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Nonprofit Legal Self-Assessment Checklist

A guide for helping nonprofits to understand common legal obligations
and to highlight areas where greater inquiry should be made

You sit on the board, or are an executive director of a Washington nonprofit corporation. You love your organization and are passionate about its mission. You are proud of the service your organization provides to the community and to those in need. You commit many hours to assuring the organization's programs are well-run and to raising adequate funds to support them. Yet you have this small nagging feeling in the back of your mind that you may be overlooking some legal requirement or trap for the unwary that will come back to haunt the organization in the future. You feel responsible for the health of your organization, and want to address any shortfall now, before it becomes a crisis later.

Congratulations for your dedication and your proactive concerns! We hope this checklist will assist you on the road to good legal health. But please understand that this checklist is only a starting point. Any checklist has limitations. Please recognize:

- This checklist is intended only for publicly supported charities. An organization that is a private foundation, supporting organization, or incorporated as a charitable trust, should not use this checklist.
- This checklist is simply a guide; it does not contain and should not be relied upon as legal advice.
- Laws and rules change constantly, and this checklist may become out-of-date.
- The checklist is not intended to be all-encompassing, but rather to address common concerns of 501(c)(3) public charities incorporated as nonprofit corporations in Washington State. Specific laws or rules may apply to your particular organization or its programs that are not addressed in this checklist.
- The checklist is intended to assist you in identifying potential legal problems. If you have identified a potential problem which you are unsure how to resolve, or have questions on matters not covered in this checklist, we recommend that you consult an attorney.

If your organization is unable to afford an attorney, please contact WAACO at contact@waaco.org or 1.866.288.9695, to see if your organization is eligible for pro bono legal services.

1. Our Organization maintains (in secured electronic or hard copy form) a corporate record book with current, legible copies of the following:
 - a) _____ Certificate of Incorporation from the Secretary of State
 - b) _____ Articles of Incorporation, with all amendments
 - c) _____ Current Bylaws
 - d) _____ 501(c)(3) determination letter from the IRS
 - e) _____ Application to IRS (Form 1023) for tax-exempt status
 - f) _____ Annual reports to the Washington Secretary of State
 - g) _____ Names, addresses, and terms of office of all officers and directors
 - h) _____ (For a membership organization), list of our current members and their addresses
 - i) _____ Insurance policies
 - j) _____ Contracts or leases
 - k) _____ Minutes of all meetings of the members, board, and committees of the board
 - l) _____ IRS Form 990 for the 3 most recent tax years
 - m) _____ List of contributors
2. Our Organization's registered agent is still at the address on file with the Secretary of State. The registered agent has signed a consent form that is on file with the Secretary of State, and we can rely on our registered agent to give us mail that comes to the corporation. (You can verify the name and address of a nonprofit corporation's registered agent on the Secretary of State's website: <http://www.secstate.wa.gov/corps/>).
3. Our Articles of Incorporation and Bylaws accurately describe the Organization's current structure and procedures. Our board of directors reviews the Articles of Incorporation and Bylaws at least once a year to make sure that actual practice is consistent with these documents.
4. Our Organization files an annual report with the Washington Secretary of State.
5. Our Organization prepares and maintains financial statements and statements of account on a regular basis.
6. If our Organization normally receives more than \$25,000 in gross receipts each year, it files an annual Form 990 or 990 EZ with the IRS.
7. If our Organization does not normally receive more than \$25,000 in annual gross receipts, it files a 990N (e-Postcard). (Available at <http://www.irs.gov/charities/>). **Failure to file this e-Postcard for three consecutive years will result in loss of federal tax exemption.**
8. Our Organization has Officer and Director insurance, and the board members have reviewed the policy and understand what it covers and what it does not cover.
9. Our Organization has notified the IRS of any material changes to our exempt purposes or activities, or amendments to our Articles of Incorporation or Bylaws since we applied for 501(c)(3) status.
10. Our Organization has a written conflict of interest policy and follows that policy.
11. Our Organization has considered adopting a written whistleblower policy and if adopted, follows that policy.

12. Our Organization has considered adopting a written document retention policy that ensures that documents are retained and secured for the appropriate period of time, and if adopted, follows that policy.
13. Any transactions our organization undertakes with its insiders, known as “disqualified persons” (such as board members, senior executives, and their close family), including setting our executive director’s salary, is (1) approved by the board or an independent committee, no members of which have a personal or financial interest in the transaction; (2) based on appropriate comparability data; and (3) concurrently documented by the board or committee which states the basis for its approval in writing, e.g., through minutes.
14. Our Organization does not endorse candidates for political office and does not participate in any political campaign for or against a candidate for any public office.
15. Our lobbying activities, if any, are an insubstantial part of our Organization’s overall activities. If we are participating in any lobbying activities, we have considered making, and if appropriate, we have made a 501(h) election with the IRS by filing Form 5768.
16. Our Organization understands its 501(c)(3) determination letter from the IRS, and its status as either a “public charity” or a “private foundation.” If there was an advance ruling period noted on our IRS determination letter that expired before June 9, 2008, we have filed a Form 8734 with the IRS.
17. If our Organization receives funds from regularly-conducted business activities that are unrelated to its exempt purpose, it correctly accounts for those funds, and understands how to report and pay taxes on this unrelated business income.
18. Our Organization understands its obligation to pay any state sales, business and occupation, or property taxes, and understands whether it is entitled to any exemptions from these taxes.
19. Our Organization has a current license to do business from the city/county where it is located.
20. Our Organization has filed a Master Business Application with the State of Washington.
21. Our Organization acknowledges, in writing, gifts of \$250 or more.
22. If our Organization provides any goods or services of more than a nominal value to a donor who makes a contribution in excess of \$75.00, our Organization provides a disclosure statement to the donor with a good faith estimate of the fair market value of any benefit that the donor received.
23. If our Organization receives gifts of vehicles or other noncash gifts, it understands and follows the IRS regulations for substantiation of those gifts.
24. If our Organization solicits charitable donations from the general public, it complies with Washington’s Charitable Solicitations Act, including registration and annual reporting requirements. (For more information and to determine, before engaging in solicitation activities, whether your Organization qualifies for an exemption from registering with the Secretary of State, visit the Secretary of State Charities Program website at: <http://www.secstate.wa.gov/charities/>).

25. Our board has reviewed, and if necessary secured expert advice about, our financial controls, and regularly revisits this topic to assure adequate scope and compliance.
26. Our Organization has adequate separation of financial duties. In particular, the person writing and signing checks is different than the person reviewing and reconciling bank statements.
27. More than one person is an authorized signer on our Organization's bank accounts, and these signatories are up-to-date.
28. Our Organization does not make loans to any of its officers or directors.
29. Our Organization understands and carefully observes any use or spending restrictions on grants and other contributed funds.
30. Our Organization's Board of Directors regularly reviews the Organization's financial statements, and reviews and approves the annual IRS Form 990.
31. Our Organization is confident that it has properly categorized volunteers, independent contractors, employees, and interns, and is treating them appropriately for their category.
32. Our Organization is confident it has properly classified employees as either exempt or nonexempt, and is treating them appropriately for their category.
33. If our Organization's staff members work overtime or have unusual hours, we are complying with wage and hour standards that govern overtime.
34. Our Organization has considered whether it should adopt written personnel policies that include, for example, a description of employee benefits, a process for handling a harassment complaint or other grievances, termination procedures, the process for performance management or employee reviews and other employment practices.
35. Our Organization verifies that all employees are eligible to work in the United States by having all employees complete form I-9 which the organization retains on file for three years after the date of hire or one year after the date of termination of employment, whichever is later.
36. Our Organization withholds federal income and FICA taxes from employees' paychecks, deposits these withheld funds, along with the employer's share of FICA taxes, with the IRS on a regular basis, and files a Form 941 quarterly with the IRS.
37. Our Organization prepares Form W-2 for employees and Form 1099 for any independent contractors.
38. Our Organization has registered with the Washington State Departments of Labor and Industries and Employment Security. Our organization makes quarterly payments to ESD for unemployment insurance, and makes quarterly payments to L & I for workers compensation insurance.
39. Our organization does not discriminate in employment on the basis of race, age, sex, disability, marital status, national origin or creed, or sexual orientation.

40. Our Organization has evaluated whether it wishes to provide workers compensation coverage for volunteers. If it has elected to provide this coverage, it has timely notified the Director of the Department of Labor and Industries of its intent to do so and is making the required contributions.
41. If our Organization operates a website, the Organization has posted written terms of use or terms of service that limits the Organization's liability and disclaims warranties. These terms of service are prominently located on the Organization's website.
42. Our Organization has proper licenses or permission to use all photos and written information created by other persons or organizations.
43. Our Organization has considered whether it should register or obtain other protection for any of its unique logos, designs, trademarks, or services.
44. We are confident that our Organization's name does not infringe on the rights of any other organization.
45. Our Organization has considered whether it would be appropriate to license any written materials, photographs, recordings, art, policy manuals, seminar materials, etc, that may be available for use by others.
46. Our Organization has considered implementing a written privacy policy that describes how the Organization uses and discloses personal information. If a privacy policy has been adopted, the Organization periodically confirms that it is in compliance with the commitments it makes in that policy.
47. When contracting with third parties to perform services, our Organization uses an employment or independent contractor agreement that assigns ownership to the Organization of intellectual property created by the employee or contractor within the scope of his or her work for the Organization. For instance, if our Organization has hired a third party to create the Organization's website, the Organization has obtained ownership of the intellectual property in the website design from the developer.
48. If our Organization allows third parties to post information on the Organization's website, the Organization has implemented a Digital Millennium Copyright Act compliant notice and takedown provision as part of its terms of use or terms of service. The organization has also registered an agent with the US Copyright Office to receive notices of copyright infringement under the DMCA.