



**A Primer on Starting and Governing
a Nonprofit 501(c)(3) Organization in Missouri
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For more information about the NPML Program: www.umsl.edu/npml

The University of Missouri St. Louis Nonprofit Management & Leadership Program (“NPML Program”) fills a vital need for nonprofit education and training in the St. Louis metropolitan region, and beyond. In so doing, the NPML Program offers comprehensive education and training for individuals looking to develop the skills and knowledge necessary to be a vital and instrumental part of the nonprofit community. In addition, the NPML Program also offers consulting and program development and/or management services to help nonprofits expand their capacity and further their missions.

Introduction

a. My background

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b. I am happy to e-mail a copy of this outline to you...

c. Hopefully you noticed in the title of this class this this is only meant to be a PRIMER on how to start a nonprofit, tax-exempt organization...

Agenda Overview (and the checklist you will want to use in the future...):

- I. Overview of the Nonprofit Sector
 - a. What is the non-profit sector?
 - b. How are non-profits regulated?
 - c. Why are nonprofits usually tax exempt?

- II. Forming a Nonprofit Corporation with 501(c)(3) Tax-Exempt Status:
 - a. Thinking about what you want to do, and the form of your organization
 - b. The IRS and types of tax exempt organizations
 - c. Benefits of nonprofit incorporation and tax exempt status
 - d. Forms of organization: corporations, foundations, unincorporated associations, etc. – and relevant state corporation law
 - i. Legal benefits of incorporation
 - e. Understanding the Uniform Nonprofit Corporation Act, and the Missouri Nonprofit Corporation Act
 - i. Review of the laws that govern the formation and operation of a nonprofit corporation in Missouri (and some discussion of Illinois) – including **articles of incorporation, bylaws**, etc.
 - f. Selecting the Board of Directors
 - g. Developing Vision and Mission Statements
 - h. Obtaining an Employer Identification Number (EIN)
 - i. Opening a bank account and establishing check signing procedures
 - j. Filing for Federal tax exemption – 501(c)(3) organization
 - i. Review of IRS Form 1023
 - k. Consideration of legal issues related to other “set up” activities:
 - i. Office space and Office equipment
 - ii. Get insurance coverage
 - iii. Payroll system and accounting system
 - iv. Pursue exemption from state sales tax and local property tax
 - v. Possible need to complete charitable solicitation registration
 - vi. Hire staff
 - vii. IT resources

- III. Corporate Governance and Management, and how to keep your tax exempt status
 - a. IRS Governance – recommended and required practices
 - b. The Board of Directors – duties, liabilities, responsibilities, and policies
 - c. Review of IRS Form 990 Annual Information Return
 - d. Review of other “best practices”
 - e. Relationship between Executive Director and Board

Course Content:

- Quick introductory concept:
Hierarchy of law:

- Federal
- State
- Local

Federal Law and “preemption” – in short, federal law “trumps” all other law, but sometimes there is only state law

- For example, as we will discuss in detail in this course, when you form a nonprofit corporation, you do that under STATE law
 - There is NO FEDERAL body or agency under which you can incorporate as a nonprofit corporation
- However, to seek federal tax exemption, you need to obtain that tax exempt status from the FEDERAL government – i.e. the IRS

So, bear in mind the hierarchy of, and distinctions between, federal, state, and local law

- And realize that various federal, state, and local laws can apply to nonprofit, tax-exempt organizations....

I. Overview of the Nonprofit Sector

a. What is the non-profit sector?

The nonprofit sector is, collectively, the name used to describe institutions and organizations in American society that are neither government nor business.

Outside the United States, nonprofits are often called nongovernmental organizations (NGOs) or civil society organizations.

The nonprofit sector is significantly bigger than people appreciate.

- As such, all of us working in this sector have an obligation to do a good job managing and leading nonprofits not only because of the important work we do, but because and problems we cause can have a ripple effect on the entire (larger) industry...

Question: can nonprofit organizations make a “profit”?

The sector may be called nonprofit, but that doesn't mean that the organizations within it cannot or should not charge fees or generate revenue that exceeds expenses (in other words, make a profit). Instead, it means that nonprofits, unlike businesses, do not exist to make money for owners or investors. Instead, these groups are dedicated to a specific mission.

b. How are non-profits regulated?

No government agency exists exclusively to monitor the activities of nonprofits; most nonprofits aren't required to hold public meetings; and few journalists report on nonprofits with the same depth and focus devoted to business and government.

However, nonprofits have many lines of defense against fraud and corruption:

Boards. All nonprofits are governed by a board of directors or trustees (there's no real difference), a group of volunteers that is legally responsible for making sure the organization remains true to its mission, safeguards its assets, and operates in the public interest. The board is the first line of defense against fraud and abuse.

Private watchdog groups. Several private groups (who are themselves nonprofits) monitor the behavior and performance of other nonprofits. Some see their mission as serving as advisors to donors who want to ensure that their gifts are being used effectively; others are industry or "trade" groups that provide information to the public and encourage compliance with generally accepted standards and practices.

- See, for example, the Better Business Bureau (BBB) and their charity info: <https://www.bbb.org/stlouis/charities-donors>
 - More specific standards = <https://www.bbb.org/stlouis/charities-donors2/standards-for-charity-accountability/>
 - See also GuideStar: <http://www2.guidestar.org/>

State charity regulators (and state laws). The attorney general's office or some other part of the state government maintains a list of registered nonprofits and investigates complaints of fraud and abuse. Often the **state attorney general** serves as the primary investigator in cases of nonprofit fraud or abuse. Almost all states have laws regulating charitable fund-raising. Also Secretary of State's office – to a certain extent. Mostly regarding ongoing certification and good standing of nonprofit corporations.

- To see if a MO nonprofit corporation is in good standing with the MO Secretary of State:

<https://bsd.sos.mo.gov/BusinessEntity/BESearch.aspx?SearchType=0>

Internal Revenue Service. A small division of the IRS (the Exempt Organizations division) is charged with ensuring that nonprofits are complying with the requirements for eligibility for tax-exempt status. See:

<https://www.irs.gov/Charities-&-Non-Profits>

IRS auditors investigate the financial affairs of thousands of nonprofits each year. As a result, a handful have their tax-exempt status revoked; others pay fines and taxes, or face “intermediate sanctions”. Formerly the only weapon available to the IRS was to revoke tax-exemption, which resulted in the denial of service to the clients and constituents the organization was created to help. However, now the IRS can also impose “intermediate sanctions” which fall short of full revocation of tax-exempt status.

Donors and members. One of the most powerful safeguards of nonprofit integrity are individual donors and members. By giving or withholding their financial support, donors and members can cause nonprofits to reappraise their operations. They can also, in unfortunate circumstances, make complaints to agencies, regulators, etc. that lead to audits and investigations.

Media. Most of the major scandals involving nonprofit organizations in recent years have come about as a result of media investigations and resulting news stories. While many nonprofit leaders feel misunderstood or even maligned by negative media coverage, this media watchdog role has resulted in increased awareness and accountability throughout the sector.

c. Why are nonprofits (usually) tax exempt?

Tax-exemption is an acknowledgment of an organization performing an activity that relieves some burden that would otherwise fall to federal, state, or local government. The government, in fact, provides an indirect subsidy to nonprofits and receives a direct benefit in return. Nonprofits also benefit the society as a whole when they provide valuable services. The viability of some of these services would be threatened if they were subject to taxes. Tax-

exemption is afforded to churches as a safeguard to preserve separation of church and state by preventing governments from using taxation to favor one religion over another.

Important distinction to understand and remember: nonprofit (corporation) status and tax-exempt status are SEPARATE states of existence/forms/certifications

What is the difference between non-profit and tax-exempt status?

https://www.irs.gov/charities-non-profits/frequently-asked-questions-about-applying-for-tax-exemption?_ga=1.262722188.1871230375.1478627745

Nonprofit status is a state law concept. Nonprofit status may make an organization eligible for certain benefits, such as state sales, property and income tax exemptions. Although most federal tax-exempt organizations are nonprofit organizations, organizing as a nonprofit organization at the state level does not automatically grant the organization exemption from federal income tax. To qualify as exempt from federal income tax, an organization must meet requirements set forth in the Internal Revenue Code. See [Types of Tax-Exempt Organizations](#) or [Publication 557](#) for more information.

II. Forming an Organization:

- a. Thinking about what you want to do, and the form of your organization
 - KEY is to think about what you want to be able to DO as a nonprofit/tax exempt organization AND how you will be funded
 - Related point to consider early on – think about the name of your organization because someone may have it already
 - To check in MO: <https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp>
 - Also, MO law about what your name can be:
<https://revisor.mo.gov/main/OneSection.aspx?section=355.146&bid=19181&hl>
- b. The IRS and types of tax exempt organizations
 - <http://www.irs.gov/Charities-&-Non-Profits/Common-Tax-Law-Restrictions-on-Activities-of-Exempt-Organizations>
 - o (follows below:)

Common Tax Law Restrictions on Activities of Exempt Organizations

The chart below compares seven federal tax law attributes of five common types of tax-exempt organizations.

	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)	527
Receive tax-deductible charitable contributions	YES	NO	NO	NO	NO
Receive contributions or fees deductible as a business expense	YES	YES	YES	YES	NO
Substantially related income exempt from federal income tax	YES	YES	YES	YES	YES
Investment income exempt from federal income tax	LTD*	YES	YES	YES	NO
Engage in legislative advocacy	LTD	YES	YES	YES	LTD
Engage in candidate election advocacy	NO	LTD	LTD	LTD	YES
Engage in public advocacy not related to legislation or election of candidates	YES	YES	YES	YES	LTD

*Private foundations are [subject to tax](#) on their net investment income.

- note difference between “private foundation” and “public charity” within 501(c)(3) (for example, “private foundation” is subject to tax on their net investment income, but “public charity” is not – **distinction between private foundation and public charity is discussed in greater detail later in course**)

- For more information like this for every kind of tax exempt organization, see pages 72 and 73 of IRS Publication 557: “Tax Exempt Status for Your Organization”: <http://www.irs.gov/pub/irs-pdf/p557.pdf>
- c. Benefits of nonprofit corporation and tax exempt status – if all steps are followed to form nonprofit corporation and obtain tax exempt status:
- i. The organization does not pay federal corporate income tax on its business revenues

- MAJOR EXCEPTION TO THIS is that the nonprofit corporation may owe federal income tax on any business income that is unrelated to its tax exempt purpose (Unrelated Business Income Tax = **UBIT**)
 - ii. The organization does not pay state income tax
 - MO law recognizes an organization as exempt from state income tax if the organization is recognized as a tax exempt 501(c)(3) entity. Thus, it is not necessary for the organization to file a separate application for recognition of exemption from state income tax in MO
 - Other states may require such a separate exemption application, though.
 - iii. The organization does not pay federal unemployment insurance tax
 - iv. Encourages people to donate money to the organization – because of tax benefit they get for making that donation (if it is a 501(c)(3) organization), or otherwise
 - v. Likely will qualify for exemption from having to pay state sales tax on purchases, and in some cases won't have to charge state sales tax on things you sell
 - vi. Etc.
- d. Forms of organization: corporations, foundations, unincorporated associations, etc – and relevant state corporation law
 - Most of you are going to want to form a nonprofit corporation, or will likely work in a nonprofit corporation... So we will focus on that here...
 - Just to be clear, you do not have to be formed as a nonprofit corporation to ultimately apply for, and get tax exempt status as a 501(c)(3) organization
 - Per IRS regulations, you can be a corporation (or unincorporated association), community chest, fund, or foundation. A charitable trust is a fund or foundation and will qualify. See: https://www.irs.gov/charities-non-profits/charitable-organizations/organizational-test-internal-revenue-code-section-501c3?_ga=1.174193442.1871230375.1478627745
 - a. Note that an individual will not qualify!!!! (nice try)
 - b. See also the form 1023 itself – “Part II: Organizational Structure”
- Legal benefits of incorporation

Why is it a good idea to incorporate a nonprofit?

Question: why bother forming a nonprofit corporation – why not just go out and do good things? Simply – because the corporate form provides advantages and protections

A corporation is a legal entity that exists in perpetuity until it is dissolved (so it can go on beyond a human life and do good things even longer). It is a 'fictitious person,' separate from its managers or governors, and is usually given many of the same rights and obligations as natural persons. A nonprofit corporation is able to conduct charitable, educational, or scientific activities; it can enter into contracts; it can incur debts; it can hire employees who are eligible for fringe benefits; and it is legally liable for its actions.

The main benefit of being incorporated is the limited liability that it provides for those managing or governing the organization. All debts and obligations are in the name of the corporation. As long as the managers and board members act reasonably and with care, and put the benefit of the organization ahead of their personal gains, they may be absolved from personal liability. Incorporation is the first step in risk management.

Secondly, because the corporation status is not affected by change of personnel, it functions in a relatively stable environment. This simplifies business with contractors and facilitates application for tax-exemption, and funders tend to prefer working with incorporated nonprofits.

Thinking ahead a little bit: Relevant info to maintaining your organizational form – annual reports and info to be found/filed with Secretary of State

- MO Secretary of State: <http://www.sos.mo.gov/>
 - <https://www.sos.mo.gov/business/corporations/generalInfo#annualReports>
- Bear in mind that there are things you have to do **AFTER** you form as a nonprofit corporation in order to **KEEP and MAINTAIN** your nonprofit corporate form
- Certain practices, policies must be followed, certain activities must occur, certain records must be kept, etc...

- e. Understanding the Missouri Nonprofit Corporation Act – and preparing your Articles of Incorporation and Bylaws
- Most states give those seeking to form nonprofit corporations a few different choices for how to form a nonprofit corporation, and the applicable laws and regulations that apply to those nonprofit corporations.
 - Here, I'm going to cover laws and regulations covering the most common types of nonprofit corporations in Missouri and Illinois

- ii. In Missouri: The Missouri Nonprofit Corporation Act is at Chapter 355 of the Missouri Revised Statutes, starting at 355.001, and proceeding through 355.881
<http://revisor.mo.gov/main/OneChapter.aspx?chapter=355>
 - In Illinois, General Not for Profit Corporation Act of 1986 can be found at 805 ILCS 105 of the Illinois Compiled Statutes
<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2280&ChapAct=805%26nbsp%3BILCS%26nbsp%3B105%2F&ChapterID=65&ChapterName=BUSINESS+ORGANIZATIONS&ActName=General+Not+For+Profit+Corporation+Act+of+1986%2E>
- iii. These are the laws that will GOVERN and CONTROL the formation and operation of the nonprofit if they are organized under these provisions
 - So, in other words, a Missouri Chapter 355 nonprofit corporation is governed by...
 - **Tip**: When in doubt on how to do something that affects the form or management of your nonprofit corporation (*and remember that is separate from your tax exempt status*), look at the STATUTE and its sections FIRST
 - a. It is a “birth to death” statute... Incorporation to dissolution...
 - **Tip**: ALSO look to see if the Secretary of State has a FORM to use
 - a. See the Not For Profit Corporations section of the Secretary of State’s corporate “Fees and Forms” web page:
 - b. <http://www.sos.mo.gov/business/corporations/forms.asp>
 - Look at the “Not for Profit Corporations” section of this web page...

MO Law:

- So you want to form a nonprofit corporation in Missouri – is the PURPOSE for which you want to start the nonprofit authorized as “ok” for a nonprofit under Missouri law?
 - Purposes for which organized:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.025&bid=19157&hl=>
 - Very broad list!! 34 broad categories
 - **Anyone know what “eleemosynary” means?**
 - Per Webster’s Dictionary: of, relating to, or supported by charity. So, presumably, this means any organization of, relating to, or supported by charity...

- Best clue on what does not qualify as a recognized purpose is sentence at the end of this section: “No group, association or organization created for or engaged in business or activity for profit, or on the cooperative plan, provision for the incorporation of which is made by any of the incorporation laws of this state, shall be organized or operate as a corporation under this chapter.”

SO JUST HOW BROAD IS THIS LIST AND THE PERMISSIBLE PURPOSES?

Could the Klu Klux Klan be organized as a nonprofit corporation in the state of Missouri?

The point is the allowable PURPOSES for a nonprofit corporation are very broad...

- Next threshold issue, under Missouri Law, is whether the organization is a “public benefit” or “mutual benefit” corporation?
 - <http://revisor.mo.gov/main/OneSection.aspx?section=355.881&bid=19315&hl=>
 - You need to know which you want to be (and which you will be) as you craft your articles of incorporation
 - And you need to know because the Secretary of State’s form for “Articles of Incorporation of an Nonprofit Corporation” requires you to identify whether you will be a public or mutual benefit corporation:
 - <http://s1.sos.mo.gov/CMSImages/Business/corp52.pdf>
 - In all likelihood, given the definitions and criteria covered in Chapter 355.881, (see (1) through (4) in that section) you will be organizing or working for a public benefit corporation, so we will be focusing on that form. **Note the “path”/“focus” we are following for this course...**
 - **Public benefit, nonprofit corporation that goes on to obtain 501(c)(3) tax exempt status as a public charity...**
 - So now it’s time to think about actually putting together your Articles of Incorporation
- **Creating the Articles of Incorporation:**
 - The nonprofit corporation’s existence BEGINS upon filing of the articles of incorporation

- For MO example:
 - <http://revisor.mo.gov/main/OneSection.aspx?section=355.101&bid=19172&hl=>
 - **QUESTION: is the Secretary of State's office reviewing the CONTENT of these articles of incorporation?** NOTE that the Secretary of State's office, which handles these forms, reviews these articles of incorporation for form, but not for content (see Silk chapter, page 66)
 - So who is REALLY looking at your Purpose, etc. at this point?
 - Probably no one – it really matters down the road for the IRS (to be discussed), and, frankly, if your organization ever gets in trouble and someone down the road, like the attorney general, comes back at a later date to look at your organization.

What should be included in your Articles of Incorporation (Generally)?

Your Articles of Incorporation are a binding legal document. The content requirements vary from state to state.

- MO law for contents of Articles of Incorporation:

Per:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.096&bid=19171&hl=>
- Luckily, there are free forms from the Secretary of State for you to use in creating your articles of incorporation:
- **MO Secretary of State form for articles of incorporation for a domestic nonprofit:**
<http://s1.sos.mo.gov/CMSImages/Business/corp52.pdf>
 - **Tip:** you don't want to fill out this form on-line. You will want to print it up so you can add additional sheets to it that will give you enough room to include all language the IRS will eventually be looking for – to be discussed below
 - Then take the completed form to an office of the Secretary of State

- Determination of, and discussion of whether or not the corporation will have “**members**”- which is something you have to indicate on the MO Secretary of State’s form:
 - FRANKLY, the concept of whether or not the corporation will have, or SHOULD have “members” can be a difficult concept to understand.
 - For legal definition of “member” see MO statute 355.066(21), and other sections
 - o <http://revisor.mo.gov/main/OneSection.aspx?section=355.066&bid=19166&hl=>
 - Due to our time limits here, let me generally say that most MO public benefit (vs. mutual benefit) nonprofit corporations do not have “members”, and are not organized this way
 - if you have “true” members, as used in 355, you have people who can vote on major decisions of a nonprofit. E.g. election of board members (so ALL the members can vote for the election of board members – not just other members of the Board). 355 delineates several rights, some of which can be modified by bylaws. Most nonprofits are not true membership entities. Organizations that may wish to involve people more directly in their activities, as opposed to those providing services primarily, will often have true members. Examples I’ve seen include churches and neighborhood assns. Suggestion: when forming nonprofits, if the founders are uncertain, I suggest they check no for members as they can always have members later but, if they have them initially, it is very unlikely that those members would vote themselves out of existence.
 - Related to the concept of whether or not a nonprofit corporation has members, you may hear the term that a nonprofit corporation without members has a “**self perpetuating board**” (we will discuss board make-up, duties, etc. in more detail below)
 - This means that vacancies on the boards of nonprofit corporations that do not have members are filled by a vote of the remaining directors that are left after a person leaves the board (not by “members” of the corporation)
 - Example – Habitat for Humanity St. Louis is a nonprofit, public benefit corporation that does not have members. When one of its board members leaves, only the other board members vote on who the new board members should be

- In contrast, in a neighborhood association that is organized as a nonprofit, mutual benefit corporation with members, when a board member leaves ALL the members of the association vote for the new board member(s) – NOT just the other board members.
- Even if you indicate in your articles of incorporation that you will not have “members”, you can still have certain kinds of members, or membership classes, or “membership benefits” in the future.
 - o For example, think about the zoo, or the science center, or the botanical garden, or any other kind of nonprofit from which you may have purchased a “membership”...

THINKING AHEAD: assuming you are going to want to seek tax exempt status as a 501(c)(3) organization, your articles of incorporation **MUST** have a few things in them at the end of the day (from the IRS perspective):

What provisions must be in an organization's organizing document (i.e. articles of incorporation) for it to qualify for exemption under section 501(c)(3)?

- **Fit this language into the form provided by the Secretary of State**
- **AND NOTE that the MO Secretary of State's form/instructions now includes some of this “magic language” for you!!**
 - **IF** you want to ultimately become a 501(c)(3)...
 - o realizing it is possible that you may ultimately want your nonprofit corporation to ultimately fall under some other kind of tax exempt status form/section...

An organization's organizing document:

(1) must limit its purposes to those set forth in section 501(c)(3) (*discussed below*),

(2) must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of such purposes (in other words: language in the organizing document should state that all powers of the corporation will be used solely for the stated purpose of the organization, and in accordance with its tax-exempt purposes), and

(3) must permanently dedicate its assets to such purposes (i.e. if your organization dissolves, other charities, nonprofits, etc. must get your assets).

(4) to be safe, you should also probably make sure to specifically say that no part of your organization's net earnings will be distributed to any members, directors, officers or other individuals except as reasonable compensation for services rendered.

- LANGUAGE with these statements/info must be in your articles of incorporation when all is said and done if you want to obtain status as a 501(c)(3) organization (*will discuss in greater detail later in the course*) (*and then, of course, you should expect to actually conduct business in accordance with these statements and requirements...!!!*)
- And, again, the form and information supplied by the Missouri Secretary of State is kind enough to give you samples of this “magic language” right in the instructions and form they provide for your articles of incorporation:
 - See: <http://s1.sos.mo.gov/CMSImages/Business/corp52.pdf>

A quick note about the differences between “incorporators” and board members...

- Note the information about “incorporators” in the form provided by the Secretary of State’s office... only one incorporator needed...
- An incorporator is not the same thing as a board member... incorporators may eventually become board members, but, at the time you file this form, they are not actually, or yet, the board members...
 - But eventually they could be...

Once the Articles of Incorporation have been filed, a certificate of incorporation is issued

- Many funders and other organizations or entities will want to see this from time to time

What changes require us to amend our articles of incorporation?

The Articles of Incorporation should remain as general as possible within the framework of your state laws. The bylaws (*separate from the articles of incorporation*) will provide further detail on the governance structure, and additional policies and procedures secure the rest of the necessary guidelines for effective and ethical functioning of your organization.

Sometimes major changes in the organization's status, activities, or structure force you to amend the Articles and to file an updated copy.

- MO Secretary of State has a form for Amendments to the Articles of Incorporation of a nonprofit corporation:
<http://s1.sos.mo.gov/CMSImages/Business/corp53a.pdf>

○ **Creating the Bylaws**

Overview of bylaws

Bylaws are the internal rules and regulations to guide your board's activities. The bylaws contain provisions regarding regulating and managing the affairs of the corporation – which may NOT be inconsistent with the articles.

Question: when are bylaws effective? Bylaws are effective as soon as they are adopted by the incorporators. It is not necessary to obtain the approval of the bylaws by any governmental agency

Related to this, in the strictest sense, bylaws are not “public documents”.

- Bylaws are NOT filed with the Secretary of State (in MO) – whereas the Articles of Incorporation are. As such, as a general proposition (and briefly previously discussed), good to keep your Articles of Incorporation general and limited, and put more of your governance rules into your bylaws. Because amending your bylaws does not require filing new forms with the Secretary of State, etc.

REMEMBER: bylaws and articles of incorporation are different things and different documents. If it helps, think of your articles of incorporation as your organizing document, and your bylaws as your operating document.

As a reference document, when filing for your tax-exempt status, you should include your bylaws if they have already been drafted. Your bylaws can provide helpful data on your organization.

Even if the law does not consider your bylaws a public document, your willingness to distribute a copy to anyone requesting it increases your accountability and transparency to the public. Also, many grant providers, funders, etc. will want to see a copy of your bylaws.

Considering your bylaws as your public document could force your board to pay careful attention to its contents. Keep the bylaws “alive” by evaluating them on a regular basis and amending them when they seem to lose validity or no longer correspond to your values.

- MO laws on bylaws for a nonprofit corporation (REMEMBER comparable law and regulations under ILLINOIS statute):
 - Each MO nonprofit corporation MUST HAVE articles of incorporation and bylaws (note the “shall”...):
<http://revisor.mo.gov/main/OneSection.aspx?section=355.116&bid=19175&hl=>
 - So how do you know what your bylaws HAVE TO say or cover – or does anything mandate that content in any way? Sections of Chapter 355 seem to indicate what your bylaws should contain. Some examples:
 - Must have a Board of trustees, or similar body, and bylaws should establish that board:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.316&bid=19215&hl=>
 - Note that, because of the structure of a nonprofit corporation, nobody really “owns” a nonprofit corporation...
 - So if you start this kind of entity, you give up a lot of control...
 - Board must have at least 3 members:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.321&bid=19216&hl=>

- NOTE THAT the BBB’s “20 standards for charity accountability” indicates/requires that you should have at least 5 voting members...
 - If you want that BBB seal of approval, need to consider this...
 - For more on the BBB, the charity seal, and the standards for the charity seal, see:
 - <http://www.bbb.org/stlouis/charities-donors/standards-for-charity-accountability/>
 - United Way of St. Louis has a set of “Quality Standards” that requires 12 board members

- Time and method of selection of directors:
 - <http://revisor.mo.gov/main/OneSection.aspx?section=355.326&bid=19217&hl=>
 - NOTE distinction in this section (and others) between nonprofit corporations that have “members” and those that don’t...

- **A note about the sometimes confusing use of the word “director”:**
 - We don’t mean the executive “director” or a “director” of operations, etc. In fact, for our purposes here, we do not mean any staff at all
 - We mean board members when we say “directors” – as in “members of the board of directors”
 - In fact, staff members should not be voting members of the board of directors...which we will talk more about later...

- Terms for directors:
 - <http://revisor.mo.gov/main/OneSection.aspx?section=355.331&bid=19218&hl=>

(NOTE that 6 years may be the longest term allowed by MO law for some kinds of directors)

- Generally, 2 or 3 year terms seem to be most common – gives time to let director learn about the organization, what they are supposed to be doing, etc, but allows for term that is not too long to get rid of a “bad” director.
- Staggering terms:
 - <http://revisor.mo.gov/main/OneSection.aspx?section=355.336&bid=19219&hl=>
 - Why do we stagger terms?

- Quorum and voting:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.401&bid=19230&hl=>
 - Minimum allowable quorum is one-third of the directors
 - Food for thought = be careful with **e-mail voting**.
 - Info on this:
<http://bryancavecharitylaw.com/does-your-board-vote-by-email/>

As email has become a primary form of communication, more and more nonprofit boards are taking action by email vote. I personally believe email voting is an efficient method of board approval for very specific questions where little or no discussion is necessary. Unfortunately, most states have declined to adopt specific legislation regarding email voting.

Without a special rule, email voting likely constitutes voting by written consent. Unlike in-person or telephonic meetings that only require a majority vote to approve a resolution, most states require a unanimous vote of all the directors in order for a written consent to be effective. In my experience, it may be difficult to receive unanimous written consent by email – often, at least 1-2 board members do not have email or do not check their email account regularly.

Therefore, organizations that vote by email must be cautious to ensure that each of its directors has access to email and that each director responds clearly and affirmatively regarding the matter they are being asked to vote on. It is also worth noting that although I am in favor of email voting, it is not appropriate in all cases. It should not take the place of meetings, and should not be used for decisions that involve significant discussion. I am also concerned with what is next – voting by text message, social websites, etc. I guess we will just have to wait and see what technology brings next.

See also statute section on “action without meeting”:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.381&bid=19227&hl=>

- Required Officers:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.431&bid=19235&hl=>
 - Pretty much have to have a president/chair, secretary and treasurer
 - MUST have someone to prepare minutes and authenticate records – i.e. secretary

- Bylaws should contain a Director’s conflict of interest policy
- With respect to a conflict of interest, note that MO statute has applicable provisions:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.416&bid=19232>
[&hl=](#)
 - Note differences/sections in here relating to “public benefit” vs. “mutual benefit” corporation...
 - Note that this statutory section could be modified into a conflict of interest policy...
 - See #6 – bylaws can impose additional requirements
- Bylaws probably should contain a policy for indemnification of Directors:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.471&bid=19240&hl=>
 - note that language is “Unless... SHALL indemnify”...
 - Bylaws should set forth policies for indemnification of directors in the face of corporate liability, or the state’s “shall” language applies...
 - This will be covered more later.
 - Inclusion of a policy for indemnifying directors (i.e. protecting directors from liability, or reimbursing them in the event of liability or legal action) can be an important part of attracting and keeping board members
- Records retention (turn all the “shalls” in here into a policy to be put into your bylaws):
<http://revisor.mo.gov/main/OneSection.aspx?section=355.821&bid=19304&hl=>
 - Note under this section that the nonprofit corporation **MUST** keep minutes of meeting of the Board of Directors and Committees of the Board of Directors.
 - Note the records you do **NOT** have to disclose if you are a public benefit corporation (number 8)
- By laws should also include info on meetings of the Board, their frequency, time and place, etc.
 - What about the ability to hold meetings “virtually”, or over the internet, or by teleconferencing, etc?
 - As these options grow more likely/prevalent, think about how to handle these kinds of issues in your bylaws.

- NOTE: some review agencies might have issues with conducting too many board meetings where all the board members are in each other's physical presence – see, for example, BBB standards...
- Bylaws can cover compensation for Directors, if there is any. Directors are not compensated, unless provided otherwise, see: <http://revisor.mo.gov/main/OneSection.aspx?section=355.366&bid=19225&hl=>
 - BUT NOTE THAT compensation will result in the loss of tort immunity for the directors under MO law (**liability and immunity to be discussed later**) see: <http://revisor.mo.gov/main/OneSection.aspx?section=537.117&bid=28476&hl=>
- If there are going to be committees of the Board, those should be covered in the bylaws: <http://revisor.mo.gov/main/OneSection.aspx?section=355.406&bid=19231&hl=>
 - MUST HAVE AT LEAST 2 Board members on a committee
- Good idea to include many other “housekeeping” policies in your bylaws
 - like location of principal office,
 - location of books and records,
 - how the bylaws can be amended,
 - audit policy, etc.
 - By the way, with respect to the audit, not all nonprofits have to have an audit
 - Requirements for an audit of the organizations books, records and accounts can be set out in the bylaws
 - Organizations SHOULD have an audit as a good policy, and for good oversight of funds
 - Helps ensure oversight and transparency (more discussed later)
 - Some grants or funders might require an audit, too
 - Also, rating agencies like the BBB look for organizations (of a certain size) to have an audit...
 - Orgs with a budget over \$200,000 (\$250,000) have to have an annual audit to get highest rating from the charity information service...

- But MO law, for example, does not require all nonprofit corporations to have an audit... (possible specific kinds that have to...?? Ask an auditor or accountant...)
- Some states do require nonprofits of a certain size to have an audit by an independent CPS... Bear in mind that just because the IRS or federal government does not require this (or other things), state law might require certain things...
 - See, for example, the California Nonprofit Integrity Act of 2004...

- Bylaws are a good place to set out, and re-affirm other policies and procedures that help you keep and maintain your nonprofit corporate status, AND your tax exempt status too – i.e. distribution of assets in event of dissolution
- **IN GENERAL/IN SUM** – if a state law for your nonprofit corporate status, or a federal law for tax exempt status, requires your organization to do something, or not do something, **MAKE SURE YOU PUT THAT IN YOUR BYLAWS** as proof that your organization does, or doesn't do, that thing.
 - And then **ACTUALLY FOLLOW** the policies and procedures in your bylaws!!!!
- **Sample nonprofit corporation bylaws:**
 - Many you can find on the web...
 - As an example, see Bryan Cave's web site: <http://bryancavecharitylaw.com/>
 - Also, take advantage of the FREE info and resources of the St. Louis Public Library (main branch) the Kirkwood Public Library, and the St. Charles Public Library – each of these libraries has a special “Grants & Foundation Center” with dedicated resources, info, etc. for the nonprofit community.
 - In order to save money for your organization, you can/should draft an initial set of bylaws yourself, but probably wise to have a lawyer work on the final form. By starting it yourself, though, you will save money, and have a good opportunity to think through how you want your nonprofit to operate...

f. Selecting the Board of Directors

Probably no other time in life when you get to choose your boss (so to speak)! So choose carefully!

- If you are the ED/CEO of a nonprofit corporation, you do not have the “final say”...
- Under MO law, the nonprofit corporation exists and operates through its Board of Directors – all corporate powers are exercised by the board, under the authority and direction of the board:
<http://revisor.mo.gov/main/OneSection.aspx?section=355.316&bid=19215&hl=>

We will talk more later about actual duties, responsibilities, liabilities, etc. of members of the Board of directors.

Ultimately, consider that the BOARD (not staff) is responsible for the operation of the organization. The staff carries out the policies (and related activities) set by the Board – with the chief executive (ED or CEO) conducting the overall management of the operational activities on a day-to-day basis

From the perspective of the IRS and a Secretary of State, those agencies cannot be everywhere – Boards and Board members stand in their stead to help ensure proper oversight, operation, and management

Why do nonprofits have boards, and what do boards do?
<http://www.boardsource.org>

Most nonprofits are corporations, which means they are legal entities distinct from the individuals who founded them. Like their for-profit counterparts, nonprofit corporations are governed by boards of directors with legal and ethical responsibilities that cannot be delegated. The board's responsibilities fall into a few broad categories. Think about bringing together a group of board members who can, from the outset, meet the following requirements:

Exercise Legal and Fiduciary Responsibility. The board is responsible for ensuring that the organization meets legal requirements and that it is operating in accordance with its mission and for the purpose for which it was granted tax-exemption. Individual board members must exercise the duty of care (*to be discussed further below*). As safeguards of a public trust, board members are responsible for protecting the organization's assets.

Exercise Oversight. The board is responsible for ensuring that the organization is well run. It moderates the power of management, and has the power to hire

and remove the chief executive, usually called the executive director or president.

Develop Financial Resources. As part of their fiduciary responsibility, many board members are actively involved in making sure that the organization has the money it needs. This may include making a personal contribution; serving as an advocate with a foundation, corporation, or government entity; organizing a fundraising event or hosting a benefit; or face-to-face solicitation of other individuals.

Provide Representation of constituencies and viewpoints. Often, board members are chosen so that they can bring to the board the experience or perspective of a particular group or segment of the organization's constituency. Boards are not inherently democratic institutions, but they do provide an opportunity for the groups and communities that a nonprofit serves to have a voice in its governance. However, representing a constituency or viewpoint takes a back seat when voting — all board members are expected to vote with the nonprofit's best interest in mind.

Best practice – paid staff members should not be voting board members. Even the CEO or ED should not be a voting board member (although they are present at all Board meetings).

- The ED should be an ex-officio board member
- **Why??**
- If any paid staff members are voting board members, it may be a conflict of interest
 - The board oversees the paid staff/EE, so the paid staff/ED should not be on the board...

After you identify the people you want to be on your Board of Directors, set your first Board meeting, and meeting schedule

- **Practice Note:** annual (at least) meetings and annual minutes (and other formalities) **MUST** be observed to preserve the nonprofit corporate existence

What happens in an organization's initial board meeting?

<http://www.boardsource.org> (and a lot of my additions)

For some boards, the initial board meeting is the first official opportunity to meet fellow board members. For other boards, members may already be in communication with each other but this meeting starts the formal activity of the board as a legal entity. Record the decisions in your first meeting minutes.

During the first meeting, besides getting to know each other, the board must do the following:

MO law requires:

<http://revisor.mo.gov/main/OneSection.aspx?section=355.111&bid=19174&hl=>

(pretty general)

1. Elect the Board of Directors, if the Directors were not named in the Articles of Incorporation
 - The articles of incorporation might just have had “incorporators”, who then need to elect Board members at first meeting.
2. Elect officers;
3. Adopt bylaws (have at least a draft set of bylaws ready to review at this meeting – remember, you can always amend them later if you realize your first set is not all it should be as you gain experience);

Other things you will want to do:

4. Fix the name and the legal address for the organization to be included in its legal documents (if not previously done in the bylaws you are adopting);
5. Authorize new officers to make business decisions for the organization (open bank accounts, sign checks, sign a lease, etc);
6. Authorize application for tax exempt status from the IRS
7. Adopt a conflict of interest policy (if not in your by-laws) (will talk more about this later)
8. Designation of the organization’s **fiscal year**
 - Establishment of your fiscal year is **very important**, and should get some real thought... and then you should develop an **organizational calendar with recurring events each year** – based on your fiscal year.
 - Affects when you have to file your 990 with the IRS...

- Also affects things like yearly budget preparation, staff reviews, etc...
 - 9. Establish and adopt the “parliamentary” procedures you will follow in your meetings (i.e. Roberts’ Rules of Order), if this is not in your bylaws;
 - 10. Assign duties and draft job descriptions.
 - 11. Carry on other “initial business” of the corporation
- **And REMEMBER** to keep meeting minutes of all the work done at this meeting, and future meetings. In addition to being required by state law, these minutes (and the decisions set forth in the minutes) become PROOF and RECORD of decisions, and form part of the binding rules and policies for the organization.
- g. Developing Vision and Mission Statements
- Some organizations have one, many organizations have both
 - These are KEY for the formation of so many other documents, policies, activities, etc. (And you need them when you go to apply for tax exempt status from the IRS.)

Why do we need a mission statement?

<http://www.boardsource.org>

Every organization needs to define its fundamental purpose, philosophy, and values. The mission statement answers the basic question of why the organization exists, and describes the needs the organization was created to fill. Without the guidance of a mission statement, programmatic priorities are difficult to establish. (My addition) Also, adherence to your mission statement will help you stay true to the ideas and programs that form the basis for your formation as a nonprofit entity, and tax exempt entity – thus helping make sure you stay in compliance with those laws and agencies that allow you to be formed and operating that way.

The mission statement provides the basis for judging the success of an organization and its programs. It helps to verify if the organization is on the right track and making the right decisions. It provides direction when the organization must adapt to new demands. Attention to mission helps the board adhere to its primary purpose and serves as a touchstone for decision

making during times of conflict. The mission statement can also be used as a tool for resource allocation. A powerful mission statement attracts donors, volunteers, and community involvement.

Vision Statements (<http://www.boardsource.org>)

Through a vision statement, a nonprofit defines its ultimate motivation, its dreams, and its image of a desired future. A vision statement describes the ideal situation if the organization could fulfill its utmost wish.

Mission Statements (<http://www.boardsource.org>)

1. Is it short and sharply focused? Would it fit on a T-shirt?
2. Do board members and staff know the mission statement? Is it clear and easily understood?
3. Does it define why you do what you do?
4. Does it provide direction for doing the right things?
5. Does it inspire your passion and commitment?
6. Does it say, in the end, what you want to be remembered for?
7. Have you revisited your mission statement in the last three years? (YOU SHOULD)

****Note** that the board of directors should formally vote on and adopt the mission and/or vision statements for the organization at one of the board meetings that occurs early in the life of the organization.

- Food for thought: Look at what the IRS checks for in the way of governance practices and information when they examine an organization:
 - See: http://www.irs.gov/pub/irs-tege/governance_check_sheet.pdf

h. Obtaining an Employer Identification Number (EIN)

[https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-\(EIN\)-Online](https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Apply-for-an-Employer-Identification-Number-(EIN)-Online)

What is an Employer Identification Number?

<http://www.boardsource.org>

All nonprofit corporations and exempt organizations, with **or** without employees, **must** have a nine-digit Employer Identification Number (EIN). This number could be considered the Social Security number for your organization. It is the reference number that you must use whenever communicating with the federal government. Form SS-4 is the form used to apply for an EIN.

i. Opening a bank account and establishing check signing procedures

Do this here, at this point in the process, so the check account, and bank account, can be in the name of the nonprofit corporation, and so you are ready to pay fees, costs, etc. that will come up in the rest of the process. You will need to show your certificate of incorporation

- Only real reason to discuss this in a this course is because it is a good example of something that will be part of your “Internal Control Policies”
 - a. For example, the Board should decide: Who can sign checks?
Amounts may matter.
- Related to this, other internal control policies to be developed by staff and reviewed by the Board like who can handle cash, who opens and reviews bank statements, etc.
 - a. Best practice is to have separation between the people who can sign checks, and those that review records, statements, etc.

j. Next step: Filing for Federal tax exemption – 501(c)(3) organization (**Most common type**)

We will be focusing on filing for federal tax exemption as a 501(c)(3) organization, because that is the most common type of tax exempt organization – due to ability to receive tax deductible charitable contributions (KEY aspect to, and attraction of, this kind of organization)

- In case you are wondering about an example of a pretty well known nonprofit, tax exempt organization that is NOT a 501(c)(3) corporation = Sierra Club - they are a 501(c)(4)
 - a. They engage in legislation and candidate advocacy...
 - b. Note on their web site – for donation information:
<http://www.sierraclub.org/giftplanning/family/default.aspx>

- Expect it to take about 6 months for your application to be reviewed, and for a determination to be made
 - a. IRS has to rule on an application within 270 days of the filing of a “substantially completed” Form 1023...

Charitable 501(c)(3) organizations fall into two main groups: private foundations and public charities

- See “Part X” of the **Form 1023** – classification as either a private foundation or public charity
 - <http://www.irs.gov/pub/irs-pdf/f1023.pdf>
- Public charities provide direct services or engage in other program activities to achieve their visions and fulfill their chosen mission or missions. They attract, and rely on, broad public support and contributions from a variety of sources.
- Private foundations are organizations that have assets that come from a single source, which is usually a family, company, or even an individual. There are private, non-operating foundations that distribute funds to public charities, and there are private, operating foundations that distribute funds to their own programs that exist for charitable purposes. (Generally speaking, deductibility of contributions to a private foundation is more limited than contributions to a public charity.)
- For some organizations, the primary distinction between a classification as a public charity or a private foundation is the organization’s source of financial support. Generally, a public charity has a broad base of support while a private foundation has very limited sources of support.
- We are going to focus on 501(c)(3) public charities since they are the most common type of 501(c)(3) organizations (NOTE: in the first paragraph of Part X, it states: “public charity status is a more favorable tax status than private foundation status.”)
 - Note this as part of the “**path of the class**”
 - **Public benefit, nonprofit corporation that goes on to obtain 501(c)(3) tax exempt status as a public charity...**

Key document to consider here: IRS document on applying for 501(c)(3) tax exempt status: <https://www.irs.gov/pub/irs-pdf/p4220.pdf> (relevant sections follow)

Organizations statutorily classified as public charities are:

- Churches
- Schools

- organizations that provide medical or hospital care (including the provision of medical education and in certain cases, medical research)
- organizations that receive a *substantial* part of their support in the form of contributions from publicly supported organizations, governmental units, and/or from the general public
- organizations that normally receive not more than one-third of their support from gross investment income and more than one-third of their support from contributions, membership fees, and gross receipts from activities related to their exempt functions
- organizations that support other public charities

WHO IS ELIGIBLE for 501(c)(3) status?

There are three key components for an organization to be exempt from federal income tax under section 501(c)(3) of the IRC. A not-for-profit (i.e., nonprofit) organization **must be (1) organized and (2) operated exclusively for one or more (3) exempt purposes.**

Anyone remember the “magic language” we talked about above – that should be in your articles of incorporation...?

organized—A 501(c)(3) organization must be *organized* as a corporation, trust, or unincorporated association. An organization’s organizing documents (articles of incorporation, trust documents, articles of association) must: limit its purposes to those described in section 501(c)(3) of the IRC (*see below*); not expressly permit activities that do not further its exempt purpose(s), i.e., unrelated activities; and permanently dedicate its assets to exempt purposes.

operated—Because a substantial portion of an organization’s activities must further its exempt purpose(s), certain other activities are prohibited or restricted including, but not limited to, the following activities. A 501(c)(3) organization:

- must absolutely refrain from participating in the political campaigns of candidates for local, state, or federal office
- must restrict its lobbying activities to an insubstantial part of its total activities (**will discuss this in greater detail on day #2**)
- must ensure that its earnings do not inure to the benefit of any private shareholder or individual (***note problem with a private shareholder or individual benefitting...***)
- must not operate for the benefit of private interests such as those of its founder, the founder’s family, its shareholders or persons controlled by such interests (***note problem with benefit of private interests...***)
- must not operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose, such as a school’s operation of a factory
- may not have purposes or activities that are illegal or violate fundamental public policy

exempt purpose—To be tax exempt, an organization must have one or more *exempt purposes*, stated in its organizing document (i.e. articles of incorporation). Section 501(c)(3) of the IRC lists the following exempt purposes: charitable, educational, religious, scientific, literary, fostering national or international sports competition, preventing cruelty to children or animals, and testing for public safety.

The most common types of 501(c)(3) organizations are charitable, educational, and religious.

CHARITABLE: Charitable organizations conduct activities that promote:

- relief of the poor, the distressed, or the underprivileged
- advancement of religion
- advancement of education or science
- erection or maintenance of public buildings, monuments, or works
- lessening the burdens of government
- lessening neighborhood tensions
- eliminating prejudice and discrimination
- defending human and civil rights secured by law
- combating community deterioration and juvenile delinquency

EDUCATIONAL: Educational organizations include:

- schools such as a primary or secondary school, a college, or a professional or trade school
- organizations that conduct public discussion groups, forums, panels, lectures, or similar programs
- organizations that present a course of instruction by means of correspondence or through the use of television or radio
- museums, zoos, planetariums, symphony orchestras, or similar organizations
- nonprofit day-care centers
- youth sports organizations

RELIGIOUS: The term *church* includes synagogues, temples, mosques, and similar types of organizations. Although the IRC excludes these organizations from the requirement to file an application for exemption, many churches voluntarily file applications for exemption. Such recognition by the IRS assures church leaders, members, and contributors that the church is tax exempt under section 501(c)(3) of the IRC and qualifies for related tax benefits

- Other religious organizations that do not carry out the functions of a church, such as mission organizations, speakers' organizations, nondenominational ministries, ecumenical organizations, or faith-based social agencies, may qualify for exemption, but these organizations must apply for exemption from the IRS

How does an organization become tax-exempt as a 501(c)(3) organization?

<https://www.irs.gov/Charities-&-Non-Profits/Application-for-Recognition-of-Exemption-1>

To be recognized as exempt from federal income taxation, most organizations are required to [apply for recognition of exemption](#). For section 501(c)(3) organizations, the law provides only [limited exceptions](#) to this requirement. Applying for recognition

of exemption results in formal IRS recognition of an organization's status, and may be preferable for that reason.

QUESTION: when you complete the process to become a nonprofit corporation, are you then also a tax exempt organization?

Do all nonprofits have to apply for recognition of tax exemption (in order to be tax exempt)?

<http://www.boardsource.org> (See directly above, too, for "limited exceptions" to the filing/application requirement...)

No. Three groups are automatically exempt from filing an application: churches, organizations with gross receipts of less than \$5,000, and affiliates of existing nonprofits covered by group exemption. All other nonprofits must file if they want to be formally recognized by the IRS as tax-exempt organizations.

Organizations applying for tax-exempt status must submit two applications: First, if they have not previously received an Employer Number (EIN), they must apply for one, and second, an application for recognition of exemption. To be recognized as a tax exempt organization under section 501(c)(3), Complete **IRS Form 1023** – "*Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*".

The IRS sometimes recognizes a group of organizations as tax-exempt if they are affiliated with a central organization. This avoids the need for each of the organizations to apply individually. See [Publication 4573](#), *Group Exemptions*, for more information.

- As an example, Habitat for Humanity St. Louis is an affiliate of Habitat for Humanity International...

When to File (from IRS guide on applying for 501(c)(3) tax exempt status: <http://www.irs.gov/pub/irs-pdf/p4220.pdf>) (see p. 11)

"Most organizations must file this application by the end of the 27th month after they were legally formed."

Used to say:

- Most organizations must file Form 1023 by the end of the 15th month after they were created, with a 12-month extension available.

An organization that files its application before the deadline will be recognized as tax exempt under section 501(c)(3) of the IRC from the date of its creation.

(Question: what do you think the benefit of this is?)

An organization that files an application after the deadline may be recognized as tax exempt from the date of the application; it may also request exemption retroactive as of the date of creation.

(See the instructions to Form 1023 for more information.)

- Review of IRS Form 1023

As background: Form 1023 was revised in 2004 to make it less burdensome (??) and to identify unscrupulous applicants

New questions are designed to address areas where the IRS has uncovered abuses in the past. For example, the form asks about compensation arrangements and asks whether the applicant has adopted a conflict of interest policy (although this is NOT required)

- The whole point of all the hurdles and hoops that the IRS requires: make sure that the organization applying for this exemption REALLY is trying to “do good” or benefit the “common good”, and not just being set up as a scam to benefit a group or individual
 - IRS wants to make sure that people are not trying to dodge paying taxes, but also working to ensure that donors and their money are protected, too.
 - This is why the IRS even cares about what will happen to the assets of the tax exempt organization it chooses to voluntarily dissolve...
 - No personal or private enrichment...

- Make sure another charitable purpose is helped out...
- This overarching POLICY is key to all of this paperwork, to all of these rules, etc.

While an organization's Form 1023 is waiting for approval from the IRS, the organization may operate as a tax-exempt organization.

Although donors have no assurance that contributions are tax-deductible for federal income tax purposes until the application is approved, contributions made while an application is pending would qualify if the application is approved. However, if the application is disallowed, contributions would not qualify. Moreover, the organization itself would be liable for filing federal income tax returns unless its income is otherwise excluded from federal taxation.

The EO website (www.irs.gov/eo) provides information about how to find out about the status of an application for tax-exempt status. (EO stands for "Exempt Organizations")

- See: <https://www.irs.gov/charities-non-profits/charitable-organizations/wheres-my-application>
- Note application fee (called "user fee" by the IRS) for filing form 1023: https://www.irs.gov/charities-non-profits/form-1023-amount-of-user-fee?_ga=1.165362751.1871230375.1478627745
 - Notice fees differ based on amounts of annual gross receipts – and if you use the "cyber assistant" (not yet available...)

INSTRUCTIONS for Form 1023: <https://www.irs.gov/pub/irs-pdf/i1023.pdf>

- VITAL document – READ THIS FIRST
- Note that there are many "definitions" at the end, and they are a useful source of information (i.e. "Bingo")
- **Key tip in the instructions:** think about your past, present and planned activities as an organization (page 3). Many items in the 1023 application form are written in the present tense, but this application applies to your future planned activities, too. So a good deal of contemplation about the hoped for future of your organization should be undertaken prior to the time of filing this application for tax exempt status.

IRS Form 1023: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue code

<http://www.irs.gov/pub/irs-pdf/f1023.pdf>

- Not going to go through the entire form here, because so much of what you fill out is dependent on specific mission, organization, etc.
- All of the general principles, laws, and policies we've discussed in forming a tax exempt 501(c)(3) organization culminate in this form and the questions it asks and the info it requires
 - For example, Part III on page 3 sets out and asks for the required provisions in your organizing document
 - POP QUIZ – what is your likely “organizing document” – the one we've talked most about so far??
 - We've talked about the things that are required in this section of the document
 - One thing to especially note is the “narrative” you will have to write up. (Part IV)
 - Tip from Brad Smith, Nonprofit Information Resource Manager for the St. Charles Public Library system: you should bullet point your narrative – not write it out in paragraph form. He believes that putting your narrative in bullet point format leads to quicker review by the IRS.
 - Another thing worth calling out here is the checklist at the end of the document of things you will need to have and do in order to file the 1023 (pages 29 and 30 of the pdf)
 - Probably useful/wise to look at the checklist FIRST to see if anything is going to be an issue...
 - In case it comes up: If you are not forming a 501(c)(3) – then the form you use is 1024... Note this info in publication 557, for example:
<http://www.irs.gov/pub/irs-pdf/p557.pdf>
 - Note IMPORTANT recent developments:
 - (1) The IRS now offers the chance to apply for 501(c)(3) tax exempt status via the 1023-EZ

- See: <http://www.irs.gov/uac/Newsroom/New-1023-EZ-Form-Makes-Applying-for-501c3Tax-Exempt-Status-Easier-Most-Charities-Qualify>
- See also: <http://bryancavecharitylaw.com/irs-finalizes-new-form-1023-ez-streamlined-application/#more-2770>
 - I think a good number of entities that want to be 501(c)(3) organizations will not qualify to use the 1023-EZ based on the determination checklist required in the instructions. See here: <http://www.irs.gov/pub/irs-pdf/i1023ez.pdf>
- Even though this new, easier form exists, I would recommend that if you really want to be a well organized tax-exempt entity, you still consider filing the full 1023, and not the 1023-EZ. **Why would I recommend that?**

(2) **Electronic filing of the 1023:**

- from: <https://www.irs.gov/charities-non-profits/applying-for-tax-exempt-status>
- more specifically from: <https://www.irs.gov/instructions/i1023>
- see also: <https://www.pay.gov/public/form/start/704509645>

How to File

As of January 31, 2020, the IRS requires that Form 1023 applications for recognition of exemption be submitted electronically online at [Pay.gov](https://www.pay.gov)

The IRS will provide a 90-day grace period during which it will continue to accept paper versions of Form 1023. To submit Form 1023, you must:

1. Register for an account on Pay.gov.
2. Enter "1023" in the search box and select Form 1023.
3. Complete the form.

If you are successful you will get a favorable IRS determination letter

<http://www.boardsource.org>

A determination letter is arguably the most important legal document your organization possesses. The IRS sends you this letter after you have successfully applied for the recognition of your organization's tax-exempt status. In this document the IRS indicates under which section of the Internal Revenue Code your organization is qualified.

For instance, if you file Form 1023, you expect to be recognized as a 501(c)(3) tax-exempt organization. In order to avoid revocation of your status, your organization must continue operating according to the manner you described in your application.

The determination letter is the only official document and proof that your organization is recognized as a tax-exempt organization. Keep it in a safe place.

(MY Addition) MANY donors, grant providers, and other entities will ask to see a copy of your determination letter as proof of your nonprofit, tax exempt 501(c)(3) status, as part of the "due diligence" they undertake in investigating or reviewing your organization.

If you are not successful and the IRS denies your application for tax exempt status...

- There are opportunities for appeal and review both internally at the IRS, and in a court of law

- **QUESTION:** How many applications for tax exempt, public charity status do you think the IRS approves each year, in terms of a percentage – i.e. 100%, or 50%, or 25%, etc.?
 - Study from Stanford seems to indicate that the IRS approved 99 percent of the applications for public charity status in 2008
 - See NYT article on this:
http://www.nytimes.com/2009/12/06/us/06charity.html?_r=3&sq=nonprofit&st=cse&scp=5&pagewanted=all%3E%20&sq=nonprofit&st=cse&scp=5&pagewanted=all
 - Is this too high a rate of approval?? Is meaningful review going on? Or is the application process itself so tough/meaningful that it necessarily results in only those organizations that really should be tax exempt, public charities getting approved?

- Also note related info in the 2010 data book:
<http://www.irs.gov/newsroom/article/0,,id=237393,00.html>

- k. Consideration of legal issues related to other “set up” activities:
 - i. Office space and Office equipment
 - Lease = contract
 - If you purchase, terms of the purchase contract...
 - ii. Get insurance coverage
 - You have to have it, and you have to have multiple kinds of policies, depending on what you do as an organization...
 - Don't think for a minute that because you are a nonprofit organization that you don't need insurance...

VERY IMPORTANT TO UNDERSTAND:

There is not any “blanket immunity” from liability for the nonprofit organization itself in Missouri – in other words, just because you are a nonprofit, and you are out there “trying to do good” doesn't give the organization itself an automatic, or blanket, immunity from liability. The nonprofit can be sued for negligence, etc. Don't believe or assume that just because you are a nonprofit organization trying to “do good” that you won't be sued if you are liable for injury or harm...

There used to be a kind of blanket immunity for nonprofit organizations in Missouri, but court decisions in the 1960's took away that blanket immunity

- See, for example: Hill v. Boles 583 S.W. 2nd 141 MO 1979
- Also: Abernathy v. Sisters of St. Mary's 446 S.W. 2nd 599 (Mo. Banc 1969), and Garnier v. St. Andrew Presbyterian Church of St. Louis 446 S.W. 2nd 607 (Mo banc 1969) (APPARENTLY these two cases were the death-knell of the doctrine of charitable immunity in MO)

- Forms and policies of insurance to especially consider, depending on what you do, and how you operate:
 - Commercial general liability (CGL)
 - Directors and officers insurance (D&O)
 - Workers compensation (workers comp)
 - Volunteer medical
 - Auto
 - Premises liability
 - Talk to your broker about others – and be aware of what you do now, and what you will do in the future

- Growth and changes can affect how much insurance you should have, the limits you should purchase, the premiums you pay, and the types of insurance you should have...

Individual board members and volunteers have some good forms of protection from liability and lawsuits in other ways – but that is a class for another day...

iii. Payroll system and accounting system

- No post-it notes
- Formality and adherence to accounting principles and practices shows good governance and management
- Also helps you meet required record keeping guidelines to maintain your 501(c)(3) status (*see below*)
- MO law for nonprofit corporation requires “A corporation shall maintain “appropriate” accounting records”.
 - See: <http://revisor.mo.gov/main/OneSection.aspx?section=355.821&bid=19304&hl=>

iv. Pursue exemption from state sales tax and local property tax

- For exemption from state sales tax – apply to the Missouri (or IL or other state) Department of Revenue
 - a. Benefit: your organization will not pay sales tax when purchasing items, and may not be required to collect sales tax in some instances
 - b. See: <http://dor.mo.gov/forms/1746.pdf>
 - More generally: <http://dor.mo.gov/forms/>
- For exemption from local property tax – go to the County or city Assessor’s office, and/or collector of Revenue or Department of Revenue and ask for information
 - a. Process often controlled by a Board of Equalization that considers requests for property tax exemption:
 - See, for example, St. Louis County: <http://stlouisco.com/YourGovernment/CountyDepartments/Revenue/BoardofEqualization>
 - b. Benefit: if your organization actually owns any property, you can obtain property tax exemption and not pay property taxes
 - c. If you rent space for your office, etc., this will only apply if part of your lease payment covers property taxes...

v. Possible need to complete charitable solicitation registration

- **Other states?**

- In MO, you don't have to register if you are a 501(c)(3) organization: <https://www.ago.mo.gov/divisions/consumer/check-a-charity/for-nonprofits/registration-faqs>

vi. Hire staff (??)

- Will you have paid staff right off the bat, or will you be an all-volunteer organization for some time?
- When you do have paid staff, **MAKE SURE** that you withhold taxes, etc. properly from their paychecks...
 - a. Failure to adequately and properly withhold amounts is an easy and common way to get in trouble with the IRS
 - b. Also, don't be fooled into thinking you can hire an "independent contractor" or "consultant" to run your organization and thereby avoid having to withhold taxes, etc.
 - While you may consider someone an "independent contractor", the IRS may consider them to be an "employee" for whom you should be withholding taxes, etc.
 - For more on this, see: <https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-Self-Employed-or-Employee>
- When you do have paid staff, bear in mind that employment law issues, and issues of discrimination, etc. DO APPLY to nonprofit organizations...
 - I just want to highlight this concern here... Our program actually has a full class on staff management issues for nonprofits...
 - Charitable organizations are NOT exempt from the extensive body of state, federal and local labor law regulating employment protections and practices

vii. IT resources

- See www.techsoup.org
- Also Google for nonprofits (which I have not personally used, but...): <http://www.google.com/nonprofits/index.html>

III. Corporate **Governance** and Management, and how to keep your tax exempt status

- a. IRS Governance – recommended and required practices

Key documents to consider here:

- (1) Specific information on proper operation of a 501(c)(3) public charity = [Compliance Guide for 501\(c\)\(3\) Public Charities](https://www.irs.gov/pub/irs-pdf/p4221nc.pdf) at: <https://www.irs.gov/pub/irs-pdf/p4221nc.pdf>
- (2) [IRS document on applying for 501\(c\)\(3\) tax exempt status:](http://www.irs.gov/pub/irs-pdf/p4220.pdf) <http://www.irs.gov/pub/irs-pdf/p4220.pdf> (relevant sections follow)

What responsibilities accompany 501(c)(3) status?

While conferring benefits on 501(c)(3) organizations, federal tax law also imposes responsibilities on organizations receiving that status.

Recordkeeping

Section 501(c)(3) organizations are required to keep books and records detailing all activities, both financial and nonfinancial. Financial information, particularly information on its sources of support (contributions, grants, sponsorships, and other sources of revenue) is crucial to determining an organization's status.

Filing Requirements

Annual Information Returns – Organizations recognized as tax exempt under section 501(c)(3) of the IRC may be required to file an annual information return: Form 990, Form 990-EZ, or Form 990-PF along with Schedules A and B. Certain categories of organizations are exempted from filing Form 990 or Form 990-EZ including churches and very small organizations. See the instructions with each of these forms for more information.

Annual Electronic Notice – Small organizations are not required to file Form 990 if their gross receipts are normally \$25,000 or less. Beginning in 2008, however, these organizations must submit an annual electronic notice using Form 990N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ*, also known as the e-Postcard. The e-Postcard can only be filed electronically; there is no paper version. For more information about the e-Postcard, go to www.irs.gov.

Unrelated Business Income Tax – In addition to filing Form 990, 990-EZ, or 990-PF, an exempt organization must file Form 990-T if it has \$1,000 or more of gross receipts from an unrelated trade or business during the year. (left this in here to briefly discuss...)

Disclosure Requirements

Public Inspection of Exemption Applications and Returns – Section 501(c)(3) organizations must make their application (Form 1023) and the three most recent annual returns (Form 990 or Form 990-EZ) available to the public, upon request and without charge (except for a reasonable charge for copying). The IRS also makes these documents available for public inspection and copying. Private foundation returns (Form 990-PF) filed on or after March 13, 2000, are subject to the same disclosure rules. These documents must be made available at the organization's principal office during regular business hours. Upon request, an organization must furnish copies of the application and the three most recent annual returns. The requests may be made in person or in writing.

Charitable Contributions— Substantiation and Disclosure – Organizations that are tax exempt under section 501(c)(3) of the IRC must meet certain requirements for documenting charitable contributions. The federal tax law imposes two general disclosure rules: 1) a donor must obtain a *written acknowledgment* from a charity for any single contribution of \$250 or more before the donor can claim a charitable contribution on his/her federal income tax return; 2) a charitable organization must provide a *written disclosure* to a donor who makes a payment in excess of \$75 partly as a contribution and partly for goods and services provided by the organization. See Publication 1771, *Charitable Contributions – Substantiation and Disclosure Requirements*, for more information.

Recordkeeping Requirements (donors)

A donor cannot claim a tax deduction for any contribution of cash, a check or other monetary gift made on or after January 1, 2007, unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity, the date of the contribution, and the amount of the contribution.

b. The Board of Directors – duties, liabilities, responsibilities, and policies

- For more on this topic, I highly recommend you contact Volunteer Lawyer and Accountants for the Arts (VLAA) and ask for a copy of their “Guide to Board Duties and Liabilities”. Great, easy to read, practical information
 - See: <http://www.vlaa.org/index.php?view=Publications>

Boardmember Responsibilities (expanding on what was discussed briefly before)

Ten Basic Responsibilities of Nonprofit Boards

<http://www.boardsource.org>

1. Determine the organization's mission and purpose. It is the board's responsibility to create and review a statement of mission and purpose that articulates the organization's goals, means, and primary constituents served.
2. Select the chief executive. Boards must reach consensus on the chief executive's responsibilities and undertake a careful search to find the most qualified individual for the position.
3. Provide proper financial oversight. The board must approve the annual budget and ensure that proper financial controls are in place.

The need for an internal audit, or internal audit committee

<http://www.boardsource.org>

In carrying out its oversight responsibilities, the board should regularly review the organization's policies and procedures on how it does business and manages its financial affairs. This task can be delegated to the audit or finance committee.

The committee should guarantee that an adequate internal control mechanism is in place to ensure that the organization is:

- using generally accepted accounting methods
- complying with applicable laws and regulations (like UPMIFA – see below)
- providing reliable financial information
- operating effectively and efficiently

More specifically, an internal audit ensures that proper policies are in place to segregate financial duties, protect cash receipts, require second signatures on large checks, keep track of inventory, require an efficient bidding process, produce timely reports, and maintain accurate recordkeeping. Appropriate internal controls create a firm base for an effective outside financial audit.

General example: The Board needs to be aware of state law, or other laws/regulation that set forth standards for financial practices, and money or investment management:

- **Specific example:** In Missouri: UPMIFA (Uniform Prudent Management of Institutional Funds Act)
 - The Act, which has been adopted as law by the majority of U.S. states (including Missouri), requires sweeping changes in the way organizations solicit, track, spend, and account for contributions designated for endowment purposes.
 - The whole point of the law is to encourage the prudent management of endowments.
 - If applicable, the finance committee or audit committee of the board, as part of its efforts at good governance, and to ensure proper financial oversight, should evaluate, modify, and/or implement policies and procedures as needed to comply with the mandates of UPMIFA (or other, similar type

legislation or laws that affect financial matters for the organization).

4. Ensure adequate resources. One of the board's foremost responsibilities is to secure adequate resources for the organization to fulfill its mission.
5. Ensure legal and ethical integrity and maintain accountability. The board is ultimately responsible for ensuring adherence to legal standards and ethical norms.
6. Ensure effective organizational planning. Boards must actively participate in an overall planning process and assist in implementing and monitoring the plan's goals.
7. Recruit and orient new board members and assess board performance. All boards have a responsibility to articulate prerequisites for candidates, orient new members, and periodically and comprehensively evaluate their own performance.
8. Enhance the organization's public standing. The board should clearly articulate the organization's mission, accomplishments, and goals to the public and garner support from the community.
9. Determine, monitor, and strengthen the organization's programs and services. The board's responsibility is to determine which programs are consistent with the organization's mission and to monitor their effectiveness.
10. Support the chief executive and assess his or her performance. The board should ensure that the chief executive has the moral and professional support he or she needs to further the goals of the organization. [See below with respect to info about setting compensation for a paid CEO/ED...](#)

Some basic legal definitions and concepts to understand from this point on:

Fiduciary Duty: A duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person.

A Fiduciary is a person having a duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking.

A Board member, or Director, or Officer of a nonprofit, has a fiduciary duty to act for the benefit of the nonprofit, over his or her own interest.

The Duty of Care and the Duty of Loyalty the Board member has to the nonprofit flow from this fiduciary duty.

Conflict of Interest: In the context of a Director or Officer of a nonprofit, a situation in which a fiduciary exploits a relationship for personal benefit, contrary to the obligation and absolute duty to act for the benefit of another. When an individual has the responsibility to represent another person, a clash between professional obligations and personal interests arises if the individual tries to perform that duty while at the same time trying to achieve personal gain.

Liability: the condition of being actually or potentially subject to a legal obligation; legal responsibility for one's acts or omissions.

Indemnification: Compensation for loss or damage, or, sometimes, for liability before loss even occurs; to provide security for financial reimbursement to an individual in case of a specified loss incurred by the person.

Legal responsibilities of nonprofit boards

Per the American Bar Association, in section 8.30(a) of its Model Nonprofit Corporation Act: A director shall discharge his or her duties as a director:

1. In good faith;
 2. With the care an ordinary prudent person in like position would exercise under similar circumstances (note that you are not supposed to be an “expert”); and
 3. In a manner the director reasonably believes to be in the best interest of the corporation
- Interestingly, MO law does NOT actually have a section in Chapter 355 mirroring or setting out these standards in the Model Act
 - But the standards are applicable and applicable under MO law via other provisions of the Missouri Nonprofit Corporation Act. For example, if the director is to be indemnified by the nonprofit corporation – 355.476 allows indemnification if the director “acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation.”

<http://www.boardsource.org>

Under well-established principles of nonprofit corporation law, a board member must meet certain standards of conduct and attention in carrying out

his or her responsibilities to the organization. These standards are usually described as the duty of care, the duty of loyalty and the duty of obedience.

Duty of Care

The duty of care describes the level of competence that is expected of a board member, and is commonly expressed as the duty of "care that an ordinarily prudent person would exercise in a like position and under similar circumstances." This means that a board member owes the duty to exercise reasonable care when he or she makes a decision as a steward of the organization.

- Can be very important to meet and satisfy this duty of care because it may protect you as a director from liability, or allow you the protection of indemnification by the organization in the event of liability (discussed further below)
 - How do you meet this duty (my addition)?
 - **Question: do you have to always make the right decision in order to live up to your duty of care?** NO. "perfect judgment and decisions" are not expected or required
 - Meet the basic responsibilities outlined above
 - Also simple things like ACTUALLY ATTEND the Board and committee meetings, and be engaged and paying attention at those meetings.
 - Don't "rubber stamp" decisions
 - Be informed – read and understand reports, statements, etc. Foster and engage in meaningful discussion.
 - It is ok to rely on statements and data from staff or other board members reasonably believed to be reliable and competent
 - That is the whole reason for the committee structure of a Board, for example – i.e. the chair of the finance committee (usually the treasurer) reports on the status of the organization's finances to the board as a whole at board meetings – and the board has ability to believe him or her and take their word

- In general, and in many cases, even if a board decision later proves to be unwise, directors will not be liable, and the director will probably be found to have met the requisite duty of care, if the decision (1) was made in good faith, (2) was reasonably believed to be in the organization's best interest, and (3) was made with independent and informed judgment.
 - This is commonly referred to as the "business judgment rule" and courts use this standard in many cases to see if a director of a corporation lived up to his or her duty of care

Duty of Loyalty

The duty of loyalty is a standard of faithfulness; a board member must give undivided allegiance when making decisions affecting the organization. This means that a board member can never use information obtained as a member for personal gain, but must act in the best interests of the organization.

- How do you meet this duty (My addition)?
 - Meet the basic responsibilities outlined above
 - Follow conflict-of-interest and confidentiality policies (see below)
 - Maintain confidentiality

Duty of Obedience (often considered to be part of the Duty of Care and Duty of Loyalty)

The duty of obedience requires board members to be faithful to the organization's mission. They are not permitted to act in a way that is inconsistent with the central goals of the organization. A basis for this rule lies in the public's trust that the organization will manage donated funds to fulfill the organization's stated and established mission.

Safeguarding against organizational conflict of interest
<http://www.boardsource.org>

A conflict of interest occurs when a director has a material, financial, or personal interest in the impending transaction with the corporation.

When the personal or professional concerns of a board member or a staff member affect his or her ability to put the welfare of the organization before personal benefit, conflict of interest exists. Nonprofit board members are likely to be affiliated with many organizations in their communities, both on a professional and a personal basis, so it is not unusual for actual or potential conflict of interest to arise.

- MO law about how to handle conflicts of interest for directors of nonprofit corporations:
<https://revisor.mo.gov/main/OneSection.aspx?section=355.416&bid=19232&hl>
- **Question: can a potential conflict of interest of a board member be approved or waived?**
- Note that conflicts can be approved or waived before they occur– key is for full disclosure, no harm to the nonprofit, and full and detailed consideration and review of possible conflict by the board
- **Generally – how often do you think the Board should be waiving or approving a conflict of interest?** As little or as few times as possible. **Why?** Because the more you do it, the more you look like you are letting a private person benefit at the cost of, or because of, the nonprofit, tax exempt organization.

Why must we be concerned about conflict of interest?

Board service in the nonprofit sector carries with it important ethical obligations. Nonprofits serve the broad public good, and when board members fail to exercise reasonable care in their oversight of the organization they are not living up to their public trust. In addition, board members have a legal responsibility to assure the prudent management of an organization's resources. In fact, they may be held liable for the organization's actions. A 1974 court decision known as the "Sibley Hospital case" set a precedent by confirming that board members can be held legally liable for conflict of interest because it constitutes a breach of their fiduciary responsibility.

(My addition) Nonprofit organizations rely on community support and must be wary of creating the impression that money or resources received from the general public are somehow profiting board members.

Further, as we've discussed, to maintain federal tax exempt status as a 501(c)(3) corporation, a nonprofit must avoid private inurement, private benefit, and self-dealing. There cannot be any indication that a board member or staff member is somehow siphoning off part of a charity's income or assets for personal use.

REMEMBER where conflict of interest concerns fell on Attorney General Office's top-ten list of things investigated by that office...?

Does conflict of interest involve only financial accountability?

No. Conflict of interest relates broadly to ethical behavior, which includes not just legal issues but considerations in every aspect of governance.

- Potential example: hiring policies (i.e. no nepotism...)

What can we do to prevent conflict-of-interest situations?

Self monitoring is the best preventative measure. Institute a system of checks and balances to circumvent actual or potential conflict of interest, beginning with well defined operating policies on all matters that might lead to conflict. Most importantly, create a carefully written conflict-of-interest policy based on the needs and circumstances of the organization. Ask each board and staff member to agree in writing to uphold the policy. A conflict of interest policy should be reviewed regularly as part of board self assessment.

Question: as a practical, real life matter, how easy do you think it is to confront a fellow board member, or a staff member, about a possible conflict of interest?

What should be included in a conflict-of-interest policy?

A policy on conflict of interest has three essential elements:

1. FULL DISCLOSURE.

Board members and staff members in decision-making roles should make known their connections with groups doing business with the organization.

This information should be provided annually. Further, on an ongoing basis,

directors and staff members should disclose to the board any personal or financial interest they have that might be impacted by a potential board action.

Use of a disclosure form (<http://www.boardsource.org>)

An essential part of a strong conflict-of-interest policy is a disclosure form. This is a document that every board member should fill out annually, listing all of his or her professional, financial, and personal affiliations that might affect his or her independent decision-making capacity during board service. This document serves as a guide to determine conflict of interest when specific issues are handled by the board. The chair should regularly review the documents.

2. BOARD MEMBER ABSTENTION FROM DISCUSSION AND VOTING.

Board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group. **To be safe, the director should probably leave the room during board meetings any time discussion revolves around a potential conflict so the other board members can discuss the issues freely.**

- STAFF MEMBER ABSTENTION FROM DECISION-MAKING.

Staff members who have an actual or potential conflict also should not be substantively involved in decision-making affecting such transactions.

3. If the Board wants to proceed with a transaction that presents a possible conflict, it should do so only after full disclosure, and after specifically finding that the transaction is in the corporation's best interest.

- Should an organization contract with a board member for professional services, such as legal counsel or accounting?

Attorneys, accountants, and other professionals can contribute valuable expertise to a board. Due to the potential for conflict of interest, their contributions should be voluntary. At the very least, a board member who is associated with a firm

competing for a contract should abstain from discussion and voting in the selection process. If a competitive bidding process results in the selection of that board member's firm, he or she should disclose the affiliation and abstain from voting on future board actions connected with that firm's contract with the organization.

Question: What if the board member/director is giving you a really great deal on the cost? Is that enough to allay any concern about a conflict of interest? If it is in fact a conflict, because the board member is being paid, can you, or should you, waive that conflict?

Helpful practice tip: good way to help avoid any appearance of self dealing or conflict or interest with respect to services or goods – get multiple, written bids, and then go with the lowest price. Obviously this is generally a good cost saving and business practice, too.

Something to note: In case not covered/stressed before this point, adoption of a conflict of interest policy is **not** required to obtain tax exempt status from the IRS. However, the IRS clearly encourages organizations to have a policy in place, and the instructions for form 1023 even include a sample policy (see below).

- **Further,** when you file your form 1023, if you answer that you do not have a conflict of interest policy, you will have to explain how compensation and business deals are not influenced by persons with conflicts.

QUESTION: why doesn't the IRS just require that organizations seeking or maintaining tax exempt status to have a conflict of interest policy?

Bear in mind: just because IRS does not require it, some funders, grants, etc. may require it, and it is a generally accepted best practice to have one.

IRS has a recommended conflict of interest policy: As Appendix A of the instructions form for the 1023: <http://www.irs.gov/pub/irs-pdf/i1023.pdf>

- Another good source for a sample conflict of interest policy (and other policies) is the local Volunteer Lawyers and Accountants for the Arts (VLAA)

- See: <http://www.vlaa.org/index.php?view=Sample-Policies>
- Some of these policies need some tweaking because they are meant for arts organizations, but they can be easily modified...

If your conflict of interest policy is not included in your bylaws: Your conflict of interest policy should have space for the board secretary's signature and the date it was adopted by the board of directors at the end. Also, keep handy a copy of the board meeting minutes recording where the conflict of interest policy was discussed, reviewed, and adopted.

So what's the downside if you don't live up to your duty of loyalty, follow a good conflict of interest policy, etc.?

In MO: Nixon v. Lichtenstein, 1997 case resulting from legal action by MO Attorney general Jay Nixon against a charitable foundation and its board members for, among other things, payment and receipt of compensation, and use of corporate funds.

- Example of what can happen when directors ignore their duty of loyalty and seek to profit for themselves, and to the detriment of the nonprofit corporation.

2 points to make here – because this point is as good a time as any...

- Nonprofit corporations must have a policy insuring that documents relevant to an investigation or litigation will not be destroyed
 - (form 990, discussed below, asks if a document retention and destruction policy exists in Part VI– see below for link to form)
 - Possibly a good thing to put into your bylaws – amend your bylaws to include
- See records retention info in MO statutes, too: (some of the things that a nonprofit corporation “shall” keep, and “shall” maintain)
 - <http://revisor.mo.gov/main/OneSection.aspx?section=355.821&bid=19304&hl=&retry=y>
 - How long should you, or must you “retain records”?
 - Varies on the type of record
 - For example, per MO statute above, nonprofit corporation shall keep at its office a copy of minutes of meetings of “members” for the past 3 years

- As a general rule, if you want to be safe, keep records, documents, files, etc. for 7 years – that seems to be the outer limits for most regulations along these lines
- Sample document retention and destruction policy:
<http://www.vlaa.org/index.php?view=Sample-Policies>
- Nonprofit corporations must also have “Whistleblower” protection, and a means for reporting questionable financial practices are also required (form 990 asks if one exists in Part VI– see below for link to form)
 - QUESTION: what is a “whistleblower”?
 - Someone who takes a bad corporate act, policy, or occurrence to “higher-ups” in the organization to reveal the problem, and, presumably, have it be dealt with and reported as needed
 - Good place to have your whistleblower policy is in your employee handbook – make sure employees know about it, but make sure it gets discussed at the board level, too (again – VALUE of well kept minutes of meetings of the board of directors)
 - NOTE that if someone is fired for revealing wrongdoing, they can have a VERY STRONG lawsuit against the corporation (for-profit or non-profit) for damages
 - Whistleblower lawsuit example from the media:
 - Summary:
http://www.nonprofitquarterly.org/index.php?option=com_content&view=article&id=4436:nonprofit-newswire--whistleblower-fired-by-nonprofit-after-fraud-reported&catid=155:daily-digest&Itemid=137
- Consideration of all these duties and responsibilities leads us to the best tool the federal government has to determine if your organization and board are living up to the duties and responsibilities of a tax exempt organization on a continuing basis...

c. Review of IRS Form 990 Annual Information Return

- **CRUCIAL** document and requirement for the ongoing life of your tax exempt 501(c)(3) organization
- Question: does every 501(c)(3) tax exempt organization have to file some version of a 990 Annual Information Return with the IRS? Almost

- a. Some limited exceptions
 - b. See, for example, <http://www.irs.gov/pub/irs-pdf/p1828.pdf>, “Tax Guide for Churches and Religious Organizations”
 - c. Bottom of page 22 shows some of the “exceptions to file form 990, 990-EZ, and 990-N (for example, “Churches” do not have to file...)”
 - d. See also pages 4 and 5 of the instructions for the 990 on who must file, and which organizations are not required to file the 990 or 990-EZ: <http://www.irs.gov/pub/irs-pdf/i990.pdf>
- **Depending on the size of your organization, your gross receipts, and your total assets, there are different versions of form 990 you will have to file**
 - **Most 501(c)(3) tax exempt organizations have to file some form of the 990 each year (990, 990 EZ, 990 N)**
 - For example, per page 4 of the 2009 instructions for form 990 – which organizations should file the 990 EZ... see link below
- But, in general:

What is IRS Form 990?

<http://www.boardsource.org>

Form 990 is an annual information return — an annual 'tax' form — that nonprofits file with the IRS. This public document provides information that allows the IRS to determine whether the organization continues to fill the requirements for its tax-exempt status.

Accountability and transparency are keys to retaining public trust, and nonprofits can accomplish it by providing easy and open access to this document.

Form 990 explains the mission and program activities of the organization. The organization's financial information details revenues, expenses, and net assets. It is also necessary to provide financial compensation information. Since the latest revision of the Form (2008), nonprofits also need to report on their various [governance practices](#).

- We won't review the entire form here, but, in sum:
- It's not just about \$ (although that is a BIG part of the info needed on the form 990), it's about the way you operate, govern and manage your organization and its assets

- It is a tool the IRS uses to make sure you are meeting all the requirements that allow you to maintain your tax exempt status
- **The 990 is, in and of itself, a “road map” to good governance and oversight – if the IRS cares about these things EACH YEAR, your board of directors should care about these things EACH YEAR...**
- If you have to file some form of the 990, you have to file one every year
- We have to expect the IRS is going to give more and more scrutiny to the governance of nonprofit organizations because of (1) the scope of the nonprofit sector, (2) the TRILLIONS of dollars in the nonprofit sector, (3) the good work done by the nonprofit sector, and (4) the number of people employed in the nonprofit sector
- Instructions for form 990 (as example): <http://www.irs.gov/pub/irs-pdf/i990.pdf>
Form 990 itself: <http://www.irs.gov/pub/irs-pdf/f990.pdf>
(**AGAIN, REMEMBER** – there are different forms of the 990 you may need to use depending on your “size” (amount of gross receipts), etc.)
 - 990 EZ: <http://www.irs.gov/pub/irs-pdf/f990ez.pdf>
 - Instructions: <http://www.irs.gov/pub/irs-pdf/i990ez.pdf>
 - 990-N: <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>
- Since it is partially a review of your policies and procedures, it is almost as much a legal review of your organization as a financial/accounting review
 - For example, Part III of the form is a statement and description of program service accomplishments
 - The IRS is checking to make sure you are still working towards your **exempt purpose**
 - Another example of “legal review” by the IRS – Part VI looks at your governance, management and disclosure policies and practices

- If you want to start up a tax exempt 501(c)(3) organization, and you want to look ahead to make sure you follow the proper policies and procedures needed in order to keep that tax exemption once you get it, good place to look is at the form 990!!! Because that is the primary tool the federal government uses to check on you in the future...
- **QUESTION:** is there a law or regulation that requires the governing body of the tax exempt organization (i.e. its board of directors) to review the form 990 return prior to, or even after, submittal of the form to the IRS??
 - Answer: **no** – there isn't any law or regulation requiring review by the governing body prior to...
 - Although you should note that the IRS does sort of ask about this in question 11 of Part VI – where it asks if a copy of this form 990 was given to all members of the governing body before filing of this form with the IRS
 - Why not? Why don't we make them all review it and sign off on it? Wouldn't this necessarily force board members to be more engaged, knowledgeable, etc.?
 - While it is not required, it clearly is a “best practice”... – which leads us to consideration of other “best practices”

d. Review of other “best practices”

How big should your board of directors be?

In most states, the laws dictate the minimum size for nonprofit boards. Usually three is the minimum (**as in MO**), but in some states only one or two board members are required. Equally, it is good to remember that laws regulate the minimal legal requirements, not what your optimal goal should be.

When determining the size of your board, start by thinking about what your board needs to accomplish. Optimal board size may vary according to the stage in the board's lifecycle, its mission, its fundraising necessities, and whether it is a national or a local board.

- You should also always have an odd number of board members/positions.
Why?

Whatever the size of your board – the KEY is to make sure you get good GOVERNANCE from its members. Good governance can come from 5 members just as easily as it can come from 25 members (or does a higher number of board members somehow guarantee better governance...???)

Question: what are the benefits to having a “big” board?

More board members can mean:

- (1) more people to spread the word about your organization,
- (2) more people to give you “influence” in the community,
- (3) more people to contribute financially to your organization, or to help you raise funds,
- (4) more people to help you with “skilled” issues like law, accounting, building trades, etc.,
- (5) more people with new or fresh ideas,
- (6) more likely that there will be more scrutiny – more eyes equals more chances to spot...
- (7) etc.

Question: what are the downsides to a “big” board?

Conversely, larger boards can;

- (1) be unwieldy,
- (2) lead to longer board meetings,
- (3) result in more expenses,
- (4) take up more of the Executive Director’s time
- (5) etc.

Frequency of Board meetings

- No specific frequency required
- Think about what the Board needs to know and consider to offer and engage in real, informed, oversight and guidance – to fulfill Duty of Care
 - would be harder to claim that the Board is informed, and meeting its Duty of Care, if only met once or twice a year

Use of an executive committee (<http://www.boardsource.org>)

A governing board may form an executive committee to act on its behalf when a full board meeting is not possible or necessary. An executive committee can be an efficient tool, but not every board needs one. An executive committee should never replace the full board.

Here are some situations that might warrant using an executive committee:

1. You have a large board. A smaller group authorized to act on its behalf under certain circumstances can speed up decision making.
2. Your board members are scattered all over the country. It is easier for a core group to get together during an emergency.
3. Your board regularly needs to take action or make frequent decisions. Certain routine financial matters may not require full board meetings. When necessary, an executive committee can efficiently move things forward.

It is important to remember that, even though your executive committee may be granted special powers in the bylaws, the full board should always validate decisions in its next meeting.

SHOULD Board members have term limits?

- MO Law (Chapter 355) does not require Board members to have term limits
- IRS regulations do not require Board members to have term limits

Question: what are the advantages and disadvantages of term limits for board members?

Advantages and Disadvantages of term limits for your Board members:

<http://www.boardsource.org>

Many boards find that setting term limits can be beneficial. The following are some advantages of a term limit policy:

1. The board has the possibility of working with active community members who can devote only a few years to board service.
2. Bringing diversity onto the board is easier.
3. The board has a built-in balance of continuity and turnover.
4. Passive, ineffective, or troublesome board members can be more easily rotated off.
5. Board members experience a better rotation of committee assignments.
6. A regular infusion of fresh ideas and new perspectives is brought onto the board.

7. The board gains a regular awareness and pays attention to the changing group dynamics.
8. Limits present an opportunity for the board and the retiring board member to reassess a mutual willingness to continue working together with the possibility of enlarging the circle of committed supporters by keeping retired board members involved.
9. (My addition) If there is any dishonesty, malfeasance, or fraud within the organization, bringing in new board members presents greater opportunity to expose such problems – exposure of the organization to fresh faces, fresh review, etc.
10. Limits help avoid perpetual concentration of power within a small group;
11. Limits help ensure maintaining a connection to the constituency served by changing and updating board members to reflect changes in demographics or environmental factors

Disadvantages of term limits:

The downside to having terms limits can mean:

1. the loss of expertise and organizational memory;
2. the board spends more time dedicated to recruitment and orientation; and additional efforts are needed to keep the group cohesive.
3. The Executive Director will likely get “more powerful” if they are around a long time, and board members are not...

Work to have a Diverse Board

- not just racial diversity, but diversity of skills, backgrounds, perspectives, etc.

A word about “Transparency” as a goal and a best practice for the Board

Up to this point, we have touched on the need for nonprofits to be as transparent as possible

- relates to IRS expectations, expectations of the Attorney General, etc.

Transparency is good for a whole host of reasons – and your organization/board should work to be as transparent as possible:

- keeps the “watchdogs” and “regulators” happy

- keeps you and the other board members protected!! If there is no way to hide something, then there is less chance there will be anything to hide...
- helps ensure you are staying committed to furthering the mission of the organization, and not “other interests”
- encourages funders, and encourages people to donate to your organization
- and it might help keep your organization out of the newspapers (for the wrong reasons)

Transparency can be achieved in many ways... easy access to records, easy/open access to meetings, an informative and useful web site, etc...

A word on lobbying and political activity...

- Remember that the degree and kind of political activity allowed to a tax exempt organization depends upon the section of the Internal Revenue Code section under which it enjoys its exemption...
 - Focus on 501(c)(3) organization - See IRS guide: <http://www.irs.gov/pub/irs-pdf/p4220.pdf>
- Absolute prohibitions: remember that, per IRS regulations for the operation of a 501(c)(3) tax exempt organization, such organizations **MUST absolutely refrain** from participating in the political campaigns of candidates for local, state, or federal office
 - Even here, there are a few grey areas about whether you are “participating” in the political campaign of a candidate
 - Permitted activity and gray areas
 - “Other lobbying activities”
 - For example, lobbying for legislation or a “cause” is probably ok, if it is an insubstantial part of the total activities of the organization
 - must restrict its lobbying activities to an “insubstantial part” of its total activities
 - so, a 501(c)(3) organization CAN engage in lobbying, but it must not be a substantial part of its activities
 - what is an “insubstantial part”??
 - when in doubt, keep it as low as possible – especially in relation to the amounts you spend on your avowed purposes and programs
 - lobbying activities constitute 5% of your money, time and resources, probably ok (but no guarantee)
 - lobbying activities constitute 20% of your money, time and resources – probably not ok...??
 - lobbying can be direct contact by the nonprofit with legislators, or urging the general public to contact legislators to propose, support or oppose legislation

- More good IRS info on “Lobbying” generally:
<http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Political-and-Lobbying-Activities>

- what is not lobbying?
 - Making information generally and openly available
 - Discussion of broad problems (i.e. “homelessness” vs. “house bill XXX which would cut funding for homeless shelters...”)
 - Self-defense lobbying, such as direct communication with legislators with respect to issues that may affect the organization’s tax exempt status, for example
 - Communication with members of the executive branch of government, unless the purpose of that communication really is to influence specific legislation

e. Relationship between Executive Director and Board

Even though the Board has ultimate responsibility for the organization, both the Board and Staff share joint custody of the organization’s mission, and the efforts to fulfill that mission

- Effective boards are not passive, but they should not dominate staff either
- Delicate balance
 - Generally (but there are always exceptions), the Board should be involved in things like: (1) setting goals for the board and the organization, (2) examining organizational structure like mission, articles of incorporation, and bylaws, (3) “discipline” of board members, (4) review of, and establishment of the CEO or ED’s authority to budget, establish programs, and otherwise manage the organization day –to-day
 - Generally (but there are always exceptions), the Board should not be involved in things like: (1) specific details of how services, programs or even departmental budgets are offered or formulated, (2) staff issues below the level of the ED/CEO, (3) operational issues like maintenance and upkeep, file and record maintenance, and other clearly “operational” issues or matters

Is the relationship between the ED and the Board inherently “adversarial” to a certain extent?? Should there be at least some “adversarial” aspect to the relationship – if that is the right word...?

ED or CEO compensation issues

- Setting and reviewing ED or CEO compensation – standards, etc. Big issue for the IRS

Note that the IRS can delve into these compensation issues in a substantial way:

Example: The IRS commenced its Hospital Compliance Project in May 2006 to study nonprofit hospitals and community benefit, and to determine how nonprofit hospitals establish and report executive compensation.

<http://www.irs.gov/pub/irs-tege/frepthosproj.pdf>

The report examined a group of 20 hospitals regarding their executive compensation practices and policies. Nearly all the hospitals set compensation amounts by following procedures that created a rebuttable presumption of reasonableness, and the actual amounts awarded were deemed "within the range of reasonable compensation."

QUESTION: Why does the IRS care so much about how much is paid to executive directors and CEO's (or other staff/board members) in a nonprofit?

- Same reasons as we see for other concerns the IRS has about nonprofits in general – should not be a scam to avoid taxes or to benefit a private person when you should really be trying to advance a public good.
- OVER and OVER we see IRS policies along these lines in all facets of the work done by nonprofit, tax exempt organizations... make sure private persons are not benefitting (or overly benefitting) and that the organization really serves the public good...

The IRS encourages a charity to rely on the rebuttable presumption test of section 4958 of the IRC when determining the compensation of its executives. Under this test, compensation payments are presumed reasonable if the compensation arrangement is:

- (1) Approved in advance by an authorized body composed entirely of individuals who do not have a conflict of interest with respect to the arrangement,

- (2) The authorized body obtained and relied on appropriate data as to comparable numbers, rates, levels, etc. prior to making its determination (see some of the resources below), and
- (3) The authorized body adequately documented the basis for its determination concurrently with making the determination

If these requirements are satisfied, the IRS may rebut the presumption only if it develops sufficient contrary evidence to rebut the probative value of the comparability data relied upon by the authorized body.

- Tools for helping to determine reasonable salary levels:
http://www.stl.unitedway.org/uploadedfiles/UWGSL_Nonprofit_Salary_Report.pdf (dated info, but still somewhat relevant...)

Or: www.salaryexpert.com

- See also: <http://www.blueavocado.org/content/how-much-pay-executive-director>
- Remember you can/should look at 990 returns from “similar” organizations...
 - What makes for a “similar” organization?
- There are also reports assembled and sold by private publishers like the Nonprofit Times “Comprehensive Nonprofit Compensation and Benefit Report” Some of these may be available at the library – in particular, the Grants & Foundation Centers of the St. Louis Public Library, Kirkwood Library, and St. Charles County Library.

Further guidance: “Reasonable Compensation”, as defined in the definition section of the instructions document for form 1023 is:

<http://www.irs.gov/pub/irs-pdf/i1023.pdf>

Reasonable compensation is the amount that would ordinarily be paid for like services by like organizations under like circumstances as of the date the compensation arrangement is made.

ED or CEO evaluation and/or termination issues

- Ultimately, the Board chooses, evaluates, and possibly decides to get rid of the Chief Executive if necessary
- Even a “founding” president, CEO, or ED can be removed by the Board
 - Example of Millard Fuller and Habitat for Humanity International

- So, on top of all other Board responsibilities, must bear in mind laws for hiring, firing and evaluation of employees, too!!!
 - Potentially helpful resource for how to evaluate your chief executive – VLAAs sample CEO evaluation policy:
<http://vlaa.org/resources/sample-policies/>
- Related to this, the ED or CEO should likely have some input on new board members chosen by the Board of Directors, but should not have too much power in this respect because he or she should not be able to stack the Board of Directors with cronies, friends, etc. – because that may not be best for the organization as a whole
 - Think of the need for “checks and balances”
- And just to prove that sometimes the IRS does in fact revoke 501(c)(3) tax exempt status:
See: <http://www.irs.gov/charities/charitable/article/0,,id=141466,00.html>
 - Does not provide much or any information about why the tax exempt status was revoked...
 - But look at the sheer number of organizations that had tax exempt status revoked... IRS is obviously reviewing and investigating...
- Other alternative besides revocation of tax exempt status is imposition of “intermediate sanctions” by the IRS:
<http://www.irs.gov/pub/irs-tege/eotopice03.pdf>
 - The enactment of IRC 4958 was the most important change in the federal income tax law relating to tax-exempt organizations in 30 years. The purpose of IRC 4958 is to impose sanctions on the influential persons in charities and social welfare organizations who receive excessive economic benefits from the organization, rather than to punish the exempt organization itself.

Ultimately: If you want to know what the IRS would be looking for if they were to “examine” the governance and management of your nonprofit organization, look here:

- This is the check sheet the IRS uses!!! See: http://www.irs.gov/pub/irs-tege/governance_check_sheet.pdf

- So, obviously, these are the things that should matter to your organization and your board...
- See also: http://www.irs.gov/pub/irs-tege/governance_practices.pdf
 - Excellent, direct IRS perspective on Governance and Related Topics for 501(c)(3) Organizations

IV. Resources to remember in the future:

- a. **GREAT** Books/resources for this course down at the main branch of the library at 1301 Olive in the Grants & Foundation Center materials. Great lists of web sites, things to consider for forming a non-profit, etc.
 - See: <http://slplgfcnews.blogspot.com/>
- b. Similarly, **GREAT** books/resources for all things nonprofit at the St. Charles Community Library- go to the Spencer Road branch and ask for Brad Smith
 1. He will help you obtain 501(c)(3) tax exempt status...
 2. Just go see him... so much to learn... it is worth the trip, but set aside several hours for this...
 3. See: <http://www.youranswerplace.org/nonprofit-services-contact-information>
- c. For ANYTHING and EVERYTHING relating to tax exempt status and the IRS:
 1. HIGHLY recommend you sign up for subscription to the EO Newsletter for updates from the IRS: <https://www.irs.gov/Charities-&-Non-Profits/Current-Edition-of-Exempt-Organizations-Update>
- d. www.vlaa.org
- e. www.boardsource.org
- f. www.nonprofitrisk.org
- i. Both St. Louis University School of Law and Washington University School of Law have legal clinics that offer a variety of free services to nonprofits.
 - This includes help with incorporating your nonprofit corporation, and applying for 501(c)(3) tax exempt status...
- j. Resources available from Legal Services of Eastern Missouri... They will help you find a lawyer to do pro bono work for a nonprofit, tax-exempt organization...