

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

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# Our Commitment



New York State Attorney General  
**Eric T. Schneiderman**

***“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.”***

# 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
- IRS Governance check sheet available at [www.irs.gov/pub/irs-tege/governance](http://www.irs.gov/pub/irs-tege/governance)

# 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](https://www.dos.ny.gov/corps/dom_nfpfile.html)
- Registration w/Charities Bureau required if expect to raise over \$25,000  
[www.charitiesnys.com](http://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](mailto: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 <https://www.bostonglobe.com/metro/2018/01/27/taking-from-charity-employee-theft-shockingly-common-nonprofit-groups/>
- What we (the Charities Bureau) expect nonprofits to do
  - Monitor (accounts, complaints)
  - Investigate
  - Report the embezzlement to law enforcement and insurer
  - 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>
- How-to Guides for governance and operations:  
[www.charitiesnys.com/guides](http://www.charitiesnys.com/guides)
- Phone: (212) 416-8401
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