

Stay Out of Jail - Free!

20 Jan 2012

Reno, NV

Inherent Board Responsibilities

- **Accountability to stakeholders**
- **Fiscal integrity**
- **Mission fulfillment**
- **Risk Management**

Risk Management

- **Governance**
- **Enterprise**
- **Financial**
- **Employment**

Governance

- **Document Audit**
 - **Articles of Incorporation**
 - **Bylaws**
 - **IRS status**
- **Follow your Bylaws!!!**
- **File required reports**
- **Meet IRS guidelines**

IRS Requirements

- **File Annual Tax Return (990 or 990EZ)**
- **File 990T, if applicable**
- **File Payroll reports**
 - **940 (Annual)**
 - **941 (Quarterly)**
- **File W2/W3s, issue W3s**
- **File 1096/1099s, issue 1099s**

IRS Oversight of NPOs

The Internal Revenue Service believes that a well-governed charity is *more likely to obey the tax laws*, safeguard charitable assets, and serve charitable interests than one with poor or lax governance.

IRS Oversight of NPOs

A charity that has clearly articulated purposes that describe its mission, a knowledgeable and committed governing body and management team, and sound management practices is more likely to operate effectively *and consistent with tax law requirements.*

IRS Oversight of NPOs

And while the *tax law generally does not mandate particular management structures, operational policies, or administrative practices*, it is important that each charity be thoughtful about the governance practices that are most appropriate for that charity in assuring sound operations and *compliance with the tax law*.

IRS 990, Part VI, Section A

Part VI **Governance, Management, and Disclosure** (Sections A, B, and C request information about policies not required by the Internal Revenue Code.)

Section A. Governing Body and Management

For each "Yes" response to lines 2–7b below, and for a "No" response to lines 8 or 9b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

		Yes	No
1a Enter the number of voting members of the governing body	1a		
b Enter the number of voting members that are independent	1b		
2 Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?	2		
3 Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person?	3		
4 Did the organization make any significant changes to its organizational documents since the prior Form 990 was filed?	4		
5 Did the organization become aware during the year of a material diversion of the organization's assets?	5		
6 Does the organization have members or stockholders?	6		
7a Does the organization have members, stockholders, or other persons who may elect one or more members of the governing body?	7a		
b Are any decisions of the governing body subject to approval by members, stockholders, or other persons?	7b		
8 Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:			
a The governing body?	8a		
b Each committee with authority to act on behalf of the governing body?	8b		
9a Does the organization have local chapters, branches, or affiliates?	9a		
b If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization?	9b		
10 Was a copy of the Form 990 provided to the organization's governing body before it was filed? All organizations must describe in Schedule O the process, if any, the organization uses to review the Form 990	10		
11 Is there any officer, director or trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? <i>If "Yes," provide the names and addresses in Schedule O</i>	11		

Management Policies

Although the Internal Revenue Code does not require charities to have governance and management policies, the Internal Revenue Service will review an organization's application for exemption and annual information returns to determine whether the organization has implemented policies relating to executive compensation, conflicts of interest, investments, fundraising, documenting governance decisions, document retention and destruction, and whistleblower claims.

IRS 990, Part VI, Section B

Section B. Policies

		Yes	No
12a	Does the organization have a written conflict of interest policy? <i>If "No," go to line 13</i>		
b	Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts?		
c	Does the organization regularly and consistently monitor and enforce compliance with the policy? <i>If "Yes," describe in Schedule O how this is done</i>		
13	Does the organization have a written whistleblower policy?		
14	Does the organization have a written document retention and destruction policy?		
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision:		
a	The organization's CEO, Executive Director, or top management official?		
b	Other officers or key employees of the organization? Describe the process in Schedule O. (see instructions)		
16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?		
b	If "Yes," has the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and taken steps to safeguard the organization's exempt status with respect to such arrangements?		

Transparency and Accountability

By making full and accurate information about its mission, activities, finance, and governance publicly available, a charity encourages transparency and accountability to its constituents. The Internal Revenue Code requires a charity to make its Form 1023 exemption application, Form 990, and Form 990-T, available for public inspection.

IRS 990, Part VI, Section C

Section C. Disclosure

- 17 List the states with which a copy of this Form 990 is required to be filed ►.....
- 18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection. Indicate how you make these available. Check all that apply.
 Own website Another's website Upon request
- 19 Describe in Schedule O whether (and if so, how), the organization makes its governing documents, conflict of interest policy, and financial statements available to the public.
- 20 State the name, physical address, and telephone number of the person who possesses the books and records of the organization: ►.....

Enterprise

- **Workplace**
 - Policies and procedures
 - Use of tax free status
 - Inventory
 - Equipment
- **Special Events**
 - Lottery
- **Volunteers**
- **Insurance**

Insurance

- **Property**
- **General Liability**
- **Directors and Officers (D&O)**
- **Special Event**
- **Auto**
- **Workers Compensation**

Inherent Fiscal Responsibilities

- **Financial accountability**
- **Fraud prevention**
- **Board-staff communication on financial management issues**

Financial

- **Have systems in place to provide the appropriate information needed by staff and board to make sound financial decisions and to fulfill Internal Revenue Service requirements.**
- **Prepare timely financial statements including the Balance Sheet (or Statement of Financial Position) and Statement of Revenue and Expenses (or Statement of Financial Activities)**

Financial

- **Prepare financial statements on a budget versus actual and/or comparative basis to achieve a better understanding of finances**
- **Develop an annual comprehensive operating budget which includes costs for all programs, management and fundraising, and all sources of funding. This budget is reviewed and approved by the Board of Directors.**

Financial

- **Prepare cash flow projections**
- **Periodically forecast year-end revenues and expenses to assist in making sound management decisions during the year**
- **Reconcile all cash accounts monthly**
- **Have a documented set of internal controls, including the handling of cash and deposits, approval over spending and disbursements**

Fraud Related Oversight Responsibilities

- **Ensure that the organization has adequate fraud-prevention and risk-management policies.**
- **Ensure that the organization has taken appropriate steps to identify fraud risks and adequately protected itself against fraud through insurance and reasonable reserves.**
- **Oversee senior management's follow-up actions in response to findings of auditors or investigators.**
- **Oversee the organization's budgeting, financial reporting, tax reporting and financial analysis processes.**

Fraud and Abuse

Committed Against a Nonprofit

- **Skimming** — Cash is stolen before the funds are recorded in the accounting records.
- **Credit card abuse** — Perpetrators either use organization-issued credit cards for personal use or use donor credit card numbers.
- **Fictitious vendor schemes** — Perpetrators set up a company and submit fake invoices for payment.
- **Conflicts of interest** — Board members or executives have hidden financial interests in vendors.
- **Payroll schemes** — Continued payment of terminated employees, overstatement of hours, or fictitious expenditure reimbursement.
- **Subrecipient fraud** — Abuses by a subrecipient entity include intentional charges of unallowable costs to the award, fraudulent reporting of levels of effort, and reporting inaccurate performance statistics and data.

Fraud and Abuse

Committed By a Nonprofit

- **Deceptive fundraising practices** — Misrepresentation of the extent of a charitable contribution deduction entitled, misrepresentation of the fair market value of donated assets, and failing to comply with donor-imposed restrictions on a gift.
- **Fraudulent financial reporting** — Misclassifying restricted donations to mislead donors or charity watchdogs, misclassifying fundraising and administrative expenses to mislead donors regarding funds used for programs, and fraudulent statements of compliance requirements with funding sources.

Employment

The board of directors and the executive director comprise the leadership of a non-profit organization and work together to advance its mission.

Overall, the board of directors governs the organization, while the executive director manages its operations.

Employment

- **Review employee manuals and handbooks for paid staff and volunteers**
- **Conduct a performance evaluation for all staff**
- **Conduct a performance evaluation and compensation review for executive directors**
- **Assist with the development of specific personnel policies**
- **Review recruitment/hiring procedures**
- **Assist with the development of job descriptions**
- **Ensure background screening procedures**
- **Review discipline and termination procedures**

Pillars of Accountability

- **Ethical Fundraising**
- **Strategic Risk Management**
- **Fiscal Integrity**
- **Leadership Sustainability**
- **Sound Employment Practices**

Source: Pillars of Accountability: A Risk Management Guide for Nonprofit Boards