



charitable allies
your nonprofit advocate

THE CARE & KEEPING OF A NONPROFIT

ANNUAL FILING REQUIREMENTS

Unless your organization is a church, church auxiliary, or another type of entity specifically exempt from annual return requirements, *your organization is required to file an annual information return with the IRS on IRS Form 990, IRS Form 990EZ or IRS Form 990-N (e-Postcard)*. This filing is due on the 15th of the 5th month after the end of your tax year (i.e., on May 15th for year-end filers). Form 990 is a long information return and takes a substantial amount of time to prepare. The Form 990-EZ is substantially shorter, but also takes some time to prepare. The Form 990-N, or “e-Postcard,” is a very short filing that basically communicates to the IRS that you still exist and have some activities. *If you fail to timely file your IRS Form 990, 990-EZ or 990-N for three consecutive years, then the IRS will automatically revoke your tax-exempt status.* Please note the emphasis on “timely.” If the IRS does not receive and accept your organization’s Form 990 before the deadline, even if post-marked before the deadline, the IRS may count the Form as late. Then, without further notice, when the third filing is “late” again, the IRS revokes the organization’s tax-exempt status. The only way to regain your tax-exempt status is to reapply and to also pass a multi-pronged, multi-factor test for retroactive determination. Therefore, please be particularly careful to file your proper 990 each year. The following provides information to help you determine which 990 you are required to file. Please note that an organization that is required to file Form 990-N may elect to file Form 990-EZ.

WHICH FORM IS RIGHT FOR YOU?

If your gross receipts are...	...then file IRS form:
Normally less than or equal to \$50,000	990-N (e-Postcard)
Between \$50,000 and \$200,000 AND your total assets are below \$500,000	990-EZ
\$200,000 or more or your total assets are \$500,000 or more	990



Business Entity Reports; Other Secretary of State Filings.

After a nonprofit organization has formed or been granted authority to do business in most states, the nonprofit has an ongoing responsibility to file regular business entity reports with the relevant secretary of state. Please be sure to check with the state of your incorporation for this anniversary filing. If an entity experiences a change, such as a change of address, a change of registered agent (the person someone formally serves if you are sued), or a move, it must file updated information with the secretary of state.

What should I do if my nonprofit loses its 501(c)(3) status?

If you get a notice from the IRS that your nonprofit status has been revoked, your 501(c)(3) status is no longer active. This can prevent you from applying for grant funding, gifts from companies, and many other fundraising activities. Nonprofits lose tax exempt status automatically after 3 consecutive years of not filing their annual return (also known as the 990).

To regain 501(c)(3) status, you'll go through a process called reinstatement. There are four types of reinstatement. For a general idea of which type of reinstatement could be right for your nonprofit, see page 10. No matter which type of reinstatement you'd like to pursue, we have nonprofit attorneys who are happy to help with any of the options and with identifying which option could be right for your unique circumstance. Contact your attorney directly or contact us at zac@charitableallies.org to learn more.



ANNUAL TAX REPORT

Many states require that nonprofits file an annual report to the revenue office. The form is usually very short. Exceptions and exceptions may exist for the size of your organization. The form is usually due each year on the same date of the IRS Form 990. It may also require attachments, such as the appropriate IRS Form 990, detailed descriptions of articles or bylaw changes, and updated officer and director information.



How should you **reinstate** your nonprofit?

Which IRS form does
your nonprofit file?

990-N or 990 EZ

Is this the 1st time
your tax exempt status
has been revoked?

yes

no

990

Has it been more or
less than 15 months
since revocation?

less

more

**Streamlined
Retroactive
Reinstatement**

**Retroactive
Reinstatement
(within 15 months)**

**Retroactive
Reinstatement
(after 15 months)**

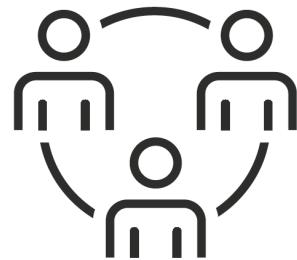
**Post-Mark Date
Reinstatement**

yes

no

CORPORATE GOVERNANCE

Corporate governance refers to the way an organization allocates authority and oversight responsibilities for decisions and operations. This is a shared responsibility between the Board of Directors and those managing the operations. Though there are some legal requirements for how responsibilities are shared, the Board and management typically create the framework.



Board of Directors

Much ink has been spilled regarding the rights and responsibilities of nonprofit Boards of Directors. We have a comprehensive Board training program that includes discussion of a Board's roles, particularly as related to being a supporter and champion of the organization and overseeing governance of the organization. At the core, however, are three legal obligations of a Board. These obligations are the Duties of Care, Loyalty and Obedience, which we'll cover the basics of below.

1.

The Duty of Care

The Duty of Care is the most complex. This is so, partly due to the fact that it is also includes the lesser duties of informed decision-making and attentiveness. **Generally, the duty of care requires that the Board member act (1) in good faith, (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (3) in a manner the Board member reasonably believes to be in the best interests of the corporation.**

Additionally, Board members are allowed to rely on information, opinions, reports, or statements, including financial statements and other financial data from other officers or employees of the organization, legal counsel, certified public accountants and other such professional persons, committees of the Board, and religious authorities, where applicable. The duty of informed-decision making requires Board members to know the law and the corresponding requirements for the nonprofit organization, keep tabs on its daily activities, actively participate in organizational planning and decision-making and to make sound and informed judgments. The duty of attentiveness requires Board members to devote the necessary attention to the organization in order to care properly for the organization and be able to act in a competent manner in regards to the organization's affairs, i.e. keep all of the nonprofit's documents, such as the articles of incorporation/organization and the bylaws, updated and current through regular reviews. **The most frequent problems that Boards encounter with this Duty are either a result of being largely inactive or being too active and micro-managing daily activities of the nonprofit.**

As a general matter, if the Directors remain informed about the organization's overall health and make well-informed decisions, then the Duty of Care will be deemed to have been met.



2.

The Duty of Loyalty

The Duty of Loyalty requires that a Director, when acting on behalf of the organization, put the interests of the nonprofit before any personal or professional concerns and avoid potential conflicts of interest. The most common concern with this duty is to be sure to avoid divided loyalties when making decisions for the organization.

3.

The Duty of Obedience

The Duty of Obedience requires directors to ensure that the organization remains committed to its established mission, and that it complies with applicable federal, state, and local laws and regulations. Mission drift is not an uncommon problem and ensuring that the charitable mission of the organization is advanced not only helps the organization be successful, but helps the Board avoid violations of this Duty.

Officers

Your organization also has officers. Officers are generally appointed by the Board of Directors and serve at the pleasure of the Board, subject to the limitations in your Organization's Articles and Bylaws and applicable state and federal laws. Importantly, officers' duties overlap with the duties of the Board of Directors but are tailored to their offices. For example, the treasurer's duty of care relates more to financial oversight and health of the organization than other aspects of the organization. Please contact us with any questions regarding the rights and responsibilities of officers.

Employment Concerns

The single largest cause of personal liability for Directors involves employment decisions and actions, particularly relating to employment of upper-management. *Please be careful not to allow personal feelings to cloud major employment decisions.* We offer a wide range of employment-related services, including preparation of employee manuals, staff trainings and education, Board trainings and education, HR policy review, document retention and destruction policies, whistleblower policies, etc. Please reach out to us as you make employment decisions. An ounce of prevention is worth a pound of cure.



BOARD PROCEDURES & PROCESSES

Here are policies and procedures you may want to develop to help your Board of Directors fulfill its duties and obligations. We offer standard Board Manuals and Board Meeting Packet templates and tailored documents for a fixed fee. Please contact us for more information at zac@charitableallies.org.

Board of Directors Manual

This Manual contains key information to help guide the work of your Board of Directors. A standard Board Manual will include the following types of information:

- ⌚ One-page history of the Organization
- ⌚ Mission, Vision, and Values Statements
- ⌚ Programming Highlights
- ⌚ Governance Overview
- ⌚ Copy of Bylaws
- ⌚ Board Fundraising and Volunteer Expectations
- ⌚ Current Board Member List with Contact Information
- ⌚ Calendar with Upcoming Board Meetings
- ⌚ Financial Information and Budget
- ⌚ Board Meeting Minutes (back three meetings)



Board Meeting Packet

The Packet contains information you want to provide the Board to help them prepare for meetings. Typically, this includes:

- ➊ Meeting Agenda – list to include consent agenda, old business, new business, and date for the next meeting
- ➋ Consent Agenda Materials
 - o Minutes from Prior Meeting for Approval
 - o Committee Updates/Reports (that don't need discussion)
- ➌ Old Business Materials
- ➍ New Business Materials



MEMBERSHIP

If your organization is a membership corporation, then your members have final say in election of directors and almost all major organizational decisions, including decisions about reorganization, dissolution, voting, calling meetings, redemption and transfer, among others.

State law requires annual member meetings and also allows member action without a meeting.

Specific procedures relating to your meetings and members are contained in your Bylaws. If your organization is not a membership corporation, this means that you do not have members with legal rights, such as the right to elect the Board of Directors or approve certain organizational actions. This does not mean that you can't have "members" in the generic sense. For example, you may create donor "members" who you recognize for certain levels of contributions to your organization but who do not obtain legal rights relating to elections and approving organizational actions. Your Articles of Incorporation and Bylaws will indicate if your organization is a membership organization. Please contact us with any questions you may have regarding membership.

INSURANCE POLICIES

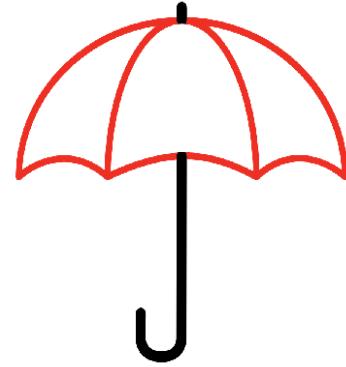
There are many different types of insurance policies. We recommend obtaining at least one of each type of policy that is appropriate for your organization. We can refer you to an excellent broker if you do not already have one. These may include:

(a) General Liability & Property

This is protection against slip and fall, renter, and property liability for the organization.

(b) Worker's Compensation

This is required by law if you have employees and covers accidents on the job.



(c) Special Event Insurance

If your organization holds large events on a regular basis, you will want to make sure special event coverage is included in your overall general liability premium. However, you may also procure small one-time policies that cover bodily injury, property damage, or both, that result from accidents at special events.

(d) Managers, Directors and Officers

This is commonly referred to as D&O coverage. This coverage protects decisions made by your managers, directors and officers in the official course of their work with the organization. D&O coverage is highly recommended for all organizations.

(e) Employment Practices Liability

This type of insurance (often called EPLI) covers “wrongful acts” that an employee may experience on the job, such as wrongful termination, discrimination, sexual harassment, and retaliation.

INTELLECTUAL PROPERTY

(f) Cybersecurity

In today's modern computing environment, more and more businesses are seeing this as essential for covering losses resulting from data breaches, business interruptions and network damage. The sensitive information nonprofits often work with can easily become a target for hackers.

(g) Errors and Omissions

This is commonly referred to as E&O or malpractice insurance. If you provide a service to clients for a fee, you have E&O exposure. This coverage protects you in the event that a client holds you responsible for a service you provided, or failed to provide, or that did not have the expected or promised results.

(h) Other Policies/Coverages

Other nonprofit organizations have particular insurance risks or needs. These may include the need to insure against the risk of specific types of misconduct (i.e., for churches or social service organizations), financial irregularities and bonding (i.e., for fund managers and similar), or others.

There are various types of intellectual property that your organization may want to use or may want to protect. Here are some important questions to ask relating to the use and protection of intellectual property:

- Has the organization registered or otherwise obtained protection for any of its unique logos, or written materials or been appropriately advised that such protection is not necessary?
- 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?
- Does the organization allow third parties to use its logos, trademarks, and copyrighted materials? If so, has it considered entering into license agreements with third parties to use the materials?
- Does the organization record video or take photos at its events? Does it obtain photo releases from subjects appearing in film or digital media?
- Does the organization use the logos, trademarks and/or copyrighted materials of others? If so, does it obtain licenses or permission to use the materials?



READY FOR A DEEPER DIVE?

Check out our free blog posts with educational information for nonprofit leaders. Also, follow us on [Facebook](#) and [Instagram](#) for quick educational tips for nonprofits so you can make your nonprofit the best it can be. Here are a few of our favorites to get you started:

Tax Exemptions & Deductions

- [What You Need to Know About Tax Exemptions and Deductions](#)
- [Where Can My Nonprofit Get Discounts & Exemptions?](#)
- [How Can I Get 501\(c\)\(3\) Status Back for My Nonprofit?](#)

Managing a Board of Directors

- [Let the Good Deed Go Unpunished: Avoiding Nonprofit Board Liability](#)
- [4 Steps to Proactively Manage Conflict on Your Board](#)
- [Helping your Board at Every Stage](#)

Donations & Fundraising

- [Can my Donor Take a Tax Deduction for an In-Kind Donation?](#)
- [What to Include When Writing a Donation Acknowledgement](#)
- [Charitable Solicitation Registration 101](#)

Other Nonprofit Topics

- [Blocker Corporation: Avoiding UBIT for Nonprofit Business Activities](#)
- [Moving Forward with Nonprofit Mergers, Reorganizations and Closures](#)
- [Correcting Public Charity Misconceptions: Rent](#)