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Fundraising in NYS

New York State
Federation of Lake Associations

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Presenter

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Goals for Today

1. Charity Status or No Charity Status for Lake Associations
2. Fundraising Rules and Requirements
3. Governance Basics



Why are you regulated?

- \$335 Billion annual industry
- Concerns about fraud and abuse
- “Four Cancer Charities Accused of Fraud” NY Times
- 2012 – paid fundraisers passed 36.9% of raised funds to charities in California, 37.9% in New York State, 40% in Massachusetts
- 2014 NY AG reached \$25MM settlement with Quadriga Art



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Annual Charities Bureau Filing

- General Rule – if you are charitable and solicit funds, you must file. If you are non-charitable or do not solicit funds, no need to file.
 - If formed after July 1, 2014, Certificate of Incorporation will state charitable or non-charitable.
 - If formed before July 1, 2014, Certificate of Incorporation will identify a Type:
 - Type A – Non-charitable
 - Types B and C – Charitable
 - Type D – depends on purposes
- Exemption – if you are charitable and solicit funds solely from your membership, no filing is required



Tax Exempt Status

- Section 501(c) of the Internal Revenue Code
 - (c)(3) – charitable, environmental
 - (c)(4) – exempt, social welfare, public good
 - (c)(7) – exempt, social club, recreational
- Organized and operated exclusively for charitable or exempt purposes



Are Lake Associations Charitable?

- Various activities or restoring the environment can be charitable; however, the performance of these activities may not be charitable when private interests are served.
- Lake clean-up and maintenance functions can be charitable when benefit to lakefront property owners are only “incidental” to the accomplishment of the broader environmental or recreational program. This is proven by whether membership is open or closed, and what specific physical area is focused on.



Why does it matter?

- Only contributions given to Section 501(c)(3) organizations are treated as charitable contributions, which may provide donor tax deductions.
- Private foundations may only fund Section 501(c)(3) public charities.
- Some governmental grants are earmarked only for 501(c)(3) organizations.



Definitions

- Professional Fundraiser – any person who directly or indirectly by contract for any consideration:
 - Plans, manages, conducts, carries on, or assists in connection with a charitable solicitation or employs or engages another person to do so, or who holds themselves out to be in such business
 - Solicits on behalf of charitable organization or any other person; or
 - Who advertises that the purchase or use of goods, services, entertainment or any other thing of value will benefit a charitable organization



Definitions

- Professional Solicitor – any person who is employed or retained for compensation by professional fund raiser to solicit contributions for charitable purposes or for the purposes of any law enforcement support organizations from persons in this state



Definitions

- Fund Raising Counsel – Any person who for compensation consults with a charitable organization or who plans, manages, advises or assists with respect to the solicitation in this state of contributions for or on behalf of a charitable organization, but who does not have access to contributions or other receipts, or authority to pay expenses



Definitions

- Commercial Co-Venture – Any person who for profit is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization and who advertises that the purchase or use of goods, services, entertainment, or any other thing of value for a charitable organization and who advertises that the purchase or use of goods, services, entertainment, or any other thing of value will benefit a charitable organization



Requirements

- Fund Raising Professionals and Fund Raising Counsel must register with AG as professional fundraiser
- \$800 annual registration fee
- Fund Raising Professionals must file an insurance bond in the sum of \$10K
- Requires Contract with Form Addendum
- File Contract with Charities Bureau within 10 days
- File Closing Statement when Contract is terminated
- Record Keeping – must provide access within 7 days



Governing Authorities

- Office of the Attorney General – Charities Bureau
- Internal Revenue Service – Tax Exempt and Governmental Agencies Division
- Relevant division of applicable state or municipal government



Attorney General Oversight

- Annual filing with Charities Bureau
- AG can obtain books and records
- AG can rescind or void related party transactions
- AG can sue for damages – double the profit to unrelated party
- AG has jurisdiction over all Directors, Officers, Agents and Key Employees of New York nonprofits
- Board Members and Key Persons have personal liability with respect to AG enforcement actions



Internal Revenue Service

- Audits
- Enforcement Actions:
 - private benefit
 - private inurement
- Unrelated Business Income Taxation
- Risk Losing Tax Exempt Status



Corporate Characteristics

- Key Documents
- Qualify for (and maintain) Tax Exemption
- Relationships with Governing Authorities
- Record-keeping Responsibilities



Key Documents

- Certificate of Incorporation
- Bylaws of the Corporation
- Conflict of Interest Policy



Organizational Documents

- Certificate of Incorporation
 - Describes Purposes
 - Includes Language Required by IRS
 - Can create certain structures
 - Membership
 - Number of Directors
- Bylaws
 - Governs Meetings and Procedures



Conflicts of Interest

- Conflict of Interest Policy
- Annual Disclosure Statement



Applying for Tax Exempt Status

- 1023 and 1023-EZ for charitable organizations
 - 1023: application, \$60 filing fee
 - 1023-EZ: user friendly, \$250 filing fee
 - available to lower budget nonprofits
- 1024 for non-charitable organizations
 - Significant application, \$600 filing fee



Maintaining Tax Exempt Status

- Annual Informational Returns
 - 990-N: annual revenue < \$50K
 - 990-EZ: annual revenue < \$200K and assets < \$500K
 - 990: annual revenues > \$200K or Assets > \$500K
 - 990-PF: all private foundations
- Must continue to operate exclusively for charitable or exempt purposes



NOT-FOR-PROFIT CORPORATION LAW

Statutory History

- Enacted on May 26, 1969, effective of September 1, 1970.
- Amended by the New York Nonprofit Revitalization Act of 2013, which took effect on July 1, 2014.
- Technical amendments enacted in 2015, 2016 and 2017.



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Fear of Fraud

James G. Sheehan, Chief of New York State Charities Bureau:

- “[Fraud] is a surprisingly common problem.”
- “We’ve seen organizations that have the same event occur two or three times because their control process is weak.”
- “People are committed to the mission. But sometimes the first stop is: Who’s in this business that we know. And that often is a board member. So making sure you have strong conflict of interest rules and related party rules is really important in making your decisions work.”

- “Attorney General’s Charity Chief: Fraud is ‘Surprisingly Common’”,
New York Nonprofit Media, August 6, 2015.



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What is New York getting at?

Imposed specific duties on the Board to encourage more effective monitoring of the nonprofit's financial health and fraud controls.

1. Board duties may only be satisfied by the board itself or committees comprised solely of board members.
2. Audit functions may only be conducted by independent board members.
3. Conflict of Interest Procedures



Liability and Indemnification

Your volunteer service is appreciated.

- Immunity
- Directors and Officers Liability Insurance
- Indemnification



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Summary

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Disclaimer

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