

PROBONO®

P A R T N E R S H I P

Volunteer Lawyers Strengthening Nonprofits & Our Communities

Top Legal Issues for Nonprofit Organizations

Presented for Fairfield County Historical Societies
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Pro Bono Partnership

Pro Bono Partnership provides free transactional legal services to nonprofit organizations whose programs or activities benefit low-income communities or otherwise serve the public interest, and which cannot afford to hire an attorney.



Pro Bono Partnership

Provides pro bono legal assistance to nonprofit organizations through the services of staff and volunteer attorneys.

To be eligible, the organization must be:

- Nonprofit, tax-exempt (or seeking 501(c)(3) status);
- In our service area (Connecticut, New Jersey, and New York, except for NYC);
- Serving the poor and disadvantaged; providing health and human services; protecting the environment; or teaching and promoting the arts; and
- Unable to pay for legal services without significant impairment of program resources.



Pro Bono Partnership

Non-litigation business law matters, in areas such as:

- Corporate structure and governance
- Contracts
- Employment law
- Environmental law
- Intellectual property law
- Mergers, dissolutions, or bankruptcy
- Real estate (including lease reviews)
- Regulatory compliance (e.g., registration, annual reporting, charitable solicitation, lobbying)
- Tax law and tax-exempt status

To apply, visit our website, www.probonopartner.org, and click on “Request Legal Assistance”



COVID-19 Resources

PBP COVID-19 Webinars

- **May 11 (recording):** Getting Back to Work: Considerations for Returning to the Workplace after COVID-19 Shutdowns
- **May 21:** The SECURE and CARES Acts Affect Retirement Plans: What You Need To Know About COVID-19-Related and Other Changes
- **June 4:** COVID-19 Contract Considerations: What Your Non-Profit Needs to Know About Commercial Contracts and Leases During the Pandemic

Other COVID-19 Resources

- <https://www.probonopartner.org/covid-19-resources/>
- <https://portal.ct.gov/coronavirus>
- Connecticut's Arts & Culture Industry Guidelines for Operating During COVID-19 (a/o 5/6/2020) https://portal.ct.gov/-/media/DECD/Arts_Culture/COVID-19-Guidelines/CT-Arts--Culture-Industry-Guidelines-for-Operating-During-COVID19-First-Edition-5620-FINAL.pdf?la=en
- <https://www.whitehouse.gov/openingamerica/>
- <https://www.cdc.gov/coronavirus/2019-ncov/index.html>



Disclaimers

This presentation is not and should not be construed as legal advice nor does this presentation create an attorney-client relationship between you, your organization, the presenter or the Pro Bono Partnership. The content of this presentation is for informational purposes only. If you have specific questions about the practices of your organization, you should contact an attorney for advice.

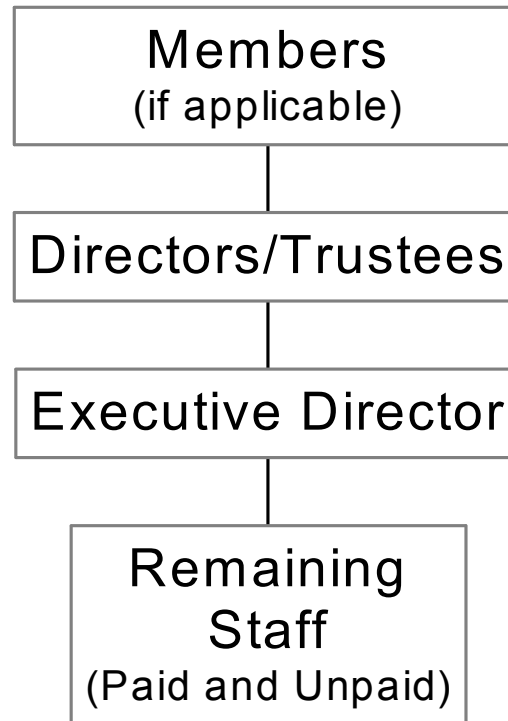


Corporate Governance/Filing Issues

- Is the organization complying with/following its corporate documents?
 - **Certificate of Incorporation**
 - Are you organized as a membership or non-membership organization?
 - If you have members –Do you have a membership list? Do they vote?
 - **Bylaws**
 - Are they followed?
 - When were they last reviewed by legal counsel?
 - **Application for Tax Exemption-** are the Organization's activities consistent with those stated?
 - Do you have a Conflict of interest policy? Other policies? Are they followed?
- Does the Board of Directors provide appropriate oversight and supervision?
 - Is the board fulfilling its fiduciary obligations of **care, loyalty and obedience**?
 - How often does the Board meet? Are minutes kept?
 - Does the Board properly manage potential conflicts of interest?



Organizational Chart for Nonprofits



Corporate Governance/Filing Issues

- Does the Organization file its 990s?
- Does the Organization have state tax exemption for its real property?
- Does the organization engage in lobbying activities?
 - Has the organization filed IRS Form 5768
- Does the Organization engage in political campaign activities?



Employment Issues

- Staying abreast of changes to employment law – constantly changing!
- Are your employees properly classified? (employee vs. independent contractor; exempt vs. non-exempt)
- Personnel policies
 - Are they updated/current?
 - Are they followed?
- Good hiring practices- offer letters; background checks
- Accommodations and leaves of absence- understanding and applying federal and state law
- Counseling on performance management; progressive discipline
- Terminations- how they are conducted



Volunteer Issues

- Are volunteers properly classified?
- How do you screen volunteers?
- How do you manage volunteers?
-
- Do you have/use volunteer procedures/manuals?
- Releases
- Do you have insurance that covers risks to/from volunteers?



Fundraising Issues

- Does the Organization properly document contributions?
 - See article on PBP website- <https://www.probonopartner.org/publications/acknowledgingdonations/>
- Is the organization registered in CT to fundraise? In other states?
- Does the Organization partake in any charitable gaming activities (e.g. raffles)?- Highly regulated



Intellectual Property Issues

- Has the Organization taken steps to protect its Protecting names/logos
 - Understanding their common law rights
 - Registering trademarks or service marks at the state or federal level through a filing with the USPTO
- Protecting materials/curriculum/original works through copyright
 - Again, understanding common law rights and how to protect their original works
 - Licensing agreements – many nonprofits earn revenue by licensing original program content to others
- Does the organization have any licensing agreements - to license use of content from others; to license program content to others
- Understanding “fair use,” and avoiding inadvertent infringement of others’ intellectual property



E-Commerce/Internet

- Has the Organization had a legal review of its website?
- Do you have a terms of use policy on your website?
- Do you have a privacy policy on your website?
- Do you have releases/permission for pictures, etc. used on the site?
- Do you collect information on your website?



Privacy Concerns

- Creating and implementing policies to protect confidential information
 - Clients
 - Donors
 - Employees
 - Others?
- Social media usage by employees
- Do you obtain release forms to use images, etc.?
- Signage in your facility?



Real Estate Concerns

- Do you lease space? Has your lease been reviewed by legal counsel?
- Understanding options if a landlord fails to deliver services
- Negotiating with contractors / landlords for renovations
- Purchases and sales of property



Contract Issues

- Ensuring that agreements are in writing and accurately reflect parties' understandings
- Understanding obligations and rights - what's beyond the business terms?
- Understanding options when business relationship doesn't work out



For More Information

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