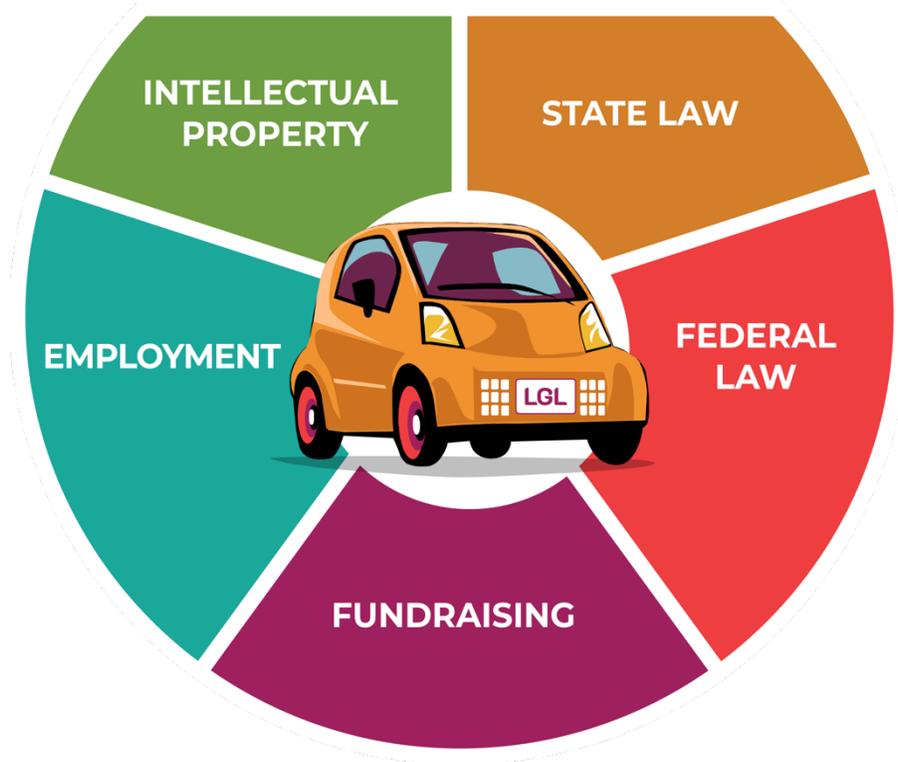


# LET'S GO LEGAL!

*The right road to compliance and protection*



Nonprofit Association  
of Washington



In partnership with

**WASHINGTON**  
Secretary of State

Corporations & Charities Division



*Let's Go Legal!* is part of a resource series on nonprofit fundamentals that includes *Boards in Gear* and *Finance Unlocked for Nonprofits*. Connect to these resources and more at [nonprofitwa.org/learn](http://nonprofitwa.org/learn).

## FINANCE UNLOCKED *for* NONPROFITS

- 1 Balance Sheet
- 2 Income Statement
- 3 Nine-Ninety
- 4 Giving
- 5 Oversight

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**Important Note:** This information is provided for educational purposes only and does not constitute legal or technical advice. If you are unsure about anything covered in this guide, we suggest that you contact the appropriate agency or seek professional advice.

Updated: Oct. 6, 2023

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# LET'S GO LEGAL!

The right road to compliance and protection



# Introduction to Let's Go Legal!

## 1. ABOUT THIS GUIDE

Your nonprofit's mission is important. *Let's Go Legal* is here to help you achieve it and stay compliant in the process. This guide will get you started on a road to compliance by thinking of your nonprofit like a car. Just like a car, you need to register your nonprofit and know how to operate the organization. There are state and federal rules of the road to follow. Your nonprofit needs money and resources (fuel) to power the organization. The people in the car matter too, these are your nonprofit's valuable workers. Lastly, similar to cars, every organization has a unique look and feel as well as special materials that you may want to protect.

Law is complicated and can seem like a maze of rules. Laws exist to protect your organization and show the community that your nonprofit is legitimate. Your organization can take some simple steps to build a strong foundation to achieve its mission. This guide contains basic educational information about nonprofit law, and you should consult an attorney about your nonprofit's specific circumstances.

At the end of each chapter is a checklist that you can use to examine your organization's legal and compliance practices. Use the checklist to identify outstanding tasks and keep track of due dates. The *Let's Go Legal* guide is just a start. Policy examples and additional resources are included so that you can customize this information to your organization.

### Thank you!

Communities Rise  
Washington State Office of the  
Secretary of State, Corporations & Charities Division  
All the nonprofits who participate in *Let's Go Legal* trainings and use the materials, your feedback helps guide efforts to create exceptional resources about nonprofit fundamentals.

*Let's Go Legal* was guided by a team of legal advisors. We greatly appreciate their contribution to these resources. Their contribution should not be viewed as legal advice.

- ❖ Brenda Tausch Lapora
- ❖ Jodi Nishioka
- ❖ Judith Andrews
- ❖ Nancy Stephens
- ❖ Taylor Ball

# LET'S GO LEGAL!

The right road to compliance and protection



Every organization has a unique look—and maybe some special materials—that need to be protected.



Before you can hit the road, your car needs to be registered. Those driving need to know the rules of the road.



Articles of Incorporation



Bylaws



Fiduciary Duties



Recordkeeping



State Taxes



If you want to move faster between states, you need to drive on a federal road, and more rules apply.



Intellectual Property (IP) Defined



Ownership



Respect



Privacy Policy



Website and Online Usage



The people in your car matter.



Minimum Wage and Overtime



Hiring Process



Non-employees



Payroll



Anti-discrimination Laws



Your fuel is money. You need to raise funds to pay for expenses and programs.



Registration and Reporting



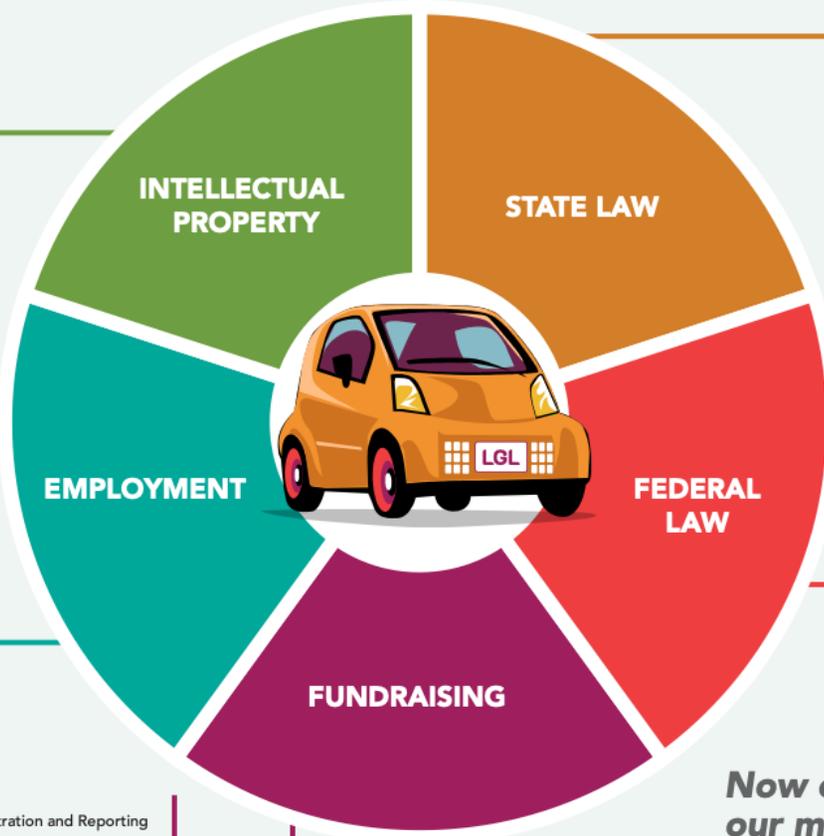
Written Acknowledgment



Restricted Gifts



Fundraising Activities



Charitable Purpose and Assets



Private Benefit



Lobbying



Political Campaigns



Public Documentation

Now on to our mission!

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COURTNEY S. CHERRY, J.D.

 COMMUNITIES RISE



## 2. WHY LEARN ABOUT NONPROFIT LAW?

Organizations have lifecycles, just like any living thing. Organizations are created, then they grow, plateau, and sometimes die. The legal needs of an organization's board and staff are guided by where that organization is in its lifecycle and what is happening around it.

Even though you are a nonprofit, you are required legally to operate like a corporation. Once a nonprofit becomes official in the eyes of the state, it is a corporation governed by corporate law, and you need to protect that status.

There are three legal jurisdictions you must always consider: local, state, and federal. These materials review Washington State Law and Federal Law rules. Consult your local jurisdiction (city, town, or county) for more information about business licenses and other local requirements.

Nonprofit law is complicated, and only an attorney with knowledge of your specific situation can counsel you. These materials are intended to deepen your understanding of basic nonprofit law and help you know what to ask. These materials are not intended to be legal advice. Please see an attorney for answers to specific questions. Communities Rise provides pro-bono legal services.

## 3. WHAT LEGAL TERMS SHOULD YOU KNOW?

The first step to engaging with this guide is to have a common understanding of the words used and what the words mean.

### ***A. Person: Director, board member, or trustee?***

While there are clear distinctions in the meaning of the words themselves, for the sake of clarity, this guide uses director, board member, or trustee in the context of a nonprofit board interchangeably, or as the same. The term refers to the people on the governance team of an organization.

### ***B. Organization: Nonprofit, charity, or 501(c)(3)?***

This guide covers a range of organizations serving the public good. To be clear, let's review the types of organizations that will be discussed.

- **Nonprofit (or nonprofit corporation):** An organization created for a public benefit without shareholders or a profit motive. CPAs often call these organizations "Not-for-profits" to underscore that their purpose is something other than profit; a profit can be earned and returned into the organization. Nonprofit status is determined under state law. A nonprofit registers with the Washington State Office of the Secretary of State as a corporation, called "incorporation."
- **Charitable corporation:** A nonprofit may also need to register with the Washington State Office of the Secretary of State as a "Charity" when the organization is asking people for donations to support

its charitable purposes. A nonprofit is required to do so if the organization is either raising at least \$50,000 in any accounting year or paying someone to do the work of the organization.

- **Tax-exempt organization:** A nonprofit corporation can apply for and receive tax-exempt status from the Internal Revenue Service (IRS). Organizing as a nonprofit corporation at the state level does not automatically grant the organization exemption from federal income tax. Tax-exempt status exempts a nonprofit from paying federal corporate income tax and allows contributions given to the organization to be tax deductible to the donors. There are many classifications of tax-exempt organizations, under section 501(c)(3) of the Internal Revenue Code. Federal tax law applies to all 501(c)(3) tax-exempt organizations.
- **IRS:** "IRS" stands for the Internal Revenue Service. The IRS is the taxing agency for the United States Federal Government. The IRS is the federal agency that regulates and monitors 501(c)(3) tax-exempt organizations. Section 501(c)(3) of the Internal Revenue Code, is the law that applies to 501(c)(3) tax-exempt organizations.

### 3. HELP FOR NONPROFITS



#### **Government**

#### **INTERNAL REVENUE SERVICE**

The IRS is a bureau of the Department of the Treasury with a mission to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all. Tax information, tools, and resources for charities and other tax-exempt organizations are available on the IRS website.

- General: <https://www.irs.gov/>
- Charities & Nonprofits: <https://www.irs.gov/charities-and-nonprofits>
- Phone – Nonprofit Taxes: 877-829-5500
- TTY/TDD: 800-829-4059

## WASHINGTON STATE OFFICE OF THE SECRETARY OF STATE, CORPORATIONS & CHARITIES DIVISION

The Washington State Office of the Secretary of State, Corporations & Charities Division has information available on nonprofit corporations and charities in Washington, training resources, frequently asked questions, and a live chat option to support your organization.



**WASHINGTON**  
Secretary of State  
Corporations & Charities Division

- <https://www.sos.wa.gov/corporations-charities>
- Corporations Email: [corps@sos.wa.gov](mailto:corps@sos.wa.gov)
- Charities Email: [charities@sos.wa.gov](mailto:charities@sos.wa.gov)
- Phone: 360-725-0377



### ***Nonprofits***

## NONPROFIT ASSOCIATION OF WASHINGTON

Nonprofit Association of Washington (NAWA) convenes a powerful network of nonprofit organizations across Washington State to learn, advocate, and collaborate, so that nonprofits can achieve their missions. NAWA has learning opportunities and resources to help strengthen your nonprofit management practices and build connections with others around the state.



**Nonprofit Association  
of Washington**

- <https://nonprofitwa.org/>
- Phone: 855-299-2922

## COMMUNITIES RISE

Communities Rise offers legal services, trainings, peer learning, and coaching. Communities Rise works with organizations, small businesses, and communities located in Washington state that have been impacted by systemic oppression to increase capacity and build power as well as community leaders in the broader nonprofit, public, and philanthropic sectors to create systemic change.



- <https://communities-rise.org/>
- Phone: 206-324-5850

## 501 COMMONS

501 Commons provides expertise to nonprofits through 30+ services, including a full range of management consulting, technology consulting, outsourced HR, accounting, IT infrastructure, and database management as well as professional development and board training, free information, and referral services.



- <https://www.501commons.org/>
- Phone: 206-682-6704

## LET'S GO LEGAL!

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## Chapter 1

# State Law

### CHAPTER OUTLINE

1. Articles of Incorporation
    - A. State law requirement
    - B. Federal tax law requirements
    - C. Requirements after incorporation
    - D. Changes to the Articles
  2. Bylaws
  3. Fiduciary Duties
    - A. The Four Duties
    - B. Protections
  4. Recordkeeping
    - A. Financial records
    - B. Board minutes
    - C. Other records
  5. State taxes
  6. Legal Checklist: State Law
- Chapter 1 Summary: State Law

### INTRODUCTION

Before you drive a car, you need to register it. You need to know the rules of the road. You need a license plate and a driver's license. We begin with state law because that is where a nonprofit first registers to become official. The Articles of Incorporation are filed to create the corporation and the board adopts Bylaws and sets out a plan to monitor money and keep records. The organization stays compliant with state corporation law and other state law requirements, including filing corporation and charity reports every year. In Washington state, the governing law is the Washington Nonprofit Corporation Act (RCW 23.04A), which was updated on January 1, 2022.



## 1. ARTICLES OF INCORPORATION

The Articles of Incorporation are the original document that creates a corporation. A nonprofit should keep a copy of the filed Articles. If the organization does not have a copy of the Articles on record, copies are available for download on the Secretary of State's website. The Articles set the parameters of the organization's charitable purposes and may describe whether the organization has members. If the Articles are filed after January 1, 2022, the Articles must state whether the organization has members meeting the definition of members under state law.

### A. State law requirement

- **Registered Agent:** A nonprofit must have a registered agent and a registered office. This is the way that the state contacts the corporation. The registered agent needs to be a dependable person or entity, and the address needs to be a stable street address in Washington State. The registered agent must sign a consent to serve in that role which is filed with the Articles.
- **Name:** A nonprofit must have a name for the corporation that cannot be the same as or very similar to the name of any other corporation or legal entity in Washington and cannot have words like Inc., Co., Company, or Ltd. as part of the name.
- **Initial Directors:** A nonprofit must give the name and address of at least one individual who will serve on the board.
- **Incorporator:** A nonprofit must give the name and address of at least one person who will serve as the incorporator. The incorporator is the person who signs the Articles.
- **Members:** A nonprofit formed after January 1, 2022 must specify whether the organization has members as such term is defined under the Washington Nonprofit Corporation Act.
- **Limitation of liability** (recommended): This provision changes the standard for determining liability of directors to "gross negligence," making it harder to prove liability.

### B. Federal tax law requirements

*While we go into more detail on federal law in the next section, let's review the elements of the Articles of Incorporation that relate to federal requirements.*

- **Purpose:** A nonprofit must list purposes for the organization that meet the definition of charitable purposes under federal tax law. Additionally, the Articles of Incorporation must not empower the organization to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more of those purposes. The IRS recommends that language prohibiting private benefit to persons involved in the organization as well as language prohibiting political activity and limiting lobbying activity be included. See the Sample Articles of Incorporation in our Key Documents, for specific language.

- **Dissolution:** A nonprofit must provide for the distribution of any remaining assets if the corporation is dissolved. The assets must be distributed to another 501(c)(3) tax-exempt organization or to the federal or state government for a public purpose.
- **Limitation of liability** (recommended): This provision changes the standard for determining liability of directors to “gross negligence,” making it harder to hold directors liable.
- **Indemnification** (recommended): This provision authorizes the corporation to pay costs of defending officers and directors who are sued, and in some cases, any damages required to be paid by an officer or director.

### **C. Requirements after incorporation**

- **Annual Report:** A nonprofit needs to file an annual report with the Secretary of State to maintain “Active Status.” The annual report is due to be filed every year by the last day of the organization’s incorporation month. If the nonprofit does not file an annual report, it will be administratively dissolved.
- **Initial Meeting of the Board of Directors:** The individuals listed in the Articles as the initial directors meet to take actions necessary to start up the corporation. This includes adopting the Bylaws, electing officers, and authorizing opening a bank account.

### **D. Changes to the Articles**

The Articles can be changed upon approval of the Board of Directors (and by the members if the organization has members with a right to vote on such matters) by a document called “Articles of Amendment.” The most common amendments to Articles are to change the corporation’s name or to add a new purpose(s).

## **2. BYLAWS**

The Bylaws are the rules of operation for the corporation and are required by state law. Bylaws are not filed with the state. A nonprofit should keep a file of the Bylaws and any associated amendments in the office. Each board member should have access to an up-to-date copy of the Bylaws. Bylaws are filed with the IRS when you apply for tax exemption.

- **Members:** Washington nonprofit corporation law permits nonprofit corporations to have members as voting or nonvoting members. If you have members, it is important to be clear why you have members and what their rights are. If you give members the right to vote, you need to clearly state what those voting rights are and provide appropriate provisions for holding meetings.
- **Board of Directors:** Under state law, only one director is needed; however, you will need at least three directors if you are seeking tax-exempt status. Usually, the number of directors is described as a range, with a minimum number and maximum number of directors given. The Bylaws also provide

for how the directors are elected, length of term, their qualifications, resignation, and removal. It is important the Bylaws have a removal provision for directors.

- **Meetings:** The Bylaws provide for how the board meets, how it gives notice of meetings, how it holds special meetings, what a quorum is, and the vote needed for the board to act. Under Washington law, a board can meet in-person or by telephone or some other form of remote communication, as long as everyone can hear everyone else speak at the same time. Chat rooms online are not permitted. You can also meet in the form of writing, called a “consent resolution.” Directors give their consent in writing or by email. Such a consent must be unanimous; that is, every director needs to vote and everyone must vote in favor of the resolution proposed. Washington State Law gives appropriate procedures on how to execute such consents when a director has an interest in the action being considered (called a “conflict of interest”) and, under normal circumstances, would not be able to vote on such matters.
- **Committees:** Bylaws often cover the roles of committees. There are two kinds of committees: (1) board committees that can act for the board, upon delegation by the board. There must be at least two directors on a board committee. Non-board members can attend committee meetings and give input but cannot vote. (2) advisory committees, composed of directors and others, give advice and recommendations to the board. Advisory committees do not have the power to act or make decisions for the board.
- **Officers:** Officers specified by statute include a president, a treasurer, and a secretary and additional officers (vice-presidents are optional) can be added as necessary. Officer’s duties are described in the Bylaws. A person can hold more than one officer position, but the president and secretary cannot be the same person.
- **Amendments:** There’s a provision that describes how the Bylaws are amended. Usually, amendments to the Bylaws require a supermajority vote of the board and sometimes special notice. If the corporation has voting members, this provision may require member approval as well.

### 3. FIDUCIARY DUTIES

*The Washington Nonprofit Corporation Act* sets out the duties and protections of the directors.

#### A. The Four Duties

Directors must fulfill four main duties according to Washington law – the **Duty of Care**, the **Duty of Loyalty**, the **Duty of Obedience**, and with the new Washington Nonprofit Corporation Act as of January 1, 2022, an additional **duty to share relevant information**.

**1) Duty of Care:** A director is expected to have a level of competence described as exercising the “care of an ordinarily prudent person in like position” under similar circumstances. That means a director must exercise reasonable care when making a decision as a board member, using diligence and independent judgment.

**2) Duty of Loyalty:** A director should act in the best interest of the organization, putting the organization before their own self-interest. This is particularly important where there is the potential for personal gain and often arises when there is a conflict of interest. It is a best practice for the board to adopt a Conflict of Interest Policy and for staff and board to sign annual disclosure statements.

**3) Duty of Obedience:** A director must make sure that the organization is in compliance with local, state, and federal laws and is staying true to its mission.

**4)\* Additional duty to share relevant information:** In addition to the duties described above, directors and officers of the organization each have an additional duty to convey information to the board, committee members or, in the case of officers, their superiors if such information is either known by the director or officer to be material to the operations of the organization or relates to a violation or probable violation of any law or regulation involving the organization.

## **B. Protections**

Washington State Law provides protections to make sure the directors are protected in the event the directors are threatened with legal action. In both cases, provisions should be written into the organization's Articles of Incorporation.

- **Limitation of Liability:** These provisions eliminate or limit the personal liability of a director in cases where the director did not act with intentional misconduct or receive inappropriate personal benefit. While this protection is granted by operation of law and does not need to be written into the organization's Articles of Incorporation or Bylaws, it is recommended that the language be added.
- **Indemnification:** These provisions permit a director who is a part of a legal proceeding related to the corporation to apply for indemnification, in other words, to be compensated for loss or damage, by the nonprofit. This would cover reasonable expenses incurred by the director in connection with a legal case before a court. This protection can extend to officers, employees, or agents of the organization.

## **4. RECORDKEEPING**

A nonprofit must keep clear and complete records to ensure that it complies with tax rules. Good recordkeeping systems allow organizations to better evaluate their programs, monitor their budget, and prepare financial statements and returns. As a best practice, organizations should have a Document Retention Policy that describes what records should be kept on file and for how long.

### **A. Financial records**

The law does not require a certain kind of record system because it will vary by organizational size. The system, however, should include these items:

- Receipts: Amount received from all sources
- Purchases: Items bought, including any items resold to customers
- Expenses: Other costs to run programs
- Employment taxes (for staffed organizations)
- Assets: Property that an organization owns and uses in its activities
- Bank statements

### **B. Board minutes**

Board minutes are the written record of the actions and decisions taken at a board meeting. Once written and approved by the board, the minutes are accepted as a true representation of the meeting they record and can be used as legal evidence.

Usually, the Secretary is in charge of board minutes. A nonprofit keeps the minutes electronically or in a binder. The board minutes should be kept forever.

### **C. Other records**

Other key documents related to the organization should be kept for at least 7 years. A Document Retention Policy is considered best practice.

## **5. STATE TAXES**

There are three state taxes that impact Washington nonprofits:

1. **Business & Occupation Tax:** A nonprofit must file a **Master Business License** with the Department of Revenue if it will have employees or a revenue source on which it must pay State Business and Occupation Tax (B&O Tax) or Sales Tax. The B&O Tax taxes the gross income that your organization brings in. Donations, grants, and proceeds from fundraising events are exempt.
2. **Sales Tax:** Organizations that sell products must pay sales tax.
3. **Property Tax:** Unless a property is exempt, a nonprofit must pay property taxes on any property that it owns.

## 6. LEGAL CHECKLIST: STATE LAW

If YES, date sent or reviewed	NO	ITEM
<b>STATE</b>		
		Our board of directors reviews the Articles of Incorporation at least once a year to make sure that actual practice is consistent with these documents.
		Our organization's registered agent is still at the address on file with the Secretary of State.
		The registered agent has signed a consent form that is on file with the Secretary of State.
		We can rely on our registered agent to give us mail that comes to the corporation.
		Our board of directors reviews the Bylaws at least once a year to make sure that actual practice is consistent with these documents.
		Our organization prepares and maintains financial statements and statements of account on a regular basis.
		Our board has reviewed, and if necessary secured expert advice about, our financial controls, and regularly revisits this topic to assure adequate scope and compliance.
		Our organization has adequate separation of financial duties. In particular, the person writing and signing checks is different than the person reviewing and reconciling bank statements.
		More than one person is an authorized signer on our organization's bank accounts and these signatories are up-to-date.
		Our organization does not make loans to any of its officers or directors.
		Our organization understands and carefully observes any use or spending restrictions on grants and other contributed funds.
		Our organization has Directors and Officers Insurance and the board members have reviewed the policy and understand what is covered and what is not covered.
		Our organization files an annual report with the Washington Secretary of State. (You may also need to register as a Charitable Organization; see Chapter 3. Fundraising & Donations for more information.)
		Our organization has filed a Master Business License application with the Washington State Department of Revenue.
		Our organization understands its obligation to pay any state sales or business and occupation taxes.
		Our organization understands whether it is entitled to any exemptions from these taxes.
<b>LOCAL</b>		
		Our organization has a current license to do business from the city/county where it is located.
		Our organization understands its obligation to pay any local business and occupation or property taxes.



1. The Articles of Incorporation are the document that creates the corporation. The Articles need to meet both state requirements for a nonprofit corporation as well as federal tax law requirements to qualify as a 501(c)(3).
2. Bylaws refers to the document that sets out the rules of operation for your organization.
3. Board members have a set of legal obligations owed to the nonprofit corporation, called fiduciary duties, which include Duty of Care, Duty of Loyalty, Duty of Obedience, and with the new Washington Nonprofit Corporation Act, a duty to share relevant information.
4. A nonprofit board keeps records so the organization can report to funders, government agencies, or the community about decisions and actions made.
5. While a tax-exempt organization generally does not pay federal taxes, the nonprofit is responsible for applicable state taxes.



**Here are some questions to think about:**

- Do you know where your organization’s key documents are stored, and are the documents accessible to officers and board members?
- Does your organization have a Document Retention Policy? If yes, do you know what records should be kept and for how long? If not yet, does your organization have a clear recordkeeping system in place?

**Reflections**



**Next steps:**

- ❑ Review the *Stay Up-to-Date with the Secretary of State* diagram on the next page. Be sure to check which type of organization you are and remember you may qualify as both. Fill in your organization’s key dates – incorporation date and accounting year end date. Nonprofit corporation reporting is based on your incorporation date, while charitable organization renewal is based on your accounting year end.

# Stay Up-to-Date with the Secretary of State

Nonprofit and charitable organizations need to register and stay up-to-date with the Office of the Secretary of State.

- 1 Check which type of organization you are.
- 2 Note your key dates.
- 3 Put those dates onto your organizational calendar.

1



## Nonprofit Corporation

**WHAT IS IT?** A private corporation for which no part of the income is distributable to its members, directors, or officers. It is formed to benefit the public, a specific group of people, or the membership of the nonprofit.

**EXAMPLES:** Labor union, chamber of commerce, social clubs, business leagues

### ANNUAL REQUIREMENTS

1. **What:** Annual Report
2. **When:** Last day of organization's incorporation month. A reminder will be sent to the registered agent at least 30 days prior to required filing date.
3. **Fee:** \$20 (revenues <\$500K/year)  
\$60 (revenues >\$500K/year)

2

Your incorporation date: \_\_\_\_\_  
Your annual report filing date: \_\_\_\_\_

*For example, an incorporation date of March 3, 2002 would have an annual report filing date of March 31 each year. File online!*



## Nonprofit and Charitable Organization

- ☐ 60% of charitable organizations are also nonprofit corporations.
- ☐ They include many of the organizations we know providing direct service, supporting the arts, or advocating for causes.
- ☐ They follow both sets of requirements to be in compliance with the Secretary of State.



## Charitable Organization

*or individuals soliciting on behalf of organizations*

**WHAT IS IT?** An entity that solicits or collects contributions from the general public in Washington to be used to support a charitable purpose. May or may not be a corporate structure.

In Washington, includes organizations that:

- Raise at least \$50,000 annually in Washington; **OR**
- Pay anyone to carry out the activities of the organization.

**EXAMPLES:** Education, health, social service, religious, cultural, and scientific organizations. **Examples that are NOT necessarily nonprofit corporations:** Individual fundraisers, out of state organizations, foreign corporations, some associations. Churches may register but are not required.

### ANNUAL REQUIREMENTS

1. **What:** Annual Renewal
2. **When:** No later than the last business day of the eleventh month after the end of the organization's accounting year. Earlier reporting welcome!
3. **Fee:** \$40

2

Your accounting year end: \_\_\_\_\_  
Your charities filing date: \_\_\_\_\_

*For example, an accounting year end of Dec. 31, 2022 would have an annual renewal filing date of Nov. 30, 2023.*

3



### ADD TO CALENDAR

...and don't forget to update address changes if you move or change contact person.



Developed by:  
Nonprofit Association  
of Washington



WASHINGTON  
Secretary of State  
Corporations & Charities Division

For more information, [visit the Office of the Secretary of State, Corporations & Charities Division website.](#)

## LET'S GO LEGAL!

The right road to compliance and protection



## Chapter 2

# Federal Law

### CHAPTER OUTLINE

1. Charitable purpose & assets
  2. Private benefit
  3. Lobbying
    - A. Lobbying limits
    - B. Education
  4. Political campaigns
  5. Public documentation
    - A. Annual filing
    - B. Public disclosure
  6. Legal Checklist: Federal Law
- Chapter 2 Summary: Federal Law

### INTRODUCTION

If you want to take your car on big highways and drive farther, more rules apply. This is also true for nonprofit organizations who want their revenue to be exempt from federal income tax and want to be eligible to receive tax-deductible contributions. For organizations applying to the IRS for tax-exemption and those who have received 501(c)(3) tax-exempt status, understanding the associated federal laws and tax rules is essential.

Board members need to be aware of and comply with federal tax rules outlined for 501(c)(3) organizations. If federal laws and rules are not followed, an organization may face legal or financial penalties including having its tax-exempt status revoked. *If your nonprofit does not have tax-exemption as a 501(c)(3) organization, it will not have to comply with the following federal tax rules.*



## 1. CHARITABLE PURPOSE & ASSETS

When considering an organization's charitable purpose and assets, there are three items to make certain the nonprofit meets. These items are outlined below as: purpose, dissolution, and income unrelated to purpose.

- **Purpose:** A 501(c)(3) organization must be organized and operated exclusively for one or more charitable purposes. These purposes must meet the definition of charitable purposes under federal tax law.
- **Dissolution:** The Articles of Incorporation must provide that, upon dissolution of the 501(c)(3) organization, all assets must go to another 501(c)(3) organization or a government entity for a public purpose.
- **Income unrelated to purpose:** 501(c)(3) organizations may have a limited amount of unrelated business income (income unrelated to its charitable purpose), but the organization must report the income and pay taxes on said income. If there is too much unrelated business income, or the unrelated income is not reported, it can jeopardize the nonprofit's tax-exempt status. There are legal tests to determine if income is unrelated business income and if there is too much unrelated business income. If unrelated income is an issue, the organization should consult an attorney.

### Definition of "Charitable"

The term "charitable" is used in the Internal Revenue Code section 501(c)(3) in its generally accepted legal sense. That includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; promotion of social welfare.

## 2. PRIVATE BENEFIT

Tax-exempt organizations are created to serve a public good, not the people creating or governing the organization. No officer, director, or other insider can therefore receive any benefit for which they have not appropriately paid. Loans to board members are not permitted. In general, a board needs to pay close attention to compensation, purchases and sales, or other financial transactions with insiders. Transactions with insiders cannot exceed fair market value.

The IRS can impose financial penalties on insiders that violate rules around private benefit, as well as on directors who approve such dealings. The organization may have its tax-exempt status revoked.

## 3. LOBBYING

Lobbying is any attempt to influence legislation by (1) expressing a position on specific legislation to a legislator or their staff, or (2) encouraging members of the general public to contact their legislators with

a position on a specific legislation (like a “call to action”). Contrary to what many people think, tax-exempt organizations may engage in lobbying if the lobbying is not a substantial part of the organization’s activities. All tax-exempt organizations may engage in education.

### **A. Lobbying limits**

- **The “substantial part” test:** Known as the “substantial part test,” these rules require that “no substantial part of a charity’s activities consist of carrying on propaganda or otherwise attempting to influence legislation.” “Substantial” has never been clearly defined. However, it is clear that the definition of lobbying under the “substantial part test” is not related to an expenditure of money alone. For example, activities conducted by volunteers to influence legislation may be considered lobbying. Organizations that choose not to elect into Section 501(h) of the tax code (see next bullet point) are still subject to section 501(c)(3) and the rules developed in common law.
- **501(h) expenditure test:** Under this standard, the amount of lobbying is measured as an expenditure of money. It sets forth specific dollar limits, calculated as a percentage of the organization’s total exempt purpose expenditures. Those 501(c)(3) organizations that choose the Section 501(h) election must apply an “expenditure test.” Section 501(h) and its related regulations also provide helpful definitions of lobbying and several exemptions.

### **B. Education**

To be clear, 501(c)(3) organizations may engage in education without limitation. A nonprofit may educate anyone anytime about the people the organization serves, the impact of policies on these people, and what ideas the organization has to help their community. An organization may tell the stories of clients or speak up when a better solution is possible. An organization may invite a policymaker into their facility to see their work in action. Nonprofits play an important role in the education of their community, including policymakers, about their work and the issues related to their success.

## **4. POLITICAL CAMPAIGNS**

A 501(c)(3) organization is not allowed to favor or oppose a candidate for public office. A candidate includes a declared candidate, an incumbent until they state that they will not seek re-election, and a person subject to speculation. A 501(c)(3) organization may not make endorsements. Also, a 501(c)(3) organization may not use its resources for a campaign for public office. It is important to prevent any campaign activity by an employee, volunteer, or board member from being attributed to the organization.

## 5. PUBLIC DOCUMENTATION

Making public key information about tax-exempt organizations through annual Form 990 filing and public disclosure about organizational activities can highlight how a nonprofit is operated, how it is compliant with applicable tax laws, and how it is governed and managed.

### A. Annual filing

Each year tax-exempt organizations must file an IRS Form 990, or one of its variations, by the 15<sup>th</sup> day of the 5<sup>th</sup> month after the organization's accounting period ends (i.e., for a calendar-year filer, submit the Form 990 by May 15<sup>th</sup>). There are several Form 990 formats available depending on your nonprofit's annual gross receipts and assets.

There are financial penalties for filing the Form 990 late. If an organization fails to file a Form 990 for three consecutive years, its tax-exempt status will be automatically revoked.

Nonprofit Association of Washington's *Finance Unlocked for Nonprofits* guide has an entire chapter on the Form 990, which includes a quick review section, a short worksheet, and questions to help you get more acquainted with your organizations Form 990.



### B. Public disclosure

It is considered to be in the public's best interest that tax-exempt organizations make public key information about their activities. Specifically, a tax-exempt organization must make available for public inspection its:

- Application for tax exemption, which is either Form 1023 or Form 1024 depending on the organization.
- Annual return, which includes Form 990 and its variations for the prior three years.

It is **not** required to disclose the name and address of any contributor.

## 6. LEGAL CHECKLIST: FEDERAL LAW

If YES, date sent or reviewed	NO	ITEM
<b>KEEPING CURRENT WITH IRS – MAINTAINING TAX-EXEMPT STATUS</b>		
		<p>Our organization files a version of the IRS Form 990 every year.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Our organization does not normally receive more than \$50,000 in annual gross receipts and files a Form 990-N (e-Postcard).</li> <li><input type="checkbox"/> Our organization normally receives more than \$50,000 in gross receipts each year and files annual Form 990 or 990-EZ with the IRS.</li> </ul>
		Our organization understands its 501(c)(3) determination letter from the IRS, and its status as either a “public charity” or a “private foundation.”
		Our organization’s Board of Directors regularly reviews the organization’s financial statements, and reviews and approves the annual IRS Form 990.
		If our organization receives funds from regularly conducted business activities that are unrelated to its exempt purpose, the organization correctly accounts for those funds and understands how to report and pay taxes on this unrelated business income.
<b>KEEPING CURRENT WITH IRS</b>		
		Our organization has notified the IRS of any material changes to our exempt purposes or activities, or amendments to our Articles of Incorporation or Bylaws since we applied for 501(c)(3) status.
<b>CONFLICT OF INTEREST</b>		
		Our organization has a written Conflict of Interest Policy and follows that policy.
		Any transactions our organization undertakes with its insiders, known as “disqualified persons,” is approved by the board or an independent committee, no members of which have a personal or financial interest in the transaction.
		The setting of our executive director’s salary is based on appropriate comparability data.
		Transactions are concurrently documented by the board or committee which states the basis for its approval in writing.
<b>OTHER POLICIES</b>		
		Our organization has considered adopting a written Whistleblower Policy and if adopted, follows that policy.
		Our organization has considered adopting a written Document Retention Policy and if adopted, follows that policy.
<b>ADVOCACY</b>		
		Our organization does not endorse candidates for political office and does not participate in any political campaign for or against a candidate for any public office.
		Our lobbying activities, if any, are an insubstantial part of our organization’s overall activities. If we are participating in any lobbying activities, we have considered the two ways that nonprofits can document their lobbying activities.



1. Federal tax law provides tax benefits to 501(c)(3) organizations because they provide a benefit to society in some way. In return, these organizations must further one or more “charitable purposes” and provide assurance that the organization’s assets will remain charitable.
2. Individuals or organizations may not benefit personally from the activities of a tax-exempt organization.
3. 501(c)(3) organizations are limited in their advocacy activities. Lobbying conducted by 501(c)(3) organizations cannot be a “substantial part” of their activities. There is an important difference between education and lobbying.
4. 501(c)(3) organizations may not participate in or intervene in the campaign of a candidate for public office.
5. Tax-exempt organizations may not operate in the dark. Tax-exempt organizations must make some documents available for public inspection and must file annual informational tax returns. Organizations must also provide donors with appropriate donation receipts.



**Here are some questions to think about:**

- Is there an individual or organization who is receiving a private benefit from your nonprofit? Does your nonprofit have a Conflict of Interest Policy? If yes, is the policy followed?
- How does your organization currently educate the community, including policymakers, about your work and issues related to achieving your nonprofit’s mission?
- If you are not already, would your nonprofit benefit from engaging in lobbying activities?

**Reflections**




**Next steps:**

- Advocacy can be a powerful tool to advance your mission. Learn more about nonprofit advocacy by exploring Nonprofit Association of Washington’s [Build a Movement!](#) resources. Bolder Advocacy has materials for [Lobbying Under the Insubstantial Part Test](#).



## Chapter 3

# Fundraising & Donations

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### CHAPTER OUTLINE

1. Registration & reporting
  2. Written acknowledgement (substantiation)
  3. Restricted gifts
  4. Fundraising activities
  5. Legal Checklist: Fundraising & Donations
- Chapter 3 Summary: Fundraising & Donations
- 

### INTRODUCTION

A car needs fuel, and for a nonprofit, fuel is money. When a nonprofit accepts other people's money for a charitable purpose, the organization agrees to abide by laws that require such money be spent on the purposes for which it was intended. There are state and federal rules that tell a nonprofit how to communicate about money received, how to account for the money, and what kinds of fundraising an organization can conduct.

### 1. REGISTRATION & REPORTING

In Washington, nonprofits that solicit members of the public for donations and raise at least \$50,000 annually or pay anyone to carry out the activities of the organization must register as a Charitable Organization with the Secretary of State, and file yearly reports with the state. The report is due no later than the last business day of the 11<sup>th</sup> month after the end of the organization's accounting year. Registration is also required if the organization engages a commercial fundraiser. Churches are not required to register.

## 2. WRITTEN ACKNOWLEDGEMENT (SUBSTANTIATION)

Donations above a certain limit are only tax-deductible if the donor has a written acknowledgement of the gift. Donors should receive written acknowledgement in the case of a:

- Single contribution of \$250 or more
- Single contribution of \$75 or more where goods or services were received by the donor (unless the goods were incidental, such as a coffee mug)

### Written acknowledgement should include:

- Name of organization
- Amount of cash contribution
- Description (not value) of non-cash contribution
- Statement that no goods or services were provided, if that was the case
- Description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution

There are also special rules around donations of certain types of property, such as vehicles, works of art, conservation easements, and property valued at more than \$500.

## 3. RESTRICTED GIFTS

Contributions restricted by the donor must be used in accordance with any donor-imposed restrictions on that gift, whether the donor restricts a gift as to purpose or expenditure. Restricted gifts require additional tracking and accounting to ensure the funds are stewarded appropriately and used for the intended purpose. One type of restricted gift is an endowment.

Nonprofits with income-producing assets of \$250,000 or more may need to register as a Charitable Trust with the Secretary of State.

### FINANCE UNLOCKED for NONPROFITS



Nonprofit Association of Washington's [Finance Unlocked for Nonprofits](#) guide goes deeper into nonprofit finance, including funds with donor restrictions. See Chapter 4, Giving.

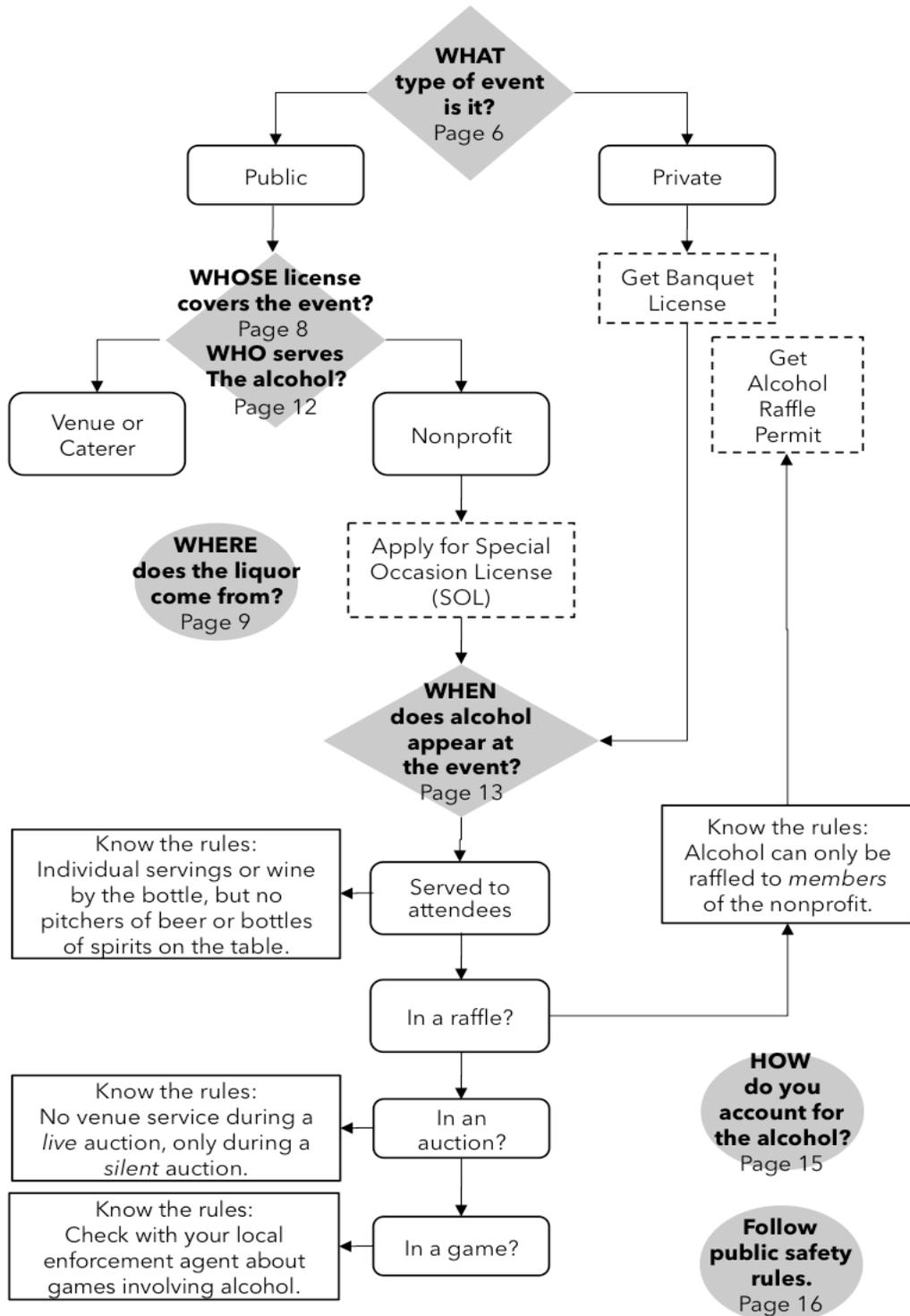
## 4. FUNDRAISING ACTIVITIES

Many nonprofits hold events or conduct other fundraising activities in order to raise money. Some of those activities may be subject to other laws.

- **Raffles:** May require a license (See the Washington State Gambling Commission for more information.)
- **Gaming & gambling:** May require a license (See the Washington State Gambling Commission for more information.)
- **Auctions:** May involve paying sales taxes on tangible property
- **Alcohol:** Requires a liquor license



Having alcohol at your event can be complicated. Use this chart from Nonprofit Association of Washington's *Liquor, Cannabis, Gambling...and Your Fundraising Event* guide to decide what licenses your organization will need. (Page numbers referenced in the chart are for the *Liquor, Cannabis, Gambling...* guide.)



## 5. LEGAL CHECKLIST: FUNDRAISING & DONATIONS

If YES, date sent or reviewed	NO	ITEM
<b>REGISTRATION AS A CHARITY</b>		
		If our organization solicits charitable donations from the general public, it complies with Washington’s Charitable Solicitations Act, including registration and annual reporting requirements.
<b>GIFT ACKNOWLEDGEMENT</b>		
		Our organization acknowledges, in writing, gifts of \$250 or more.
<b>IN-KIND</b>		
		If our organization provides any goods or services of more than a nominal value to a donor who makes a contribution in excess of \$75.00, our organization provides a disclosure statement to the donor with a good faith estimate of the fair market value of any benefit that the donor received.
		If our organization receives gifts of vehicles or other non-cash gifts, it understands and follows the IRS regulations for substantiation of those gifts.



1. In Washington, nonprofits that solicit members of the public for donations and raise at least \$50,000 annually or pay anyone to carry out the activities of the organization must (1) register as a Charitable Organization and (2) file yearly reports with the State.
2. Certain donations require written acknowledgement for the donor to be able to take a tax-deduction.
3. In some cases, donors may restrict how their gift can be used. An endowment is one kind of restricted gift.
4. A number of laws impact how an organization can raise money, from holding a raffle to serving alcohol. Disclosure requirements apply to nonprofits.



**Here are some questions to think about:**

- For donations received, does your nonprofit have a system for written acknowledgements that meets the required elements outlined in this chapter?
- If your nonprofit has funds with donor restrictions, do you know what the tracking and accounting requirements are? Is your organization following through on required tracking?
- What are your major fundraising activities? Do the activities involve alcohol and/or gambling, and if so, is your nonprofit staying compliant?

**Reflections**




**Next steps:**

- ❑ Review your nonprofit’s current process for written gift acknowledgement. Use the following resources to check that your organization’s approach meets IRS regulations.
  - National Council of Nonprofits – [Gift Acknowledgements: Saying ‘Thank You’ to Donors](#)
  - IRS Charitable Contributions – [Substantiating Charitable Contributions](#) and [Quid Pro Quo Contributions](#)
- ❑ Review Propel Nonprofits [Managing Restricted Funds resource](#) to gain a deeper understanding on funds with and without restrictions.



## Chapter 4

# Employment Law

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### CHAPTER OUTLINE

1. Minimum wage & overtime
    - A. Minimum wage
    - B. Overtime
    - C. Exempt
  2. Hiring process
    - A. At-will employment
    - B. Employment verification
  3. Non-employees: Interns, Volunteers, & Independent Contractors
    - A. Unpaid interns
    - B. Volunteers
    - C. Independent contractors
  4. Payroll
  5. Anti-discrimination laws
  6. Legal Checklist: Employment Law
- Chapter 4 Summary: Employment Law
- 

### INTRODUCTION

An important part of getting on the road to compliance is making sure you are taking care of your people. People engaged in the work of an organization help move the mission forward. An organization's valuable workers may include paid employees, volunteers, interns, and independent contractors. Each type of worker has a role and legal compliance considerations.

### 1. MINIMUM WAGE & OVERTIME

#### A. Minimum wage

Most employees must be paid the minimum wage for all "hours worked." "Hours worked" means all time during which an employee performs work for the benefit of the employer. This includes time spent opening or closing a business and required meetings and training. Also included is time spent by an employee voluntarily continuing to work on an assigned task at the end of a shift or on a day off. All work time must be paid for by the employer.

For 2024, the Washington State Minimum Wage is \$16.28 per hour, higher than the federal minimum wage of \$7.25 per hour. Employers are required to pay employees the more favorable (i.e., higher) of the state and federal minimum wage. Several counties and cities throughout Washington State have enacted local minimum wage ordinances. Employers need to know what minimum wage applies to their employees.

### **Minimum Wages Around Washington**

Cities can set minimum wages higher than the state. SeaTac, Seattle, and Tukwila have higher wages, and the hyperlinks below connect to resource pages for each city.

**SeaTac:** [Employment Standards Ordinance](#)

**Seattle:** [Minimum Wage Ordinance](#)

**Tukwila:** [Minimum Wage and Fair Access to Additional Hours of Work](#)

## **B. Overtime**

Most employees who work more than 40 hours in a 7-day work week must be paid overtime compensation for all hours worked over 40 hours. For every overtime hour worked, the employee must be paid 1.5 times the employee's regular rate of pay. An employee's "regular rate" is not necessarily the same as an employee's fixed or straight time rate. The regular rate includes all compensation for employment paid to the employee divided by the number of hours worked in the week for which the compensation was intended. Payments such as commission payments, premium pay, and non-discretionary bonuses are included in the regular rate. Discretionary compensation, expense reimbursements, and pay for unworked time (e.g., holiday, vacation, sick pay) does not need to be included when calculating the regular rate.

## **C. Exempt**

State and federal law provides exemption from overtime pay for employees employed as bona fide executive, administrative, professional, or outside sales employees. To qualify for the exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all of the requirements.

Paying an employee on a salary basis requires that the employee receive a predetermined amount of pay on a weekly basis, regardless of the quantity or quality of the hours worked. Current (as of October 2023) state law increases the minimum salary requirement incrementally until it reaches 2.5 times the state minimum wage in 2028. Effective January 1, 2024, the rule increases the minimum salary required for the executive, administrative, and professional exemptions under state law as follows:

- Employers with 50 or Fewer Employees: \$1302.40 per week
- Employers with 51 or More Employees: \$1302.40 per week

Please reference the Washington State Department of Labor & Industries [Salary Threshold Implementation Schedule](#) for the overtime exempt minimum salary threshold projections through the year 2028.

In addition to the salary basis requirements, exempt employees must also meet duties requirements. State and federal duties tests differ slightly, and employers must comply with both. The three most commonly applied exemptions are the executive, administrative, and professional exemption, which are outlined below in Chart A.

State and federal law also provide exemptions for certain other categories of employees. Employers should consult with legal counsel when making a decision whether to classify an employee as exempt from overtime.

Employers are not required to pay employees a higher rate of pay to work on holidays or weekends. Employers are not required to pay employees severance pay.

**CHART A: COMMON EXEMPTIONS**

Executive exemption	Administrative exemption	Professional exemption
<b><i>An employee must:</i></b>	<b><i>An employee's primary duty must:</i></b>	<b><i>An employee qualifies if the employee:</i></b>
<ul style="list-style-type: none"> <li><input type="checkbox"/> Have the primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision.</li> <li><input type="checkbox"/> Customarily or regularly direct the work of two or more full time employees or their equivalent; and</li> <li><input type="checkbox"/> Have the authority to hire, fire, promote, or demote other employees or have particular weight given to suggestions and recommendations as to such decisions.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Involve office or non-manual work directly related to the management or general business operations of the employer or its customers. Examples provided in the regulations include work in areas such as finance, accounting, budgeting, auditing, quality control, purchasing, marketing, personnel management, public relations, and database administration; and</li> <li><input type="checkbox"/> Exercise discretion and independent judgment with respect to significant matters.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Has a primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, and whose duties require consistent exercise of discretion and judgment; or</li> <li><input type="checkbox"/> Has a primary duty requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.</li> </ul>

Job duties fact sheets and case studies are available on the [Washington Department of Labor & Industries Overtime Rules Resources page](#).

## 2. HIRING PROCESS

Nonprofits offer unique and meaningful work opportunities. There are many employer compliance requirements to complete when bringing a new worker onboard, so take the time to prepare for their arrival.

### A. At-will employment

Washington State recognizes the doctrine of at-will employment. At-will employment means that employees can quit whenever they want and the employer may terminate employees whenever it wants, provided there is no contract or agreement to the contrary. All employees are at-will employees unless the employer has taken affirmative steps to change the status. The majority of employees should be employed on an at-will basis to provide the employer with flexibility and to minimize cost.

Employers should have a policy confirming at-will employment. Sample at-will employment policies are provided in the resources accompanying this guide.

### B. Employment verification

Employers must have all employees hired complete the Form I-9. The Form I-9 is used to verify the identity and employment authorization of individuals hired for employment in the United States. Federal regulations require an employer to retain a Form I-9 for each employee hired for three years after the date of hire, or one year after the date employment ends, whichever is later. Additional information on the Form I-9 is available on the [U.S. Citizenship and Immigration Services webpage – I-9, Employment Eligibility Verification](#) – including blank forms and documents for download.

## 3. NON-EMPLOYEES: INTERNS, VOLUNTEERS, AND INDEPENDENT CONTRACTORS

As a nonprofit considers their workers, there may be questions about what qualifies as a volunteer, intern, employee, or independent contractor. It is important to properly identify the type of worker. For example, misclassifying employees as independent contractors can expose an employer to liabilities from unpaid minimum wages and overtime pay to federal, state, and local tax withholdings.

### A. Unpaid interns

The law narrowly limits an employer's ability to use unpaid interns. The U.S. Department of Labor looks at seven factors for evaluating whether an unpaid intern's status is valid, and an employer should examine to what extent:

1. An understanding exists between the intern and employer that there is no expectation of compensation – any promise of compensation, stated expressly or implied, suggests the intern is an employee.

2. The internship provides training that would be similar to an educational environment.
3. The internship is tied to the intern's formal education program by integrating the experience with coursework or academic credits.
4. The internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The duration of the internship is limited to the period in which the intern receives beneficial learning.
6. The intern's work complements, instead of displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The intern and employer understand that the internship is conducted without entitlement to a paid job at the end of the internship.

Both the U.S. Department of Labor and Washington State Department of Labor & Industries have additional resources related to unpaid internships.

- U.S. Department of Labor: [Internship Programs Under the Fair Labor Standards Act](#)
- Washington State Department of Labor & Industries: [Unpaid Internships 101](#)

## **B. Volunteers**

The Washington State Department of Labor & Industries defines a volunteer as someone who freely gives their time and talents without expectation of pay. In addition, a volunteer can only volunteer at an educational, charitable, religious, state or local government, or nonprofit organization. Each volunteer should sign a document confirming volunteer status, which includes an acknowledgement of no pay.

## **C. Independent contractors**

An "independent contractor" is a person or business that performs services for an organization under a contract between the parties, with the terms spelled out such as duties, pay, the amount and type of work, and other matters. An independent contractor pays their own Social Security and taxes, and is not eligible for retirement or health benefits.

Individual workers hired to perform functions essential to your organization's primary purpose, who work full or part-time under the employer's control, and who do not provide similar services for other organizations are **not likely** to qualify as independent contractors. The U.S. Department of Labor evaluates independent contractor status based on the following factors. No single factor is regarded as more important than another.

1. Extent to which the worker's services are an integral part of the employer's business.
2. Permanency of the relationship.
3. Amount of the worker's investment in facilities and equipment.
4. Nature and degree of control by the principal.
5. Worker's opportunities for profit and loss.

6. Level of skill required in performing the job and the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

Misclassifying employees as independent contractors can expose an employer to liability for unpaid minimum wage and overtime, sick and vacation pay, workers' compensation premiums, federal, state and local income tax withholdings, Social Security and Medicare contributions, unemployment, insurance, taxes, and benefits. There may be penalties under state and federal law for misclassification.

**Note:** The City of Seattle has issued new rules governing organizations hiring independent contractors called the [Independent Contractors Protections Ordinance](#) that will be effective on September 1, 2022. Communities Rise will have resources on the Independent Contractors Protections Ordinance on their [resources web page](#).



**Staffagories – A nonprofit worker sorting activity**

Instructions:

- Think about each member of your team and sort the individual workers into a specific Staff or Non-Staff category.

Write down the worker’s name and at least one reason why this person is properly categorized.

**STAFF**

Non-exempt	Exempt		
	Executive	Administrative	Professional

**NON-STAFF**

Interns	Volunteers	Independent Contractors

## 4. PAYROLL

An employer must establish regularly scheduled paydays at least once a month. When an employee has ceased working for an employer, the employer must pay the final wages due at the end of the established pay period. Payment must be made by midnight on the payday. If mailed, the paychecks must be postmarked on the payday. If payment is made using direct deposit, funds must be available on the established payday.

## 5. ANTI-DISCRIMINATION LAWS

Federal law prohibits employment discrimination based on the following covered bases: race, color, creed, religion, sex (including pregnancy-related discrimination), national origin, age, disability, genetic information, and military or veteran status. Washington's anti-discrimination laws protect the same characteristics as federal law and also extend protections based on veteran and marital status, sexual orientation, and political activities. Federal law ([Title VII of the Civil Rights Act of 1964](#)) applies to employers with 15 or more employees. [Washington's Law Against Discrimination](#) applies to employers with eight or more persons.

## 6. LEGAL CHECKLIST: EMPLOYMENT LAW

If YES, date sent or reviewed	NO	ITEM
<b>EQUAL OPPORTUNITY</b>		
		Our organization does not discriminate in employment on the basis of race, color, creed, religion, sex (including pregnancy-related discrimination), national origin, age, disability, genetic information, military or veteran status, marital status, sexual orientation, and political activities.
<b>WORKERS COMPENSATION</b>		
		Our organization has evaluated whether it wishes to provide workers compensation coverage for volunteers. If our organization elected to provide this coverage, it has timely notified the Director of the Washington State Department of Labor & industries of its intent to do so and is making the required contributions.
<b>TYPES OF WORKERS</b>		
		Our organization is confident that it has properly categorized volunteers, independent contractors, employees, and interns, and is treating workers appropriately for their category.
		Our organization is confident it has properly classified employees as either exempt or non-exempt and is treating them appropriately for their category.
<b>ORGANIZATIONS WITH STAFF</b>		
<b>LABOR PRACTICE</b>		
		If our organization's staff members work overtime or have unusual hours, we are complying with wage and hour standards that govern overtime.
		Our organization has considered whether it should adopt written personnel policies that include, for example, a description of employee benefits, a process for handling a harassment complaint or other grievances, termination procedures, the process for performance management or employee reviews, and other employment practices.

**WORK ELIGIBILITY**

		Our organization verifies that all employees are eligible to work in the United States by having all employees complete Form I-9, which the organization retains on file for three years after the date of hire or one year after the date employment ends, whichever is later.
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**FEDERAL REQUIREMENTS**

		Our organization withholds federal income and FICA taxes from employees' paychecks, deposits these withheld funds, along with the employer's share of FICA taxes, with the IRS on a regular basis, and files a Form 941 quarterly with the IRS.
--	--	---

		Our organization prepares Form W-2 for employees and Form 1099 for any independent contractors.
--	--	---

**STATE REQUIREMENTS**

		Our organization has registered with the Washington State Departments of Labor & Industries (L&I) and Employment Security Department (ESD). Our organization makes quarterly payments to ESD for unemployment insurance and makes quarterly payments to L&I for workers compensation insurance.
--	--	---



1. Federal, state, and in some cases local law regulates employers’ pay practices and policies. Washington employers must comply with federal, state, and local law.
2. Employers should understand the basis for at-will employment. Employers must also verify the work eligibility of employees with a Form I-9.
3. Nonprofits need to make sure non-employees, such as interns, volunteers, and independent contractors, are treated consistent with the law to avoid incurring liability.
4. Employees must be paid at least once a month on a regularly scheduled payday. Payroll taxes must be withheld and paid to the IRS. The IRS is very strict on payroll taxes and will hold individual board members liable for unpaid payroll taxes.
5. Federal and state law prohibit discrimination across a wide array of characteristics.



**Here are some questions to think about:**

- Do the workers at your nonprofit reflect the people you serve or the people most affected by the issues your organization is working to address?
- Do you thoroughly review the job duties of worker opportunities to ensure they are properly classified? For current workers, do you reassess their job classifications when their job duties or wages change to verify they are still classified correctly?

**Reflections**



**Next steps:**

- ❑ Go deeper into nonprofit employment and lifecycle of workers with Nonprofit Association of Washington’s [Workers in Nonprofits](#) guide. Explore the guide and download useful resources and tools, including the Overtime Salary Threshold tool.
- ❑ Learn more about independent contractors through the following resources from the Washington State Department of Labor & Industries.
  - [Independent Contractor Guide: A Step-by-Step Guide to Hiring Independent Contractors in Washington State](#)
  - [Employer Services Independent Contractor e-Learning Resource](#)
  - [Independent Contractors: Workers’ Compensation, Personal Labor Test, & 6-Part and 7-Part Tests](#)



## Chapter 5

# Intellectual Property

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### CHAPTER OUTLINE

1. Intellectual property defined
    - A. Trademarks
    - B. Copyright
    - C. Patents
    - D. Trade Secret
  2. Ownership
  3. Respect
  4. Privacy policy
  5. Website & online usage
    - A. Use of non-original content
    - B. Photo release
    - C. Terms of use
  6. Legal Checklist: Intellectual Property
- Chapter 5 Summary: Intellectual Property
- 

### INTRODUCTION

Every car manufacturer works to create an automobile brand and models of cars that have unique design features and attributes that communicate their cars are special. Nonprofits use a name, logo, website, and special materials that communicate who the organization is and share ideas that are intangible. Whether shared on websites, used in print materials, or captured through unique research on the issues the organization addresses, protecting the ideas and products of a nonprofit is vital. Likewise, it is important that nonprofits are careful about how the ideas of others are used in their activities.

### 1. INTELLECTUAL PROPERTY DEFINED

Unlike real property or personal (material) property, intellectual property are assets of an individual or organization that are intangible. Intellectual property is the ownership interest a person or company may have in creations of the mind. Intellectual property law grants the creator of intellectual property

exclusive rights for exploiting and benefiting from their creation. There are four main types of intellectual property protections – trademarks, copyright, patents, and trade secrets.

### A. Trademarks

Trademarks protect words, symbols, and other “marks” that are capable of identifying its owner. A trademark is a name or symbol or other indicator that identifies your enterprise to the public. With continuous use, rights can last forever. Trademark rights are acquired by using the trademark. Use the **TM** mark in connection with an unregistered trademark and the ® to indicate a registered trademark. Examples of trademarks include Netflix, Nike, Google, Apple logo, etc.

Trademarks do not create monopoly rights. They are acquired in connection with particular goods and services. For this reason, there could be more than one party with the same mark for different, unrelated services. Trademarks are also not all created equally. Some are stronger than others with stronger rights attaching to arbitrary or made-up words than to words that are highly suggestive of the goods or services covered or even descriptive of such goods or services. Generic trademarks are not protectable at all.

- **Registration:** Registration is available at the state and federal level. (Note: your corporate name registered with the state is not the same as a trademark and does not give you proprietary rights to a name.) The owner of a federally registered mark acquires additional statutory rights and enforcements by the courts. A federal registration grants nationwide rights even though the trademark may only be used in as few as two states.
- **Corporate name:** Your corporate name is not automatically a trademark. Your corporate name can be a trademark if you register it. The first to use a trademark in connection with particular goods and/or services has prior rights.
- **Domain name:** A domain name is also not a trademark, though domain names arguably serve an identifying function. Domain names are not acquired in the same way as a trademark nor are treated as a trademark. However, it is possible that a portion of a trademark may be incorporated into a domain name and the domain name itself may be used or registered as a trademark.
- **Use:** A trademark should be used consistently throughout the organization. Improper use of a trademark could lead to erosion or weakening of the mark and sometimes loss.

### B. Copyright

A copyright protects rights in the expression of an idea or “artistic works.” Once the copyright term ends, works fall to the public domain and may be used by anyone. Although, confirming what is in the public domain is sometimes difficult.

Copyright holders have the exclusive rights to reproduce, create derivative works based on the work, distribute copies, perform, or display the work. The rights attach at the time of creation but in order to have standing to sue in court, the owner will need to register the work with the U.S. Copyright Office. The

symbol © is used in connection with copyrighted material. Examples of copyright protectable works include instructional or educational materials, movies, musical works, software code, and website content (e.g., pictures and articles). Copyright does not protect names, titles, slogans, or short phrases such as business or product names.

If your organization produces materials, it owns the copyright to those materials. If your nonprofit plans to market and use the materials, registering the copyright in the name of the organization is worthwhile. The fee for registering a copyright is inexpensive, and the Copyright Registration Certificate is a powerful attachment to a cease-and-desist letter should the need arise. Also, it is a good idea to obtain a written assignment from individuals involved in creating the materials if there is any uncertainty regarding ownership.

### **C. Patents**

Patents protect new, non-obvious useful inventions. Utility patents last 20 years. Patents must be registered for rights to attach. A patent attorney should be consulted if you believe you have an invention that qualifies for protection.

### **D. Trade secrets**

A “trade secret” is information that is confidential to the business and held in secret. There is no registration process, and trade secrets remain protected so long as the information is held in confidence. Intellectual property counsel should be consulted regarding best practices to ensure information is protected as a trade secret.

## **2. OWNERSHIP**

Intellectual property is generally owned by its creator. If created by an employee, the works are generally assigned to the employer either by law or by contractual agreement. If the work is created by independent contractors or other external collaborators, the nonprofit should obtain a written assignment from those individuals or entities if the nonprofit intends to outrightly own the intellectual property. In the absence of a written assignment, independent contractors may in some circumstances still retain intellectual property ownership even though they were properly compensated by the nonprofit to create such works. Like any other corporate assets, a nonprofit should hold its intellectual property in its own name or the name of some other entity it fully controls. Holding intellectual property in the name of an individual puts the company at risk that the individual might abscond with the intellectual property or use it for their own benefit.

**Important note:** Though not technically intellectual property, your domain name should also be retained by your corporation – in the name of the corporation. Do not allow a webmaster to register or maintain your domain name – it is a corporate asset.

### 3. RESPECT

Respecting the intellectual property rights of others is important. Before you use a symbol or image in your nonprofit's marketing materials or on your website, search for the symbol or image online. Someone with a similar trademark could challenge your nonprofit's use, even if your use is not considered trademark use.

Before adopting a name determine if someone else owns the rights to that name by searching for the name on:

1. The United States Patent and Trademark Office website
2. The corporate database with the Washington Office of the Secretary of State, Corporations & Charities Division
3. The internet in general

While these searches will not provide a legal analysis of your rights, the searches may alert you to some possible issues you may encounter. Requesting a search by a trademark professional will give the best results, and even then, common law rights may be missed. The cost to defend unauthorized use of a trademark held by someone else or to compensate the owner for your unauthorized use can be high.

Ideally, any material used by the organization on its website or otherwise should be original material created by the organization. Other material should only be used with permission of the owner and credit should be given to the owner. (Additional information is provided in Section 5 below on **Website & Online Usage**.) Just because a "work" is older or the creator is deceased, do not assume the work is in the public domain and freely available for use. Rights may be retained by the creator's estate.

### 4. PRIVACY POLICY

A website that collects personal information should have a privacy policy. A privacy policy tells your website visitors what your nonprofit will do with information gathered, how information is gathered, and how the information is stored.

Once you have a privacy policy in place, be sure you adhere to what is in your policy regarding collection, storage, and use of information.

Some special considerations related to privacy policies:

- **Links to other sites:** If your nonprofit's website provides links to websites of others, you may need to include third party privacy requirements into your policy.
- **Use by children:** If your nonprofit's website will be used or visited by those under the age of 13, there are specific requirements under the Children's Online Privacy Protection Act of 1998 (COPPA). The state of California has the "California Office of Privacy Protection" with certain Privacy Policy provisions that apply to any website collecting data from California residents.

- **E-commerce:** If you operate an e-commerce site, there are certain provisions you should include.

Sample privacy policies are provided in the resources accompanying this guide. Do not just copy and paste a privacy policy onto your website. The privacy policy must factually state your actual practices, and having the final policy reviewed by counsel is a good idea.

## 5. WEBSITE & ONLINE USAGE

Your website is the organization's front door to your community and the world beyond. A nonprofit's website can be easily viewed—and content easily taken—thus it is important to pay attention to how you use others' content and how you protect your own content.

### A. Use of non-original content

You should obtain permission for any non-original content used on your website and always give credit to the owner. When creating your website, remember you cannot clip information from another website and post to your own without risking infringing that third party content. Even if you pay for stock art or clipart, commercial use may be excluded in the fine print associated with your license to use. While there are some exceptions for use by nonprofits that could qualify as "fair use" under the Copyright Act, use by a nonprofit corporation is often considered commercial use. Additional details on fair use are available on the [U.S. Copyright Office webpage – More Information on Fair Use](#).

### B. Photo release

Having a signed release for any photograph of a person used on your nonprofit's website as well as for any description or story associated with a particular individual is considered best practice. If your organization ever receives a complaint from someone regarding use of their image or likeness, remove the image or likeness immediately with your apology.

### C. Terms of use

If you accept third party posts or content, consider a "terms of use" page in addition to a privacy policy. Including a copyright notice at the bottom of your website's homepage is a good idea. While including a copyright notice is not a legal requirement, this step might act as a deterrent against copying your nonprofit's website and content contained thereon. The copyright notice can be in most any form, and the general format is as follows: "© Name, date. All rights reserved."

Whether on the "terms of use" page or at the bottom of the homepage, another good practice is to include a trademark attribution line somewhere on your nonprofit's website. You should list unregistered trademarks as "\_\_\_\_\_ is a trademark of Company A." Federally registered trademarks are listed as "\_\_\_\_\_ is a registered trademark of Company A." If your nonprofit anticipates your marks will be used by others, you may consider including guidelines for proper, acceptable usage of your trademarks.

## 6. LEGAL CHECKLIST: INTELLECTUAL PROPERTY

If YES, date sent or reviewed	NO	ITEM
<b>OWNERSHIP</b>		
		Our organization has proper licenses or permission to use all photos and written information created by other persons or organizations.
		Our organization has considered whether it should register or obtain other protection for any of its unique logos, designs, trademarks, or services.
		We are confident that our organization's name does not infringe on the rights of any other organization.
		Our organization has considered whether it would be appropriate to license any written materials, photographs, recordings, art, policy manuals, seminar materials, etc., which may be available for use by others.
		When contracting with third parties to perform services, our organization uses an employment or independent contractor agreement that assigns ownership to the organization of intellectual property created by the employee or independent contractor within the scope of their work for the organization.
<b>PRIVACY POLICY</b>		
		Our organization has considered implementing a written privacy policy that describes how the organization uses and discloses personal information.
		If a privacy policy has been adopted, the organization periodically confirms that the organization is in compliance with the commitments made in the policy.
<b>WEBSITE</b>		
		If our organization operates a website, the organization has posted written terms of use or terms of service that limits the organization's liability and disclaims warranties. These terms of service are prominently located on the organization's website.
		If our organization allows third parties to post information on the organization's website, the organization has implemented a Digital Millennium Copyright Act (DMCA) compliant notice and takedown provision as part of its terms of use or terms of service. The organization has also registered an agent with the U.S. Copyright Office to receive notices of copyright infringement under the DMCA.



1. Intellectual property are assets of an individual or enterprise that are intangible. There are four kinds of intellectual property protections: trademarks, copyright, patents, and trade secrets.
2. In the process of protecting your nonprofit’s intellectual property rights, a good place to start is knowing who owns the intellectual property of your organization’s key elements.
3. Nonprofits need to respect the intellectual property rights of others, just as you want others to honor the intellectual property rights of your organization. Intellectual property litigation is expensive. Adopt a policy that respects the intellectual property rights of others, which includes searching to see if others have adopted intellectual property similar to your organization’s prior to your adoption.
4. The general public wants to know how you are going to use the information given to your organization, particularly if gathered through a website. A privacy policy keeps web communication honest by telling visitors about the collection, storage, and use of their information.
5. Your nonprofit’s online presence opens the door for intellectual property challenges, both in how you use the information from others and how others make use of your information.



**Here are some questions to think about:**

- How are you protecting your nonprofit’s ideas and products, which may include websites, print materials, or unique research on the issues your organization addresses?
  
- How is your nonprofit respecting the intellectual property rights of others? What specific actions do board members, volunteers, and/or staff take?

**Reflections**



**Next steps:**

- Determine what assets your organization owns by completing the asset audit activity on the following page.
- Review Public Counsel Law Center’s [Intellectual Property Licensing Basics for Nonprofits](#) resource to gain a deeper understanding on the topic.



**Asset Audit: Sorting what you use and who owns it**

Reflect on your organization’s assets. From your website to your logo to photos used in print materials, do you know who owns these assets? Use the following qualifications table to help you determine if your organization owns an asset. After reviewing the qualifications, move to the activity table that lists different types of assets (use the blank asset spaces to add your own). Check yes or no for each asset and be sure to capture any notes or next steps to take.

Qualifications		
 <b>WE OWN THE ASSET</b>	 <b>WE DO NOT OWN THE ASSET</b>	
<input type="checkbox"/> We have proof of ownership <input type="checkbox"/> We protect our assets <input type="checkbox"/> We respect others’ assets <input type="checkbox"/> We communicate how we use private information	<input type="checkbox"/> We ask permission to use assets <input type="checkbox"/> We give credit to the owner <input type="checkbox"/> We stop using assets we do not have permission to use	
Activity		
Types of Assets	Do we own the asset?	Notes & Next Steps
Organization name	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Logo	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Recordings, art, or any materials your organization developed	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Photos on your print materials	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Website	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Domain name	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Photos on your website	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Clipart used on print materials or website	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Names of people gathered from your website	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Asset:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Asset:	<input type="checkbox"/> Yes <input type="checkbox"/> No	



# Additional Resources

After reviewing the *Let's Go Legal* guide and completing the activities, you may want to learn more about specific items mentioned. This section provides direct links to additional resources to help your nonprofit stay compliant.



## ***Local, State, and Federal Resources***

### **City of Seattle**

- City of Seattle Office of Labor Standards:  
<https://www.seattle.gov/laborstandards/ordinances/minimum-wage>

### **City of SeaTac**

- City of SeaTac Employment Standards Ordinance:  
<https://www.seatacwa.gov/our-city/employment-standards-ordinance>

### **Washington State Office of the Secretary of State, Corporations & Charities Division**

- Information for charitable organizations: <https://www.sos.wa.gov/charities/charitable-organizations.aspx>
- Information for nonprofits and charities:  
<https://www.sos.wa.gov/corps/nonprofitinformation.aspx>

### **Washington State Senate Committee Services: Senate Ways and Means Committee**

- The Taxation of Nonprofit Organizations in Washington State:  
<https://leg.wa.gov/Senate/Committees/WM/documents/Publications/2006/NonprofitsMay2006.pdf>

### **Washington State Department of Revenue**

- Business and Occupation (B&O) Tax:  
<https://dor.wa.gov/education/industry-guides/private-mailing-business-tax-guide/business-and-occupation-bo-tax>

## ADDITIONAL RESOURCES

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### Washington State Gambling Commission

- Nonprofit Organization Training: <https://www.wsgc.wa.gov/licensing/training-requirements/nonprofit-organization-training>

### U.S. Internal Revenue Service

- Form 1023 Application for Recognition of Exemption Under Section 501(c)(3): <https://www.irs.gov/pub/irs-pdf/f1023.pdf>
- Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3): <https://www.irs.gov/forms-pubs/about-form-1023-ez>
- Compliance Guide for 501(c)(3) Public Charities: <https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>

### United States Patent and Trademark Office

- Website homepage: <https://www.uspto.gov/>

### U.S. Copyright Office

- Website homepage: <https://www.copyright.gov/>



### *Other Nonprofit Resources*

#### Nonprofit Association of Washington

- Nonprofit Fundamentals: <https://nonprofitwa.org/learn/nonprofit-fundamentals/>

#### Communities Rise

- Resources for Nonprofit and Community-Based Organizations: <https://communities-rise.org/resources/nonprofit-cbo/>

#### 501 Commons

- Nonprofit Legal Resources: <https://www.501commons.org/resources/tools-and-best-practices/legal-resources>

#### National Council of Nonprofits

- Tools and Resources for Nonprofits: <https://www.councilofnonprofits.org/tools-resources>



# Key Documents

There are key documents related to each chapter of the guide that you should review for your nonprofit. If your organization does not have all the following items in place, the resources accompanying this guide include sample documents.

## CHAPTER 1 STATE LAW

- Articles of Incorporation
- Bylaws
- Annual filing (Washington State Office of the Secretary of State)
- Conflict of Interest Policy
- Document Retention Policy
- Gift Acceptance Policy
- Minutes

## CHAPTER 2 FEDERAL LAW

- Form 1023
- Form 990-N, Form 990-EZ, or Form 990 (form type depends on annual gross receipts and assets)

## CHAPTER 3 FUNDRAISING & DONATIONS

- Quid Pro Quo Letter (that meets federal requirements)
- Thank You Letter (that meets federal requirements)

## CHAPTER 4 EMPLOYMENT LAW

- Anti-discrimination Policy/Equal Employment Opportunity (EEO) Policy
- At-will Employment Policy
- Confidentiality Policy
- I-9 Form(s) (for all employees hired)
- Whistleblower Policy
- Reference Document: L&I Independent Contractor Guide (<https://lni.wa.gov/forms-publications/F101-063-000.pdf>)

## CHAPTER 5 INTELLECTUAL PROPERTY

- Photo Releases/Story Releases
- Privacy Policy
- Take-down Request (that meets the Digital Millennium Copyright Act)
- Terms of Use

## NEXT STEPS

### After you work through *Let's Go Legal...*

Take a moment to capture items you want to remember and action steps you want to take. For action steps, think about specifics related to the task (who, when, where, and how).



STATE LAW	
Items to remember	Action steps

FEDERAL LAW	
Items to remember	Action steps

FUNDRAISING	
Items to remember	Action steps

EMPLOYMENT	
Items to remember	Action steps

INTELLECTUAL PROPERTY	
Items to remember	Action steps