

...find the answer here

Risk Considerations of Governing Documents
Webinar October 3, 2007

Handout

What Governing Documents should a nonprofit have on hand, and review periodically to ensure they are up-to-date and accurate?

- ♣ Foundational Documents (commonly referred to as “governing documents”): typically the Corporate Charter, or Article of Association, or Articles of Incorporation, or “Certificate” of Incorporation, and Bylaws
- ♣ IRS Determination Letter
- ♣ Proof of State income tax exemption
- ♣ Annual report filed with the State

What to do if:

(1) You can't find your Determination letter and need a new one?

- ♣ Send a letter to the IRS informing them of the situation and enclosing photocopies of whatever correspondence you do have from the IRS that refers to your organization as a tax-exempt entity. Generally the IRS will replace the letter for you within a matter of weeks. The mailing address is:

Internal Revenue Service
Exempt Organizations Determinations
P.O. Box 2508
Cincinnati, OH 45201

(2) Your office moves or your organization changes its name and you need to update the name/address with the IRS?

- ♣ Send a letter (address above) informing the IRS of the change of address or name. If your name has changed, you should enclose a copy of the amended articles of incorporation as filed with the State showing the new name. You can do this right away or wait until you file your annual return (Form 990). However, the longer you delay in informing the IRS of an address change, the more risk there is that important correspondence from the IRS may not be received.

- (3) Your organization has amended its articles of incorporation or bylaws.
- ♣ Send a letter to the IRS describing briefly the change(s) and enclosing copies of the amended documents.
 - ♣ This IRS website provides information on how to inform the IRS of such changes: <http://www.irs.gov/charities/article/0,,id=172533,00.html>
- (4) You received an 'advance ruling' but never a final Determination Letter about your organization's tax exempt status?
- ♣ Send a letter to the IRS requesting a "final determination letter." Enclose copies of the organization's most recently filed 990s as well as completed IRS Form 8734.
 - ♣ This IRS website provides information about Advance Rulings and a link to the form that needs to be submitted along with a request for a final determination: <http://www.irs.gov/charities/article/0,,id=139020,00.html>

You may direct technical and procedural questions concerning charities and other nonprofit organizations to the IRS Tax Exempt and Government Entities Customer Account Services at (877) 829-5500 (toll-free number).

Sample Conflict of Interest Policy

Provided Courtesy of the National Council of Nonprofit Associations (© 2004)

Conflict of Interest Policy for the {Organization Name}

The purpose of the following policy and procedures is to prevent the personal interest of staff members, board members, and volunteers from interfering with the performance of their duties to {Organization Name}, or result in personal financial, professional, or political gain on the part of such persons at the expense of {Organization Name} or its supporters, and other stakeholders.

Definitions: Conflict of Interest (also Conflict) means a conflict, or the appearance of a conflict, between the private interests and official responsibilities of a person in a position of trust. Persons in a position of trust include staff members, officers, and board members of {Organization Name}. *Board* means the Board of Directors. *Officer* means an officer of the Board of Directors. *Volunteer* means a person -- other than a board member -- who does not receive compensation for services and expertise provided to {Organization Name} and retains a significant independent decision-making authority to commit resources of the organization. *Staff Member* means a person who receives all or part of her/his income from the payroll of {Organization Name}. *Supporter* means corporations, foundations, individuals, 501 (c) (3) nonprofits, and other nonprofit organizations who contribute to {Organization Name}.

POLICY AND PRACTICES

1. Full disclosure, by notice in writing, shall be made by the interested parties to the full Board of Directors in all conflicts of interest, including but not limited to the following:
 - a. A board member is related to another board member or staff member by blood, marriage or domestic partnership.
 - b. A staff member in a supervisory capacity is related to another staff member whom she/he supervises.
 - c. A board member or their organization stands to benefit from an {Organization Name} transaction or staff member of such organization receives payment from {Organization Name} for any subcontract, goods, or services other than as part of her/his regular job responsibilities or as reimbursement for reasonable expenses incurred as provided in the bylaws and board policy.
 - d. A board member's organization receives grant funding from {Organization Name}.
 - e. A board member or staff member is a member of the governing body of a contributor to {Organization Name}.
 - f. A volunteer working on behalf of {Organization Name} who meets any of the situations or criteria listed above.
2. Following full disclosure of a possible conflict of interest or any condition listed above, the Board of Directors shall determine whether a conflict of interest exists and, if so the Board shall vote to authorize or reject the transaction or take any other action deemed necessary to address the conflict and protect {Organization Name}'s best interests. Both votes shall be by a majority vote without counting the vote of any interested director, even if the disinterested directors are less than a quorum provided that at least one consenting director is disinterested.
3. A Board member or Committee member who is formally considering employment with {Organization Name} must take a temporary leave of absence until the position is filled. Such a leave will be taken within the Board member's elected term which will not be extended because of the leave. A Board member or Committee member who is formally considering employment with {Organization Name} must submit a written request for a temporary leave of absence to the Secretary of the {Organization Name} Board, c/o the {Organization Name}'s office, indicating the time period of the leave. The Secretary of {Organization Name} will inform the Chair of the Board of such a request. The Chair will bring the request to the Board for action. The request and any action taken shall be reflected in the official minutes of the {Organization Name}.

4. An interested Board member, officer, or staff member shall not participate in any discussion or debate of the Board of Directors, or of any committee or subcommittee thereof in which the subject of discussion is a contract, transaction, or situation in which there may be a perceived or actual conflict of interest. However, they may be present to provide clarifying information in such a discussion or debate unless objected to by any present board or committee member.
5. Anyone in a position to make decisions about spending {Organization Name}'s resources (i.e., transactions such as purchases contracts) – who also stands to benefit from that decision – has a duty to disclose that conflict as soon as it arises (or becomes apparent); s/he should not participate in any final decisions.
6. A copy of this policy shall be given to all Board members, staff members, volunteers or other key stakeholders upon commencement of such person's relationship with {Organization Name} or at the official adoption of stated policy. Each board member, officer, staff member, and volunteer shall sign and date the policy at the beginning of her/his term of service or employment and each year thereafter. Failure to sign does not nullify the policy.

{Organization Name}'s

**Conflict of Interest
Disclosure Form**

This form must be filed annually by all specified parties, as identified in the {Organization Name} Conflict of Interest Policy Statement (ratified by the {Organization Name}'s Board of Directors on {Date of ratification})

_____ I have no conflict of interest to report

_____ I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own):

The undersigned, by their affixed signature, note their understanding of the implications of this policy.

Signature
Printed Name

Date

For More Sample Policies, email us at: info@nonprofitrisk.org