New York State Federation of
Lake Associations
35th Annual Conference:
Board Policies and Best Practices
for Nonprofits

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"OUR JOB AS A REGULATOR ISN’T JUST TO GO OUT AND CATCH BAD GUYS, IT’S ALSO TO HELP THE GOOD GUYS CONDUCT THEIR BUSINESS EFFICIENTLY AND EFFECTIVELY."

New York State Attorney General Eric T. Schneiderman
VALUE OF NONPROFITS

• Community Common Ground and Quality of Life (De Tocqueville)
• Making a Difference (e.g., Citizens Statewide Lake Assessment Program)
• Employment (1.25 million people, 18.1% of New York’s private work force) (NY OSC 2016-“New York led the nation in both the number of people employed and total wages paid by these organizations.”)
• Education, Engagement, and Experimentation
The Role of the Charities Bureau

• Encourage and Support New York Nonprofits
  • Registration and reporting by charities (transparency)
  • Supporting good governance in all nonprofits-audits, rules on related party transactions and conflict of interest, guidance documents, responding to embezzlement
  • Seeing that donor intent, planned gifts, and gift restrictions are honored
  • Advocating for the independence of charities and their assets
  • Overseeing the prudent management of institutional funds (written policy on investment objectives-New York Prudent Management of Institutional Funds Act)
The Governance Recipes - New York Not-for-Profit Corporation Law (NPCL) and IRS

- NPCL-
- Voting rights
- Powers and duties of officers and directors
- Boards-size, term limits, meetings
- Conflicts of interest reporting
- Conflict of interest/related party procedures
- Related party transactions-records and documentation in minutes
The Governance Recipes-New York Not-for-Profit Corporation Law (NPCL) and IRS

- IRS 990
- Payroll taxes-employees vs. contractors
- Governance questions
- Diversion of assets?
- Conflict of interest policy? Enforced? (IRS sample policy on website)
- Document retention/destruction(including electronic records)
- Financial reporting/year over year
- Listing of contractors (over $100,000)
- Board review of 990
- Available for public inspection
New York Not-for-Profit Corporations

• Charitable
• Non-charitable
• Applies to both:
  • No activities “for pecuniary gain” except to support other lawful activities
  • No private “inurement” (benefit to individual who is in position to exercise substantial influence)
Common Governance Issues for Nonprofit Boards

- Volunteers and employees
- Governing documents - charter, by laws, membership records
- Maintenance and condition reviews and repairs
- Contracts with managing agents - periodic rebids
- Insurance - liability for directors, fidelity policy
- Treasurer, bank accounts, reports
- Credit cards, checks, ATM cards - authorization and review (signature stamps)
- Board elections and minutes
- Fundraising
- Tax issues
UBIT (Unrelated Business Income Tax)

- Income unrelated to core mission
- Complicated before - even more complicated since tax reform
- Need an accountant
- Rental income excluded unless property is debt-financed
- Consider moving business/revenue generation activities to for-profit subsidiary
What Charitable Nonprofits Need to do (Right from the start)

• Register with Department of State
  https://www.dos.ny.gov/corps/dom_nfpfile.html
• Registration w/ Charities Bureau required if expect to raise over $25,000
  www.charitiesnys.com
• Registration w/ Charities Bureau required to qualify for state grants
• Annual filing of CHAR 500 and IRS 990
• Filing of independent audit reports if fundraising or grant-seeking and over threshold
• Required reports from for-profit fundraiser, countersigned by charity
State and City Grant Activity

• Must be current in Charities Bureau registration and filings to receive state/city grants
• Working with charities to bring their filing current
• Cooperating with new State Grants Gateway
Protecting Nonprofit Assets and Endowments

• Reviewing wisely-IRS 990 filings, independent auditor reports, management letters
• Responding to crises and bad acts
• Sunrises (new projects) and sunsets (time to discontinue or merge old activities)
• Protecting restricted endowments
How we help Charities and Board Members with Governance

• Website: https://www.charitiesnys.com/
• Guidebook for Directors: Right From the Start - Responsibilities of Directors of Not-for-Profit Corporations
• Guidebook for Directors: Internal Controls and Financial Accountability for Not-for-Profit Boards
• Doing Well While Doing Good (current collection of Guidance materials on website)
• Disclosure Requirement for Solicitation of Contributions
• Responding to requests for information:
  • Phone: (212) 416-8401
  • Email: charities.bureau@ag.ny.gov
• Registration, annual filings, complaints, enforcement
Bad things happen to good people

- Embezzlement happens. (Washington Post-1000 significant reported diversions in five years) Boston Globe-119 in New York in five years

- What we (the Charities Bureau) expect nonprofits to do
  - Monitor (accounts, complaints)
  - Investigate
  - Report the embezzlement to law enforcement and insuror
  - Act against the offender.
  - Let’s get (at least some) money back-from embezzler, relatives, or insurance.
  - Fixing the risk problem after the embezzlement -internal controls, auditor review, background checks, governance, insurance
2015 Embezzler of the Year: Drew Morgan-$1.6 million meant for special needs children at Camp Anchor, Lido Beach-3.5 to 7 year sentence

- Discovered by Nassau DA
- Auditor: no cash controls
The Cat Savior (photo from Putnam Daily Voice) and 2017 Embezzler of the Year
Michael Klein, 2017 Embezzler of the Year

- 13 years of embezzlement by Mahopac VFD treasurer
- Treasurer wrote 275 checks to two businesses he owned
- $5.6 million
- 55 foot yacht, jewelry, home in Florida
- Sentenced June 21 to six years
- Embezzlement happens. (Washington Post-1000 reported significant diversions in five years)
LOOK TO OUR WEBSITE FOR PRACTICAL INFORMATION

• [http://www.charitiesnys.com](http://www.charitiesnys.com)
• How-to Guides for governance and operations: www.charitiesnys.com/guides
• Phone: (212) 416-8401
• Thank you for your attention and the work you do.
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