



**Non-Profit
Legal Checkup**

 **CaritasLawGroup P.C.**





This checklist was developed for nonprofit organizations to assist them in spotting potential legal issues. However, no checklist can substitute for specific legal advice. Please note the following:

- This checklist is designed for public charities organized as nonprofit corporations. Charitable trusts, private foundations and supporting organizations should not solely rely on this checklist.
- There may be other issues that impact your specific organization based on its structure, programs and activities.
- This checklist is intended to assist you in identifying potential legal problems. If you have identified a potential legal issue, you should consult an attorney.

Governing Documents

ARTICLES OF INCORPORATION

DATE OF LAST DOCUMENT	RECORDS	NOTES
	Were the articles of incorporation and all amendments filed with the relevant state agency?	
	Were the articles of incorporation and all amendments published with a newspaper of general circulation (if required)?	
	Were the affidavits of publication filed with the relevant state authority (if required)?	
	Is the purpose clause consistent with the organization's current (and planned) activities, mission, and tax-status?	
	Does the purpose clause limit the organization's purposes to exclusively tax-exempt purposes?	
	Does the dissolution clause require distribution of the organization's assets to another 501(c)(3) or governmental organization for exclusively public purposes upon dissolution?	
	If the articles of incorporation state the organization has members, is it clear whether they have voting rights?	
	Are there any outdated provisions? (e.g., is the life of the corporation limited?)	

BYLAWS

DATE OF LAST DOCUMENT	RECORDS	NOTES
	Do the bylaws accurately describe the organization's current structure and operations?	

	If the bylaws have a separate purpose clause, is it consistent with the purpose clause in the articles of incorporation?	
	Does the organization operate with the minimum number of directors required in the relevant jurisdiction?	
	Does the organization have all of the officers required the relevant state law and by its bylaws?	
	Does the organization maintain a list of the names, addresses and terms of office of all officers and directors?	
	Does the organization provide appropriate notice of board and committee meetings or obtain waivers?	
	Do the bylaws provide for a voting membership? If so, is the organization properly tracking who is entitled to vote? Is the organization properly noticing and documenting member meetings?	
	Are the bylaws consistent with current state law?	
	Are there any unusual or outdated provisions? (e.g., are Roberts Rules incorporated by reference?)	

POLICIES AND PROCEDURES

DATE OF LAST DOCUMENT	RECORDS	NOTES
	<p>Does the organization have a conflict of interest policy?</p> <p>Does the policy cover officers, directors, key employees, highly compensated employees, and those with substantial influence?</p> <p>Does it require disclosure of conflicts, recusal by interested persons, and decision by disinterested decision makers at least annually and as conflicts arise?</p> <p>Is it followed?</p>	

	Does the board of directors annually review the performance of the organization's chief executive?	
	Does the organization have a whistleblower policy? Is it followed?	
	Does the organization have a document retention and destruction policy? Is it followed?	
	Does the organization have a gift acceptance policy? Is it followed?	
	Does the organization have a travel and expense reimbursement policy? Is it followed?	
	Does the organization have a confidentiality policy? Is it followed?	
	Does the organization have a signature authority policy? Is it followed?	
	What other types of policies and procedures does the organization have in place?	
	Are the individuals to whom the organization's policies and procedures are applicable informed about such policies and procedures and have easy access to them?	
	Is there a board orientation process?	
	Are board members trained regarding their fiduciary duties, oversight responsibilities, and the key laws that govern charities?	

BOARD MEETINGS AND MINUTES

DATE OF LAST DOCUMENT	RECORDS	NOTES
	<p>Does the organization maintain a minute book?</p> <p>If so, do the minutes properly record attendance, key actions, votes and abstentions?</p> <p>If not, how are board actions memorialized?</p>	
	<p>Is a schedule of board (or member) meetings mandated and, if so, are meetings noticed and held in accordance with the bylaws?</p>	
	<p>Do the minutes reflect any conflict of interest transactions, and if so, are they properly managed?</p>	

State Compliance

ANNUAL REPORTS AND FILINGS WITH THE STATE

DATE OF LAST DOCUMENT	RECORDS	NOTES
	<p>Is the organization in good standing with its state of domicile?</p>	
	<p>Is the organization “doing business” in other states?</p> <p>If so, is it registered to do business as a foreign corporation in those states?</p> <p>Has it obtained recognition of state tax-exemption in these states (if required)?</p>	
	<p>Are annual reports up to date?</p> <p>Do they list all current officers and directors?</p> <p>Is the contact information current?</p>	

STATUTORY AGENT

DATE OF LAST DOCUMENT	RECORDS	NOTES
	<p>Is the registered agent listed with the state still at the address on file?</p> <p>Is the registered agent still connected to the organization and reliable?</p>	

Tax Issues

TAX-EXEMPTION ISSUES

DATE OF LAST DOCUMENT	RECORDS	NOTES
	<p>If the organization pays directors, officers, or key employees, is compensation properly reported, and did the independent members of the board properly approve it?</p>	
	<p>Does the organization timely file any state tax and/or information return required under applicable state law?</p>	
	<p>Does the organization understand its determination letter and its public charity status?</p> <p>Are the same confirmed by IRS website's "select check function" (polling what had been Publication 78)?</p>	
	<p>If the determination letter is an advance ruling and the advance ruling date expired before June 9, 2008, has the organization filed Form 8734 with the IRS?</p>	
	<p>Is there a state exemption letter (if required)?</p>	
	<p>Does the organization understand and comply with the prohibition against participating in political campaigns for or against candidates for public office</p>	

	<p>Does the organization understand and comply with the requirement that all lobbying activities must be an insubstantial part of the organization’s overall activities?</p> <p>Has the organization considered filing Form 5768 to make the 501(h) election, which provides for relatively generous lobbying expenditure limits without violating the prohibition against substantial lobbying?</p> <p>Is the organization properly tracking and reporting its lobbying?</p>	
	<p>If the organization receives revenues from regularly conducted business activities that are not related to its exempt purpose, does it correctly account, report and pay taxes on those funds; if not, has it qualified those activities as excepted from the unrelated business income tax?</p>	
	<p>Has the organization made any significant changes to its mission, programs, or primary sources of support that have not been reported to the IRS via Form 990/990-EZ?</p>	
	<p>Have changes to the governing documents been reported to the IRS via Form 990/990-EZ?</p>	

TAX RETURNS

DATE OF LAST DOCUMENT	RECORDS	NOTES
	<p>If the organization is required to file some form of Form 990, is the organization timely filing annual notice, Form 990-N (or filing the Form 990-EZ or Form 990 annually)? If not, check IRS website’s “select check function” access of Publication 78 to determine whether the organization is still recognized as a tax-exempt entity.</p>	
	<p>Is the organization properly reporting its public charity status on its Form 990?</p>	
	<p>Is the organization passing the public support test (if applicable)?</p>	

	Does the organization make its completed Application for Recognition of Tax-Exemption Form 1023 available for public inspection (if filed after July 1987)?	
	Does the organization list the states with which a copy of its 990 is required to be filed?	
Fundraising Compliance		
DATE OF LAST DOCUMENT	RECORDS	NOTES
	<p>Does the organization solicit for donations in other states?</p> <p>If so, is it registered to solicit in those states?</p> <p>If so, are the filings kept current?</p>	
	<p>Does the organization qualify for exemption from charitable solicitation registration in any state?</p> <p>Has the organization formerly requested exemption from the state?</p>	
	<p>Does the organization have a donate button on its website?</p> <p>If the organization is not otherwise actively soliciting in other states, is it registered with the states based on revenues received on a repeated and ongoing basis and/or substantial basis?</p> <p>If not, are the appropriate disclaimers on the website?</p>	
	<p>Is the organization engaged with a professional fundraiser (e.g. Professional Solicitor, Professional Fund-raising Counsel)?</p> <p>If so, is there a written agreement that complies with state requirements?</p> <p>Is the professional fundraiser registered with the states where it provides services to the organization?</p> <p>Does the organization have current disclosures on its website, written solicitation materials, and phone scripts?</p>	
	Does the organization have current disclosures on its website and written solicitation materials?	

	If the organization participates in charitable sales promotions, is it and its partners complying with commercial co-venture laws in the states where the sales promotion is offered?	
	If the organization receives non-cash gifts, does it appropriately follow the IRS requirements for substantiation of such gifts?	
	Does the organization appropriately acknowledge gifts of \$250 or more in writing?	
	If the organization participates in raffles are the raffles compliant with relevant state and local laws?	

Employees, Independent Contractors, & Volunteers

DATE OF LAST DOCUMENT	RECORDS	NOTES
	If the organization has employees, does it appropriately distinguish among employees, independent contractors, interns and volunteers?	
	Does the organization distinguish between exempt and non-exempt employees? (e.g., those employees that are exempt from federal and state wage and hour laws)	
	Does the organization verify all employees are eligible to work in the United States by requiring all employees to complete a Form I-9?	
	If the organization has employees, has it considered adopting an employee handbook describing employee hours, dress code, benefits, paid holidays, vacation policies, grievance procedures, review procedures, and other employment practices? If so, is it up to date and does the organization follow it?	
	Does the organization timely withhold and remit payroll taxes for its employees?	
	Does the organization provide a Form W-2 for employees and a Form 1099 for any independent contractors paid more than \$600 in a calendar year?	

	Does the organization comply with state employee compensation and unemployment laws?	
	<p>If the organization has volunteers, does the organization have a volunteer handbook with policies and procedures?</p> <p>Does it require volunteers to sign a Participation Agreement?</p>	

Intellectual Property

DATE OF LAST DOCUMENT	RECORDS	NOTES
	Has the organization taken reasonable steps to ensure that none of its intellectual property (including names, logos, web content, other written materials, and videos) infringes on the rights of another party?	
	Has the organization registered or otherwise obtained protection for any of its unique logos, branded program names/marks, or written materials?	
	<p>Does the organization allow third parties to use its logos, trademarks, and copyrighted materials?</p> <p>If so, has it entered into license agreements with third parties using the materials?</p>	
	<p>Does the organization record video or take photos at its events?</p> <p>Does it obtain photo releases from subjects appearing in film or digital media?</p>	

Insurance and Risk Management

DATE OF LAST DOCUMENT	RECORDS	NOTES
	Does the organization have directors and officers insurance?	
	If the organization owns or rents real property, does the organization have property insurance?	
	Does the organization have general liability insurance?	
	Does the organization have other necessary insurance coverage?	
	Does the organization require program participants to sign appropriate waivers and releases?	
	Does the organization record video or take photos at its events? Does it obtain photo releases from subjects appearing in film or digital media?	

Public Disclosure

DATE OF LAST DOCUMENT	RECORDS	NOTES
	Does the organization maintain copies of 3 most recent Form 990s (redact Schedule B) for public inspection?	
	Does the organization maintain a copy of Form 1023, Application for Exemption and all related correspondence for public inspection?	



 Caritas Law Group P.C.

PROVIDED BY



207 S. Rural Road, Tempe, AZ 85282

PHONE 602-456-0071 ▪ FAX 602-296-0415

info@caritaslawgroup.com ▪ caritaslawgroup.com