

The New York Nonprofit Compliance Checklist

Staying on Track and Out of Trouble

Created by teams of students in the Columbia Law School Lawyering in the Digital Age Clinic, guided by Professor Mary Marsh Zulack in collaboration with Stephen Falla Riff, Esq., Executive Director of the Renaissance Charter High School for Innovation, and formerly with the Community Development Project of the Legal Aid Society of New York.

Last updated: March, 2018

This Checklist provides information but does not provide legal advice regarding actual circumstances. For legal, tax, or business advice, please consult a qualified professional.
Always check for later information. This material is not automatically updated.

Authored by: Kathryn Hutchins, Megan Ji, Amy McMahon, Ignacio Saldana, Elizabeth Snow and Jason Sugarman, and updated by Allison Fijolek, Fabiola Urdaneta, Hadar Shkolnik and Shannon Kahlden, students in the Columbia Law School Lawyering in the Digital Age Clinic.

We hope people will use this material effectively for such things as training programs and discussions. You have permission to copy, distribute and modify it under the terms of the GNU Free Documentation License, Version 1.3 or any later version published by the Free Software Foundation; with no Invariant Sections, no Front-Cover Texts, and no Back-Cover Texts. See "GNU Free Documentation License" at <https://www.gnu.org/licenses/fdl-1.3.en.html>.

TABLE OF CONTENTS

INTRODUCTION.....	3
I. CORPORATE GOVERNANCE.....	4
II. RECORDKEEPING.....	9
III. PERSONNEL.....	11
IV. FILINGS.....	16
V. CORPORATE, EMPLOYMENT & SALES TAXES.....	18
VI. INSURANCE COVERAGE.....	21
VII. CHARITABLE CONTRIBUTIONS.....	23
VIII. JEOPARDIZING EXEMPTIONS.....	27
IX. INTELLECUTAL PROPERTY.....	28

INTRODUCTION

By taking a few simple preemptive steps, a 501(c)(3) nonprofit organization will run efficiently and within the bounds of the law—making it attractive to the public and to potential funders, able to withstand scrutiny from regulators, and more likely to achieve its mission. This Checklist helps nonprofits take these steps and 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 with a high-functioning board of directors that effectively reviews and carries 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. This Checklist was last updated in Spring 2017 for the changes in law promulgated by the New York Nonprofit Revitalization Act of 2013 and the Act’s 2015 and 2016 Amendments. We work hard to keep it continually updated, but 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.

I. CORPORATE GOVERNANCE

A. 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**
 - ! These laws must comply with New York Not-for-Profit Corporation Law
 - **RESOURCE:** LawHelpNY provides a [sample bylaw document](#).
- **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 the provisions**
- **Periodically review bylaws for relevance and ease of use and make amendments as necessary**

B. HOLD REGULAR BOARD MEETINGS

- Prior to each board meeting, prepare a meeting notice and proposed agenda**
 - ! You are permitted to send notices electronically
 - **RESOURCE:** LawHelpNY provides a [sample meeting notice](#)
 - **RESOURCE:** Nonprofitally provides a [sample agenda](#)
- Keep minutes of these meetings**
 - A board secretary must take notes and prepare the minutes of the meeting. These minutes are important because they provide a history of the board's activities. The minutes may be reviewed by the IRS, the Attorney General's Charities Bureau, and the courts, to confirm that the organization is acting in compliance with both its own mission and the law. Minutes should also remain open to others who may perform due diligence on the organization, including funders, lenders, or members of the board.
 - Prior to each meeting, distribute written minutes from the previous meeting to board members for review.
 - **RESOURCE:** LawHelpNY provides [sample organizational meeting minutes](#)

- **RESOURCE:** Microsoft Office provides a [template for meeting minutes](#).

Ensure compliance with quorum and voting rules

C. HOLD ANNUAL BOARD MEETINGS

Elect directors and officers

- The New York State Attorney General's Office, Charities Bureau provides a publication called "[Right from the Start](#)," which gives an overview of the duties and responsibilities of a director.

Review organization's mission. Assess its relevance and how effectively it is being carried out.

Review board member term limits and ensure compliance

Review executive compensation and performance

- ! Individuals are expressly prohibited from being present for discussion and voting on their own compensation, though an individual can make a statement and answer board questions before leaving the meeting

Evaluate board performance

- **RESOURCE:** Free Management Library provides a [sample board evaluation](#).

Present annual report to assess the success of the organization's mission.

- The 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.
- The annual report may include,
 - Chairperson of the board letter (an introductory statement about the success and continued improvements of the organization; also often includes a determination of what the organization cares about and the direction the Board wants to pursue)
 - Description of the causes, actions, and accomplishments of the organization
 - Financial statements
 - CPA opinion letter (a statement that verifies that the organization has adhered to Generally Accepted Accounting Principles in the keeping of books and records)
 - Income statements (unrelated business income and related business income)
 - Balance sheet

- If applicable, footnotes describing IRS problems, lawsuits, etc.
 - List of directors and officers
 - Information regarding members
- **Ensure compliance with quorum and voting rules**
- **Review and sign corporate policies**
 - **Conflict of interest policies**
 - This establishes procedures for situations in which an individual's obligation to further the organization's charitable purpose is at odds with his or her own financial or other material interests.
 - ! Note that your organization is required to adopt a conflict of interest policy for your directors, officers, and key persons.
 - Policy requirements:
 - A definition of what constitutes a conflict of interest (this should be determined by the Board)
 - Procedures for disclosing conflicts to the audit committee or the board
 - A requirement that the conflicted person cannot participate in a decision
 - A prohibition against the conflicted person trying to improperly influence deliberations/voting.
 - A requirement that the existence and the resolution of the conflict be fully documented
 - **RESOURCE:** The Lawyers Alliance for New York provides a [sample conflict of interest policy](#).
 - **Whistleblower protection policy**
 - Protection from retaliation individuals who raise concerns about wrongdoing within an organization.
 - ! Note that your organization is required to adopt a whistleblower policy.
 - Policy requirements:
 - Procedures for reporting violations or suspected violations of laws or corporate polices, including procedures for preserving the confidentiality of that information
 - A requirement that an employee, officer, or director be designated to administer the whistleblower policy. This individual should report to the audit committee or to the board.
 - An employee who also holds a director position is prohibited from any board or committee deliberation concerning the administration of whistleblower policies.

- The subject of a whistleblower complaint is prohibited from being present at or participating in board or committee deliberations and voting on the matter related to the complaint.
 - The policy must be distributed to directors, officers, employees, and volunteers who provide substantial services.
- **Related party transaction procedure**
 - A related party transaction is a transaction in which the parties were joined by a special relationship prior to the deal. This procedure addresses such situations.
 - Transactions excluded from the definition of “related party transaction”:
 - Where the transaction or the related party’s financial interest is trivial
 - If the transaction would not normally be reviewed by the board
 - If the transaction constitutes a benefit given to a related party only as a member of a class of the beneficiaries intended by the corporation as part of its mission, and that benefit is available to similarly situated members of the class
 - ! Note that your organization is required to adopt a related party transaction procedure.
 - Policy requirements:
 - Conflict must be disclosed
 - Board must consider alternatives to the extent available
 - Transaction must be approved by at least a majority vote
 - The board or authorized committee must determine that the transaction is fair, reasonable, and in the best interest of the organization.
 - Whole transaction must be fully documented.
 - In *condominium or cooperative housing corporation*, each director must receive a copy of the applicable law on related party transactions ([§ 715](#)) every year. An annual report on any related party transaction must be provided to the members or to the governing board and signed by each director.
- **Document retention and destruction policy**
 - This minimizes accidental destruction of documents important to the organization and of improper destruction of documents connected to investigations or litigations. The policy also describes how long documents must be kept and where they are stored.

- **RESOURCE:** A [Sample Document Retention and Destruction Policy](#) authored by Authenticity Consulting, LLC is available through the Free Management Library.

- **Code of conduct and ethics policy**
 - This 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 nonprofits.
 - ! Remember that e-mail messages and electronic documents are included under this policy as well.
 - **RESOURCE:** The Society for Human Resources Management provides sample [Code of Ethics Policy Statement](#). The National Council of Nonprofits provides a [Sample Confidentiality Policy](#).

- **Gift acceptance policy**
 - This is a policy that describes the types of gifts that an organization may accept and the manner in which such gifts must be handled.
 - ! You must complete [IRS Schedule M to Form 990](#) if: (1) you received more than \$25,000 in non-cash contributions (*e.g.* books, clothing); or (2) you received any similar assets (*e.g.* art, historical treasures)
 - **RESOURCE:** The Nonprofit Risk Management Center provides some [Sample Gift Acceptance policies](#).

II. RECORDKEEPING

A. CREATE RECORDKEEPING SYSTEMS FOR,

- **Incorporation and Tax Exemption Records**
 - Certificate of incorporation
 - Bylaws
 - Recognition of federal tax exemption for a nonprofit organization ([Form 1023](#))

- **Board and Committee Proceedings Records**
 - Notices, agendas and minutes of all meetings
 - Resolutions of the board and of committees
 - Charters of all committees
 - All corporate policies (including conflict of interests, whistleblower, document retention, gift acceptance, and ethics)

- **Board and Committee Member Records**
 - Contact information
 - Terms of office
 - Records all committees' duties and accomplishments

- **Contract, Lease, and Legal Document Records**
 - Leases and renewals
 - Contracts relating to property and equipment
 - ! Note that you should maintain records demonstrating competitive bidding and review of bids for possible savings and renegotiation of interest rates

- **Employment Records**
 - Employment tax returns
 - ! These should be kept for at least four years after the tax is paid or due (whichever is later)
 - Employment termination records
 - ! You should maintain written records of incidents, warnings, complaints, and employee performance evaluations

- **Grants**
 - Proposals
 - Comply with grant requirements
 - ! Remember that noncompliance can result in: (1) termination of the contract, (2) a requirement that the money be refunded, (3) adverse publicity, and (4) non-renewal of the grant.

B. FINANCIAL RECORDS AND REPORTS

- **Put internal controls into place to safeguard charitable assets**
 - **RESOURCE:** The New York State Attorney General's Office, Charities Bureau provides a publication called [Internal Controls and Financial Accountability](#).
- **Duties of audit and finance committees**
- **Accounting records and financial reports**
 - Nonprofit organizations must ensure proper retention of records necessary for accurate year-end reporting to the IRS and to NYS
 - These records include:
 - Annual income statement
 - Annual statement of financial position (i.e., balance sheet)
 - Budget and budget deviation analyses
 - Cash flow reports
 - ! You should ensure that no single individual is responsible for receiving, recording and depositing funds, or writing and signing checks.
- **Keep records of all charitable solicitations and all receipts issued for donations**
 - ! Remember to keep records of all the charitable solicitation documents. See Section 7: Charitable Contributions of this checklist.

III. PERSONNEL

A. EMPLOYMENT MATTERS

- **Create an onboarding process**
 - Steps to the onboarding process include:
 - A job description detailing (1) time commitment, (2) interest, or mission and objective, of the organization, and (3) description of the position, including qualifications and duties expected of the position.
 - Sourcing candidates
 - Conducting interviews
 - Checking references
 - Conduct background checks
 - For important information on background checks, please see page 13.
 - Offer letters
 - Managing the new hire's transition
 - **RESOURCE:** A web search will turn up many helpful resources with advice on writing job descriptions, screening candidates, and extending offers.
- **Maintain employee records**
 - Records should include:
 - Names
 - Social security numbers
 - ! Social security numbers must be kept in compliance with [New York Labor Law 203-d](#), which restricts employers' ability to use or communicate employees' personal identifying information.
 - Employee tax withholdings ([Form W-E](#))
 - Employment Eligibility Verification Form ([Form I-9](#))
 - Employees must submit a Form I-9 to you within 3 days of employment. You must retain this Form I-9 for up to 3 years.
 - For each payroll period, you must record (1) beginning and ending dates; (2) the days or weeks each employee worked and the earnings for each day or week; and (3) all payments made to the employee, including bonuses and vacation pay.
- **Create and maintain a payroll system**

- This system should comply with all withholding requirements. The related forms are on the [NYS Department of Taxation and Finance website](#).
- **Select a retirement plan for the organization**
 - For more information, please see the [IRS's Plan Feature Comparison Chart](#).
- **Obtain an Employer Registration Number (ERN) by filling out a [Form NYS-100](#)**
 - The ERN is for the purposes of reporting unemployment insurance, withholding and wage data
- **Adhere to appropriate employment practices**
 - Ensure that you are properly classifying independent contractors and employees.
 - You must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay state unemployment tax on wages paid to an employee, but not payments to independent contractors.
 - To better understand the difference between an employee and independent contract, please visit this [IRS webpage](#).
 - Create an employee handbook, containing guidelines, expectations, and procedures of the organization, and distribute to employees.
 - This handbook should be regularly updated for compliance with local, state, and federal employment law.
 - **RESOURCE:** The 501 Commons website provides a [sample employee handbook](#). Please note this 2004 resource is to be used as a structural guide.
 - Maintain a clear, written reimbursement policy for employee expenses
 - Ensure that mandatory notices (such as minimum wage notices, Family and Medical Leave notices, notice regarding employee rights to tax withholdings) are placed in locations where employees can view in the normal course of business.
 - Comply with federal, state, and local antidiscrimination and wage and hour laws.
 - Conduct periodic organizational reviews to ensure that all corporate policies comply with the law

B. VOLUNTEER MATTERS

- **Establish a volunteer recruitment process**
 - Create a volunteer application form
 - **RESOURCE:** Rocky Mountain Children’s Health Foundation’s [volunteer application](#) is a good sample.
 - Conduct interviews of prospective volunteers and verify references
 - Create a volunteer contract to formalize the expectations of both organization and of the volunteer.
 - **RESOURCE:** Know How Nonprofit provides [guidance on what a volunteer agreement may include](#).
- **Obtain volunteer insurance**
 - ! Under the Volunteer Protection Act of 1997 a nonprofit organization *volunteer* is generally immune from tort claims. The Act does not give your organization immunity, though, so you should obtain adequate liability insurance.
 - **RESOURCE:** For more information, please visit the [Nonprofit Risk Management Center site](#).
- **Establish a volunteer screening process and perform background checks**
 - Inform prospective volunteers of the type and frequency of screening, if any, required for each volunteer position
 - Conduct background checks. This entails obtaining the volunteer’s consent and then requesting criminal history.
 - The volunteer must be notified of the background check in writing that a background check was requested and given the name and address of the agency performing the background check. They are also legally entitled to review the background check.
 - In New York State, background checks may not contain records of noncriminal violations.
 - In New York City, the Ban the Box Law prohibits you from conducting a background check before you extend a conditional offer.

- ! Under the Volunteers for Children Act of 1998, nonprofit organizations may access federal criminal record files through the national fingerprint database.
 - **RESOURCE:** The New York State Office of Court Administration provides a statewide search of an individual's criminal history for a fee of \$65.00. Forms and instructions are on the [New York State Unified Court System website](#). Various private companies also provide screening services for a fee.
 - **RESOURCE:** The Nonprofit Risk Management Center has published a [Nonprofit Staff Screening Tool Kit](#).
- **Implement volunteer orientation procedures**
 - Create a volunteer handbook
 - **RESOURCE:** The Serviceleader.org provides a [Volunteer Handbook Template](#).
 - Create a training system
 - Ensure to post the whistleblower policy on the corporation's website or at the corporation's offices in a conspicuous location accessible to volunteers or to otherwise provide volunteers with a copy.
 - **Supervise Volunteers**
 - Evaluation: Volunteers should be periodically reviewed
 - **RESOURCE:** Volunteer Today provides a [sample Volunteer Performance Evaluation form](#).
 - **RESOURCE:** Service leader provides a [sample volunteer feedback and program evaluation form](#).
 - Termination: The volunteer handbook should include a section on the dismissal of volunteers
 - ! 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. You should also consider if reassignment or retraining would be effective alternatives.
 - **RESOURCE:** Volunteer Power's website provides an [article](#) on firing volunteers. Service Leader provides [A Few Pointers On the Unpleasant](#)

[Topic of Firing Volunteers](#). Court Appointed Special Advocates for Children also has an [article](#) on this topic.

- **RESOURCE:** The National Service Resource Center provides a guide titled, [Becoming a Better Supervisor: A Resource Guide for Community Service Supervisors](#).

IV. FILINGS

A. IRS FILINGS

- **File an Annual Report, or [Form 990](#), with the IRS. ([Instructions](#).)**
 - ! This is due the 15th day of the 5th month after the close of your tax year.
 - o If your organization has annual receipts of less than \$20,000 and total assets of less than \$500,000, you can instead file a [Form 990-EZ](#). ([Instructions](#).)
 - o If your organization has annual receipts of \$50,000 or less, you can instead file a [Form 990-N](#) (also called an “e-Postcard”).
 - o Private foundations must file a [Form 990-PF](#), regardless of their financial status. ([Instructions](#).)
 - **RESOURCE:** The [IRS Website](#) has information that can assist you with your Form 990 filing, including [FAQs](#) and a [table of resources and tools](#).

B. NEW YORK FILINGS

- **Register and file yearly financial reports with the New York Attorney General’s Charities Bureau.**
 - To register, you must file a [Form CHAR410 \(Registration Statement\)](#) and submit your organizational documents, financial reports, and (if applicable) IRS form for exemption. ([Instructions](#).)
 - After registering, each year, you must file a [Form CHAR500 \(Annual Financial Reports\)](#). ([Instructions](#).)
 - ! This is due the 15th day of the 5th month after your accounting period.
 - ! Note that religious organizations, PTAs, and educational institutes that file annual reports with NYS DOE can be exempt from this requirement.
 - **RESOURCE:** The NYS Charities website has information that can help you with your CHAR500 filing, including [FAQs](#) and a [summary of the annual filing requirements](#).

C. OTHER STATE FILINGS

- **File charitable registrations in other states, as necessary.**
 - ! If your organization is fundraising in any other state, you are generally required to register in that state. Most states require both registration and annual financial reporting.

- ! The National Association of State Charity Officials (NASCO) has developed a set of guidelines (the “Charleston Principles”) for when internet solicitations of contributions require registration in other states. The Charleston Principles are available on [NASCO’s website](#).

D. PUBLIC DISCLOSURE REQUIREMENTS

You must make the documents below 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](#).) These documents include,

- **Exemption application documents**
 - Recognition of exemption for a 501(c)(3) ([Form 1023](#))
 - Annual Returns ([Form 990](#) or [Form 990-EZ](#) or [Form 990-N](#))
 - Exempt Organization Business Tax Return, if necessary ([Form 990-T](#))
- **Annual filing for charitable organizations ([Form CHAR500](#))**

V. CORPORATE, EMPLOYMENT & SALES TAXES

A. CORPORATE TAX RECORDS FOR UNRELATED BUSINESS INCOME

- **File a [Form 990-T](#) with the IRS**
 - Nonprofits that have \$1,000 or more in gross income from an unrelated business **must** file this form.
 - 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.
- **File a [NYS Form CT-13](#)**
 - A nonprofit that is carrying on an unrelated trade or business in New York State **must** file this form and pay the tax due regardless of the amount of federal gross income from an unrelated trade or business.

B. PAYMENT RECORDS FOR EMPLOYMENT TAXES

- **FEDERAL FILINGS**
 - **Federal Income Tax Withholding ([Form W-4](#))**
 - Whenever an employer pays wages/compensation to an employee, the IRS will likely expect the employer to collect a portion of the employee's federal income tax on the payment through withholding. A [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.
 - Factors affecting how much an employer must withhold from a given wage payment are:
 - (1) the frequency of your payroll period;
 - (2) the employee's marital status;
 - (3) the number of withholding exemptions the employee claims; and
 - (4) the size of the wage payment
 - **RESOURCE:** [IRS Withholding Calculator](#)
 - **Federal Insurance Contributions Act (FICA) Tax ([Form W-2](#))**

- 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.
- **Miscellaneous Income ([Form 1099-Misc](#))**
 - This form is used when payments of \$10 or more in gross royalties or \$600 or more in rents or compensations are paid to independent contractors.
- **Federal Unemployment Tax Act (FUTA) ([Form 940](#))**
 - ! Payments to employees of 501(c)(3) organizations are **exempt** from FUTA tax; this exemption cannot be waived.
 - **RESOURCE:** See [Employer's Supplemental Tax Guide](#) for additional information.
- **STATE FILINGS**
 - **NYS Income Tax Withholding ([Collection of Forms](#))**
 - **NYS Unemployment Tax Withholding ([NYS-100N](#))**

C. SALES TAXES

- If your organization will sell tangible personal property or provide specific services in New York, you are required to collect and remit NYS sales and local tax to the NYS Department of Taxation and Finance, usually on a quarterly basis.
- **Obtain a Certificate of Authority**
 - A **Certificate of Authority** enables an organization to obtain a Sales Tax ID.
 - **RESOURCE:** Instructions on how to apply for a Certificate of Authority can be found at the [New York State Department of Taxation and Finance](#) website.
- **Sales Tax Identification Number**

- o This will be provided with the organization's Certificate of Authority.
- **Exemption from Corporate Franchise Taxes ([Form CT-247](#))**
 - o Nonprofits are exempt from the Corporate Franchise Taxes.
 - o

VI. INSURANCE COVERAGE

A. INSURANCE COVERAGE REQUIRED BY NYS

- **RESOURCE:** New York State Workers' Compensation Board provides a [Employer's Handbook to the Workers' Compensation and the Disability Benefits System](#).
- **Disability insurance**
 - This provides temporary cash benefits to an eligible wage earner when he/she is disabled by an off-the-job injury or illness. NYS requires you to provide this for your employees.
 - **RESOURCE:** For more information, see the [New York State Workers' Compensation Board website](#).
- **Workers compensation insurance**
 - This 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.
 - **RESOURCE:** For more information, see the [New York State Workers' Compensation Board website](#).

B. CONSIDER OTHER INSURANCE COVERAGE

- **Have your insurance agent review your lease to ensure that you have complied with all insurance requirements occasioned by the lease**
- **Directors and officers liability insurance**
 - This 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).
- **General liability insurance**
 - This covers an organization against claims for damage or injury caused by negligence during performance of an employee's duties or business activities.
- **Volunteer injury liability coverage**
 - This provides volunteers with compensation for injuries sustained while performing volunteer duties.
- **Auto insurance**

- This 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.
- **Property insurance**
 - This provides protection against certain risks to property, such as fire, theft and weather damage.
- **Fiduciary liability insurance, if your organization has a pension plan**

VII. CHARITABLE CONTRIBUTIONS

A. CHARITABLE CONTRIBUTIONS

- **Disclose according to the IRS Substantiation and Disclosure Requirements**
 - **RESOURCE:** Please see the [IRS website](#) for the requirements.
- **Create solicitation letters**
 - A *fundraising solicitation* is any solicitation of contributions or gifts made in written or printed form or by television, radio, or telephone.
 - Certain tax-exempt organizations that are not eligible to receive tax deductible charitable contributions must disclose, in any *fundraising solicitation* "an express statement (in a conspicuous and easily recognizable format)" that contributions to the organization are not deductible for federal income tax purposes as charitable contributions. This provision applies to organizations that are not eligible to receive deductible charitable contributions and are described in section 501(c), section 501(d), or section 527.
- **Create acknowledgement letters**
 - **RESOURCE:** The National Council of Nonprofits provides helpful information on acknowledgement letter on [its website](#).
 - ! **A written acknowledgment is required** to substantiate a charitable contribution of **\$250 or more** and **must contain the following information:**
 - (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 case;
 - (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 contributions consisted entirely of intangible religious benefits, if that was the case.

! Acknowledgement letters are not required for contributions less than \$250. However, it is always a good idea to send an acknowledgment letter anyway.

- **Create a “quid pro quo” disclosure statement**
 - A “Quid Pro Quo” disclosure statement applies when a donor makes a payment that is in part a contribution and in part payment for goods or services.
 - **RESOURCE:** See the [IRS Website](#) for specifics regarding when disclosure statements are required and when they are not required.
 - A penalty is imposed on a charity that does not make the required disclosure of a “Quid Pro Quo” contribution of more than \$75.
- **Note whether contributions received must be used for a specific purpose**
- **Ensure the confidentiality of donor information**
 - **EXCEPTION:** when a 501(c)(3) organization makes financial or in-kind donations of more than \$2500 in a six-months period to a 501(c)(4) organization that engages in significant lobbying, the 501(c)(3) organization must disclose all donors contributing to it more than \$2500 during the six-month period. The 501(c)(3) organization must also disclose all its contributions to the 501(c)(4) organization.
 - ! The disclosures will be publicly available, except when:
 - Disclosure of donations to the 501(c)(3) organization may cause harm, threats, harassment, or reprisals to the source of donation or to individuals or property affiliated with the source of donation.
- **Train internal fundraisers to comply with legal requirements of soliciting charitable contributions**

B. NONCASH CONTRIBUTIONS

- If an organization receives **charitable deduction property** (any property which the donee organization signed an appraisal summary or [Form 8283](#)) valued at more than \$500 and not distributed for charitable purposes, and within three years sells, exchanges, or disposes of the property, the organization must file a [Form 8282](#).
 - If the value of the donated property exceeds \$5,000, the donor must get a qualified appraisal for contributions of property. The donee organization is not a qualified appraiser for the purpose of valuing the donated property.

- For noncash donations over \$5,000 the donor must attach [Form 8283](#) to the tax return to support the charitable deduction. The donee must sign Part IV of Section B, [Form 8283](#) unless publically traded securities are donated.
 - **RESOURCE:** For additional information regarding noncash contributions, please see the [IRS Website](#).

C. COMPLYING WITH CHARITIES LAW REQUIREMENTS

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

- **RESOURCE:** For additional advice on nonprofit fundraising, please see [Raise-Funds](#), a website specializing in nonprofit fundraising.
- **Determine whether organization’s fundraiser must be registered with charities bureau**
 - [Article 7-A of the Executive Law](#) requires “fundraising professionals” to register with the Charities Bureau. Fundraising professionals are typically categorized as [Professional Fundraisers](#) or [Fund Raising Counsel](#).
 - **RESOURCE:** For definitions of Professional Fundraisers and Fund Raising Counsel, please see [§ 171-a of Article 7-A](#).
 - ! 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.
- **Have a clear written contract with the fundraising professional filed with the charities bureau within 10 days of signing**
 - The agreement must contain specific provisions, including, but not limited to
 - (1) a clear narrative description of the services to be performed,
 - (2) a clear statement of the financial arrangement between the parties; and
 - (3) a provision referencing the requirements of the organization’s statutory right to cancel the contract without cost
 - Under [§ 174-b 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

- **RESOURCE:** Professional fundraisers should use these forms on the NYS AG website: [The Professional Fund Raiser/Fund Raising Contract Certification & Addendum to Contract With Charitable Organizations](#) and [The Professional Fundraising Interim/Closing Statement](#).
 - **RESOURCE** Fundraising counsel should use these forms on the NYS AG website: [The Professional Fund Raiser/Fund Raising Contract Certification & Addendum to Contract With Charitable Organizations](#).
- **Compensate fundraising professionals**
 - Percentage-based compensation arrangements, finder's fees, and contingent fees are not expressly prohibited under New York law. However, organizations such as the Association of Fundraising Professionals view such arrangements as encouraging abuse and undermining the philanthropic values of charities.
 - 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.
 - If a board member is compensated for fundraising services, the compensation arrangement must comply with the organization's conflict of interest policy (*see* page 7).
 - **Review solicitation materials before distribution to ensure 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.

VIII. JEOPARDIZING EXEMPTIONS

- **Document any transactions or decisions that may jeopardize exemption status, such as:**
 - **Inurement/private benefit**
 - 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.
 - **Excess benefit transactions**
 - This 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.
 - **RESOURCE:** For more information, please visit the [IRS website on excess benefit transactions](#).
 - **Lobbying**
 - Lobbying is activity that intends to influence legislation. A section 501(c)(3) organization may engage in some lobbying, but excessive lobbying risks loss of tax-exempt status.
 - **RESOURCE:** For more information, visit the [IRS website on Lobbying](#).
 - **Political activity**
 - 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.
 - **RESOURCE:** For more information, visit the [IRS website on Political Activities](#).

IX. INTELLECTUAL PROPERTY

- **Review potential intellectual property issues**
 - **Trademarks**
 - Before adopting a business name, conduct a trademark search to determine to see if your mark conflicts with any existing marks.
 - Consider what names and symbols do you use to identify your organization *and* do you wish to protect these potential trademarks?
 - Take reasonable precautions to maintain the confidentiality of your **trade secrets**, if any.
 - Trade secrets can include proprietary business methods, formulas for a product, customer lists, etc.
 - ! Any public disclosure of trade secrets disqualifies the material from protection.
 - Execute confidentiality agreements with employees and outside parties you disclosure trade secrets to.
 - Obtain **copyright** protections of materials (outlines, handbooks, presentations, etc.) produced by the organization as necessary
 - ! Remember that the fair use doctrine will still allow others to use your copyrighted work in certain circumstances.
 - **RESOURCE:** To learn more about fair use, please visit the [U.S. Copyright Office website](#).
- Conduct a periodic review of your **website**
 - 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?