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FAQs About Nonprofit Organizations

By D'Ann Johnson

Following widespread coverage of fraud and mismanagement in well-known charities, the public has increased its scrutiny on nonprofit organizations. As a result, it is especially critical that nonprofit board members and staff understand the numerous state and federal laws that govern the day-to-day operations of nonprofits.

This article is a summary of some common requirements, but is by no means a comprehensive overview of every law governing nonprofits. These materials are not to be used as a substitute for the advice of an attorney.

How does a nonprofit change its registered agent and address?

When a nonprofit changes its registered agent and address, it must notify the Texas Secretary of State. The consequences for failing to notify the Secretary can be severe: the nonprofit might not receive notice of a lawsuit filed against the nonprofit — resulting in a default judgment. The forms for filing notice are available on the Secretary of State's website, www.sos.state.tx.us.

Can a board of directors take action without a meeting?

Unless the articles of incorporation allow for written consent that is less than unanimous consent, the board of directors of a Texas nonprofit can take actions without a meeting only if there is unanimous written and signed consent.

If the articles permit less than unanimous consent to take an action without holding a meeting, the number of directors who approve the action must be at least the same number as the number required by the nonprofit's articles or bylaws to take action at a meeting.

Can a nonprofit make a loan to a director?

Absolutely not. Under Texas law, a nonprofit may not make a loan to members, officers, or directors. A director or officer who approves a prohibited loan is personally liable for the total amount of the loan until it is repaid. However, the law does permit certain loans to employees and officers to finance the officer's principal residence.

Can a nonprofit enter into a transaction with a director?

Yes, but directors should not approve a transaction unless it is fair to the organization and does not result in benefits to an insider of the organization that could run afoul of the private inurement rules of the IRS. A nonprofit should have a conflicts of interest policy in place and follow the policy.

Must a nonprofit disclose its books and records to the public?

In order to increase accountability and transparency of nonprofit transactions, both state and federal laws require certain records to be available for public inspection. Texas law requires most nonprofits receiving more than \$10,000 in annual contributions from sources outside its membership to keep true and accurate financial records at the nonprofit's registered or principal office for at least three years following the end of the nonprofit's fiscal year. Most nonprofits must also prepare or approve a detailed annual report of financial activity.

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Can a nonprofit spend donations however it chooses?

No. A nonprofit can only use funds derived from tax-exempt donations to accomplish the charitable purposes stated in the nonprofit's articles and bylaws. If a donor gives money for a specific purpose, a nonprofit cannot use those funds for a different purpose unless: (a) the nonprofit receives permission from the donor; or (b) the nonprofit files a lawsuit seeking permission from a court and notifies the Texas Attorney General of the suit.

Can a nonprofit engage in political activity?

A 501(c)(3) nonprofit is prohibited from endorsing a candidate for political office or engaging in partisan political activity. A 501(c)(3) nonprofit, however, is allowed to lobby on behalf of particular issues as long as the lobbying does not constitute a substantial part of the nonprofit's activities and expenditures. For more information, see "Worry Free Lobbying for Nonprofits" from the Alliance for Justice, www.afi.org.

D'Ann Johnson is the legal services coordinator for Texas C-BAR. C-BAR's website has a free Nonprofit Legal Toolkit, which has a much more comprehensive discussion of these issues and sample forms. Also, C-BAR offers workshops to organizations throughout the state. Visit www.texasbar.org.

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