



EARLY ACTION CHECKLIST
For New and Smaller Charities

**A Report of the New York City Bar Association
COMMITTEE ON NON-PROFIT ORGANIZATIONS**

The Panel on the Independent Sector in October 2007 published its Principles for Good Governance and Ethical Practice, a Guide for Charities and Foundations (the “33 Principles”). The 33 principles in the Panel’s document are a very useful source of guidance for charities. However, for newer and smaller charities, strict adherence to the 33 Principles may be onerous. The non-exclusive checklist below has therefore been prepared to aid such charities in getting started on the process of putting in place good governance and operational practices and includes items likely to need early attention. After these items have been addressed, such charities could make reference to the 33 Principles and other sources for additional procedures that may be appropriate.

While many of the recommended practices listed below are influenced by or derived from legal requirements, the list is not intended to be an exhaustive guide of the federal or state laws and regulations applicable to charities, nor are all of the recommendations made mandated by law. Rather, the list is intended to provide an overall summary of “best practices” for a charity’s governance and operation, which, if followed, assist a charity in ensuring the operational and fiscal integrity of the organization and in avoiding the appearance of impropriety. Because the rules governing not-for-profit organizations are numerous and complex, charities, especially newly-formed organizations, are encouraged to consult an attorney to make sure they have been organized and are operating in compliance with the applicable laws and regulations.

1. Establishment of Mission and Goals. A charity’s mission and goals should be set even before the charity itself is created, and should be reviewed at regular intervals (*e.g.*, no less frequently than every five years) by the charity’s board.

2. Board Size and Balance. A charity should fix and periodically review both the size of its governing board and the mix of talents and backgrounds to be included. Consideration should be given to including on the board (or in some advisory capacity working closely with the board) individuals with needed skills, such as financial and legal expertise.

3. Board's Policy Setting and Oversight Roles. A charity's board should understand and regularly exercise its fundamental responsibilities for policy setting and oversight. In particular, the board should regularly review and act upon annual budgets, key financial transactions, fiscal controls, governance issues, investment policies, and key staff compensation matters.

4. Separation of Key Officer Positions and Key Functions. A charity's board should appoint separate persons for key positions based on what is appropriate for the size of the organization. At a minimum the offices of president (or chairman) and treasurer should be held by different persons, but a board should review the relevant state laws to determine if other positions must be kept distinct (for example, in New York, the offices of president (or chairman) and secretary must be held by different persons). Functions such as receipt of payments and deposits of payments should also be separated to the maximum extent possible to ensure adequate financial controls.

5. Hiring and Oversight of Paid Staff. A charity should hire responsible staff as reasonably needed, and should establish and review staff structure (including to ensure appropriate division of responsibility) and compensation policies, especially for senior paid staff personnel.

6. Regular Board Meetings. The board should meet frequently enough to conduct its business and fulfill its duties. The number of meetings might need to vary over the charity's life, depending on the nature of the board's involvement in the operations of the organization. For instance, it may be appropriate to hold more meetings until the organization has matured with established procedures and practices and fewer meetings after a level of maturity has been obtained. Many charitable organizations find it prudent to meet at least three or four times a year to fulfill basic governance and oversight responsibilities, with more frequent meetings being necessary if the circumstances warrant it. Other boards with strong committee structures, including organizations with widely dispersed board membership, may find it sufficient to hold only one or two meetings of the full board each year.

7. Significant Charitable Mission Program Spending. A charity must spend a significant percentage of its annual budget on its mission programs, while also providing effectively for needed administrative and fundraising functions.

8. Maintenance of Financial Records. A charity must keep complete, current and accurate financial records, with appropriate independent accounting or financial expert review or audit. The board should review the charity's financial statements and annual IRS filings.

9. Protection of Important Documents, Record Retention Policies. A charity should establish policies and procedures to protect and preserve important organization documents, together with appropriate business record retention policies (and where such policies provide for routine business record destruction, also for suspension of such destruction upon learning of any investigation involving such records).

10. Protection of Charity's Property and Other Assets. A charity should establish policies and procedures to protect its property, finances, and human and program assets, including appropriate internal controls over financial transactions. A charity should also maintain insurance appropriate to the circumstances.

11. Board Education and Communications, Document Access. A charity should establish procedures for education of board members on their duties and responsibilities, including providing copies of key documents and providing access to other relevant documentation.

12. Availability to Public of Charity's Filings and Other Useful Information. A charity should make available to the public appropriate information about itself and its operations and programs, including its annual IRS returns and other mandated filings.

13. Governance Policies. A charity should adopt and implement a written policy to avoid conflicts of interest and to manage them where a transaction could be in the best interests of the charity notwithstanding a conflict. Such a policy should require full disclosure of potential conflicts, decisions regarding such conflicts to be made by noninterested parties, and adequate contemporaneous documentation of the deliberations in each such transaction considered. The board should also consider whether certain best practices policies such as policies on ethics, whistleblowers, document retention and destruction, and compensation, should be adopted by the charity.

14. Compliance with Charitable Solicitation Requirements. A charity's solicitations must be truthful, particularly as to the purposes for which funds are solicited (whether narrow or broad), and the charity must comply with state charitable solicitation laws.

15. Policies for Acceptance and Implementation of Restricted Gifts. A charity should establish policies and procedures regarding acceptance of restricted gifts and, once accepted, administer such gifts in accordance with gift terms (subject to judicial *cy pres* relief in certain instances of impossibility or impracticability).

16. Acknowledgement of Charitable Contributions and Respect of Donor Privacy. A charity must provide donors with timely acknowledgements and other documentation required of it in order to allow the donors to take tax deductions, and have appropriate procedures for protecting the privacy of donors (unless waived).