



Corporate Governance and Compliance Training North Reading Public Schools Support Organizations

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Disclaimer

- ❑ ***Purpose:*** To provide fundamental training for current or prospective Board members wishing to serve on a not for profit board.
- ❑ ***Disclaimer:*** The information in this presentation is meant for educational purposes only and not intended or offered as legal advice.

Agenda

- ❑ NPO
- ❑ Governance
 - Roles
 - Procedures & Policies
 - Legal Duty
 - Liability and Protections
- ❑ Compliance
 - State & Federal
 - IRS Revocation
 - Online Fundraising



NPO - Not For Profit Organization

General Characteristics:

1. Exempt purpose
2. Organized and operated exclusively for one or more exempt purposes
3. No private inurement
4. Restrictions on political activities (limited lobbying and campaign work)

NPO - Not For Profit Organization

OTHER TERMS DESCRIBING AN NPO

- ❑ Nonprofit organization
- ❑ Charitable organization
- ❑ 501(c)(3) or Section 501(c)(3) organization
- ❑ Covered by 501(c)(3)



NPO - Not For Profit Organization

IRC § 501(a) AND 501(C)(3)

- ❑ IRC Section 501(a): **Exemption from Taxation: An organization** described in subsection (c) . . . ***shall be exempt from taxation*** under this subtitle
- ❑ IRC Section 501(c)(3): Corporations ***organized AND operated exclusively*** for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals...

NPO - Not For Profit Organization

WHY ARE NPO'S EXEMPT?

- ❑ **Government acknowledgement that:**
 - NPOs relieve govt. of obligation to deliver certain charitable services
 - Viability of many NPOs would be threatened if taxed
- ❑ **Religious organizations** – separation of church and state
- ❑ **Educational organizations** – government wants to support schools and other training opportunities
- ❑ **Charitable organizations** – government wants to promote health, relief of poor, distressed, housing, arts & literacy

NPO - Not For Profit Organization

NPO BENEFITS

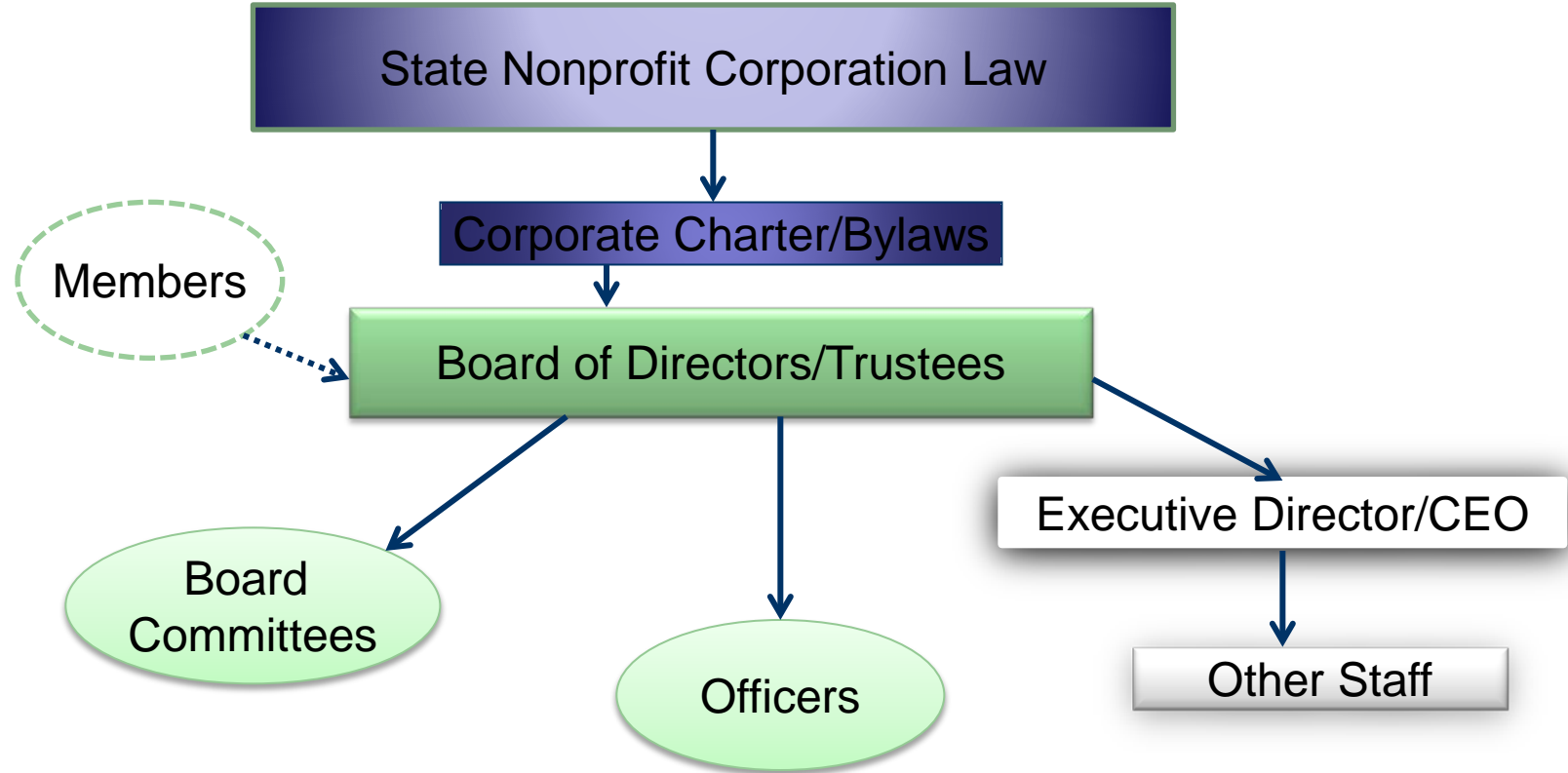
- ❑ No obligation to pay federal income taxes because exempt under Section 501(c)(3) of the Internal Revenue Code
- ❑ Enhances eligibility for private, state and federal grants
- ❑ Real estate exemption
- ❑ Sales tax exemption
- ❑ Donations are tax deductible

NPO - Not For Profit Organization

NPO Obligations:

- ❑ In return for tax exemption, NPO agrees to follow government guidelines
 - ❑ Limitations on lobbying/political activity
- ❑ Board of Directors is the NPO's governing body ultimately held accountable

Governance – Role



Governance – Role

1. Member/Board/Officers = *Head*
2. Staff = *Hands*
3. Volunteers/Clients = *Heart*
4. Working as a Team = *Health*

Governance – Roles

Members:

Member Corp

- ❑ Members act as shareholders
- ❑ Members elect directors
- ❑ Bylaws set out who is member, when and how directors are elected

Nonmember Corp

- ❑ Directors elect or re-elect directors
- ❑ Bylaws set out when and how directors elect board.



Governance – Roles

Board Selection:

- ❑ Qualifications
- ❑ Size
- ❑ Term - limits/fixed/staggered
- ❑ Relationships among directors
- ❑ Independence
 - No compensation as employee or officer
 - Review related transactions

Governance – Roles

Officers:

- Elected by the Board
- Serve at the pleasure of the Board
- Election/role/removal etc. governed by organizing documents
- Carry out the directives of the Board
- Do not vote



Governance - Roles

Role of Board

- Adopts and updates policy
- Develops vision/strategy
- Selects and evaluates ED
- Approves & monitors budget
- Advocacy & fundraising

Role of ED

- ✓ Enact policy and formulates procedures
- ✓ Carries out vision/strategy
- ✓ Hires & manages staff
- ✓ Proposes & work within budget
- ✓ Advocacy & fundraising

Governance – Board Legal Duty

Board Guidelines:

- ❑ Govern as a board
- ❑ Communicate through ED and not staff
- ❑ Show up and pay attention
- ❑ Act as ambassador to public
- ❑ ***Adhere to legal duty***
- ❑ ***Be familiar with mission, organizing documents, and policies***

Governance – Board Legal Duty

Duty of Care and Loyalty

A Director must exercise duties with same care as an ordinarily prudent person in a similar position with respect to a similar organization.

A Director must perform duties in good faith and in a manner reasonably believed to be in the best interests of the organization.

Governance – Board Legal Duty

Duty of Care Includes:

- ❑ Attendance at Board and committee meetings
- ❑ Request and review entity information
- ❑ Understand financial statements
- ❑ Vote independently
- ❑ Voice opinion

- ✓ Directors may rely on certain information provided by ED/staff such as opinions, audits, financial statements

Governance – Board Legal Duty

Duty of Loyalty Include:

- ❑ Prohibits acting in self-interest
- ❑ Management of conflicts of interest
 - Any conflict in which a director or related party of director has a financial interest
 - Conflicts are not prohibited – but need to follow policy as subject to scrutiny

Governance – Board Legal Duty

Third Duty – Duty of Obedience:

- ❑ Not specifically imposed in MA – but applies in other states
- ❑ *Requires directors to ensure that NPO's resources are used in manner consistent with its purpose and the NPO doesn't engage in unauthorized activities.*
- ❑ Be careful of restricted gifts
- ❑ Know your purpose

Governance – Policy and Procedure

Board Guidelines:

- ❑ Govern as a board
- ❑ Communicate through ED and not staff
- ❑ Show up and pay attention
- ❑ Act as ambassador to public
- ❑ Adhere to legal duty
- ❑ ***Be familiar with mission, organizing documents, and policies***



Governance – Policy and Procedure

Governing Instruments:

- ❑ Articles of Organization
 - Provides purpose
 - Describes rights and powers

- ❑ Bylaws
 - House rules
 - Describes roles and rules

Governance – Policy and Procedure

Articles:

- Art I – Name
- Art II – PURPOSE
- Art III – Members
- Art IV - Powers
- Art V – Bylaws/Officers
- Art VI – Nonpermanent information (address, Directors/Officers/Fiscal Year/Resident Agent

See Tab 11 for example Articles of Organization

Governance – Policy and Procedure

Articles - PURPOSE

- ❑ *Operating and Organized exclusively for charitable/educational purpose*
- ❑ *Role of Board:* Ensures activities, programs and services are aligned with purpose and are effective.

Governance – Policy and Procedure

Bylaws:

- ❑ In-House Rules and Regulations
- ❑ Define governance policies and guidelines:
 - Size and qualifications of Board
 - Election of Board members (removal rights and term limits)
 - Defines committees
 - Board meeting notice, attendance, requirements, quorum
 - Officer duties and powers; terms and term limits
 - Bylaws amendment process

Governance – Policy and Procedure

Bylaws:

- ❑ Guidance on election of Officers
- ❑ Determines roles and duties
- ❑ Required Officers:
 - Chair/President
 - Treasurer
 - Clerk

Governance – Policy and Procedure

Office of President:

- ❑ Elected by the Board
- ❑ A pivotal role
- ❑ Works with ED/Senior Staff
- ❑ Facilitates board meetings
- ❑ Holds Board members accountable
- ❑ Serves at the pleasure of the Board

Governance – Policy and Procedure

Office of Treasurer/Clerk:

- ❑ **Treasurer:** Keeps or oversees financial records keeps Board up to date on financial status
- ❑ **Clerk/Secretary:** Ensures effective record management maintains minutes (usually minute taker) keeps & corporate documents

Governance – Policy and Procedure

Committees:

- ❑ Executive
- ❑ Audit
- ❑ Compensation
- ❑ Nominating Fundraising
- ❑ Marketing
- ❑ Finance (investments)
- ❑ Other “Special”, “Temporary” or “Ad Hoc” Committees

Governance – Policy and Procedure

Articles/Bylaw - Guiding Principles:

1. Keep Simple
2. Keep Current
3. Keep Amendments

Review Bylaw Checklist (Tab 10) each year

Governance – Policy and Procedure

Policies:

- Conflict of Interest
- Whistleblower
- Document Retention
- Joint Venture
- Affiliate Procedures
- Gift Acceptance
- Privacy Policy
- CORI Policy
- Investment Policy

Governance – Policy and Procedure

Conflict of Interest Policy:

- ❑ Disclosure of any transaction in which a director has a personal interest
- ❑ Recusal of interested director
- ❑ Determination by other directors (transaction is fair and as favorable as with third party)
- ❑ IRS imposes penalties for improper benefit to directors

Governance – Policy and Procedure

Whistleblower Policy:

- ❑ Encourages reporting of unethical or illegal conduct
- ❑ Assures protection to whistleblower from retaliation
- ❑ Provides procedure for investigating reports.

Governance – Policy and Procedure

Document Retention Policy:

- ❑ Provides guidelines for retention
- ❑ Prohibits destruction while investigation or legal action is pending

Joint Venture Policy:

- ❑ Provides safeguards to ensure that collaboration furthers charitable mission

Governance – Policy and Procedure

Affiliate Policy:

- ❑ Includes procedures that ensure affiliates adhere to policies of main NPO

Gift Acceptance Policy:

- ❑ Governs restricted gifts
- ❑ Provides guidance re non-cash contributions (i.e. real estate, art, cars)



Governance – Policy and Procedure

Privacy Policy:

- ❑ Procedures to safeguard personal information
- ❑ No sharing of donor information w/o permission
- ❑ Inform donors/visitors to website what information is collected and how it is used.

CORI Policy:

- ❑ Policy required if conduct 5+ searches annually

Governance – Policy and Procedure

Investment Policy:

- ❑ Required for long-term investments
- ❑ Establishes investment objectives
- ❑ May restrict certain investments
- ❑ Uniform Prudent Management of Institutional Funds Act (MGL 180A)
 - Guidelines for investing and spending funds
 - Must invest in “good faith”
 - Board may delegate but must review periodically

Governance – Director Liability

Liability for:

- ❑ Breach of duties of care/loyalty/obedience
- ❑ Knowing participation in wrongful acts
- ❑ Acts of the NPO

Governance – Liability Protections

Statutory Amnesty:

- ❑ MA law allows NPOs to limit liability of directors in law suits brought by NPO itself or on its behalf
- ❑ MA SOS recommends language to be included in Articles of Incorporation

Governance – Liability Protections

Statutory Amnesty Language:

“No director or officer shall be personally liable to the corporation for monetary damages for breach of fiduciary duty as a director or officer, notwithstanding any provision of law imposing such liability; provided, however, that the liability of a director or officer, to the extent that such liability is imposed by applicable law, shall not be eliminated (i) for any breach of the director’s or officers duty of loyalty to the corporation; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (iii) for any transaction from which the director or officer derived an improper personal benefit.”

Governance – Liability Protections

Charitable Immunity Laws:

- ❑ MA Nonprofit Charitable Immunity
- ❑ MA Director/Officer Immunity
- ❑ Federal Volunteer Protection Act



Governance – Liability Protections

MA Nonprofit Charitable Immunity:

Maximum recovery is capped at \$20,000 (MGL § 85(k))

Exclusions:

- Defense costs
- Liability under federal law
- Activities not directly related to exempt purpose
- Contract law claim
- Others

Governance – Liability Protections

MA Director Immunity:

Exclusions:

- Defense costs
- Federal laws
- Contract law claims
- Claims arising out of the use of an automobile
- Acts of willful or wanton misconduct
- If Directors are compensated
- Others

Governance – Liability Protections

Federal Volunteer Protection Act:

- ❑ 42 US Code §14501 et seq.
- ❑ Overrides state laws that are inconsistent with the Act
- ❑ Does not preempt state laws providing additional protection from liability

Governance – Liability Protections

Federal Volunteer Protection Act:

Provides immunity from liability for negligence of volunteers serving nonprofit or govt. entity if:

1. Volunteer acting within scope of her responsibilities
2. Volunteer was properly licenses, certified or authorized to act
3. Harm was not caused by willful criminal or reckless misconduct or gross negligence
4. Harm not caused by volunteer operating a motor vehicle, vessel, or aircraft
5. Volunteer's misconduct was not a crime of violence, hate crime, sexual offense, or violation of civil rights
6. Volunteer not under influence of alcohol or drugs

Governance – Liability Protections

Federal Volunteer Protection Act:

Additional Exclusions

- 1) Defense costs
- 2) Violation of certain Federal laws
- 3) Contract law claims
- 4) Directors and Officers if compensated
- 5) Others

Governance – Liability Protections

Indemnification:

- ❑ NPO can indemnify directors
- ❑ NPO pay for cost of defense and cost of legal judgment and fees
- ❑ Indemnification language should be in bylaws
- ❑ Indemnification is only good if NPO can pay

Governance – Liability Protections

Director and Officer Insurance (D&O):

- ❑ Best protection
- ❑ D&O reimburses director's liability to NPO or outside party (if not indemnified) AND funds NPO's indemnity obligations if director is indemnified
- ❑ D&O typically has certain exclusions (doesn't cover punitive claims, where director realized profit, etc.)
- ❑ Some umbrella policies include – but typically an additional fee

Governance – Liability Protections

Additional Insurance Protection:

- General liability
- Property coverage
- Worker's compensation
- Auto
- Fidelity Insurance
- Volunteer accident coverage
- Special coverage such as sexual abuse or defamation

Governance Homework

- Review Articles of Organization
- Review Bylaws
- Memorize NPO's purpose
- Assess policies in place and policies needed
- Review indemnity provisions
- Review insurance policies (and exceptions)

Governance Homework

Board Manual

Include the following:

- Purpose
- Articles
- Bylaws
- Policies
- AGO Board Guidelines

Compliance – Oversight Bodies

- ❑ State government – grants legal existence
- ❑ Federal government – grants tax exemption

STATE	FEDERAL
<ul style="list-style-type: none">• Registration• Licenses• Limit political activities• Sales/use tax• Dissolution• Annual reporting	<ul style="list-style-type: none">• Excise tax for PF• Limits political activities• Limits UBIT• Annual reporting

Compliance – MA Initial Filings

- Secretary of Commonwealth (SOS)
 - Initial registration by submitting Articles
- Attorney General, Div. of Public Charities (AGO)
 - Initial registration (Articles and Bylaws)
 - Certificate of solicitation
- Dept. of Revenue
 - Form TA1 for sales tax exemption
- City/Municipality
 - Form 2ABC property tax exemption

Compliance – MA Annual Filings SOS

SOS Annual Report:

<http://www.sec.state.ma.us/cor/corpweb/cornp/npfrm.htm>

Corporations Division

William Francis Galvin, Secretary of the Commonwealth

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Related pages:

File Corporations Online

Search the Corporate Database

File Uniform Commercial Code (UCC) Online

Search the UCC Database

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[Secretary of the Commonwealth Home](#)

Non-Profit Corporation Forms

All corporations organized in the Commonwealth of Massachusetts as a not for profit corporation shall be subject to the following information. Use an [attachment form](#) for information that would otherwise not fit on the form you're filing. Please note the form that the attachment sheet is in reference to on the attachment sheet.

All the following forms are fillable PDF files that require [Adobe Acrobat Reader](#) for viewing. File sizes range from 60 KB to 250 KB.

[Articles of Organization](#)

A non-profit corporation shall organize for a non-profit purpose consistent by filing articles of organization with the Corporations Division. M.G.L.A. c180 § 4 (1971); 950 CMR 106.03.

[Annual Report](#)

Every non-profit corporation organized under the laws of the Commonwealth must file a non-profit annual report with the Corporations Division on or before November 1st of each year. M.G.L.A. c180 § 26A (1933); 950 CMR § 106.13.

[Articles of Amendment](#)

A non-profit corporation may amend its articles of organization by a vote of two thirds of its members legally qualified to vote at a meeting called for the purpose of amending its articles. M.G.L.A. c180 § 3.

Compliance – MA Annual Filings SOS

SOS Annual Report:

- ❑ Every non-profit corporation organized under the laws of the Commonwealth must file a non-profit annual report with the Corporations Division on or before November 1st of each year. (*M.G.L.A. c180 § 26A (1933); 950 CMR § 106.13*)
- ❑ Required for Good Standing Certificate
- ❑ In good standing? Search:

<http://corp.sec.state.ma.us/corpweb/corpsearch/CorpSearch.aspx>

Compliance – MA Annual Filings AGO

AGO Annual Report:

<http://www.mass.gov/ago/doing-business-in-massachusetts/public-charities-or-not-for-profits/forms/form-pc-and-instructions.html>

The screenshot displays the official website of the Attorney General of Massachusetts. At the top left is the state seal, and next to it is the text "The Official Website of the Attorney General of Massachusetts" and "Attorney General Martha Coakley". A search bar is located to the right of the header. Below the header is a navigation menu with the following items: "About the Attorney General's Office", "News and Updates", "Consumer Resources", "Public Safety", "Doing Business in Massachusetts", "Government Resources", and "Bureaus". A breadcrumb trail reads: "Home > Doing Business in Massachusetts > Public Charities or Not-for-Profits > Legal Findings, Forms, and Publications >". The main heading is "Non-Profits & Charities Forms and Publications". Below this heading, a paragraph states: "Many of the forms and publications available on the Attorney General's Office website are posted as a PDF. To download and view PDF files, you must have Adobe Reader installed on your computer. This program is available as a free program download on the Adobe website:". A bullet point links to "Free download of Adobe Reader 9". There are three PDF links: "Attorney General's Guide for Board Members of Charitable Organizations (PDF)", "Donating Dos and Don'ts (PDF)", and "Attorney General's Guide for Donors (PDF)". Below these links, the mailing address is provided: "Office of the Attorney General, Non-Profit Organizations/Public Charities Division, One Ashburton Place, Boston, MA 02108". The section concludes with the heading "Form PC and Short Form PC" and a link to "Form PC and Short Form PC - Forms and Instructions".

Compliance – MA Annual Filings AGO

AGO Annual Report:

- ❑ MA law requires all “public charities” operating in MA to register and file annual reports with the AGO Non-Profit Organizations/Public Charities Division
- ❑ Requires Annual Form PC
- ❑ In good standing? Search the AGO Public Charities Annual Filing Website:

<http://www.charities.ago.state.ma.us/>

- ❑ AGO also publishes lists of **Non-Compliant** and **De-Activated** Public Charities

Compliance – MA Annual Filings AGO

AGO Annual Report: Non-Compliant and De-Activated Public Charities

<http://www.mass.gov/ago/doing-business-in-massachusetts/public-charities-or-not-for-profits/public-charities-annual-filings/notice-of-non-compliant-and-de-activated.html>

Notice of Non-compliant Public Charities

The public charities listed below have failed to comply with one or more of the provisions of Chapter 12 or Chapter 68 and are believed to still be active in Massachusetts. Members of the public may want to consider a charity's lack of compliance when dealing with, or contributing to, any charity that appears on this list. Any organizations appearing on this list should contact the Division at (617) 727-2200, ext. 2101 to resolve its status.

This list is not all inclusive; failure to appear on this list does not mean that a public charity is in compliance with its registration and reporting requirements. For confirmation of compliance, please contact the Attorney General's Office at (617) 727-2200, ext. 2101.

Download and view:

- [List of Non-compliant Charities \(Excel\)](#) 
- [List of Non-compliant Charities \(PDF\)](#) 

Notice of De-activated Public Charities

The public charities listed below have failed to comply with the provisions of Chapters 12 and are believed to no longer be operating in Massachusetts. After repeated attempts to contact these organizations, the Division has deemed them "de-activated."

[De-activation is a term used solely for the purposes of the Division; it is not a substitute for statutory dissolution and does not affect or limit the rights or obligations of the public charity or third parties.] Members of the public are encouraged to contact the Division if they have reason to believe that any public charity on this list is still active in the Commonwealth. In addition, members of the public may want to consider a public charity's lack of compliance when dealing with, or contributing to, any charity that appears on this list. Any organizations appearing on this list should contact the Division at (617) 727-2200, ext. 2101, to resolve its status.

This list is not all inclusive; failure to appear on this list does not mean that a public charity is active or in compliance with its registration and reporting obligations. For confirmation of compliance please contact the Attorney General's Office at (617) 727-2200, ext. 2101.

Download and view:

- [List of De-activated Charities \(Excel\)](#) 
- [List of De-activated Charities \(PDF\)](#) 

Compliance – MA Annual Filings

AGO Annual Reports:

- ❑ Chapter 165 and Act Further Regulating MA Public Charities
- ❑ Increased penalties for failure to file the annual Form PC or for failing to make the initial registration with AGO
 - Must respond within 30 of notice from AGO.
 - Civil penalties - up to \$50 a day up to a max of \$10K.
 - **MAY BE ASSESSED AGAINST RESPONSIBLE OFFICER OR AGENT.**

Compliance – Federal Annual Filings Form 990

<http://www.irs.gov/charities/article/0,,id=256974,00.html>

The screenshot shows the IRS website interface. At the top, there is a navigation bar with the IRS logo, a search bar, and links for Home, Change Text Size, Contact IRS, About IRS, Site Map, Español, and Help. Below the navigation bar, there are tabs for Individuals, Businesses, Charities & Non-Profits (selected), Government Entities, Tax Professionals, Retirement Plans Community, and Tax Exempt Bond Community. Under the Charities & Non-Profits tab, there are links for Charitable Orqs, Churches and Religious Orqs, Contributors, Other Non-Profits, Political Orqs, and Private Foundations.

The main content area is titled "Annual Reporting & Filing" and contains the following information:

- Charities & Non-Profits Topics**
 - Life Cycle
 - Search for Charities
 - A-Z Site Index
 - StayExempt.irs.gov
 - Calendar of Events
 - EO Update
 - Exempt Organizations FAQs
 - More Topics ...
- Annual Reporting & Filing**
 - 990-Series Returns (current year forms and schedules)
 - Which form should I use?
 - Annual electronic notice (e-Postcard) for small exempt organizations
 - Filing tips
- More Information from the IRS**
 - How do I complete Form 990?

At the bottom of the page, there is a footer with links for Accessibility, Freedom of Information Act, Important Links, IRS Privacy Policy, USA.gov, and U.S. Treasury. A page note indicates "Page Last Reviewed or Updated: May 09, 2012".

Compliance – Federal Annual Filings Form 990

Form 990 Forms:

Status	Form
Gross receipts normally \leq \$50,000 Note: Organizations <u>eligible</u> to file the e-Postcard <u>may choose to file a full return</u>	<u>990-N</u>
Gross receipts $<$ \$200,000, and Total assets $<$ \$500,000	<u>990-EZ or 990</u>
Gross receipts \geq \$200,000, or Total assets \geq \$500,000	<u>990</u>
Private foundation - regardless of financial status	<u>990-PF</u>



Compliance – Federal Annual Filing Auto-Revocation

Auto-Revocation:

- ❑ As of January 2012 – more than 385,000 nonprofits have had their tax-exempt status revoked
- ❑ Only small percent of original group have applied for reinstatement
- ❑ Guidestar reports that majority (approx 75%) of 501(c)(3)s revoked have income \$25K or less



Compliance – Federal Annual Filing Auto-Revocation

Pension Protection Act of 2006 (PPA)

Pub. L. No. 109-280, 120 Stat. 780, §1223 (2006)

- ❑ Requires filing for organizations not previously required to file an annual information return §6033(i)
- ❑ Loss of exemption *by operation of law* for organizations that fail to file a required return or notice for 3 years §6033(j)



Compliance – Federal Annual Filing Auto-Revocation

How do you know if your organization's status has been revoked?

- ❑ IRS lists on website – updated monthly.
 - ❑ IRS Select Check

- ❑ IRS sends letter to last known address.

Compliance – Federal Annual Filing Auto-Revocation

<http://www.irs.gov/charities/article/0,,id=240099,00.html/>

The screenshot shows the IRS website's navigation bar with the IRS logo and a search box. Below the navigation bar, there are tabs for 'Charities & Non-Profits', 'Government Entities', 'Tax Professionals', 'Retirement Plans Community', and 'Tax Exempt Bond Community'. The main content area is titled 'Automatic Revocation of Exemption List' and contains the following text:

The IRS publishes a list of organizations that have had their federal tax-exempt status automatically revoked for failing to file an annual information return or notice with the IRS for three consecutive years (Auto-Revocation List). The Auto-Revocation List may be viewed and searched on [Exempt Organizations Select Check \(EO Select Check\)](#). The Auto-Revocation List provides the organization's name, employer identification number (EIN), exemption type, last known address, effective date of revocation and the date the organization's name was posted on IRS.gov. Users can also download the Auto-Revocation List using [EO Select Check](#).

Updated data posting date: 7-9-2012

Search [Auto-Revocation List](#) on [EO Select Check](#)

[Search Tips](#) for [Exempt Organizations Select Check](#)

Because the list is an official IRS record of organizations that lost their exempt status for failing to file for three consecutive years, [an organization whose exempt status is reinstated remains on the list](#). If, however, you think your organization was erroneously listed as revoked, see our [frequently asked questions](#).

The spreadsheets and Acrobat files previously provided have been replaced by [EO Select Check](#). Use [EO Select Check](#) to search for automatically revoked organizations by state.

For related information see:

- [Information on automatic revocation of tax exemption](#)
- [How to get an organization's tax-exempt status reinstated](#)
- [Frequently asked questions](#)
- [Annual filing requirements for tax-exempt organizations](#)
- [Data Alerts](#)

Page Last Reviewed or Updated: July 11, 2012

Compliance – Federal Annual Filing Auto-Revocation

And there is more....

- ❑ NPO no longer listed on IRS Publication 78, which is the official list of organizations eligible to receive tax-deductible charitable contributions
- ❑ Donors will not be able to receive a tax deduction for their gifts to NPO after revocation date
- ❑ Most private foundations/government agencies are unlikely to give grants to NPOs that are not tax-exempt

Compliance – Federal Annual Filing Auto-Revocation

What does it mean that a nonprofit's tax-exempt status has been revoked?

- ❑ NPO will no longer be exempt from federal income tax and must pay corporate income tax on annual revenue.
- ❑ NPO may be subject to back taxes and penalties for failure to pay corporate income tax *as of the effective date of revocation*.
- ❑ May impact state tax-exempt status and impact state exemptions for income tax, property tax, and sales/use tax (depend on federal exemption).



Compliance - Fundraising

Charitable Solicitation:

- ❑ Defined very broadly under MA statute: *“Solicitation” is “any direct or indirect request for a contribution on the representation that such contribution will be used in whole or in part for a charitable purpose.”*
- ❑ The statute specifically includes *“any written or otherwise recorded or published request that is ... circulated, distributed, posted in a public place, or advertised or communicated by press, telegraph, television or other media.”*
- ❑ Solicitation of charitable contributions can be carried out by personal meetings, direct mail, e-mail, telephone calls and over the internet.



Compliance – Fundraising

Certificate of Solicitation:

- ❑ Before raising funds obtain a Certificate of Solicitation from the AGO (File Schedule A-1 and A-2 of Form PC)
- ❑ No renewal – but financial reports due annually
- ❑ Special rules for games of chance (including raffles)
- ❑ Exemptions for volunteer NPOs that either:
 - (1) receive \$5,000 or less from the public, or
 - (2) receive contributions from ten or less persons.

Compliance - Fundraising

Professional Fundraisers:

Additional registration requirements for:

- ❑ *professional solicitors* (retained by NPO to solicit contributions for charitable purposes);
- ❑ *fundraising counsel* (retained by NPO to plan, conduct, manage, or advise the NPO's in connection with the solicitation of contributions, but who actually solicits no contributions); and
- ❑ *commercial co-venturers* (for-profit entities that conduct or sponsor a performance, event or sale to the public of a good or service which is advertised in conjunction with the name of NPO).

Compliance - Fundraising

Commercial Co-Venture:

- ❑ “cause related marketing”
- ❑ use charity’s name to sell products or services - and make charitable donation based on the sales
- ❑ regulated in over 20 states – including MA



Compliance - Fundraising

Commercial Co-Ventures in MA:

- ❑ MA requires that any co-venture must be
 - 1) in writing;
 - 2) signed by two officers of the NPO, and
 - 3) filed with AGO (Div. of Public Charities) within 10 days after such contract is entered into.
- ❑ No solicitation to be conducted prior to the filing of contract with AGO.
- ❑ Must include charitable purpose statement and minimum percentage of gross receipts to be used exclusively for charitable purposes.

Compliance – Fundraising

Online Fundraising

- ❑ In four states (NY, PA, NJ, FL) “Donate Now” button triggers registration requirement.
- ❑ Triggers:
 - specifically target individuals in particular state
 - receive contributions from a state on repeated basis
 - substantial basis from website.
- ❑ Website, email, twitter, phone solicitation – can trigger requirement to register.



Compliance - Fundraising

URS (Unified Registration Statement):

- ❑ The URS is a reporting form designed for NPOs registered in numerous states.
- ❑ MA accepts the URS from NPOs based in other states for an initial registration.
- ❑ NPOs based in MA may not use the URS at all.
- ❑ www.multistatefiling.com

Compliance Homework

- Search MA SOS Corporate Database
- Search MA AGO for Public Charities
- Search MA AGO Non-Compliant / De-Activated List
- Search IRS Exempt Organizations Select Check List
- Review NPO Form 990 history and filing dates
- Review Fundraising Protocol/ Registration Requirements

INDIVIDUAL BOARD MEMBER TOP 10:

1. Show up
2. Speak up
3. Follow up
4. Know your Purpose
5. Review your Bylaws
6. Study the numbers (even if they are scary)
7. Join a committee and do the work
8. Be attentive outside Board meetings
9. Govern with the group
10. Share your passion.