

# Nonprofit Legal Checklist

This checklist was created for nonprofit organizations, particularly their board members, to assist them on the road to good legal health. But please understand that this checklist is only a starting point. Any checklist has limitations. Please recognize:

- This checklist is intended only for publicly supported charities. Private foundations, supporting organizations, or charitable trusts should not use this checklist.
- This checklist is simply a guide; it does not contain and should not be relied upon as legal advice.
- Laws and rules change constantly, and this checklist may become out-of-date.
- The checklist addresses common concerns of 501(c)(3) public charities incorporated as nonprofit corporations in Washington State. Specific laws or rules may apply to your particular organization or its programs that are not addressed in this checklist.
- The checklist is intended to assist you in identifying potential legal problems. If you have identified a potential problem which you are unsure how to resolve, or have questions on matters not covered in this checklist, we recommend that you consult an attorney.

If your organization is unable to afford an attorney, please contact Wayfind at [contact@wayfindlegal.org](mailto:contact@wayfindlegal.org) or 1.866.288.9695, to see if your organization is eligible for pro bono legal services.

## CORPORATE RECORDS

Our Organization maintains (in secured electronic or hard copy form) a corporate record book with current, legible copies of the following:

Date of last document	No	Records
<b>CORE DOCUMENTS</b>		
		Certificate of Incorporation from the Secretary of State
		Articles of Incorporation, with all amendments
		Current Bylaws
		501(c)(3) determination letter from the IRS
		Application to IRS (Form 1023) for tax-exempt status
<b>UPDATE ANNUALLY</b>		
		IRS Form 990. (Keep for the 3 most recent tax years)
		Annual report (Nonprofit corporation) to the Washington Secretary of State
		Annual renewal (Charitable Corporation) to the Washington Secretary of State
		(For a membership organization), list of our current members and their addresses
		Insurance policies
<b>UPDATE REGULARLY</b>		

		Names, addresses, and terms of office of all members, officers, and directors,
		Minutes of all meetings of the members, board, and committees of the board
		List of contributors
		Contracts or leases

## GOVERNANCE – STATE

If Yes, Date sent or reviewed	No	Checklist	Information
<b>ARTICLES OF INCORPORATION</b>			
		Our board of directors reviews the Articles of Incorporation at least once a year to make sure that actual practice is consistent with these documents.	Your Articles of Incorporation define what your organization will do and who will be initially responsible for the management of the corporation.
<b>- Registered agent</b>			
		Our Organization’s registered agent is still at the address on file with the Secretary of State.	Your “registered agent” is the main contact with the Secretary of State. Verify the name and address of a nonprofit corporation’s registered agent here: <a href="http://www.sos.wa.gov/corps/search_advanced.aspx">http://www.sos.wa.gov/corps/search_advanced.aspx</a>
		The registered agent has signed a consent form that is on file with the Secretary of State	
		We can rely on our registered agent to give us mail that comes to the corporation	
<b>BYLAWS</b>			
		Our board of directors reviews the Bylaws at least once a year to make sure that actual practice is consistent with these documents.	Your Bylaws accurately set out the rules that govern the internal management of your organization.
<b>FINANCIAL STATEMENTS</b>			
		Our Organization prepares and maintains financial statements and statements of account on a regular basis.	Financial statements include a Profit and Loss Statement and a Balance Sheet. Statements of Account means that the bank statement is balanced monthly.
<b>- Financial controls</b>			
		Our board has reviewed, and if necessary secured expert advice about, our financial controls, and regularly revisits this topic to assure adequate scope and compliance.	
If Yes, Date sent	No	Checklist	Information

or reviewed			
<b>- Separation of duties</b>			
		Our Organization has adequate separation of financial duties. In particular, the person writing and signing checks is different than the person reviewing and reconciling bank statements.	
		More than one person is an authorized signer on our Organization's bank accounts, and these signatories are up-to-date.	
<b>- No loans</b>			
		Our Organization does not make loans to any of its officers or directors	
<b>- Restrictions</b>			
		Our Organization understands and carefully observes any use or spending restrictions on grants and other contributed funds.	
<b>- Insurance</b>			
		Our Organization has Officer and Director insurance, and the board members have reviewed the policy and understand what it covers and what it does not cover.	
<b>ANNUAL REPORT</b>			
		Our Organization files an annual report with the Washington Secretary of State. (You may also need to register as a Charitable Organization; see "Fundraising" for more.)	The annual report is due the last day of organization's incorporation month.
<b>BUSINESS LICENSE</b>			
		Our Organization has filed a Master Business Application with the State of Washington.	<a href="http://bls.dor.wa.gov/file.aspx">http://bls.dor.wa.gov/file.aspx</a>
<b>STATE TAXES</b>			
		Our Organization understands its obligation to pay any state sales or business and occupation taxes.	
		Our organization understands whether it is entitled to any exemptions from these taxes	Some nonprofits can be exempt from some taxes for specific reasons.
<b>LOCAL</b>			
		Our Organization has a current license to do business from the city/county where it is located.	
		Our Organization understands its obligation to pay any local business and occupation or property taxes.	

## GOVERNANCE – FEDERAL

If Yes, Date sent or reviewed	Checklist	Information
<b>KEEPING CURRENT WITH IRS -MAINTAINING TAX-EXEMPT STATUS</b>		
	<p>Our organization files a version of the IRS Form 990 every year.</p> <p><input type="checkbox"/> Our Organization does not normally receive more than \$50,000 in annual gross receipts and files a 990N (e-Postcard).</p> <p><input type="checkbox"/> Our Organization normally receives more than \$50,000 in gross receipts each year and files annual Form 990 or 990 EZ with the IRS.</p>	<p>Failure to file for three consecutive years will result in loss of federal tax exemption.</p>
	<p>Our Organization understands its 501(c)(3) determination letter from the IRS, and its status as either a “public charity” or a “private foundation.</p>	<p>Your determination letter should include information either in the top right side or in the body of the letter.</p>
	<p>Our Organization’s Board of Directors regularly reviews the Organization’s financial statements, and reviews and approves the annual IRS Form 990.</p>	
	<p>If our Organization receives funds from regularly-conducted business activities that are unrelated to its exempt purpose, it correctly accounts for those funds, and understands how to report and pay taxes on this unrelated business income.</p>	<p>Unrelated business income could include the proceeds from a thrift store, card sale, or spaghetti feed in certain circumstances.</p>
<b>KEEPING CURRENT WITH IRS</b>		
	<p>Our Organization has notified the IRS of any material changes to our exempt purposes or activities, or amendments to our Articles of Incorporation or Bylaws since we applied for 501(c)(3) status.</p>	
<b>CONFLICT OF INTEREST</b>		
	<p>Our Organization has a written conflict of interest policy and follows that policy.</p>	<p>Template of Conflict of Interest Policy is available at <a href="http://www.wayfindlegal.org/tools/legal">www.wayfindlegal.org/tools/legal</a></p>
	<p>Any transactions our organization undertakes with its insiders, known as “disqualified persons,” is approved by the board or an independent committee, no members of which have a personal or financial interest in the transaction.</p>	<p>“Disqualified persons” include board members, senior executives, and their close family.</p>
	<p>The setting of our executive director’s salary is based on appropriate comparability data.</p>	
	<p>Transactions are concurrently documented by the board or committee which states the basis for its approval in writing.</p>	<p>Most boards use the minutes to document these transactions.</p>

If Yes, Date sent or reviewed		Checklist	Information
<b>OTHER POLICIES</b>			
		Our Organization has considered adopting a written whistleblower policy and if adopted, follows that policy.	
		Our Organization has considered adopting a written document retention policy and if adopted, follows that policy.	A document retention policy ensures that documents are retained and secured for the appropriate period of time.
<b>ADVOCACY</b>			
		Our Organization does not endorse candidates for political office and does not participate in any political campaign for or against a candidate for any public office.	Individual board members may endorse candidates as an individual, but not as a representative of the Organization.
		Our lobbying activities, if any, are an insubstantial part of our Organization's overall activities. If we are participating in any lobbying activities, we have considered the two ways that nonprofits can document their lobbying activities.	Nonprofits can make the 501(h) election on IRS Form 5768. They can also use the "fact and circumstances" test.

## FUNDRAISING

If Yes, Date sent or reviewed	No	Checklist	Information
<b>REGISTRATION AS A CHARITY</b>			
		If our Organization solicits charitable donations from the general public, it complies with Washington's Charitable Solicitations Act, including registration and annual reporting requirements.	Any organization that solicits more than \$50,000 <u>or</u> pays anyone to carry out the activities of the organization must register as a Charity. Your Annual Renewal is due no later than the last business day of the 11 <sup>th</sup> month after the end of the organization's accounting year.
<b>GIFT ACKNOWLEDGEMENT</b>			
		Our Organization acknowledges, in writing, gifts of \$250 or more.	

IN-KIND			
		If our Organization provides any goods or services of more than a nominal value to a donor who makes a contribution in excess of \$75.00, our Organization provides a disclosure statement to the donor with a good faith estimate of the fair market value of any benefit that the donor received.	
		If our Organization receives gifts of vehicles or other noncash gifts, it understands and follows the IRS regulations for substantiation of those gifts.	

## EMPLOYMENT LAW

If Yes, Date sent or reviewed	No	Checklist	Information
<b>EQUAL OPPORTUNITY</b>			
		Our organization does not discriminate in employment on the basis of race, age, sex, disability, marital status, national origin or creed, or sexual orientation.	
<b>WORKERS COMPENSATION</b>			
		Our Organization has evaluated whether it wishes to provide workers compensation coverage for volunteers. If it has elected to provide this coverage, it has timely notified the Director of the Department of Labor and industries of its intent to do so and is making the required contributions.	
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<b>TYPES OF WORKERS</b>			
		Our Organization is confident that it has properly categorized volunteers, independent contractors, employees, and interns, and is treating them appropriately for their category.	
		Our Organization is confident it has properly classified employees as either exempt or nonexempt, and is treating them appropriately for their category.	
<b>ORGANIZATIONS WITH STAFF</b>			
<b>LABOR PRACTICE</b>			
		If our Organization's staff members work overtime or have unusual hours, we are complying with wage and hour standards that govern overtime.	
		Our Organization has considered whether it should adopt written personnel policies that include, for example, a description of employee benefits, a	

		process for handling a harassment complaint or other grievances, termination procedures, the process for performance management or employee reviews and other employment practices.	
<b>WORK ELIGIBILITY</b>			
		Our Organization verifies that all employees are eligible to work in the United States by having all employees complete form I-9 which the organization retains on file for three years after the date of hire or one year after the date of termination of employment, whichever is later.	
<b>FEDERAL REQUIREMENTS</b>			
		Our Organization withholds federal income and FICA taxes from employees' paychecks, deposits these withheld funds, along with the employer's share or FICA taxes, with the IRS on a regular basis, and files a Form 941 quarterly with the IRS.	
		Our Organization prepares Form W-2 for employees and Form 1099 for any independent contractors.	
<b>STATE REQUIREMENTS</b>			
		Our Organization has registered with the Washington State Departments of Labor and Industries and Employment Security. Our organization makes quarterly payments to ESD for unemployment insurance, and makes quarterly payments to L & I for workers compensation insurance.	

## INTELLECTUAL PROPERTY LAW

If Yes, Date sent or reviewed	No	Checklist	Information
<b>OWNERSHIP</b>			
		Our Organization has proper licenses or permission to use all photos and written information created by other persons or organizations.	
		Our Organization has considered whether it should register or obtain other protection for any of its unique logos, designs, trademarks, or services.	
		We are confident that our Organization's name does not infringe on the rights of any other organization.	

If Yes, Date sent or reviewed	No	Checklist	Information
		Our Organization has considered whether it would be appropriate to license any written materials, photographs, recordings, art, policy manuals, seminar materials, etc, that may be available for use by others.	If the organization has materials that it creates and wants to limit use of those materials by others, then it must consider whether it wants to create a licensing agreement to allow others to use the materials with their limitations.
		When contracting with third parties to perform services, our Organization uses an employment or independent contractor agreement that assigns ownership to the Organization of intellectual property created by the employee or contractor within the scope of his or her work for the Organization.	One example comes in hiring a third party to create a website. The Organization should obtain ownership of the intellectual property in the website design from the developer.
<b>PRIVACY POLICY</b>			
		Our Organization has considered implementing a written privacy policy that describes how the Organization uses and discloses personal information.	
		If a privacy policy has been adopted, the Organization periodically confirms that it is in compliance with the commitments it makes in that policy.	
<b>WEBSITE</b>			
		<p>If our Organization operates a website, the Organization has posted written terms of use or terms of service that limits the Organization’s liability and disclaims warranties. These terms of service are prominently located on the Organization’s website.</p> <p>If our Organization allows third parties to post information on the Organization’s website, the Organization has implemented a Digital Millennium Copyright Act compliant notice and takedown provision as part of its terms of use or terms of service. The organization has also registered an agent with the US Copyright Office to receive notices of copyright infringement under the DMCA</p>	