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Nonprofit Insights

A Newsletter for Nonprofit Decision Makers

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*Risk Assessment*

# 7 Threats That Can Bring a Nonprofit Down


By their very nature, nonprofits embrace risk. They start with little more than a bold dream and desire to make a difference. But risk has a way of blindsiding unwary nonprofits. Consider these seven key areas of risk — and ways to protect your nonprofit:

**1. Fraud risk** – A lack of appreciation of fraud risk can leave nonprofits exposed to devastating losses, both in terms of financial loss and negative publicity/loss of reputation. For example, allowing a leader, staff member or volunteer to be "above suspicion" can be a recipe for disaster. Likewise, permitting basic financial checks and balances to fall through the cracks can have disastrous consequences.

***Defense:*** *At the very least, segregate financial duties. For example, do not permit the same employee to originate and approve purchases, and separate the invoice approval function from the payment and receiving function.*

**2. Copyright/trademark infringement** – There is risk any time an organization uses the intellectual property of another. It could be that energetic new volunteer who cuts and pastes copyrighted material onto your organization's website. Or, perhaps it's the freelance graphic designer who uses copyrighted imagery in your new brochure without permission.

***Defense:*** *Establish standards for publications, both written and electronic. These should include proper use of attribution/citing and disclaimers and guidelines for use of intellectual property.*

**3. Damage to reputation** – In today's wired world, bad news travels fast — whether it's a disgruntled employee or a donor with an axe to grind. Under the legal doctrine of "vicarious liability," an organization can be held liable for an employee's defaming media posts, whether the social media use is for official or personal purposes.

***Defense:*** *Keep abreast of ever-changing legal developments surrounding social media. Create written guidelines for employees, volunteers and members, and designate a point person to monitor social media. Have a formal crisis communication plan in place to respond quickly to conflicts, crises and bad news.*

**4. Retirement plan compliance** – Managing the typical 403(b) plan is incredibly complex, and penalties for noncompliance — even unintentional errors — can be severe. Outsourcing operation of your retirement plan to a third party provider does not relieve your organization of liability for noncompliance.

***Defense:*** *Understand how to detect — and correct — errors in plan administration. Start with the IRS's comprehensive* 403(b) Fix-It Guide, *which delves into common compliance errors and solutions.*

**5. Loss of tax-exempt status** – Ignoring compliance issues can seriously jeopardize your organization's tax-exempt status. These issues run the gamut from the obvious (failure to file Form 990 and any required schedules) to the more complex (excess benefit transactions and issues with unrelated business income).

***Defense:*** *Notify the IRS if your organization experiences "material changes in its form, activities or sources of support," and know the red flags for violations. The IRS has become increasingly pro-*

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*Legacy Gifts*

# Best Practices for Your Planned Giving Committee

You do have a planned giving committee, don't you? How else are you going to tap into that deep pool of charitable bequests — and meet the future needs of your organization?

While they can take many shapes and forms, a planned giving committee is essentially responsible for:

- Establishing a formal process to seek out, secure and manage planned gifts.
- Establishing due diligence procedures for accepting certain types of gifts (e.g., gifts of life insurance, real estate, securities, gifts-in-kind, etc.).
- Assisting in marketing the planned giving program.
- Providing guidance to prospective and current donors.
- Keeping abreast of changes in the tax code and various planned giving vehicles.

## Start with Board Commitment

Have your board formally endorse a resolution to develop a planned giving committee. Make sure they fully understand the potential impact of planned giving on the organization — that it is "a present investment in a future return." The board will also need to approve budget allocations and assist in marketing the planned giving program.

Planned gifts come in a bewildering array of permutations — from bequests and charitable remainder trusts to gifts of annuities, insurance and even property. To protect yourself from gifts that come with unforeseen impact, have development staff prepare policies and procedures that spell out the following:

- What types of gifts will be accepted? Will you accept gifts of real estate or closely held securities?
- Under what circumstances can a gift be accepted? For example, is your organization willing to pay for an appraisal in order to accept a donated work of art?
- Who is authorized to accept a gift on behalf of your organization?
- In what cases is board approval required?

## Tap Specialized Expertise

With professional advisors on your committee — estate and trust attorneys, CPAs, financial planners, etc. — you'll be able to work through the myriad details of wills, estate transfers and complex trust arrangements. Someone considering a planned gift will typically consult with his or her own financial advisors first. But having your own team of experts working with a donor's financial advisors and estate/trust attorneys lays the groundwork for a lifelong donor, client and fan of your organization.

*Designating a committee with the specific task of developing planned gifts can pay off handsomely.*

On the back end, it's important to have someone on the team with legal/financial/estate experience to monitor and administer estates in probate. That person can work with executors and lawyers to ensure that your organization receives its bequest — and that costs to settle are reasonable.

## Market Strategically

Ultimately, the goal of any planned giving strategy is to get prospects to "raise their hands" and self-identify as planned givers. That includes identifying the "sleepers" — donors who have or are considering placing your organization in their will, but have yet to identify themselves.

Here, your planned giving committee can focus on the ongoing cultivation and education of prospects and potential prospects — such as sending out mailers and planned giving newsletters, and holding information luncheons, wills clinics and estate planning seminars. Committee members can also work with the Planned Giving Officer to make presentations.

Ultimately, designating a committee with the specific task of developing planned gifts can pay off handsomely. ■

*Whether it is help with structuring a committee or providing accounting guidance, our firm can bring value to your planned giving activities.*

## *Read Up*

A variety of resources are available to guide your planned giving activities, including these:

**Community foundations** — In a growing number of cities, community foundations are providing small nonprofits with some of the expertise and structure they need to get into planned giving.

**Association of Fundraising Professionals (AFP)** — The AFP Resource Center contains a large variety of material on planned giving. And AFP staff can answer specific questions or perform a bibliographic search to develop a list of potential resources (www.afpnet.org).

**Partnership for Philanthropic Planning** — This organization's online resource center provides charitable gift planning articles and resources (www.pppnet.org). ■

*Good Governance*

# How Many Policies Do You Really Need?

Well … it depends. The IRS lacks formal authority to require specific governance policies of nonprofits. Yet, IRS officials have indicated that nonprofits that fail to adopt certain policies have a greater chance of being audited.

Just as important, your organization's IRS Form 990 (which very specifically asks about your governance policies) is increasingly viewed by potential donors, the media and charitable watchdog groups. A series of "no" answers in this section of Form 990 may raise red flags.

The IRS clearly notes that governance policies may depend on the organization's "size, type and culture." In addition, organizations should consider the governance policies and practices that are "most appropriate for that organization in assuring sound operations and compliance."

That said, nonprofits of all sizes are well-advised to consider the following governance policies:

- **Conflict of interest** – Procedures for identifying, disclosing and dealing with situations where officers, directors or trustees and key employees may have a financial or other conflict.

- **Branch affiliation** – If applicable, written policies and procedures governing the activities of chapters, affiliates and branches to ensure that their operations are consistent with your organization's tax-exempt purpose.

- **Whistleblower** – A process for employees, customers or suppliers to report suspected breaches in ethics or illegal/inappropriate activity without fear of retaliation.

- **Document retention and destruction** – Guidance on how long records must be kept by your nonprofit before they are destroyed.

- **Executive compensation** – A clearly articulated process for ensuring that the board has approved "reasonable and not excessive" compensation for the executive director/CEO.

- **Gift acceptance** – A policy that requires the review of any "non-standard gifts" and guides a nonprofit in the types of gifts it can accept.

- **Joint venture policy** – If applicable, a policy that evaluates your organization's participation in joint ventures or similar arrangements with taxable entities as it relates to your tax-exempt status.

Take action by holding a board meeting to review key policies already in place and discuss whether you should adopt any additional policies. Guidance and sample policies can be found at the following sources:

- **Board Source:** www.boardsource.org/eweb
- **Independent Sector:** www.independentsector.org
- **Foundation Center:** www.foundationcenter.org
- **Idealist:** www.idealist.org
- **Council of Nonprofits:** www.councilofnonprofits.org ■

## Risk Assessment

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*active in helping nonprofits avoid losing their exempt status, including creating a variety of informative online training tools at www.stayexempt.org.*

**6. Contracting issues** – Under the legal concept of "apparent authority," a vendor who reasonably perceives that a volunteer or staffer has the authority to act on behalf of the organization may enter into a contract with your organization — even if that volunteer or staff member didn't have such authority.

***Defense:*** *Develop a simple policy that spells out who has authority to enter into legal contracts, and run contracts by your attorney — especially complex agreements, like those for technology purchases and software development.*

**7. Fundraising registration** – It is incredibly easy to run afoul of the registration requirements that many states, counties and municipalities require in order for charities to solicit funds in their territories. Organizations that fail to register can be subject to fines and civil suits, and even have their right to solicit contributions revoked. Complicating matters further is the issue of fundraising over the Internet.


***Defense:*** *In an effort to streamline the registration process, the National Association of Attorneys General and The National Association of State Charity Officials jointly developed a standardized registration form called the "Unified Registration Statement," or URS.*

Finally, make sure you protect your directors and officers. Many nonprofits assume that state immunity laws and a general liability insurance policy will provide all the protection they need. But immunity from liability doesn't stop someone from filing a claim and forcing you to incur expenses defending your organization.

Therefore, you should consider a directors and officers (D&O) liability policy that protects your organization and its directors, officers, employees and volunteers against losses due to "wrongful acts" in governing and managing the organization. ■

*Our firm is well versed in identifying and mitigating the risks faced by nonprofits. Contact our office today for guidance.*

# Not All Bequests Are Created Equal


The National Philanthropic Trust estimates that upwards of $27.4 trillion in charitable bequests will be made in the U.S. through 2052. In fact, interest in planned giving has grown in the wake of the Great Recession. Donors have found that committing future gifts from their estate allows them to support a charity — even if they lack the means for a current gift.

At its most basic, a bequest is a gift of personal property made through a donor's will. Such property could be anything from money and real estate to works of art or even patents and other intellectual property. Yet not all bequests are created equal, and it is critical for fundraising officers to clearly understand the differences.

- **Pecuniary Bequest** – A fixed or stated sum of money designated in a donor's will.

- **Specific Bequest** – A designated or specific item in the will. Typically, the item is intended to be sold by the organization and the proceeds to benefit its charitable work.

- **Residuary Bequest** – All or a portion of a donor's assets that remain after all other bequests have been made and any debts and taxes paid.

- **Contingent Bequest** – A gift made on the condition of a certain event occurring. For example, a specific bequest to fund a special shelter if an animal welfare organization attains the property to house it.

Note that these different types of bequests can be mixed and matched in the donor's will. Ultimately, most nonprofits have substantial untapped potential for bequests through their major and annual donors. The key is to establish and nurture the strong relationships necessary to be written into a will. ■

*An experienced accounting professional can be invaluable in evaluating and managing donor bequests.*