



## **Does Your Nonprofit Need a Lawyer?**

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## Nonprofits and Legal Counsel: A 10-Point Checklist

Many nonprofits operate without input from business lawyers, even when they must address important matters related to incorporation and tax exemption, contracts, real estate, employment and other issues. To make sure your nonprofit is on the right legal track, use this checklist to review and rate your organization's performance in 10 key areas.

### 1. Are you incorporated and/or tax exempt?

If you are incorporated and/or tax exempt, you are subject to review by federal and state regulators, and you have to meet certain government requirements to stay in business. Your own organizational documents may contain other limits. You need to understand those limits and how to stay within them.

### 2. Do you file annual financial reports with the IRS or local/state officials?

If you file annual financial reports with the IRS or local/state officials, the content of those reports is used to determine whether or not you still qualify for corporate and tax exempt status. Information in those reports is also available to the public. You should know exactly what your filing requirements are and develop an effective internal system to make sure reports are complete and accurate and are filed on a timely basis.

### 3. Do you have employees or independent contractors?

Employment relationships are closely regulated by federal and state law. As an employer, you need to handle hiring, firing, and promotion decisions properly; comply with rules on payroll and withholding; and have clear personnel policies that cover work rules, benefits and other terms of employment. You need to understand how different employment rules apply specifically to you and move quickly to strengthen any areas where compliance is in question.

### 4. Do you own or rent real estate?

If you own or rent real estate, you must address a range of issues associated with leases, property taxes, building code compliance, insurance and zoning or other use restrictions. You need to make sure you understand your legal rights and obligations.

### 5. Does your organization regularly enter into contracts to purchase goods, services or equipment?

If your organization regularly enters into contracts for goods, services or equipment, you need to make sure you understand what those contracts say and what will happen if you have a dispute with the other side. A lawyer can explain this to you in plain English. In many cases, a lawyer may also be able to negotiate better terms or make sure you are protected from one-sided provisions. At the very least, a lawyer can save you time by handling the negotiation and drafting process so you can spend your time on more important tasks.

### 6. Do you publish or distribute materials to the public, or do you need to protect your name from unauthorized use?

If you publish or distribute materials, you should know the rules of copyright. If you want to have exclusive rights to use your name (or prevent others from using it), you need to know about trademarks.

### 7. Do you have relationships with candidates for public office or engage in advocacy on issues of political significance?

Political activity by nonprofits is regulated by federal and state law. For example, nonprofits are permitted to engage in lobbying, but they are not allowed to support or oppose candidates for public office. Failure to comply with these rules can lead to financial penalties and the loss of tax-exempt status. You need to understand where the lines are drawn so that you can avoid unnecessary trouble.

### 8. Do you have any single grant or contract over \$100,000 or is your budget over \$500,000?

Nonprofits with any single grant or contract over \$100,000 or a budget over \$500,000 are engaged in substantial activities and will be expected to behave

like a business. You'll have to stay in compliance with the terms of your contracts or grants. You should also have purchasing procedures; good financial management and fiscal controls; an annual audit; and advice on handling disputes with vendors and other assorted issues.

**9. Do you own or operate a business, either within your organization or through a separate entity, or do you charge for services?**

If so, you need to understand the tax rules that cover earned income, including those that apply to sales tax. You also need to make sure that your business is structured properly, and understand how your business and nonprofit activities relate to each other. You may also need help with contracts, employment, insurance or governance issues.

**10. Are you in financial trouble?**

If you are facing a serious financial challenge, you are probably being chased by creditors and may be fending off lawsuits or small claims. A lawyer can help you negotiate with creditors and can advise on options that might be appropriate such as bankruptcy or merger.

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