

## **Maintaining Compliance – An Annual Checklist**

**Disclaimer:** *This tool is not intended as legal advice. Your organizational goals, purpose, values, and bylaws should drive the creation of committee descriptions.*

Following is a checklist of the necessary documents and actions to ensure that the organization you represent is properly protected from potential legal consequences that could occur. Like any document created to apply generally to a group, your organization may have other specific needs and issues that must be addressed. This list is provided as an outline for discussion by staff and board members charged with ensuring the continued legal compliance of the organization.

It is always prudent to periodically implement a “legal audit” to make sure that the individual needs of your organization are properly considered in your actions. Providing protection from the legal ramifications of every activity and action of the organization, its boards, officers, employees, and volunteers is an impossible task. However, this checklist is intended to provide at least the minimum consideration that will cover most circumstances you may confront. It should be reviewed annually.

### **Please keep in mind that:**

1. The checklist is developed for publicly supported charitable organizations and not private foundations.
2. Supporting organizations are required to comply with other rules developed and administered by the IRS that cause significant additional compliance responsibilities.
3. Specially created trust instruments require specific legal expertise in interpretation – periodic consultation with legal counsel is recommended.
4. Laws change frequently and this listing is best used in Alaska by an experienced legal advisor because its publication is geographically and time sensitive.

### **Use this list to help you periodically review important aspects of your organization:**

1. The organization maintains a **legible corporate record**. The record is a repository of all formal documents (Form 1023, Forms 990, Alaska Biennial Reports, etc.), corporate minutes, and records of meetings of the organization. This repository may hold either paper or electronic (be sure you have policies regarding “back-up” of electronic records). This record is for the benefit of the organization, its board, and its members. This repository is subject to the organization’s document retention policies. An offsite back-up copy of all documents is maintained and updated on a regular basis. The record will include, at a minimum:
  - **Original Articles of Incorporation** (Articles of Organization or Charter) and all subsequent amendments as approved by the State of Alaska, Department of Commerce and Economic Development, Division of Corporations
  - The **Certificate of Entity** status provided by the State of Alaska
  - The organization’s **business license**, most entities must have one filed annually

- The **current bylaws** signed by the secretary and attested to by a director
  - The **Letter of Determination of Exempt Status** received from the Internal Revenue Service
  - The original **Form 1023** Application for Exempt Status originally filed with the Internal Revenue Service
  - The **Annual Solicitation Report** filed with the State of Alaska Department of Law
  - Names, physical address, mailing address, electronic address, and notice address of each of the members of the **governing board**
  - **Current list of all committees**, designated chairman of each, and members
  - A complete, current, and dated **list of all members of the organization** (unless considered confidential, which should then be separately maintained and updated regularly)
  - The **corporate minutes** of at least the prior 12 months of meetings of the board of directors (such prior minutes should be permanently maintained in accordance with document retention policies)
2. Update the **board tally** identifying each board member by their appointment history to the board and various officers' status, term of office, and identified skill set of value to the board.
  3. Update and keep copies of **legal documents** considered important to the proper function of the organization such as insurance policies, executive employment agreements, intellectual property agreements, loan documents, lease agreements, major grant agreements and other major contracts.
  4. Update and keep a **board-approved ethics statement** of the organization that is provided or published conspicuously as deemed necessary (on the organization's website, the entrance to its facilities, in all employee and volunteer meeting areas, etc.) Review the **nonprofit's conflict of interest policy**; discuss and disclose conflicts; ask board members to sign a disclosure questionnaire (and remind them to update it throughout the year, as needed); review the **nonprofit's gift policy** and practices. IRS and other federal law require you maintain policies regarding conflicts, whistleblower, document retention and if the organization has employees IRS "safe harbor" compensation.
  5. Review and remind board members of the **Employee Protection Policy (aka Whistleblower procedure/anti-retaliation policy)** and process for reviewing complaints.
  6. Review and accept the annual independent **audited financial statement or qualified review** and keep copies for the prior three fiscal years in addition to regular financial reports throughout the year. Keep a copy of the last **management letter** received from the organization's Independent Certified Public Accountant (Auditor) and the contract entered into for the audit of the current fiscal year. For nonprofits that do not conduct an independent financial audit, review an asset/liability report that clearly illustrates the current cash position of the nonprofit and projected cash position relative to anticipated liabilities at year-end.
  7. File the **IRS Forms 990, 990-EZ and 990-T** and keep copies for the last 3 tax years. The full board should review the IRS Form 990 prior to filing (for 990-N filers, report to board members when it is filed).

8. Confirm that state corporate filings are current, including filing state registrations for fundraising, tax-exempt status, and employment tax withholdings. File the organization's **current biennial report** with the State of Alaska Department of Commerce and Economic Development, Division of Corporations. A copy of the last filed report is included and has been amended and re-filed after each change of director, officer or registered agent, and any amendments to the articles. (Copies of any required letters informing the IRS of a modification to the articles or bylaws are also included). **Ensure that Alaska Department of Commerce filings are up to date regarding officers and registered agent (Form 0446).**
9. **As required by the local borough, if you own real estate, timely file your Annual Property Tax Exemption Application with the Assessor.**
10. Update and keep a copy of the organization's **privacy policy** with regard to information collected in the normal course of business. The Alaska Personal Information Protection Act requires that personal data collected is secure – the policy informs persons how data is handled.
11. Review the proposed **budget** and approve the budget for the following year (and adjust throughout the year as needed).
12. Ensure **insurance policies** are renewed (and from time to time review the policies to make sure the coverage is adequate – Commercial Liability, Directors and Officers, other policies as needed). While you're looking through those files, pull out the document retention policy and see what you can discard this year.
13. Convene an **annual corporate meeting**, in accordance with bylaws and state law.
14. **Elect the board of directors and officers** in accordance with bylaws and state law. Bring attention to when board members' terms expire and share with all board members the process for recruiting, electing, and retaining board members.
15. Review **banking relationships** and policies and review signatures required by bank; update if needed (signature cards as well as authority provided banks when officer changes occur).
16. Review and update as needed the **financial management and financial policies**.
17. Review and update as needed the **administrative policies** of the organization, including the **document retention and destruction policy**.
18. Review and update the **employee policy manual** (handbook, policies and procedures).
19. If not incorporated into the employee policies of the organization, the organization's **compensation policy** incorporating the Internal Revenue Service's **Safe Harbor** provisions related to **Excess Benefit Rules**.
20. Review and approve any and all **compensation** paid to the CEO/Executive Director (and trustees); review policy and practices governing reimbursement of expenses for volunteers (this policy applies to volunteer board members and all-volunteer organizations).
21. Review and submit updates to the **health insurance census** for renewal (if applicable). Check your renewal date to ensure on-time reporting.
22. Review whether the nonprofit has taken the **Section 501(h) election** for advocacy spending above 5% of budget and discuss the importance, value, and ease of engaging in everyday

advocacy to advance the nonprofit's mission.

23. Backup and keep the organization's **donor database**.
24. Update, use, and maintain the last approved organization **strategic plan**.
25. Ensure the board is regularly discussing and applying the **organization's core values**, focusing on how they inform and shape the decisions the board makes.
26. Update and use an annual "tickler" file or **calendar of required filings** and activities to maintain the organization's status as a legal entity which at a minimum includes:
  - The date upon which the fiscal year ends
  - The date upon which and what federal returns or reports are due to be filed (Form 990, 990-EZ, 990-N, and/or 990-T)
  - The date upon which the annual solicitation report must be filed with the State of Alaska Department of Law
  - The date upon which the biennial report is due to be filed
  - Required filings to maintain certification as necessary for the activities of the organization