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CHICAGO LAW PARTNERS



Welcome to the first issue of Chicago Law Partners newsletter - "In Brief". From time to time we will share tips, insights, and updates of interest to our clients and friends. We hope you find these materials of interest. If there's a topic you'd like us to address, let us know. We're interested in your feedback.

In Brief

Issue No. 1

As we head to year-end, it's a good time for a quick review of a few legal issues that, with planning, can help organizations minimize potential legal exposure.

- **Take advantage of recent updates to the Illinois Not-For-Profit Act.** The Act has been amended - twice! Under the revised Act, it is much easier for members to take action without a formal meeting. It also is easier for boards to take action by unanimous written consent - the requirement of written signatures authorizing that consent has been eliminated. There are a number of other changes worth noting. For additional detail see <http://chicagolawpartners.com/publications-resources.php>.
- **Review your bylaws.** Periodic review of your bylaws is important to ensure that they are consistent with: (i) the law of the state in which your organization is incorporated; (ii) the organization's Articles of Incorporation; and (iii) the organization's policies and current practices. If the bylaws aren't consistent with the law, you must change the bylaws. If the bylaws are not consistent with the Articles or with policies and practices, you can either change the Articles, the bylaws, or the policies and practices. But, you must change something. Since it is not that easy to change the Articles, it usually is the bylaws or the policies and practices that are changed. Even if everything is consistent, most bylaws can benefit from some clean-up and modernization.
- **Amend your Articles of Incorporation with care.**
 - Any amendment to an organization's Articles of Incorporation requires official notification to the IRS. The IRS views any such amendments as "changes" which typically require the submission of a new tax exemption application. Most organizations do not want to go through that process. As a result, organizations should not make any changes to the Articles unless those changes are absolutely essential. Even better, prepare Articles, in the first instance, that avoid unnecessary detail and, thus, stand the test of time.

o It should be noted that a name change requires an amendment to the Articles of Incorporation (because the Articles set forth the organization's name). Therefore, even a simple name change could trigger the need to re-file for a tax exemption. Moreover, a simple name change is not so simple if the process involves amending the Articles. So, name changes should not be undertaken lightly. If a change must be made, give consideration to not formally and legally changing the name (which requires an amendment to the Articles), but, rather, taking the steps to operate "under an assumed name" - that is a "doing business as" (d/b/a) name. While there is a state law established process required for obtaining a d/b/a, it is not nearly as difficult as amending the Articles (and it doesn't require IRS notification). At the same time, when operating under an "assumed name," an organization always must be careful to use its full, legal name when required (e.g., on tax returns, contracts, and the like).

- **Understand the New Form 990.** The IRS has undertaken a massive revision of the Form 990 which retains the financial reporting function of the old Form 990, but greatly streamlined. The new IRS Form 990 - the information return for tax exempt organizations - can either be your friend or your enemy. Make it your friend. In return for having streamlined the actual financial reporting form, the IRS added several pages of schedules to the form, many of which are confusing, challenging and difficult to complete. We are so glad for paper-work reduction! Nonetheless, the Form 990 should be viewed as an opportunity. The Form 990 is publicly available. Accordingly, you have the opportunity to use it as public relations tool to tell the world about your organization and its mission, in your own words. For many organizations (think public charity), that is a great opportunity. For others (think trade association), it is a bit of an intrusion. The beauty of the Form, however, is that you can describe your organization and mission with more or less openness, as you choose. For those with a public face, choose openness. With those that have no real need for a public face, less openness will work. In addition, many of the Form's questions are designed to solicit responses that allow the IRS some insight into the organization's corporate governance. There has been much written as to the IRS' authority for asking certain questions; if there are "right" answers to the questions; and what, if anything, the IRS might do with a response that it does not think is "right." Organizations should look at the Form 990 attachments as a roadmap towards "best practices" in corporate governance, transparency, and the development of a culture of disclosure. Follow that road, and your organization almost certainly will improve its governance, or, at least, have confirmation that its practices raise no red flags with the IRS.
- **Maintain accurate records.** That means creating good records in the first place and having, and implementing, a good record retention/destruction policy. Creating good records means, for example, that minutes should never be a record of what was said; they are a record of what was done. Similarly, best practices suggest thinking twice before pushing the send button on that e-mail message. We tend to think sending an e-mail is like talking on the phone - very informal. However, there is no record of what is said on the phone. That e-mail may exist in cyberspace forever.
- **Keep your employment house in order.** Make sure your employment practices are up-to-date and that you properly classify and carefully document any work being done by independent contractors.
- **Manage relationships.** Adopt (and enforce) policies for establishing, maintaining, and managing your organization's relationships with others, including chapters, affiliated entities,

suppliers, and customers.

- **Protect your most valuable assets.** Be sure that all of your intellectual property (including your name, logo, mailing list, and copyrightable material) is fully protected. Among other things, be sure to use trademark and copyright symbols as appropriate. In addition, don't forget to secure appropriate ownership and/or license rights when materials are being created for your organization by others - including your organization's members.
- **Review your current and future leadership.** Are the right people in place to govern and lead your organization? Are there successors in the developmental pipeline? If not, what will you do to fix it?

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If you have any questions regarding this newsletter, please contact Jed Mandel (312-929-1960), or any other CLP attorney for more information.

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