

***Parent Groups and Other School Support Organizations:
A Guide for School Personnel and Parents***

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INTRODUCTION

This paper is intended to present a general overview of the major questions to which school personnel who work with parent support groups², as well as the leaders of such groups, should be able to answer to fulfill their duties. The information provided is current as of January 15, 2017, and most of the important points are accompanied by citations to the relevant statute, rule or case law. However the applications of the general principles outlined in this paper may depend on the specific facts and contexts of individual situations. Accordingly no statement in this paper should be considered as legal advice, and readers are strongly encouraged to consult with legal counsel with respect to any particular issue with which they are concerned.

IS THE GROUP INCORPORATED?

Most parent support groups in Washington are incorporated as nonprofit corporations. A corporation is a legal entity that is separate from the individuals who create it and operate its functions. If the corporation has members, it is also separate from those members. It can conduct business, hire staff, contract, sue, and obtain insurance in its own name—in short it can do anything that an individual can do (and as discussed below, a nonprofit corporation can do some things that an individual cannot legally do). It is a “person” as that term is used in Washington statutes.³ This means that it is subject to legal requirements including criminal prohibitions⁴ just like a human being.

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² The term “parent support groups” is used throughout this paper to refer to organizations that are typically composed of parents who come together to support the school or school community that their own children attend. Such groups may describe themselves in a variety of ways -- PTAs or PTSAs (if chartered by the Washington State PTA), parent-teacher organizations (PTOs), booster clubs, etc. In this paper the term “parent support group” should be read as referring to any such group, regardless of its name.

³ RCW 1.16.080(1)

⁴ RCW 9A.04.110 (17); see also *State v. Truax*, 130 Wash. 69, 226 P. 259 (1924) (a corporation can be charged with a crime punishable by a fine, but not if the crime is punishable only by imprisonment, because a corporation cannot be imprisoned.) Almost all Washington criminal statutes include fines as possible punishments for violations.

WHY DOES IT MATTER?

Because a corporation is a separate legal entity it—and not the individual officers, employees or volunteers—is liable for damages caused by acts of such individuals taken on behalf of the corporation as long as they are acting in good faith and within the scope of their authority. Incorporation as a nonprofit also allows the organization to conduct certain kinds of activities and/or receive certain benefits that would not be available to individuals.

A secondary benefit of incorporation can be its continuity—it can and does exist long beyond the lives of the individuals involved with it. This is particularly important for parent support groups because the parents’ interest tends to move with their children from school to school and ultimately dissipate when their children graduate.

If you are unsure whether a group is incorporated, you can determine whether it is incorporated on the Secretary of State’s website, <https://www.sos.wa.gov/corps/>.

WHAT IF THE GROUP ISN’T INCORPORATED?

If a group of parents come together to take action to support students and are not incorporated they will be considered for legal purposes to be an unincorporated association. Some unincorporated associations are well-organized and continue in operation over a long period of time. Others fade away as the individuals involved move, move on to other things or lose interest.

The major differences between an unincorporated association and a nonprofit corporation are (1) unlike a corporation, the members of an unincorporated association are individually liable for all actions of the association⁵; (2) there are no formal requirements to create an unincorporated association, and as a result the individuals involved may not even be aware that they are part of such an entity. Most of the legal requirements for nonprofit corporations (other than the annual filing with the Secretary of State’s Corporations Division) also apply to unincorporated associations; however some of the privileges available to nonprofit corporations are not equally available to unincorporated associations.⁶

PROFIT vs. NONPROFIT CORPORATION: WHAT’S THE DIFFERENCE?

Sometimes people have the mistaken belief that a nonprofit corporation should never earn a profit from its activities, i.e. that all funds received or raised during the year should be spent during the year in which they were raised. That is not accurate. A nonprofit corporation, like most people and certainly most businesses, must have funds on which to operate, and that includes making a “profit” in the sense that income exceeds expenses during the fiscal year.

⁵ *Nolan v. McNamee*, 82 Wash. 585, 144 P. 904 (1914) (all members of an unincorporated association are liable for the debts of the association).

⁶ For example, as discussed more fully below at page 9, nonprofit corporations can, under certain circumstances, engage in gambling activities, even though individuals engaged in identical activities would be committing a crime.

Doing so allows the nonprofit to pay its expenses at the beginning of the next fiscal year and to build up a reserve to cushion against unanticipated expenses or fundraising challenges in subsequent fiscal years.

The difference between a for-profit corporation and a nonprofit corporation is that while a for profit corporation is owned by its shareholders – who share in its profits either through dividends or sale of stock -- no one “owns” the assets of a nonprofit corporation, and no one individual receives a part of its earnings, or “profits.”

HOW IS A NONPROFIT CORPORATION ESTABLISHED?

Creating a nonprofit corporation is fairly easy. The organizing document is called the “Articles of Incorporation.”⁷ There are forms on the Washington State Secretary of State’s website (<https://www.sos.wa.gov/corps/Forms.aspx>) that can be filled out, signed and mailed to the Secretary of State’s office along with the filing fee (currently \$30). There is also an online option that offers expedited processing for a fee of \$50.

WHO DETERMINES THE RULES GOVERNING A NONPROFIT CORPORATION?

The governance of a nonprofit corporation is determined by its individual Articles of Incorporation, its bylaws and in a few instances by state law. PTAs and PTSAs operate under a uniform set of bylaws established by the Washington State PTA.⁸ Other parent support groups establish their own set of rules either in the Articles of Incorporation or bylaws, including whether to have members; what voting rights, if any, members will have; the size and composition of its board of directors; the method of selecting officers; the necessary quorum in order for the board or the membership to conduct business, and other items that the organizers deem appropriate.

WHAT ARE A NONPROFIT CORPORATION’S CONTINUING REQUIREMENTS TO KEEP ITS CORPORATE STATUS?

Board of Directors

A nonprofit corporation is governed by the board of directors, and either the Articles of Incorporation or the bylaws should spell out the number and terms of the board members. Board members of any corporation – whether a for-profit or a nonprofit -- have a special level of responsibility that is called the “fiduciary responsibility” to make sure that they are acting in the

⁷ RCW 24.03.025, .145 - .150. Note that if the nonprofit wants to apply for a federal tax exemption, its Articles of Incorporation must include certain language about its purposes and the disposition of any assets if the corporation is dissolved. Federal tax exemptions are discussed below at pages 5-6.

⁸ The current versions of the PTA Bylaws are at http://www.wastatepta.org/new/WSPTA_Bylaws_2016-17.pdf. (viewed on January 15, 2017).

best interests of the corporation.⁹ If board members do not comply with these duties and the corporation is financially harmed, the board members can be held personally liable. However, this does not mean that board members are responsible for errors or mistakes that are made in good faith.¹⁰

These fiduciary duties that all board members have include the duty of to act in good faith and exercise reasonable care¹¹ in making decisions or acting on behalf of the corporation; to be loyal¹² to the corporation; and to be obedient to the corporate mission and purposes.¹³

While the task of complying with various requirements of the corporation can be assigned to individual board members, officers or others, all board members remain responsible for making sure that the nonprofit is operating within the bounds of the law and in the best interest of the corporation.

Officers

A nonprofit corporation must have a president, at least one vice-president, a secretary and a treasurer.¹⁴ The terms, manner of election and removal and qualifications should be set forth in the Articles of Incorporation or in the bylaws. Offices can be combined except that state law prohibits the combination of the president and secretary. Typically the officers are members of the board of directors, but that is not a requirement.

Annual Report

A nonprofit corporation is required to file a report (and pay a fee) with the Secretary of State's office at any time there is a change in officers or the registered agent, and in any event at least

⁹ The fiduciary duties of members of a nonprofit's board are the same as to those of the directors of a for-profit corporation.

¹⁰ *Para-Medical Leasing, Inc. v. Hangen*, 48 Wn.App. 389, 394, 739 P.2d 717 (Div. 1 1987), quoting *Nursing Home Bldg. Corp. v. DeHart*, 13 Wash.App. 489, 498-99, 535 P.2d 137, review den'd, 86 Wash.2d 1005 (1975). ("[T]he law will not hold directors liable for honest errors, for mistakes of judgment, when they act without corrupt motive and in good faith, that is, for mistakes which may properly be classified under the head of honest mistakes. . . . This rule is commonly referred to as the 'business judgment rule.'")

¹¹ *Senn v. Northwest Underwriters, Inc.*, 74 Wn.App. 408, 415, 875 P.2d 637 (1994) (The fact that an officer did not inform herself of the activities being taken by the corporation does not excuse her liability for defalcations.)

¹² *Rodriguez v. Loudeye Corp.*, 144 Wn.App. 709, 722, 189 P.3d 168, (2008) ("The duty of loyalty mandates that the best interest of the corporation and its shareholders takes precedence over any interest possessed by a director ... and not shared by the stockholders generally.") (*internal punctuation and citations omitted*).

¹³ *In re Manhattan Eye, Ear & Throat Hosp.*, 186 Misc.2d 126, 151-2, 715 N.Y.S.2d 575 (1999)(It is axiomatic that the board of directors is charged with the duty to ensure that the mission of the charitable corporation is carried out. This duty has been referred to as the "duty of obedience." It requires the director of a not-for-profit corporation to be faithful to the purposes and goals of the organization, since unlike business corporations, whose ultimate objective is to make money, nonprofit corporations are defined by their specific objectives: perpetuation of particular activities [is] central to the raison d'etre of the organization.") (*internal punctuation and citations omitted*).

¹⁴ RCW 24.03.125

annually during the month in which the corporation was originally incorporated.¹⁵ Financial institutions sometimes rely on the current information on the Secretary of State’s website as evidence of the current officers when adding or deleting signers to the organization’s account(s).

Registered Agent

The nonprofit must designate a “registered agent”, i.e. the person or organization to whom all official notices will be sent and where legal papers can be served.¹⁶ The initial designation of a registered agent should be in the Articles of Incorporation, and the registered agent should be listed in any subsequent report filed with the Secretary of State’s office. Designation of a registered agent will also be required for purposes of filing tax returns with the IRS. The person or entity that is selected as registered agent should be reasonably available at all times so that important notices or requests from government agencies are not neglected.¹⁷

Record Keeping

By statute, a nonprofit corporation is required to keep certain records, including (1) current articles and bylaws; (2) membership information (if there are members); (3) financial statements; (4) officers’ and directors’ information; and (5) minutes of meetings of the board and of members (if any).¹⁸ These records should be maintained either by the secretary of the nonprofit corporation or by the registered agent. If the corporation has members, these records are available by law to inspection by a member of 90 days standing for a purpose reasonably related to membership interests.¹⁹

HOW DO I DETERMINE WHETHER A PARENT GROUP IS COMPLYING WITH THESE REQUIREMENTS?

As noted in the preceding paragraph, anyone who has been a member of the nonprofit for at least 90 days has the right to review certain corporate records, so if you are a member, the first thing to do is ask to see the corporate records, which should provide sufficient information to determine whether the group is in compliance with state law.

¹⁵ RCW 23.95.255(2)(4). WAC 434-112-060.

¹⁶ RCW 23.95.415.

¹⁷ Parent groups should be cautious about using the school or school district with which they are affiliated as their designated agent. First, they should make sure that the school or school district consents to serve in that capacity. Second, and more importantly, care should be taken to make sure that there will be someone at the address that is listed who knows what to do when notices addressed to the parent group are received. In that same vein, listing an individual runs the risk that the person named may move or not forward notices to the appropriate person to respond. If that happens, important deadlines could be missed to the detriment of the parent group. One of the services provided by Washington State PTA is to serve as registered agent for local PTAs and PTSAs at no additional charge.

¹⁸ RCW 24.03.135

¹⁹ *Ibid.*

If there's no response, or you don't know who to ask, the Secretary of State's website has current information on the status of any nonprofit corporation registered in Washington State. To find the status of a particular corporation, go to www.sos.wa.gov, then on the list on the left hand side of the page click on "Corporations." That will open a page that has a "Corporation Search" function. Enter the name of the nonprofit (or your best guess as to its name) and you should receive a list of corporations (profit and nonprofit) meeting the search criteria, along with whether the corporation is "active" or "inactive."

If you click on the nonprofit's name, you can see additional information, including its Uniform Business Identifier or UBI (this is the tax identification for state purposes), and the date on which it would become inactive if the required annual report is not filed. Click on "View More Information" and you can see the names and addresses of the officers and the registered agent. There is also the option of purchasing copies of various corporate documents via the website, and some historical documents made be accessed through the Archives Division of the Secretary of State's Office.

ARE NONPROFITS EXEMPT FROM PAYING STATE SALES AND BUSINESS TAXES?

Nonprofit corporations pay state sales tax on items they buy for their own use just like any other person purchasing such goods in Washington. On the other hand, if a nonprofit is buying items for resale, it can obtain a reseller's permit and avoid paying sales tax at the time of purchasing the items.²⁰ A nonprofit that obtains a Consolidated Business License will usually receive a reseller's permit automatically.²¹

When a nonprofit corporation sells items as part of a "fund raising activity" that is not a "regular place of business" it is NOT required to collect sales tax.²² The proceeds of such sales are likewise exempt from Washington's business and occupation (B&O) tax.²³

However when a nonprofit operates a "regular place of business", i.e. a retail operation that is operated on a regular schedule, sales are subject to the retail sales tax and the B&O tax. There is a small business credit that, as a practical matter, means that retail sales of less than \$89,000 per year are not subject to payment of B&O taxes.²⁴

State tax returns are filed and taxes are paid either quarterly, semi-annually or annually, depending on the level of revenue. For most nonprofits the report is due annually no later than

²⁰ RCW 82.08.130; *see also* WAC 458-20-102 for regulations relating to reseller permits.

²¹ WAC 458-20-10201 (204)

²² RCW 82.08.02573

²³ RCW 82.04.3651

²⁴ WAC 458-20-104. This allowance is a credit, not an exemption, which means the group still has to file information about its activities with the Department of Revenue, and then claim the credit against any tax that otherwise would be due.

January 31st of the following year. Information about state tax laws is available from the Washington Department of Revenue (<http://dor.wa.gov/Content/Home/Default.aspx>).

DO NONPROFIT PARENT GROUPS PAY FEDERAL TAXES?

A nonprofit corporation is subject to the federal income tax on net corporate income unless it applies for and is granted a tax exemption by the Internal Revenue Service.²⁵ Nonprofit parent groups may apply for tax exemption under one of two different sections of the Internal Revenue Code, either Section 501(c) (3) or Section 501(c)(4). Those whose articles of incorporation state that they are organized for educational or charitable purposes can apply for tax exemption under Section 501(c) (3). Exemption under Section 501(c)(3) means that the group will not have to pay federal income tax on its net revenues²⁶, and that donations made by individuals are deductible by them as charitable contributions.²⁷ However, groups that are exempt under Section 501(c)(3) are subject to severe limitations on lobbying or other political activity.

Some parent groups are tax exempt under Section 501(c)(4) of the Internal Revenue Code, which allows them to spend their resources on lobbying; however donations to 501(c)(4) organizations cannot be claimed as tax exemptions by donors.

To qualify, the nonprofit must include certain specific language in its Articles of Incorporation, and must file an application with the IRS. Forms and information about filing are available on the IRS website.²⁸ An organization with less than \$5,000 in revenue that meets the other requirements does not need to apply to be considered tax exempt.²⁹

WHAT ARE THE ONGOING OBLIGATIONS OF A TAX EXEMPT ORGANIZATION?

A nonprofit that has been granted exemption from federal tax under Section 501(c)(3) must file an annual informational report, due on the 15th day of the 4th month following the end of the nonprofit's fiscal year, or face a penalty of up to \$100 per day for each day that the return is not filed.³⁰ In addition, organizations exempt under section 501(c)(3) must make copies of their application for tax exemption and the past three years' tax returns available on reasonable request for inspection by any member of the public, not just members of the organization.³¹

²⁵ 26 USC § 11

²⁶ 26 USC § 501(c)(3)

²⁷ 26 USC § 170

²⁸ <https://www.irs.gov/charities-non-profits/applying-for-tax-exempt-status> (viewed January 15, 2017) 26 CFR § 1.501(a)-1, The current fee is \$400 if the applicant organization anticipates having less than \$10,000 in total receipts and \$850 if the applicant anticipates receipts of more than \$10,000. https://www.irs.gov/irb/2016-01_IRB/ar14.html#d0e17916 (viewed January 15, 2017)(scroll down to Part 6, Section 6-09).

²⁹ <https://www.irs.gov/charities-non-profits/charitable-organizations/public-charity-exemption-application> (viewed January 30, 2017)

³⁰ 26 USC § 6721. More information about the annual tax return is available on the IRS website, <https://www.irs.gov/uac/e-file-for-charities-and-non-profits> (viewed January 15, 2017).

³¹ 26 CFR § 301.6104(d)-1

Most importantly, the nonprofit must assure that it continues to operate consistent with its application documents, which in effect become a contract with the IRS. Complying with this requirement means that the nonprofit must confine its activities to those set forth in the initial application, unless the nonprofit updates its statement of activities. It also means that the nonprofit may not become involved in campaigns for elected office—both partisan and nonpartisan—nor can it expend a substantial portion of its resources, including volunteer time, on lobbying.

Failure to comply with these requirements can result in the imposition of significant financial penalties and ultimately lead to the loss of the nonprofit's tax exempt status. Any income earned by the nonprofit from regular ongoing business activities that are not related to the nonprofit's charitable or educational purpose is subject to the corporate income tax, regardless of the nonprofit's tax exemption under Section 501(c)(3).³²

HOW CAN I FIND OUT THE FEDERAL TAX STATUS OF A NONPROFIT CORPORATION?

There are three options for someone seeking to determine the federal tax status of a nonprofit corporation. The first is simply to ask an officer or board member, and s/he says that the nonprofit is exempt from federal income tax, ask to see copies of the application for tax exempt status and recent tax returns. As noted above (page 7, footnote 27 and associated text) IRS regulations require that these records be disclosed to any person – not only its members – so you're entitled to see them upon request.

You can also ascertain the current status of the nonprofit via the IRS website, www.irs.gov. Type "charities" into the search field, and then click on the link titled "EO Select Check." Follow the directions and you can find out whether the nonprofit is currently tax exempt or has had its tax exempt status revoked. Note that the search will identify any current or previous registered tax exempt organization that has any variation of any of the words in the search field, so be as precise as possible in making your search.

The third resource is a free website, www.guidestar.org. This nonprofit website contains information about nonprofits including access to copies of tax returns the organization has filed. To access this information requires setting up a free account, and there is no charge for locating or downloading information. Note that there is a lag time between when returns are filed with the IRS and when they're made available on GuideStar, so you may not be able to see the most recent return. Also, GuideStar does not have access to 990N returns filed electronically.

³² 26 U.S.C. §511.

DO PARENT GROUPS HAVE TO REGISTER UNDER THE WASHINGTON STATE CHARITABLE SOLICITATIONS ACT?

Any person (including corporations and associations) that collects funds from the public—including membership dues, donations, sales of items, etc.—for charitable or educational purposes is required to register with the Washington Secretary of State under the Washington Charitable Solicitation Act.³³ There is an exemption for organizations that are operated entirely by volunteers and collect less than \$50,000 during its fiscal year,³⁴ but there is an optional registration available online for free for those exempt organizations.³⁵

Registered organizations are required to file an annual renewal with the Secretary of State's office no later than eleven months after the end of its fiscal year.³⁶ The financial statement included in the annual renewal must be reviewed by the organization's board of directors.³⁷ Whether required to be registered or not, all organizations are required to abide by certain statutory limitations on how funds are solicited.³⁸

DO PARENT GROUPS NEED A LICENSE TO OPERATE FUNDRAISING ACTIVITIES THAT CONSTITUTE GAMBLING ACTIVITIES?

Under Washington law, any activity that involves (1) a prize that is awarded (2) on the basis of chance among (3) persons who have given valuable consideration in order to participate is considered a lottery.³⁹ Consideration need not be of a monetary value, but can include visiting a store to obtain a free ticket for a drawing.⁴⁰ Washington statutes set forth specific regulations about when and under what circumstances gambling activities can be conducted—some can be conducted by a “bona fide charitable or nonprofit organization”⁴¹ without a license while others require a license, and some cannot be conducted at all.

³³ See, generally, RCW 19.09

³⁴ WAC 434-120-100(2)(b). There is also a registration requirement for professional fundraisers, but it only applies to those who are paid for fund raising activities.

³⁵ WAC 434-120-110. The main advantage of the optional registration is that organizations that give grants often require that their grantees be registered, even though they are legally exempt from the registration. The optional registration satisfies such a requirement.

³⁶ WAC 434-120-140(2)(a)

³⁷ RCW 19.09.075(2)

³⁸ RCW 19.09.100

³⁹ *State ex rel. Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 150, 247 P.2d 787 (1952) (“Three things are necessary to constitute a lottery, viz., prize, chance, and consideration.”)(Citation and quotation marks omitted). See also *Society Theatre v. City of Seattle*, 118 Wash. 258, 203 P. 21 (1922); *D’Orio v. Jacobs*, 151 Wash. 297, 275 P. 563 (1929).

⁴⁰ *State ex rel. Schillberg v. Safeway Stores, Inc.*, 75 Wn.2d 339, 450 P.2d 949 (Wash. 1969)

⁴¹ RCW 9.46.0209. Under a close reading of this statute it is not clear that a school ASB would qualify as a “bona fide charitable or nonprofit organization” but the Gambling Commission has issued licenses to ASBs, indicating that it considers ASBs as qualifying organizations for this purpose.

Organizing or conducting a gambling activity that is not conducted in accordance with the state gambling act is “professional gambling.”⁴² Engaging in “professional gambling” is a crime with the maximum penalty of ten years in prison and a fine of up to \$20,000.⁴³ Information about legal gambling activities and licensing requirements is available from the Washington State Gambling Commission (<http://www.wsgc.wa.gov/>).

ARE THERE REQUIREMENTS UNDER THE STATE LIQUOR LAWS THAT MIGHT APPLY TO A NONPROFIT PARENT GROUP?

Parent groups occasionally conduct fund raisers at which alcohol is served. Such events can never be allowed to be conducted on school premises.⁴⁴ In addition, unless the premises and/or the caterer for such a fund raiser are licensed to serve liquor, the parent group must obtain a “special occasion license” from the Washington Liquor & Cannabis Board.⁴⁵ The requirement for a license also applies to auctions where alcohol is included in items being auctioned. A separate permit is required if alcohol is to be offered as a prize in a raffle.⁴⁶ More information about liquor licenses is available from the Washington State Liquor & Cannabis Board (<http://lcb.wa.gov/>).

WHAT ARE THE MAJOR POTENTIAL RISKS TO A NONPROFIT PARENT GROUP AND HOW CAN THEY BE MINIMIZED?

Bank Accounts

Generally a nonprofit will have one or more bank accounts where its funds are deposited. Opening an account in a financial institution requires either a Social Security Account Number (SSAN) of an individual or an Employer Identification Number (EIN) issued in the name of the organization by the Internal Revenue Service. Using an individual’s SSAN is dangerous because it would place the individual at risk of having his/her identity stolen and s/he would likely have to pay federal income tax on any interest received because of the funds belonging to the organization. It is highly recommended that the organization obtain an EIN instead of using an individual’s Social Security Number.

Contrary to what its name suggests, an EIN does not mean that the organization has to actually be an employer—the EIN is simply the federal government’s means of identifying entities other

⁴² RCW 9.46.0269

⁴³ RCW 9.46.220-.222, 9A.20.021

⁴⁴ RCW 66.44.100 (prohibiting consuming alcohol in a public place) and RCW 66.04.010(36) defining “public place” as including “buildings and grounds used for school purposes.”

⁴⁵ RCW 66.24.380, WAC 314-05-020. There is also a “banquet permit” that allows alcoholic beverages to be served free of charge at invitation-only events that are not advertised to or open to the general program. See *generally* Chapter WAC 314-18. Most fundraising events conducted by nonprofits are not by invitation only and therefore would not qualify for or require a banquet permit.

⁴⁶ RCW 9.46.0315, WAC 314-38-040,

than individuals for tax-related purposes. The easiest way to obtain an EIN is to apply via the online application process.⁴⁷

No Credit or Debit Cards

Most financial institutions offer account holders the convenience of withdrawing funds via use of a debit card and/or through online transfers. It is strongly recommended that nonprofits operated by volunteers avoid these options in order to minimize the risk that the account might be “hacked” or that funds are diverted to purposes unrelated to the nonprofit.

No intermingling nonprofit’s fund with personal funds

Having one of the members deposit funds belonging to the nonprofit into her/his personal account is extremely ill-advised. Not only would such a step increase the risk of theft or misappropriation, it would run the additional risk that the funds could be taken to pay debts of the individual.⁴⁸

Accountability for funds

Nonprofits’ reliance on volunteers makes them particularly vulnerable to having their funds mismanaged. This can undercut the credibility of the nonprofit with its members and/or contributors, and can result in diversion of nonprofit funds from the purposes for which they were raised.

To minimize the risk of such diversion, the nonprofit should put in place reasonable policies and procedures specifying how funds will be handled, what financial records will be maintained, and how frequently the board of directors will receive financial reports. It is strongly recommended that such procedures include having, at a minimum, the following elements:

- at least two people count any cash receipts at fundraising events with each keeping a copy of the resulting tally; and
- a board member who is not an authorized signer on the nonprofit’s bank accounts review bank and investment account statements on a regular, preferably monthly, basis and report the results of the review to the board;
- all board members receive a monthly financial report (typically prepared by the treasurer) even in months when there is no board meeting – failure to receive regular financial reports is a warning sign that board members should not ignore;
- the board establishes a committee that periodically (at least twice per year) reviews all financial records and, when appropriate, makes recommendations for improvements.

⁴⁷ <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online> (viewed January 15, 2017).

⁴⁸ See, e.g. *Chase & Baker Co. v. Olmsted*, 93 Wash. 306, 160 P. 952, (1916) (the portion of bank account funds held in trust for another can be attached by debtor of the account owner if the balance in the account has, at any time, fallen below the amount held in trust).

Although the responsibility for handling and accounting for funds can be assigned to one or more board members, typically but not always the treasurer, assuring that all funds are properly handled and accounted for is one aspect of the fiduciary duty that all board members assume by agreeing to serve.

Contractual liability

A nonprofit is liable on its contracts just like any person or other entity. Contracts can be made orally or in writing, and if the person with whom the contract is made reasonably believes that the person making the contract on behalf of the nonprofit has authority to do so, it can be enforced against the nonprofit. To guard against unwise contracting actions, a nonprofit should have clear policies about who is authorized to contract on behalf of the nonprofit and under what circumstances.

Insurance to Cover the Nonprofit's Personal Injury Liability

Nonprofits can be held liable for injuries resulting from the negligent actions of its volunteers and employees, just like any other legal entity.⁴⁹ To minimize the risk to the nonprofit's viability the nonprofit should maintain adequate liability insurance to protect its assets from such liability. Many school districts require that nonprofits using their facilities provide proof of such insurance and in some instances that the school district be named as an additional insured on the nonprofits' liability insurance coverage.

Other kinds of insurance

- **Medical payments** insurance reimburses medical expenses of persons injured at events conducted by the nonprofit without requiring a showing that the nonprofit was at fault in causing the injury.
- **Property damage** insurance will cover any property owned by the nonprofit, including items that may only be in the nonprofits' possession for a short time things such as donated auction items, spirit wear inventories, etc. School district insurance will not cover such items nor will many home owners' policies.
- **Errors and omissions** insurance protects board members from claims that they have violated their fiduciary duty to the association.
- **Fidelity bonds** will cover financial losses resulting from diversion of funds. However such bonds often are conditioned on a requirement that certain procedures for the handling of funds be followed as a condition of the insurance.

⁴⁹ *Pierce v. Yakima Valley Memorial Hosp. Ass'n*, 260 P.2d 765, 43 Wn.2d 162 (1953) (overruling prior cases holding charities immune from tort liability because the widespread availability of insurance negates the policy justification for such immunity).

OTHER RESOURCES

Washington State PTA, <http://www.wastatepta.org/>, a nonprofit that charters approximately 900 local chapters in Washington, and is affiliated with the National PTA, <http://www.pta.org/>. 1300 South Fawcett, Suite 300, Tacoma WA 98402.

PTO Today, <http://www.ptotoday.com/>, a for-profit company that sells services to parent organizations. 100 Stonewall Blvd., Suite 3, Wrentham, MA 02093.

Better Booster Clubs, <http://www.betterboosterclubs.com/>, 1601 East Highway 13, Suite 200, Burnsville, MN 55337-6848.