



407A Pro Bono Clinic (part I)

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Ten-Step Legal Checklist for Consultation with Nonprofits

I. Legal Form and Governance

“Why do I need a lawyer?”

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.

Notes:

<p>a) Is your organization incorporated as a D.C. nonprofit corporation? If so, may we see copies of your articles of incorporation and bylaws?</p>	
<p>b) Has your organization received tax exemption under IRC Section 501(c)(3)? If so, may we see a copy of your determination letter from the IRS?</p>	
<p>c) Do you maintain current copies of your bylaws, minutes of board meetings and other corporate records?</p>	
<p>d) Do you provide orientation or training to board members on their legal duties?</p>	

Notes:

<p>e) Do you maintain directors & officers insurance?</p>	
<p>f) Please describe your board of directors (i.e., number of members, how they are selected)</p>	
<p>g) Does your organization have any affiliate organizations that control or are controlled by your organization, or share board members, staff or facilities?</p>	

II. Reporting & Compliance with Federal, State and Local Regulations

“Why do I need a lawyer?”

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 make sure that you have good internal systems to make sure reports are filed on a timely basis and are complete and accurate.

Notes:

a) Does your organization file annual informational returns to the IRS (IRS Form 990, 990-PF)? (Orgs exempt under Section 501(c)(3), other than religious orgs or those with gross revenue below \$25,000, are required to file.)? If so, may we see a copy of your latest filing?	
b) Do you make your IRS Form 990 returns available for public inspection (by hard copy or posting on the Web)?	
c) Does your organization file bi-annual reports with the Office of Corporations of the DC Department of Consumer and Regulatory Affairs?	

III. Employment & Human Resources

“Why do I need a lawyer?”

If you have employees or independent consultants, you have to comply with payroll and withholding requirements and with a host of federal and local laws that regulate employment relationships. You should know your rights and obligations as an employer and move quickly to strengthen any areas where proper compliance is in question.

Notes:

<p>a) Do you have employees? If so, how many?</p>	
<p>b) Do you distinguish between non-exempt employees, and exempt employees? (Employees whose duties are more administrative typically are “non-exempt” and are paid hourly, while those who exercise significant discretion in how they perform their work are treated as “exempt” and are paid salaries.)</p>	
<p>c) Do you hire independent contractors?</p>	
<p>d) Do you have a personnel policy manual? Has it been reviewed within the past two years for changes in the law?</p>	

IV. Owned or Leased Property

“Why do I need a lawyer?”

If you own or rent real estate, you have certain legal rights and obligations. These include property taxes, building code compliance, leasing, insurance and zoning or other use restrictions. You need to make sure you understand your legal rights and obligations. Similarly, if you lease significant equipment, such as a copier or telephone system, you need to keep track of your rights and obligations.

Notes:

<p>a) Do you own or lease, as a tenant, any land or buildings? If so, may we see copies of any title documents or leases?</p>	
<p>b) If you own any land or buildings, do you lease any portion of it to another party? If so, may we see copies of any leases?</p>	
<p>c) Do you lease any significant equipment items, such as a copier, telephone system, or machinery? If so, may we see copies of any leases?</p>	
<p>d) [If your state offers it,] Have you sought or obtained exemption from real or personal property taxes?</p>	

V. Reputation, Branding & Intellectual Property

“Why do I need a lawyer?”

Your organization's reputation may be its most important asset, so you must protect against confusion between your organization and the activities of others with similar names and mission, or the use of your organization's name by another party. If you publish or distribute materials to the public, 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.

Notes:

a) Do you allow any third parties to use your name and any logos or marks (such as through a cause-related marketing campaign by a for-profit)? If so, please describe these arrangements.	
b) Do you publish information or data you consider proprietary, the use of which by others you would like to control or restrict?	

VI. Advocacy, Lobbying & Political Activity

“Why do I need a lawyer?”

As a general rule, no substantial part of the activities of a Section 501(c)(3) organization may be “carrying on propaganda, or otherwise attempting, to influence legislation.” However, other tax-exempt organizations, such as civic leagues, chambers of commerce, trade associations, and social clubs, have no absolute limitations on lobbying. A lawyer can help you to determine what activities are acceptable for your organization. Generally, supporting or opposing legislation is permissible within applicable limits, but supporting or opposing political candidates is absolutely prohibited.

Notes:

a) Do you advocate on behalf of your clients or cause before non-elected government agencies or officials?	
b) Do you support or oppose legislation, either directly by contacting legislators or indirectly by urging the public to express your view to legislators?	
c) If you do support or oppose legislation, please briefly describe your efforts. Do you write letters of support, meet with legislators, even propose measures to legislators? Do you track staff time and expenses for these efforts?	
d) If staff members participate in political campaigns, do they do so on their own time, and do they clearly indicate that any endorsements are not meant to represent the organization?	

VII. Compliance with Grant and Contract Requirements

“Why do I need a lawyer?”

If you receive restricted funds (funds earmarked for specific uses) through a grant or contract from a private or government funder, you'll have to stay in compliance with the terms of your contract or grant. In doing so, you will need to track how restricted grant or contract funds are spent and ensure they are not spent on prohibited uses, such as, typically, general and administrative costs, and be prepared to demonstrate to what extent you performed the required activities or met the objectives of the grant or contract.

Notes:

<p>c) Do you have any restricted grants or contracts? If so, which are from government sources and which are from private funders? May we see copies of any grant agreements or contracts?</p>	
<p>d) How do you account for (i) expenditure of funds, and (ii) fulfillment of the activities and objectives of the grants or contracts?</p>	

VIII. Earned Revenue & Unrelated Business Income Tax

“Why do I need a lawyer?”

If you own or operate a business, either within your organization or through a separate entity, or if you charge for services to the public, you need to know about the tax rules that govern these activities. You may also need help to structure your business relationships correctly and make sure that proper oversight is in place.

Notes:

a) Do you charge clients for your services? If so, please describe your fees.	
b) Do you provide goods or services to the public (distinct from your clients) for which you charge fees? If so, how does this activity relate to fulfilling your public benefit mission, other than simply generating revenue?	
c) Do you receive any revenue for advertising on your Web site or any other communications or publications? (Generally, recognizing sponsors is not treated as advertising so long as the recognition does not feature any comparative information or description of specific goods or services.)	

IX. Regulation of Program Activities

“Why do I need a lawyer?”

Specific laws and regulations may govern your activities. (For example, typically any activity requiring a license or permit, from health care, child care, counseling, any kind of financial services, food service and the like, is governed by regulations.) If your activities are regulated by a government agency, you need to know the restrictions and requirements that come along with the funding, and you need to make sure proper compliance procedures are in place. These don't have to be complicated; they just have to work.

Notes:

<p>a) Do you employ any licensed professionals, such as doctors, lawyers, clinical social workers?</p>	
<p>b) Has your organization applied for the DC Master Business License? Are you aware of any other licenses, permit or inspection requirements that apply to your activities?</p>	

X. Finances and Fiscal Management

“Why do I need a lawyer?”

Fiscal accountability is one of the most important obligations of any nonprofit organization. Because proper financial management can be very demanding and is easier to evaluate than your other activities, it is also one of the areas that is most likely to get you into trouble. Government regulators, such as the IRS or your state attorney general, and private and government funders expect that you will keep accurate records of income and expenses and make efficient use of funds. If you become aware of any misallocation of funds, an attorney can work with your accountants to help you get back into compliance with any regulations and grant or contract obligations. If you are in financial trouble, a lawyer also can help you negotiate with creditors and can advise on options, like bankruptcy or merger, that might be appropriate.

Notes:

<p>a) Please describe your accounting system? Do you maintain your accounts internally, or do you rely on an outside accountant or bookkeeper?</p>	
<p>b) Do you provide periodic financial statements to your board (preferably monthly)? Do you have a finance committee of your board, or perhaps an outside accountant, review your financial statements?</p>	
<p>c) Do you have an annual audit or review by a certified public accountant? If so, may we see a copy of their report and any “management letter” describing recommended actions?</p>	
<p>d) Please describe any internal financial controls (such as check signature requirements, separating logging receipt of checks from entry of deposits).</p>	

Notes:

e) Do you have a line of credit or any significant loan obligations?	
f) Do you make certain that you withhold payroll taxes?	