



Is it Time for a Legal Audit?

Presented by:

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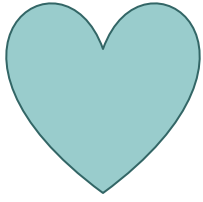
Ellis M. Carter



Ellis M. Carter is the founder of the Carter Law Group P.C., in Phoenix, Arizona. Carter Law Group exclusively represents tax-exempt organizations and socially responsible companies. Ellis has been selected by her peers for inclusion in Best Lawyers in America, Nonprofit/Charities law (2007-2014) and peer rated “AV Preeminent” (the highest rating available) by Martindale Hubbell. Carter Law Group has been named a “first tier firm” for Nonprofit/Charities law by U.S. News/Best Lawyers.[®] Ellis is also the author and publisher of the blog, CharityLawyer, which can be read at <http://charitylawyerblog.com>.



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Questions!



Legal Audit

- An overview of an organization's non-financial compliance, governance and risk management issues.
- Like a financial audit, a legal audit can be tailored to cover areas of particular concern.
- The audit can also be conducted at one time or divided into phases.



Corporate Status

Reviewing corporate status typically entails a review of:

- articles of incorporation,
- bylaws,
- minutes; and
- corporate filings.



Corporate Status

- Significant operations in other states may trigger a duty to register to “do business” as a foreign corporation in that state.



Governance Policies

This review should consider:

- which policies exist
- whether additional policies make sense for the organization
- whether the policies are legally compliant
- whether they are consistent with existing practice



Governance Policies

Governance Policies may include:

- Conflict of Interest
- Signature Authority Policy
- Whistleblower
- Record Retention
- Form 990 Review



Governance Policies

- Travel and Expense Reimbursement
- Compensation
- Gift Acceptance
- Less common policies include, Fundraising, Confidentiality, Email Voting, Joint Venture, Foreign Aid Policy.



Tax-Exempt Status

- Is the organization properly classified (both for tax-exemption and public charity status)
- Are activities still within the scope of its ruling
- Has the organization reported changes to its governing documents and significant changes in sources of support, programs, purposes, etc. on its Form 990



Other Federal Tax Matters

Review of compliance with:

- Public support test (if applicable)
- Lobbying limits
- Prohibition on political campaign activity
- Unrelated business income rules



Other Federal Tax Matters

Review of compliance with:

- Private benefit, private inurement and excess benefit rules
- Public inspection rules
- Requirement to report significant changes



State and Local Tax Issues

Review of:

- Property Tax
- Transaction Privilege Tax

It is a good idea to review exemptions to determine whether the organization still qualifies.



Fundraising

- Ensure organization is registered to solicit in jurisdictions where it is actively soliciting funds.
- If not, consider:
 - Registering in all states
 - Soliciting via a conduit site (razoo.org; networkforgood.org)
 - Strategic Registration



Fundraising

- Are outside paid fundraisers properly registered in states where solicitations are being made?
- If Charitable Gift Annuities are being offered, is the organization in compliance with state law (i.e., unrestricted assets in excess of \$300,000).



Fundraising

- If organization is beneficiary of commercial co-ventures is co-venture properly registered in states that require it?
- If organization participates in raffles or other forms of charitable gambling, are events compliant with state law?



Gift Administration Issues

Entails review of:

- Management of restricted gifts
- Gift acceptance policies as well as
- Substantiation and acknowledgement practices



Insurance Policies

Review of:

- General liability
- Directors and Officers
- Property

to ensure riskiest activities are adequately covered.



Volunteer and Participant Waivers

A legal audit should consider whether:

- Appropriate releases and waivers exist;
- Releases and waivers are adequate in light of the organization's activities; and
- Procedures have been implemented to ensure they are consistently used.



Contractual Obligations

- Review significant to ensure notice and termination dates are properly monitored as well as for compliance with restrictive covenants.
- Review process for most significant contracts (over \$X or X years) should include legal review.



Contractual Obligations

*NEVER SIGN WHAT YOU DO NOT
UNDERSTAND!*

(includes gifts!)

(and copier leases!)



Board Orientation and Training

Is there a process to train Board members regarding their fiduciary duties, oversight responsibilities, and the key laws that govern the organization?



Other Issues

Depending on the organization's activities, a legal audit may also consider:

- Personnel policies,
- Intellectual property issues,
- Real estate issues, etc.



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Still



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