

### Legal Audit Checklist

The following is a generic outline / checklist which is designed to help social sector organizations think strategically about possible legal issues facing their organizations. Each topic below may require information gathering and review.

Regular legal audits can help social sector organizations maintain compliance with state and federal laws, prevent conflicts and protect themselves from liability.

Items on the checklist may not be relevant to all organizations. This list is not intended to be exhaustive and it may not include all relevant legal issues.

### Form of Organization

- If a form of organization has not been selected, review and discuss advantages/disadvantages of various forms of organization (e.g., corporation, limited liability company)

### Corporations and Governance

- Review Articles/Certificate of Incorporation and Bylaws
- Review Board of Directors committee structure and committee charters
- Review Board of Directors and committee minutes
- Review corporate structure, including affiliates and joint ventures
- Verify that state corporate filings, including annual reports, have been made
- Review whether corporate registration and/or filings should be undertaken in other jurisdictions
- Review governance-related policies, including conflicts and ethics
- Review insurance coverage

### Federal Tax Law Compliance

- Tax-exempt status, including IRS determination letter
- Form 990 compliance and preparation for 2010 filing requirements
- Communications with the IRS
- Political campaign activities
- Lobbying
- Unrelated business income
- Related organizations and their activities
- Excess benefit transactions
- Rebuttable presumption
- Automatic excess benefits
- Public vs. private foundation status

### Other Federal Regulatory Compliance

- Foreign Corrupt Practices Act
- U.S. trade controls
- Export controls
- Economic sanctions



- Anti-terrorism
- Government grants and contracts
- Lobbying registration and disclosure; Byrd Amendment likely referenced in grants
- Foreign bank accounts

## State and Local Tax

- State tax-exempt determination letter and tax filings
- Unrelated business income
- Sales, privilege, excise, franchise taxes
- Employment taxes and workers compensation

## Fundraising and Access to Capital

- State fundraising registration and reporting
- Planned gift activities -- charitable gift annuities, split interest trusts
- Internet solicitations
- Federal tax law substantiation requirements
- Access to loans and equity investments, including program related investments

## Website and Internet

- Review website; review procedures for content monitoring
- Determine whether domain names infringe on another organization's trademarks or servicemarks
- Use of trademarks
- Third party content
- Consents for use of content and website links
- Privacy policy and confidential information
- Charitable solicitations
- Compliance with IRS lobbying and political campaign activity rules
- Review policy for links to/from other sites

## Intellectual Property

- Verify status of trademarks, trade names, domain names, and copyrights
- Determine whether other proprietary information should be protected
- Review policies and third party agreements relating to non-disclosure of confidential information and ownership of intellectual property created by employees and contractors
- Review procedures for maintaining confidentiality of trade secrets
- Review licenses, contracts and other agreements relating to intellectual property and computer software to which the organization is a party or a third party beneficiary
- Grants likely to have IP provisions that would include provisions re allocation of rights and requirements for protection of rights.

## Document Retention Policies

- Should the organization have a retention policy?
- Review existing policy for both hard copy and electronic documents
- Check grants for document retention requirements and then check policy for conformance.
- Verify the existence of a policy against altering, destroying, or concealing documents in the event of an anticipated or known government audit or investigation

## Communications

- Review policies re public statements and speaking to the media

## Human Resources and Employee Benefits

- Review employee manuals, handbooks and policies
- Review whether individuals are properly classified as employees and independent contractors
- Review compliance with federal requirements for documentation of citizenship of employees
- Review compliance with federal and state laws prohibiting various forms of discrimination
- Review job application form, standard job posting and recruiting materials
- Review employment contracts and letter agreements
- Review procedures and practices for use of temporary workers
- Review procedures and practices for terminating employees
- Review FLSA compliance issues
- Review compliance with Family and Medical Leave Act
- Review existing tax qualified benefit plans
- Review non-qualified deferred compensation plans
- Review fringe benefits
- Review severance plans or policies
- Verify filing of all IRS/DOL forms
- Review recordkeeping for EEO/AAP compliance

## Leases

- If organization planning to lease space, guidance on key issues
- If organization has entered into a lease, review to determine compliance with its provisions
- Consider option provisions and dates for exercise

## Contracts

- Review significant contracts and schedule notification of contract renewal dates
- Verify compliance with representations and warranties
- Determine policy for internal contract review, external review by counsel, execution of contracts
- Determine whether there are contracts with related parties and whether there was compliance with procedures for disclosing conflicts of interest
- Determine whether there are business relationships not covered by a written agreement

## Financial

- Review internal/external audit procedures
- Review management letter for the last three independent audit cycles
- Review internal control procedures
- Review audited financial statements for last three cycles

## Lawsuits

- Existing or threatened lawsuits

## Legal Barriers

- Legal barriers that affect day-to-day operations
- Consider other legal barriers, including barriers to growth and success