

OPEN WIDE AND SAY ARGH!

An Annual Health Check-Up For Your California Nonprofit Corporation

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When you volunteered to become an officer of your California nonprofit corporation, you may have thought you would be spending your volunteer hours bringing musical education to public schools, raising money for flight training scholarship for women pilots, or working toward some other laudable charitable goal. This is true. However, what you may not have realized is that you have also accepted a small host of legal responsibilities.

As an officer or director of a California nonprofit corporation, you have a duty to act on behalf of the corporation to ensure that the corporation complies with state and federal laws. Your first step will be to conduct a corporate health check-up. Open wide the corporate records, say “argh!” if appropriate, and then take steps to bring it into compliance.

Gather Information from the Outgoing Officers

The first step in your corporation’s health check up is to determine its current condition by gathering corporate information. What documents have been filed in the past? What documents should have been filed? Are any government agencies claiming that the corporation is delinquent? Talk to the outgoing officers and request to review the following documents:

1. articles of incorporation
2. merger documents (if applicable)
3. amended articles of incorporation (if applicable)
4. bylaws
5. amended bylaws
6. employer identification number (EIN) letter
7. minutes and resolutions
8. IRS exempt status letter
9. Franchise Tax Board exempt status letter
10. California Attorney General registration (CT-1)
11. Secretary of State Statement of Information
12. California Attorney General annual renewals (RRF-1)
13. California Attorney General raffle registrations and reports (NRP-1, NRP-2)
14. Franchise Tax Board Return Form 199 (if applicable)
15. IRS Form 990
16. California Board of Equalization Sales Tax Returns

If your organization has a dedicated office, all of these documents should be stored there for easy access. Unfortunately, in many smaller nonprofit organizations, these documents are stored in file boxes and transferred, or not, as the case may be, from outgoing officers to incoming officers. It would be helpful to keep all of these documents in digital format at an Internet site where officers can access them easily.

Consult Outside Resources

Should you find that your corporate documents are unavailable for any reason, you can obtain most of them from the Secretary of State, Attorney General, Guidestar, Recorder/County Clerk, Franchise Tax Board, and IRS.

Secretary of State

The California Secretary of State processes many corporate filings including the articles of incorporation, statements of information, mergers and dissolutions. You should go to the Secretary of State website to check your corporation's online records, verify the correct corporate name and state number, and print out a "Business Entities Records Order Form." The California Secretary of State website is www.ss.ca.gov.

Attorney General

The California Attorney General regulates charities and administers a statutory registration program. All charities are required to register and file annual financial disclosure reports with the Registry. In addition, nonprofit organizations that conduct raffles for charitable purposes are required to register and file a financial report for each raffle held. To determine the status of your corporation you will need to visit the California Attorney General website at <http://oag.ca.gov/charities>.

Guidestar

Guidestar is an organization that gathers and publicizes information about nonprofit organizations on its website at www.guidestar.org. Much of the information is available for free, including the last three years of federal tax returns.

Recorder/County Clerk

The Recorder/County Clerk registers fictitious business names. To determine if your corporation has a fictitious business name, you should go to the County Clerk website in your county. Follow the instructions on your county's website. In San Diego, you can visit the county recorder at <http://arcc.co.san-diego.ca.us/>.

Franchise Tax Board

The Franchise Tax Board requires nonprofit corporations to file Form 199N or Form 199 annually. Organizations with gross receipts that are normally \$25,000 or less are required to electronically file FTB 199N, California e-Postcard. For more information, go to www.ftb.ca.gov and search for 199N. Organizations with normal gross receipts in excess of \$25,000, must file Form 199. If the organization has been in existence for three or more years, then “normally less than \$25,000” means the organization has earned an average of \$25,000 or less per year over the last three years.

To obtain tax records from the Franchise Tax Board, you must be an officer of the corporation or have power of attorney. You will need to complete a Request (Form FTB3516-side 2) and send it to the Franchise Tax Board with payment of \$20 per tax year. Visit the Franchise Tax Board website at www.ftb.ca.gov to print out the request form.

Internal Revenue Service

The Internal Revenue Service requires that nonprofit corporations file a tax e-Postcard or a tax return annually regardless of gross receipts. If the organization has less than \$50,000 in gross receipts (\$25,000 in gross receipts for tax years ending before December 31, 2010), then it can file the Form 990-N. This form is quick and easy and is filed online. Organizations with gross receipts in excess of \$50,000 but less than \$200,000 may file the Form 990-EZ. Organizations with gross receipts in excess of \$200,000 or with assets in excess of \$500,000 must file the Form 990. An organization that fails to file the required e-Postcard (or information return) for three consecutive tax years will automatically lose its tax-exempt status.

To obtain tax records from the Internal Revenue Service, you must be an officer of the corporation or have power of attorney. You will need to complete a Request (Form 4506) and send it to the IRS with payment of \$57 per tax year. Visit the IRS at www.irs.gov to download the form. Failure to file the IRS Form 990 annually

California Board of Equalization

Nonprofit organizations are required in most cases to have a seller’s permit if they sell products to raise funds. Check with the BOE at <http://www.boe.ca.gov/> to see if you have a permit and to determine your filing schedule.

Take Action

After searching all the government records and reviewing records provided to you by your outgoing officers, you will have a good sense of what needs to be done. If your organization is not in compliance, take action to bring your organization into compliance as soon as possible. If your organization is current, create a list of deadlines and be sure that you or someone in your organization will maintain the organization's good standing.

The information above is not exhaustive, and your organization's unique situations may warrant further research. If you have specific questions that are not adequately addressed here, please send me an email. You may also wish to consult the links provided below.



For more information:

California Secretary of State
www.ss.ca.gov

California Attorney General
www.oag.ca.gov

Guidestar
www.guidestar.org

Franchise Tax Board
www.ftb.ca.gov

Internal Revenue Service
www.irs.gov

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