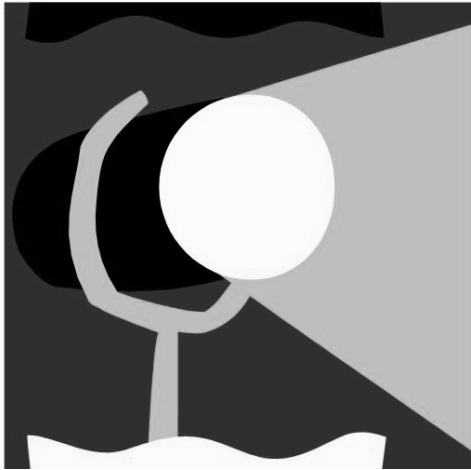




Nonprofit Board of Directors: The Legal Basis for Good Governance





Focusing On:

The inter-related State and Federal laws which underlie the creation and structure of nonprofits as well as the basic legal requirements for good governance.

★ NB - Nonprofits are a “regulated industry”



Corporate Structure



NY Tax Exempt Nonprofits

Created, Structured and Governed by:

1. Not-for-Profit Corporation Law (NPCL)

Creation & Structure - Certificate of Incorporation

Governance & Procedures – By-laws

2. Federal Internal Revenue Code (IRC)

Basic requirements for being tax exempt



Not-for-Profit Corporations

New York State (NPCL)

1. Creation, Structure & Change

NPCL sets forth NY's requirements on:

- permissions & procedures to create a nonprofit**
- certificate of incorporation - specific content**
corporate name, purposes, types of nonprofits
- minimum number of directors – 3**
- certificate amendments – change in mission, etc.**
- sale or transfer of assets**
- dissolution**

Federal Tax Exempt Nonprofits

2. “The IRC section” - “The Requirements”



501(a) An organization described in subsection (c) . . . shall be exempt from taxation . . .

501(c)(3) Corporations, and any community chest, fund, or foundation, **organized and operated exclusively** for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition . . . , or for the prevention of cruelty to children or animals, **no part of the net earning of which inures to the benefit of any private shareholder or individuals, no substantial part** of the activities of which is carrying on **propaganda**, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h)), and which **does not participate in, or intervene in** (including the publishing or distributing of statements) **any political campaign** on behalf of, or in opposition to, any candidate for public office.

IRC Tax Exemption Requirements



1. Organized & Operated Exclusively

Must have one of the IRS listed **purposes**

Other IRS required provisions & nonprofit operates as such

2. No Net Earnings Inures to Individuals

IRS required provision in certificate of incorporation

Salaries are OK - Sharing in Profits is NOT

IRC basis for Conflict of Interest Policy

3. No Substantial Lobbying

IRS required provision in certificate of incorporation

4. No Political Campaigning - prohibition

IRS required provision in certificate of incorporation

Prohibition on - For or Against Any Candidate -



Nonprofit Corporations

New York State (NPCL)

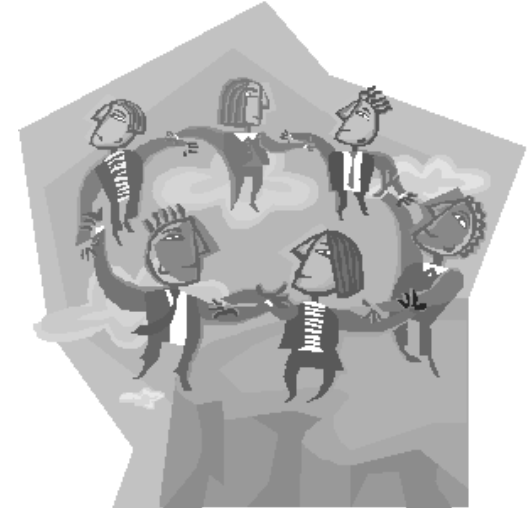
Required Governance Procedures In the By-laws - Directors

- ★ Number of Directors – Term Limits (?)
- ★ Quorums - flexible
- ★ Annual meeting
- ★ Regular & Special meetings
- ★ Allows Unanimous written consent
- ★ Allows Conference calls – **No Proxies**
- ★ Defines Interested Directors
- ★ Allows Indemnification



Governance Themes

Based on the NPCL



Bylaws are for: Collective Decision Making

Use them constantly

Update them as nonprofit changes over time

- ★ No President or Executive Director for life
- ★ Set up to govern nonprofit to exist in perpetuity - Not by personality
- ★ Sets out areas of responsibility & control
- ★ Relationships of Directors (and Members)
- ★ Criteria for Members and Directors – setting the “culture”

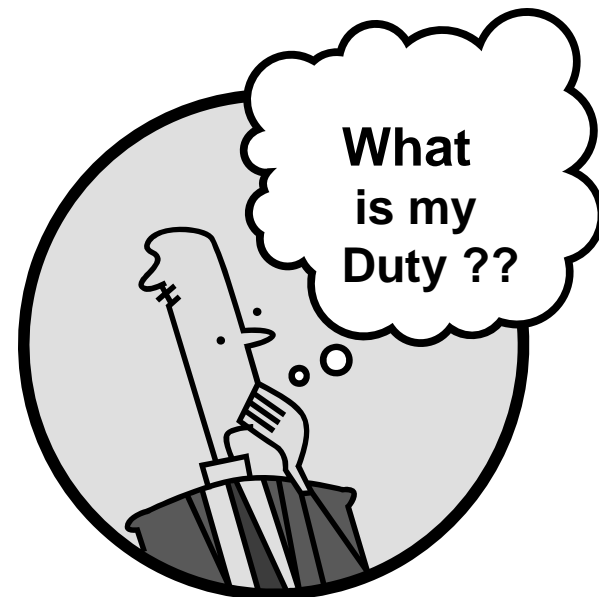


Governance

Based on Common Law & NPCL

3 Basic Duties of Directors

- ★ Duty of Care
- ★ Duty of Loyalty
- ★ Duty Of Obedience



Duty of Care - *Use your head*

The Reasonable Person Standard

Ask Questions - Use Experts



- **Attend** - Board and committee meetings
- **Read** - all materials such as minutes, reports, financial statements, program literature
- **Make sure** - minutes reflect decisions and dissents
- **Ask questions** - about operations and procedures
- **Make sure** - there are procedures for deciding about fundraising, fees, compensation, capital expenditures, budgets
- **Participate** - on committees, in risk assessment and strategic planning
- **Ensure** - periodic reviews of key employees and appropriateness of insurance coverage for organization's programs
- **Ensure** - the Board has a balance of institutional memory and new blood and diverse talents.

Duty of Care

New Board Member



✓ Check List

Read – Certificate of Incorporation, Mission Statement, By-laws, application for tax exemption, minutes, annual reports, publications, web-site, Form 990, audited financials

Get – Lists of Board members and staff, talk to them to determine relationships and management style
the current year's budget and cash flow

Review – Form 990, audited financials, management letter

Ensure – There is a conflict of interest policy, a whistle blower's policy, that Board meeting materials are distributed in advance

Duty of Loyalty



When Board of Directors votes/decides on actions,
the directors effectuate the decisions – even if disagree
Directors are to act in the interest of the nonprofit - bring
ideas, assistance, benefits, opportunities to the nonprofit
Private benefit to officers, directors, employees must be
done carefully, if at all, at “arm’s length” with full
disclosure.

★ **Basis for conflict of interest policy .**

- new federal IRS “Best Practices” really “required”

Duty of Obedience

Ensure Your Nonprofit:



- Complies with applicable laws and regulations – federal & state registration, annual filings, all employee related matters
- Complies with its internal documents and policies
- Uses its resources for its purposes and specific missions
- Carries out its purposes and does not engage in unauthorized activities.

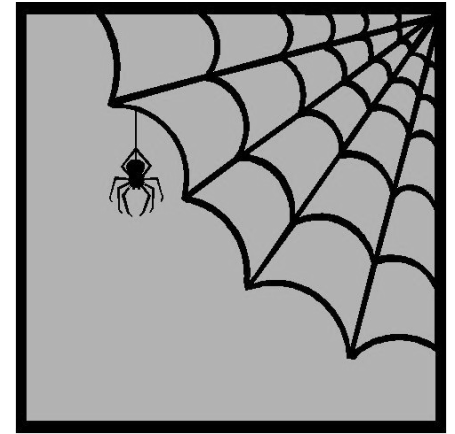
★ **Basis for the new IRC Whistle Blower Policy**

Dysfunctional Board Syndrome

- Cliques
- Social Freeloaders
- Founder Syndrome
 - Big Egos or Donors
 - Other Agendas
- Board – too big – too small



Useful Web-sites



- IRS – Charities

www.irs.gov/charities/

- NY Attorney General – Charities Bureau

www.oag.state.ny.us/bureaus/charities/about.html

- Governance Matters

www.governancematters.org

- Lawyers Alliance for New York

www.lany.org



Jewish Community Relations Council of New York

Nonprofit Nexus Legal & Fiscal Matters

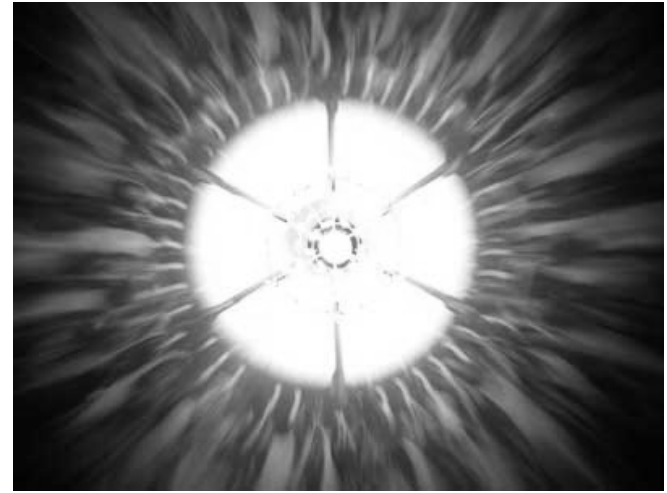
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Remember !!



- Use your Head
- Work for the Nonprofit's Benefit
- Know the Laws
- Don't be a Rubber Stamp

Thank You