (1) received more than \$25,000 in non-cash contributions (e.g. books, clothing); or (2) received any similar assets (e.g. art, historical treasures)

★ TOOL: A copy of Form 990 is available on the Internal Revenue Service's website at http://www.irs.ustreas.gov/pub/irs-pdf/f990sm.pdf.

¹¹ A *code of conduct and ethics policy* requires directors, officers and employees to adhere to high ethical standards, to carry out the mission of the organization, and to follow all applicable internal rules of the organization and applicable laws that govern charities.

¹⁰ A *document retention and destruction policy* is a written policy that helps eliminate accidental destruction of important corporate documents. The policy also safeguards against improper destruction of documents in connection with an investigation or litigation. The policy describes how long documents must be kept and where they are stored.

¹² A *gift acceptance policy* is a written policy that describes the types of gifts that an organization may accept and the manner in which such gifts must be handled.

III. Recordkeeping

| Recor | ds related to incorporation and tax exemption |
|-------|---|
| - | Certificate of incorporation |
| • | Bylaws |
| • | Recognition of federal tax exemption for a nonprofit organization (Form 1023) |
| | ★ TOOL: A copy of Form 1023 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f1023.pdf . |
| • | Exemption from NYS and local corporate and sales taxes |
| Recor | ds related to the proceedings of the board and committees |
| • | Notices, agendas and minutes of all meetings |
| • | Resolutions of the board and of committees |
| • | Charters of all committees |
| • | All corporate policies, including conflict of interest, whistleblower, document retention, and ethics. ¹³ |

- Contact information
- Terms of the office
- Records of the duties and accomplishments of all committees, for example:
 - Executive
 - Finance
 - Audit
 - Fundraising
 - Marketing
 - Personnel, etc.
 - Treatment of conflicts of interest, for example:

¹⁴ For more information, see: http://www.managementhelp.org/boards/brdcmtte.htm on the Free Management website.

- Relationship between the board and its chief officers/key employees
 Records related to contracts, leases and legal documents
 Leases and renewal of leases¹⁵
 Contracts concerning property and equipment
 Records showing competitive bidding and review of bids for possible savings and renegotiation of interest rates
 Records related to Employment Termination
 Maintain written records of incidents, warnings, complaints, and employee performance evaluations
 - Proposals
 - Create grant compliance checklists:
 - Federal¹⁷, state and local grants
 - Private foundation grants
 - Individual donors
 - Grant compliance issues including reports on deliverables, financial accountability and the relationship with the grantor
 - Donor-restricted gifts¹⁸
 - Cy pres doctrine¹⁹

¹⁵ According to New York Not-For-Profit Corporation Law (NPCL) § 509, two-thirds of the entire board must approve a lease, sale or purchase of real property. If number of board members exceeds twenty-one, then a majority is sufficient. Please see Justia's website at: http://law.justia.com/newyork/codes/not-for-profit-corporation/npc0509_509.html.

¹⁶ For help with grants solicitation and management, see: Non-Profit Guides http://www.npguides.org/ and the Foundation Center www.foundationcenter.org.

Organizations that expend more than \$50,000 of federal awards per year must obtain an annual audit that complies with the Federal Office of Management and Budget Circular A-133. An accounting firm specializing in nonprofit organizations should be familiar with this procedure. For further information, see either this guide (http://www.nea.gov/about/OIG/NEA-Guidelines-A-133.pdf) from the National Endowment for the Arts or this release (http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133 revised 2007.pdf) from the White House.

¹⁸ If donors specify that their gifts be used for a specific exempt purpose, the board must provide safeguards to ensure that the donors' intended purpose is met and is consistent with the charitable mission of the organization.

(1) REMINDER: Noncompliance can result in: (1) termination of the contract; (2) the requirement to refund money; (3) adverse publicity; or (4) non-renewal of grant.

| Financial Recor | rds and Reports |
|-----------------|---|
| Put in | nternal controls into place to safeguard charitable assets ²⁰ |
| Dutie | es of audit and finance committees |
| Acco | unting records and financial reports ²¹ , including: |
| • | Annual income statement |
| • | Annual statement of financial position (i.e., balance sheet) |
| - | Budget and budget deviation analyses |
| • | Cash flow reports |
| | (REMINDER: Make sure that no single individual is responsible for receiving, recording and depositing funds, or writing and signing checks. |
| ☐ Dona | ation receipts |
| | ★ TOOL: A sample Non-cash Charitable Gift Acknowledgment Letter and Receipt is available through the Evangelical Council for Financial Accountability's website a http://www.ecfa.org/Documents/SampleNon-CashCharitableGiftAcknowledmentLettersandReceipt.doc . |
| | ★ TOOL: A template for creating a Donation receipt is available through the Microsoft Office website at http://office.microsoft.com/en-us/templates/donation-receipt-TC006089148.aspx . |
| (i) Keep | records of all charitable solicitations and all receipts issued for donations. |
| ☐ Char | itable solicitation records (see: Section IX, "Fundraising Requirements") |
| ☐ Empl | ovment records, as required by law (see: Section V "Personnel Management") |

¹⁹ This is a legal doctrine under which a court reforms a written instrument with a gift to charity as closely to the donor's intention as possible, so that the gift does not fail. Courts use cy pres especially in construing charitable gifts when the donor's original charitable purpose cannot be fulfilled.

The Charities Bureau has an excellent publication called, "Internal Controls and Financial Accountability for Not-for-Profit Boards," available from the New York State Attorney General's Office, Charities Bureau at http://www.charitiesnys.com/pdfs/Internal%20Controls%20-%20Final%20-%20Small%20Type.pdf, which should be reviewed.

²¹ Nonprofit organizations must ensure proper retention of records necessary for accurate year-end reporting to the IRS and to NYS.

IV. Personnel Management

Employee Matters²² Employment process²³ Job description: Time commitment Interest of the organization²⁴ Description of the position²⁵ Interviews Offer letter²⁶ * TOOL: A sample offer letter is available through the University of Tulsa, Office of Human Resource's website at http://www.utulsa.edu/personnel/pdf/APPENDIXISampleOfferLetter.pdf. Retention efforts Performance management is an ongoing process where the manager/supervisor and employee work together to plan, monitor and review an employee's professional objectives and overall contribution to the organization Learning, training and development will help employees develop professionally

For more information, see the Employment Law Guide for Nonprofit Organizations on the Pro Bono Partnership's website at http://www.probonopartner.org/PBPGuide/frame.htm.

²⁴ The *interest of the organization* means the mission and objective of the organization.

Maintain employee records as required by law

Employee tax withholdings

Names and social security numbers²⁷

²⁵ The *description of the position* means the qualifications and duties expected of the particular position.

For more information, see the HR Toolkit for Voluntary & Nonprofit Sector on the HR Council for the Nonprofit Sector's website at http://www.hrvs-rhsbc.ca/hr-toolkit/keeping-people-employee-engagement.cfm.

An *offer letter* is a document that confirms the details of an offer of employment. The job offer letter includes details such as the job description, reporting relationship, salary, bonus potential, benefits, vacation allotment, etc.

New York Labor Law 203-d governs how employees' social security numbers should be kept (NYLL 203-d is available on the New York State Division of Labor Standards website at http://www.labor.state.ny.us/formsdocs/wp/LS10.pdf). For example, the law restricts employers' ability to use or communicate employees' personal identifying information.

★ TOOL: Form W-F is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/fw4.pdf.

- Employment Eligibility Verification Form (Form I-9)
 - **©** REMINDER: Employees must complete and submit an Employment Eligibility Verification Form I-9 within 3 days of employment to their employers. Employers are required to retain I-9s for up to 3 years.
 - ★ TOOL: Form I-9 is available on the Department of Homeland Security, U.S. Citizenship and Immigration Services website at http://www.uscis.gov/files/form/i-9.pdf.
- Records for each payroll period
 - (i) For each payroll period, record: (a) beginning and ending dates; (b) the days (or weeks, etc.) each employee worked and the earnings for each day (or week, etc.); and (c) all payments made to the employee, including bonuses and vacation pay.
- Create or update a payroll system
 - See: Withholding Tax Forms at http://www.nystax.gov/forms/withholding-cur-forms.htm (NYS Department of Taxation & Finance) for official forms of:
 - Withholding requirements (federal, state & city)
 - Requirements for payment of funds withheld (federal, state & city)
 - Reporting requirements for funds withheld (federal, state & city)
- Adhere to appropriate employment practices
 - Proper classification of independent contractors and employees
 - ① Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay state unemployment tax on wages paid to an employee. Section 501(c)(3) organizations are exempt from payment of the federal unemployment taxes ("FUTA"). Nonprofits do <u>not</u> generally have to withhold or pay any taxes on payments to independent contractors. To understand the difference between an independent contractor and an employee, refer to: IRS Determination Guidelines on the Internal Revenue Service website at http://www.irs.gov/businesses/small/article/0,.id=99921,00.html on the classification of employees and contractors.
 - Employee handbooks²⁸
 - ★ TOOL: A sample Employee Handbook is available on the National Association of Veterans' Research and Education Foundations' website at http://www.navref.org/bestpractices/word/main hr employment handbooksample.doc.
 - Have a clear, written reimbursement policy for employee expenses

²⁸ *Employee handbooks* contain guidelines, expectations and procedures of a business or company and are distributed to its employees.

- Termination of employment
- Mandatory notices for employees²⁹
- Compliance with federal, state and local anti-discrimination and wage and hour laws
- Conduct periodic organizational reviews to ensure compliance and harmonization of all corporate policies with the law

Volunteer Matters

| Establi | ish a volunteer recruitment process |
|----------|--|
| • | Create a volunteer application form. |
| | ★ TOOL: A variety of useful information, including a sample Volunteer Interview Form is available at the Texas Commission on the Arts "Toolkit" at http://www.arts.state.tx.us/toolkit/nonprofit/templates/interviewform.pdf . |
| • | Conduct interviews of prospective volunteers and verify references ³⁰ |
| • | Volunteer Agreement ³¹ |
| | ** TOOL: A sample Volunteer Contract is available from the Texas Commission on the Arts at http://www.arts.state.tx.us/toolkit/nonprofit/templates/samplevolunteer.pdf . |
| ☐ Volunt | teer insurance ³² |
| | ① Under the Volunteer Protection Act of 1997 a nonprofit organization volunteer is generally immune from tort claims; however, the Act does not provide immunity to the nonprofit, which should obtain adequate liability insurance. |
| Establi | ish a Volunteer Screening Process & Perform Background Checks ³³ |

³⁰Sample interview questions and evaluation considerations provided by the Community Shares of Greater Cleveland http://www.communityshares.org/eecc/SP3_Interview_Questions.pdf.

³² *Volunteer insurance* provides for personal injury or property damage protection that derives from the duties of volunteers. For more information, please visit Nonprofitrisk.org at http://www.nonprofitrisk.org/library/articles/insurance052004.shtml.

 $^{^{29}}$ Mandatory employment notices and posters must be placed in a location where employees can view them in the normal course of business. These notices must comply with federal and state laws, e.g. minimum wage notices and Family and Medical Leave (FMLA) notices.

A volunteer contract is the agreement between the organization and the volunteer that formalizes the expectations of the volunteer's activities. The contract might include any benefits offered by the organization, *e.g.*, free trainings, use of facilities for private use, etc.

A *background check* is the process of looking up the compiled criminal records and/or financial records of an individual. In order to avoid liability and protect vulnerable people that interact with the organization, specifically children, those with developmental disabilities and elderly people, a vigorous screening process should be implemented.

- A prospective volunteer should be informed of the type and frequency of screening, if any, required for each volunteer position.
- When necessary to conduct a background check, first obtain the volunteer's consent, then request criminal history.
 - ① Under the Volunteers for Children Act of 1998, nonprofit organizations may access federal criminal record files through the national fingerprint database.
 - ▼ TOOL: For additional information, contact the New York State Division of Criminal Justice Customer Contact Center at 1-800-262-3257 or InfoDCJS@dcjs.state.ny.us and ask to be directed to the U&D group for assistance. Alternatively, write to The NY DCJS U&D Unit, 5th floor, 4 Tower Place, Albany, New York 12203-3764, or visit their website at http://criminaljustice.state.ny.us/ojis/recordreview.htm.
 - o Criminal History Record Search: The New York State Office of Court Administration provides a statewide search of an individual's criminal history for a fee of \$65.00.
 - ★ TOOL: Visit the New York Unified Court System website at http://www.courts.state.ny.us/apps/chrs/ for forms and instructions on how to perform a criminal history record search.
 - Commercial Background Screening Companies: Various companies provide screening of volunteers for a fee. Many of these commercial entities compile their data from public sources.³⁴
 - ★ TOOL: For additional information, the Nonprofit Risk Management Center has published The Nonprofit Staff Screening Tool Kit at http://www.ojp.gov/ccdo/programs/H_c.pdf.
- ☐ Implement Volunteer Orientation Procedures
 - Volunteer Handbook³⁵
 - Training

2

³⁴ For example, LexisNexis has a fee-based screening service specifically for nonprofit organizations https://volunteer.lexisnexis.com/pub/.

³⁵ *Volunteer handbooks* contain guidelines to plan, train, administer, manage and communicate with volunteers. For more information, see the Resource Center's website at http://www.nationalserviceresources.org/practices/17451.

| \Box | Super | vise | Vol | untee | rc36 |
|--------|-------|-------|------|-------|------|
| l I 1 | ouber | V 15C | v Oi | unice | 15 |

** TOOL: Becoming a Better Supervisor: A Resource Guide for Community Service Supervisors by the National Service Resource Center at http://www.nationalserviceresources.org/becoming-supervisor.

Evaluation: Periodically perform a volunteer review

★ TOOL: A sample volunteer performance evolution from the Faith in Action National Network at http://www.fianationalnetwork.org/viewfile.cfv?id=1106.

★ TOOL: A sample volunteer feedback form from the Community Shares of Greater Cleveland at http://www.communityshares.org/eecc/S3_Evaluation_Form.pdf.

- Termination: The volunteer handbook should include a section on the dismissal of volunteers.³⁷
 - A volunteer discipline and termination procedure is discussed in the article "A Few Pointers On the Unpleasant Topic of Firing Volunteers." *Source*: ServiceLeader.org http://www.serviceleader.org/leaders/firing.

Retirement Plan

| Decide what ty | pe of retirement plan is best for your organization |
|----------------|---|
| | FOOL: A Plan Feature Comparative Chart is available from the Internal Revenue ice at http://www.irs.gov/pub/irs-pdf/p4484.pdf . |
| Additional tax | resources |
| &u T | FOOL: Additional natinament plan information is available from the Internal Day |

TOOL: Additional retirement plan information is available from the Internal Revenue Service at http://www.irs.gov/charities/article/0,,id=178020,00.html.

³⁶ Supervision is the oversight and support of the volunteers. There should be a process whereby the supervisor(s) and volunteer(s) mutually set goals with direct reports. Additionally, supervisors should support volunteer's motivation including the acknowledgment and use of volunteer input. For more information, please visit CharityVillage's article by Monika Penner entitled "Supporting, Recognizing and Challenging Volunteers" at http://www.charityvillage.com/cv/research/rvol38.html and "Staffing and Supervision of Employees and Volunteers" on Managementhelp.org at http://managementhelp.org/np_progs/sup_mod/staff.htm.

Volunteers on Managementhelp.org at http://managementhelp.org/np_blogs/sup-mod/start.htm.

There should be adequate notice about personnel issues such as probation, suspension and termination. In the event of alleged inappropriate behavior, an investigation should be conducted to see if there has been an infraction. If alternatives such as reassignment or retraining are ineffective or in the event of an egregious infraction or continuous unsatisfactory performance, termination may be appropriate. For more information of how to conduct a dismissal/termination meeting, please visit Volunteer Power's website at http://www.volunteerpower.com/articles/Firing.asp and Court Appointed Special Advocates website http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5466409/k.E368/How to Fire a Volunteer and Live to Tell About It.htm.

V. Filings

Annual Exempt Organization Return with the IRS

| • 0 |
|--|
| ☐ IRS Form 990 (if gross receipts are ≥ \$200,000 OR assets ≥ \$500,000) |
| ★ TOOL: Form 990 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f990.pdf . |
| \square IRS Form 990-EZ ³⁸ (if gross receipts are < \$200,000 and assets are < \$500,000) |
| ★ TOOL: Form 990-EZ is available on the Internal Revenue Service's website |
| at http://www.irs.gov/pub/irs-tege/f990rez.pdf . |
| ☐ IRS 990-N (the "e-Postcard") ³⁹ (990-N) (if gross receipts are normally \leq \$50,000, although organizations may still choose to file) |
| (i) REMINDER: The e-Postcard is due every year by the 15th day of the 5th month after the close of your tax year. For example, the e-Postcard for an organization whose tax year ends or June 30, 2010, will be due by November 15, 2010. Any organization that fails to file for 3 years will lose its tax exemption. |
| ★ TOOL: Form 990-N is available on the Urban Institute's website at http://epostcard.form990.org/ . |
| Initial and Annual Filings with the Charities Bureau of the NYS Attorney General's Office |
| ☐ Initial registration ⁴⁰ (CHAR410) |
| ★ TOOL : Form CHAR410 is available on the New York State Attorney General's Office, Charities Bureau's website at http://www.charitiesnys.com/pdfs/char410.pdf . |
| Annual filings41 (CHAR500) |
| |

The *Form 990-EZ* is a shortened version of Form 990. It is designed for use by small exempt organizations and nonexempt charitable trusts. An organization may file Form 990-EZ, instead of Form 990, if it meets the thresholds for both its gross receipts and total assets during the year.

³⁹ Organizations that normally have annual gross receipts of <u>less than \$25,000</u> are not required to file a Form 990 or Form 990-EZ.

⁴⁰ Under Article 7-A of the Executive Law and the Estates, Powers, and Trusts Law (EPTL), nonprofit organizations are required by law to register. Pursuant to these statutes, a nonprofit organization will be given a certain status by the Charities Bureau. The charitable entity type and registration type will determine the annual filing requirements. Please visit the New York State Attorney General's Office, Charities Bureau's website at http://www.charitiesnys.com/charities_new.html for more information.

⁴¹ The *CHAR500* is the required annual filing form for charitable organizations with the Office of the Attorney General.

| | (i) All submissions must be mailed, postmarked by the 15th day of the 5th month after the organization's tax year ends, to the address at the top of the CHAR500. For example, a report for the tax year ended December 31, 2009 is due by May 15, 2010. |
|------------|--|
| | ★ TOOL: Form CHAR500 is available on the New York State Attorney General's Office, Charities Bureau's website at http://www.charitiesnys.com/pdfs/CHAR500-09.pdf . |
| | Charitable registration in other states |
| | ① Generally, a nonprofit engaged in fundraising in any other state is required to register with the charities regulator within that state. Most states require both registration and annual financial reporting. The National Association of State Charity Officials (NASCO) have developed a set of guidelines (termed the "Charleston Principles" regarding when internet solicitation of contributions requires registration in other states. The Charleston Principles are available on NASCO's website at http://www.nasconet.org/Charleston%20Principles,%20Final.pdf/file_view . |
| Public Dis | closure Requirements ⁴² |
| | Exemption application documents, including: |
| | Recognition of exemption for a 501(c)(3) organization (Form 1023) |
| | ★ TOOL : Form 1023 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f1023.pdf . |
| | Annual Returns (Form 990 or Form 990-EZ or Form 990-N) |
| | ★ TOOL: Form 990 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f990.pdf . |
| | ★ TOOL: Form 990-EZ is available on the Internal Revenue Service's website at - http://www.irs.gov/pub/irs-tege/f990rez.pdf . |
| | ★ TOOL : Form 990-N is available on the Urban Institute's website at - http://epostcard.form990.org/ . |
| | Exempt Organization Business Tax Return, if necessary (Form 990-T) |
| | ★ TOOL: Form 990-T is available on the Internal Revenue Service's website at |

i File the CHAR500 with the Charities Bureau of the Attorney General's Office.

http://www.irs.gov/pub/irs-pdf/f990t.pdf.

Annual Filing for Charitable Organizations (CHAR 500)

⁴² Exempt organizations must make certain annual returns and applications for exemption available to individuals who request them. Copies should be provided immediately in the case of in-person requests and within 30 days in the case of written requests. The tax-exempt organization may charge a reasonable copying fee plus actual postage. Alternatively, the organization may make these materials available on its website or on a third-party site like Guidestar USA, Inc.'s website www.guidestar.org.

★ TOOL: Form CHAR500 is available on the New York State Attorney General's Office, Charities Bureau's website at http://www.charitiesnys.com/pdfs/CHAR500-09.pdf.

VI. Corporate, Employment & Sales Taxes

| Corporate Tax Records for Unrelated Business Income ⁴³ |
|--|
| ☐ IRS Form 990-T ⁴⁴ |
| ★ TOOL: Form 990-T is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f990t.pdf . |
| NYS Form CT-13 ⁴⁵ |
| ★ TOOL:NYS Form CT-13 is available at the New York State Department of Taxation and Finance's website at http://www.tax.state.ny.us/pdf/2008/corp/ct13_2008.pdf . |
| Payment Records for Employment Taxes ⁴⁶ |
| Federal Income Tax Withholding ⁴⁷ (Form W-4) |
| ★ TOOL: Form W-4 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/fw4.pdf . |
| Whenever an employer pays wages/compensation to an employee, the IRS will expect the employer to collect a portion of the employee's federal income tax on the payment throug withholding |
| • The factors affecting how much you must withhold from a given wage payment are: |
| 1) The frequency of your payroll period; |
| 2) The employee's marital status; |
| |
| 13 |

⁴⁴ Nonprofits that have \$1,000 or more in gross income from an unrelated business must file a *Form 990-T*. For instructions, see the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/i990t.pdf.

For more information, see the Internal Revenue Service's website at http://www.irs.gov/charities/article/0,,id=132488,00.html.

⁴³ Your organization may be liable for tax on its unrelated business income. Unrelated Business Income is defined on the Internal Revenue Service's website at http://www.irs.gov/charities/article/0,.id=96104,00.html. For most organizations, *Unrelated Business Income* is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption. For more information on forms and instructions, see the New York State Office of Attorney General, Charities website at http://www.charitiesnys.com/charities.new.html.

For instructions, see the New York State Department of Taxation and Finance's website at http://www.nystax.gov/pdf/2008/corp/ct13i_2008.pdf.

⁴⁷ Form W-4 is filled out by the employee and used by the employer to determine the correct amount of tax withholding to deduct from the employee's wages. For more information, see the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/fw4.pdf.

| 4) The size of the wage payment |
|---|
| ① IRS Withholding Calculator: available on the Internal Revenue Service's website at http://www.irs.gov/individuals/article/0,,id=96196,00.html . |
| Federal Insurance Contributions Act ("FICA") Tax ⁴⁸ (Form W-2) |
| ★ TOOL: Form W-2 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/fw2.pdf . |
| ☐ Miscellaneous Income ⁴⁹ (Form 1099-MISC) |
| ★ TOOL: Form 1099-MISC is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f1099msc.pdf . |
| Federal Unemployment Tax Act ("FUTA") ⁵⁰ (Form 940) |
| (i) REMINDER: Payments to employees of section 501(c)(3) organizations are <u>exempt</u> from FUTA tax; this exemption cannot be waived. See "Employer's Supplemental Tax Guide" on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/p15a.pdf . |
| ★ TOOL: Form 940 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f940.pdf . |
| NYS Income Tax Withholding (Forms) |
| ★ TOOL: New York State withholding tax forms are available on the New York State Department of Taxation and Finance's website at http://www.nystax.gov/forms/withholding_cur_forms.htm . |
| NYS Unemployment Tax Withholding (<u>NYS-100N</u>) |

3) The number of withholding exemptions the employee claims; and

⁴⁸ *FICA* is a federal tax imposed on employers and employees to fund Social Security and Medicare. FICA taxes are reported on Form W-2. An employer will also use the Form W-2 to: (1) report wages, tips, and other compensation paid to an employee; (2) report the employee's income tax and Social Security taxes withheld and any advanced earned income credit payments; and (3) report wage information to the employee and the Social Security Administration.

Finance's website at http://www.tax.state.nv.us/pdf/2002/wt/nvs100n 1002.pdf.

* TOOL: Form NYS-100N is available on the New York State Department of Taxation and

⁴⁹ A *Form 1099-MISC* is generally used to report payments made in the course of a trade or business to a person who is not an employee or to an unincorporated business (*e.g.* an independent contractor). This form is required, for instance, when payments of \$10 or more in gross royalties or \$600 or more in rents or compensation are paid. For instructions on how to complete the form, see the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/i1099msc.pdf.

⁵⁰ *FUTA* is a federal tax imposed on employers to fund the costs of administering the unemployment insurance and job service programs of the states. FUTA taxes are reported on Form 940.

Sales Taxes

| (i) REMINDER: If the organization will sell tangible personal property or provide specific services in NYS, it must collect and remit NYS sales and local taxes to the NYS Department of Taxation and Finance, usually on a quarterly basis. |
|--|
| Certificate of Authority ⁵¹ |
| ★ TOOL: The application to register for a sales tax Certificate of Authority is available on the New York State Department of Taxation and Finance's website at http://www.tax.state.ny.us/pdf/2007/fillin/st/dtf17 407 fill in.pdf. |
| Exemption from Corporate Franchise Taxes (CT-247) |
| ★ TOOL: Form CT-247 is available on the New York State Department of Taxation and Finance at http://www.tax.state.ny.us/pdf/2009/corp/ct247_809.pdf . |
| Sales Tax Identification Number ⁵² |

⁵¹ A *Certificate of Authority* enables an organization to obtain a Sales Tax ID.
⁵² The *Sales Tax Identification Number* will be provided with the organization's Certificate of Authority.

VII. Insurance Coverage

| Insurance (| Coverage Required by NYS |
|-------------|--|
| | Disability insurance ⁵³ |
| | Workers' compensation insurance ⁵⁴ ① For more information about the requirements of coverage for volunteers and employees of nonprofit organizations, see the New York State Workers' Compensation Board's website at http://www.wcb.state.ny.us/content/main/Employers/Employers.jsp . |
| Other Insu | rance Coverage |
| | Directors and officers liability insurance ⁵⁵ |
| | General liability insurance ⁵⁶ |
| | Volunteer injury liability coverage ⁵⁷ (if relevant) |
| | Auto insurance ⁵⁸ |
| | Property insurance ⁵⁹ |
| | Fiduciary liability insurance, if the organization has a pension plan |
| | Have your insurance agent review your lease to ensure that you have complied with all insurance irements occasioned by the lease |
| | |

⁵³ *Disability insurance* provides temporary cash benefits to an eligible wage earner when he/she is disabled by an off-the-job injury or illness. NYS requires employers to provide such coverage to their employees. For more information, see the New York State Workers' Compensation Board at http://www.wcb.state.ny.us/content/main/DisabilityBenefits/Employer/complyWithLaw.jsp.

Workers' compensation insurance provides employees who have been injured in the course of employment with compensation and medical care; in return, the employee relinquishes his or her right to sue the employer for negligence.

⁵⁵ Directors and officers liability insurance covers the damages or defense costs that arise from a lawsuit for the alleged wrongful acts of directors or officers while acting in their capacity for the organization (e.g., mismanagement of funds).

⁵⁶ General liability insurance covers an organization against claims for damage or injury caused by negligence during performance of an employee's duties or business activities.

⁵⁷ *Voluntary injury liability coverage* provides volunteers with compensation for injuries sustained while performing volunteer duties.

Auto insurance covers damage to an organization's cars, trucks, and other vehicles and also provides protection against losses and liabilities incurred as a result of traffic accidents.

⁵⁹ *Property insurance* provides protection against certain risks to property, such as fire, theft and weather damage.

VIII. Charitable Contributions

| Charitable Cont | cributions ⁶⁰ |
|----------------------------------|---|
| Creat | e solicitation letters ⁶¹ |
| tho At wl | olicitation letters must state that the organization is a 501(c)(3) organization and that a copy of e organization's annual report is available from the organization or the New York State ttorney General's Office, Charities Bureau. Any request for funds must state the purpose for hich the funds will be used and that a copy of the annual report may be obtained from the ganization |
| co co | Certain tax-exempt organizations are <u>not</u> eligible to receive tax-deductible charitable ontributions. They must disclose in any fundraising statement "an express statement (in a onspicuous and easily recognizable format)" that contributions to the organization are not eductible for federal income tax purposes as charitable contributions. |
| ☐ Creat | e acknowledgment letters |
| <u>ht</u> t at <u>ht</u> t | TOOL: A sample acknowledgement letter is available on Labyrinth, Inc.'s website at tp://www.labyrinthinc.com/sharedcontent/SampleAcknowledgement.asp?Page=4&subs=7 and Lawhlep.org/NY's website at tp://lawhelp.org/documents/497651Form%20of%20acknowledgment%20letter.pdf?stateabbrevNY/. |
| | written acknowledgment is required to substantiate a charitable contribution of \$250 or more ad must contain the following information: |
| | 1) Name of the organization: |

- 1) Name of the organization;
- 2) Amount of cash contribution;
- 3) Description (but not value) of non-cash contributions;
- 4) Statement that no goods or services were provided by the organization, if that is the
- 5) Description and good faith estimate of the value of goods or services, if any, that the organization provided in return for the contribution; and
- 6) Statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.

⁶¹ A fundraising solicitation is any solicitation of contributions or gifts made in written or printed form or by television, radio, or telephone. For more information, see the Internal Revenue Service's website at http://www.irs.gov/charities/article/0..id=96113,00.html.

For more information on substantiation and disclosure requirements, see the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/p1771.pdf.

| ① Although not required for contributions less than \$250, an acknowledgment letter to the donor is always a good idea. |
|---|
| Create a "quid pro quo" disclosure statement ⁶² |
| TOOL: A sample quid pro quo acknowledgement letter is available on Lawhelp.org/NY's website http://lawhelp.org/documents/497661Form%20of%20QPQ%20Acknowledgment%20Letter.pdf? stateabbrev=/NY/. |
| ☐ Note whether contributions received must be used for a specific purpose |
| ☐ Ensure the confidentiality of donor information |
| ☐ Train internal fundraisers to comply with legal requirements of soliciting charitable contributions |
| |

Non-cash Contributions⁶³

① If a nonprofit receives a non-cash donation over \$5,000, the donor must attach a Form 8283 to his/her annual income tax return to support the charitable deduction, and the recipient of the donation must sign Part IV of Section B on Form 8283, unless publicly traded securities are donated. If an organization sells, exchanges, or disposes of the property within three years of receiving it, the organization must file a Form 8282, unless an exception applies. For more information, see the Internal Revenue Service's website at http://www.irs.gov/charities/charitable/article/0,,id=123202,00.html.

★ TOOL: Form 8283 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f8283.pdf.

★ TOOL: Form 8282 is available on the Internal Revenue Service's website at http://www.irs.gov/pub/irs-pdf/f8282.pdf.

Complying with Charities Law Requirements

(i) If a nonprofit organization hires an outside fundraising professional, the nonprofit and the fundraiser must comply with certain charities law requirements.⁶⁴

⁶² "Quid pro quo" disclosure statements apply when a donor makes a payment that is in part a contribution and in part payment for goods or services. The organization must provide the donor with a disclosure statement for this type of contribution regardless of the value of the contribution. Failure to do so may result in a monetary penalty to the organization. For more information, see the Internal Revenue Service's website at http://www.irs.gov/charities/charitable/article/0,,id=123201,00.html.

http://www.lawyersalliance.org/pdfs/news_legal/Nov_09_Alert_Working_With_Fundraising_Professionals.pdf. Additionally, please see http://www.raise-funds.com/, a website dedicated exclusively for advice on non-profit fundraising.

⁶³ A charity may need to provide additional substantiation with respect to non-cash contributions. Also, there are special rules for the contribution of some motor vehicles.

⁶⁴ Please see the following memo from the Lawyers Alliance for New York on working with outside fundraisers:

| Determine whether t | he organization' | s fundraiser must | be registered | with the C | Charities Bureau |
|---------------------|------------------|-------------------|---------------|------------|------------------|
| | | | | | |

- Under Article 7-A of the Executive Law, fundraising professionals—those who engage in fundraising activities for compensation—must register with the Charities Bureau. Fundraising professionals are usually categorized as "Professional Fundraisers" or "Fund Raising Counsel."
 - (1) Although both fundraising professionals must register every year, there are different filing requirements and fees for a Professional Fundraiser and Fund Raising Counsel. 67

★ TOOL: FOR PROFESSIONAL FUNDRAISERS—The Professional Fundraiser Registration Statement, the CHAR 013, is available on the Charities Bureau website at http://www.charitiesnys.com/pdfs/char013.pdf. The Annual Bond Form, CHAR 015, is available on the Charities Bureau website at http://www.charitiesnys.com/pdfs/char015.pdf.

★ TOOL: FOR FUNDRAISING COUNSEL—The Fundraising Counsel Registration Statement, CHAR 014, is available on the Charities Bureau website at http://www.charitiesnys.com/pdfs/char014.pdf.

| Have a clear. | written o | contract v | with the | fundraising | professional. ⁶⁸ |
|---------------|-----------|------------|----------|-------------|-----------------------------|
| mave a cicar, | WIIIICII | omiaci v | viui uic | Tunuraising | professional. |

• The nonprofit must enter into an agreement that contains specific provisions, including, but not limited to (i) a clear narrative description of the services to be performed, (ii) a clear statement of the financial arrangement between the parties; and (iii) a provision referencing the requirements of the organization's statutory right to cancel the contract without cost. 69

★ TOOL: FOR PROFESSIONAL FUNDRAISERS—the Professional Fund Raiser/Fundraising Counsel Contract Certification & Addendum to Contract With Charitable Organizations, CHAR 016A/CHAR 016B is available on the Charities Bureau website at http://www.charitiesnys.com/pdfs/CHAR016A%20with%20CHAR016B.pdf. The

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⁶⁵ A Professional Fundraiser is a person who "directly or indirectly, by contract...for compensation or other consideration (a) plans, manages, conducts, carries on, or assists in connection with a charitable solicitation; (b) solicits on behalf of a charitable organization or any other person; or (c) who advertises that the purchase or use of goods, services, entertainment or any other thing of value will benefit a charitable organization but is not a commercial co-venturer." §171-A of Article 7-A.

⁶⁶ Fund Raising Counsel is a person or entity who "for compensation consults with a charitable organization or who plans, manages, advises, or assists with respect to the solicitation in this state of contributions for or on behalf of a charitable organization, but who does not have access to contributions or other receipts from a solicitation or authority to pay expenses associated with a solicitation and who does not solicit. §171-A of Article 7-A (emphasis added).

⁶⁷ Please note that fundraising professionals do not include a bona fide officer, volunteer, or employee of the charitable organization or an attorney-at -law retained by the organization.

⁶⁸ Governed by §174-a, this agreement must be filed with the Charities Bureau within ten days of signing. ⁶⁹ Under §174-a of Article 7-A, an organization has a statutory right to cancel its contract with a fundraising professional without cost, penalty, or liability, within 15 days following the filing of the contract with the Charities Bureau. To effectuate the statutory right to cancel the contract, the organization need only provide timely, written notice of its intention not to be bound by the terms of the contract to the correct address of the fundraiser.

Professional Fundraising Interim/Closing Statement, CHAR 037, is available at http://www.charitiesnys.com/pdfs/char037.pdf.

★ TOOL: FOR FUNDRAISING COUNSEL—The Fundraising Contract Certification & Addendum to Contract with Charitable Organizations, CHAR 016A/CHAR 016B, is available on the Charities Bureau website at http://www.charitiesnys.com/pdfs/CHAR016A%20with%20CHAR016B.pdf.

| | Compensate | fundraising | professionals |
|---|------------|-------------|---------------|
| _ | | | |

- Although percentage-based compensation arrangements, finder's fees, and contingent fees
 are not expressly prohibited under New York law, the Association of Fundraising
 Professionals ("AFP") takes the position that fundraising professionals should not receive
 these types of compensation because such compensation arrangements may encourage abuse
 and undermine the philanthropic values upon which the charitable sector is based.
- While compensation for board members is not expressly prohibited under New York law, many nonprofits choose not to compensate directors for their fundraising in order to avoid questions about the organization's financial integrity and avoid potential conflicts of interest.
 - (1) If an organization decides to compensate a board member for fundraising services, the compensation arrangement must comply with the New York State conflict of interest rules and the IRS regulations on excess benefit transactions.⁷¹

| | Review | solicitation | materials | before | distribution | to ensure | e accuracy ⁷² |
|---|-----------|--------------|-----------|--------|--------------|------------|--------------------------|
| ш | TCC VIC W | Someration | materials | OCTOIC | distribution | to clisure | accuracy |

• Under §174-b of Article 7-A, any solicitation must provide a clear description of the programs and activities for which it has requested and has expended or will expend contributions. Additionally, any solicitation by a professional fundraiser or solicitor must clearly and unambiguously disclose: (a) the name of the professional fundraiser on file with the Attorney General and that the solicitation is being conducted by a professional fundraiser; (b) and that the individual is receiving compensation for conducting the solicitation.

Please see Section IX "Jeopardizing Exemptions" for more information on excess benefit transactions.
⁷² §175 of Article 7-A prohibits organizations and their fundraisers from making deceptive and misleading charitable solicitations. Intent to deceive is not required for the Attorney General to bring a lawsuit against an organization for solicitation fraud.

⁷⁰ Bonuses may be acceptable if based on performance, provided they are not a percentage, if consistent with the organization's overall bonus system.

IX. Jeopardizing Exemptions

Document Transactions or Decisions that May Jeopardize Exemption Status

- Inurement/private benefit⁷³
- Excess benefit transactions⁷⁴
- Lobbying⁷⁵
- Political activity⁷⁶
- Certain types of litigation⁷⁷

⁷³ A section 501(c)(3) organization must not be organized or operated for the benefit of private interests, and no part of its net earnings may inure to the benefit of any private shareholder or individual.

An excess benefit transaction occurs when an applicable tax-exempt organization directly or indirectly provides an economic benefit to or for the use of a disqualified person. If this economic benefit value exceeds the value of the consideration received by the organization, then the disqualified person and the organization's manager will be liable for an excise tax on the transaction. For more information, see: http://www.irs.gov/charities/charitable/article/0,,id=123298,00.html.

⁷⁵ *Lobbying* means activities attempting to influence legislation. A section 501(c)(3) organization may engage in some lobbying, but excessive lobbying risks loss of tax-exempt status. For more information, see: http://www.irs.gov/charities/article/0,id=163392,00.html.

A section 501(c)(3) organization is absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. For more information, see:

http://www.irs.gov/charities/charitable/article/0,,id=163395,00.html.

Consult the following memo from the IRS entitled, "<u>Litigation by IRC 501(c)(3) Organizations</u>" on permissible types of litigation in which public interest law organizations may engage.

X. <u>Intellectual Property Matters</u>

Review Potential Intellectual Property Issues

- Trademarks (organization name or names of products produced by organization)
 - What names and symbols do you use to identify your organization and do you wish to protect these potential trademarks?
- Copyright protection of materials produced by the organization (*e.g.*, outlines, handbooks, presentations, etc.)
- Periodic website review/audit
 - If your organization has a website, does the website have a privacy policy?
 - Does the website have a terms of use section?
 - Do you collect information regarding visitors to your website?
 - Do you offer copyrighted materials on your website and, if so, is the copyright clearly and properly designated?