Legal Brief

Best Practices for Nonprofit Organizations

Nonprofit organizations come in many sizes and shapes, but their common focus is helping others and making our community a better place. This article summarizes the legal and practical steps each nonprofit organization should take so that the organization is prepared to focus more time and energy on fulfilling its mission.

Bylaws and Finances

Each organization should have a functional set of bylaws that should be consistent with the organization's Articles of Incorporation. These by-laws should describe the mission of the organization; explain the rights of board members; explain how directors and officers are selected; identify which committees exist and how they operate; and include provisions that limit personal liability and provide for indemnification when permitted by law. The bylaws should be reviewed approximately every five years to make sure that the bylaws still meet the needs of the organization.

The organization also should ensure that its funds are spent appropriately and expenditures are recorded accurately. The organization should approve an annual budget, and the directors should review ongoing expenditures periodically to make sure that funds are spent within the budget. A system of checks and balances should be used to record receipt of funds and approve necessary expenditures. An audit also should be conducted annually to obtain an independent review of revenues and expenditures.

Policies

Each organization should have a conflict of interest policy. Identifying and avoiding conflicts of interest may be required by governmental entities, which may provide a significant source of funding. Furthermore, charitable donors may expect that conflicts of interest will be avoided in order to ensure that the organization's funds are spent fairly and wisely. The conflict of interest policy should require board members, employees and volunteers with decision-making authority to disclose any financial interests they have in any business entity that conducts business with the organization.

A nonprofit organization also should have written personnel policies that govern all employees and volunteers of the organization. The personnel policies should cover working conditions, employee benefits, evaluation, supervision, hiring and firing, grievance procedures, and confidentiality of employee, client and organization information. Nonprofit organizations have many of the same legal obligations as for-profit businesses with respect to employees, so preparing and following appropriate policies will help avoid liability. Given the nature of today's electronic world, policies should include provisions regarding computer and smartphone use during working hours.

Fundraising

The organization should make sure that its fundraising activities are in compliance with Pennsylvania law. The organization should register with the Pennsylvania Attorney General's Office, if required, and all materials used in fundraising should be accurate and truthful. Furthermore, the organization should make sure that all charitable donations are used for charitable purposes. It is a violation of law to divert charitable donations for private purposes.

Recordkeeping

The organization should prepare policies for appropriate information management and destruction. Because a substantial amount of information is in electronic form, these policies must go beyond paper records and include e-mails, pictures, audio and video recordings, and financial data. Preparing these policies requires organizing the information in the organization's possession, understanding how long the information should be kept and where it will be kept; outlining document destruction practices (including e-mail); and implementing a "litigation hold" of document destruction when necessary.

Each of these policies and practices should be prepared in a way that is appropriate to the size and function of the organization. An organization with hundreds of employees and a budget of several million dollars needs different policies and practices than an organization with five employees and a budget of several hundred thousand dollars. Guidance on these issues can be obtained through training sessions offered by local and statewide organizations or Internet sites maintained by these organizations.

Worth Noting

Because there is no "cookie-cutter" approach for the policies and practices outlined above, the organization should obtain competent advice from a lawyer or other qualified professional. An individual who serves as a director may be able to provide advice on certain topics. Other times, the expertise will be found outside of the organization. Complying with the necessary legal requirements will help ensure a stable framework in which your organization can grow.

Document Checklist for Nonprofits

- Articles of Incorporation
- Bylaws
- Conflict of Interest Policy
- Personnel Policy
- Information Management Policy

For more information about nonprofit best practices, please contact Thomas A. Pendleton at MacDonald, Illig, Jones & Britton LLP at 814/870-7756 or tpendleton@mijb.com

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