

# Legal Audit Checklist for Social Entrepreneurs Doing Business in the United States



# Legal Audit Checklist for Social Entrepreneurs Doing Business in the United States<sup>1</sup>

This checklist is the outgrowth of a long standing partnership between Ashoka: Innovators for the Public (Ashoka) and The George Washington University Law School Small Business and Community Economic Development Clinic (SBCED Clinic). In the summer of 2012, the SBCED Clinic was one of three transactional law clinics which joined in a collaborative initiative to serve Ashoka. That year, Jonathan Ng, Esq., former Global Legal Director with Ashoka, and the SBCED Clinic developed a Legal Audit Checklist for Social Entrepreneurs and Nonprofits which was expanded in 2017-18 under the direction of Annette Johnson, Esq., Ashoka's current Global Legal Director. The checklist is designed for social entrepreneurs to complete, to help them identify potential areas of legal compliance, and to guide their relationships with legal counsel.

This checklist is a tool to help Social Entrepreneurs comply with legal, regulatory and related requirements in operating their various non-profit organizations, for profit businesses and hybrid organizations. It is designed for social entrepreneurs to complete and serves as a guide to highlight potential areas of legal compliance. This checklist can also serve as a useful tool to guide the entrepreneurs' relationships with legal counsel. However, not all categories listed are material or relevant to all social enterprises. For all topics, please answer the question. If the question involves a specific document, ensure that the document is maintained and updated periodically as applicable. Please note that this checklist uses the terms "organization" and "enterprise" to refer to both non-profit and for-profit ventures, unless "non-profit" is expressly specified. Finally, if any of the information requested is inapplicable or unavailable, make such notations. The Table of Contents outlines the topics covered in this checklist.

Special thanks to law students Andrea Johnson, Ella Lvov and Basel Musharbash for conducting legal research, redrafting and editing.

Copyright 2018 by the George Washington University Law School, Small Business & Community Economic Development Clinic

## TABLE OF CONTENTS

---

ENTITY FORMATION.....	4
BUSINESS PLANNING.....	5
GENERAL ORGANIZATION MATERIALS.....	6
TAXATION AND TAX EXEMPTION.....	7
Tax Compliance for Not-For-Profit Entities.....	7
General State and Local Tax Compliance.....	9
CORPORATE MAINTENANCE.....	10
ALTER EGO & VEIL PIERCING (FOR LIMITED LIABILITY ENTITIES).....	11
ENTITY BOARD INTEGRITY.....	12
FUNDRAISING.....	13
EMPLOYMENT LEGAL ISSUES.....	15
Legal Issues Pertaining to Employees.....	15
Legal Issues Pertaining to Independent Contractors.....	16
Legal Issues Pertaining to Unpaid Interns.....	17
VOLUNTEER LEGAL ISSUES.....	17
CONTRACTS.....	18
INTELLECTUAL PROPERTY.....	19
COMMUNICATIONS, WEBSITE, CLOUD & INTERNET USE.....	20
RISK MANAGEMENT.....	21
INSURANCE.....	23
LEGAL PROCEEDINGS AND ADVICE.....	24
RECORD RETENTION.....	25
REPORTING REQUIREMENTS.....	27
ACCESSIBILITY & DISABILITY ASSISTANCE.....	27
DISASTER PREPARATION.....	28
BUSINESS AREA SPECIFIC COMPLIANCE ISSUES.....	29
Staff Training.....	31
The Sarbanes-Oxley Act.....	32
Green Business.....	32
MANAGING THE ATTORNEY-CLIENT RELATIONSHIP.....	32
ENDNOTES.....	35

## ENTITY FORMATION

The following chart may be useful in guiding your decision of whether to form a corporate entity and the type of corporate entity that would be most suitable for your enterprise. If you already have a registered corporate entity, this chart should be completed prior to conducting a legal audit. Your responses to the chart will help you determine which sections of this checklist are applicable to your enterprise.

Entity Formation	Yes	No	N/A
<p>Does the client need to register a new corporate entity? Reasons to register a new corporate entity include:</p> <ul style="list-style-type: none"> <li>• protecting assets from liability</li> <li>• accommodating the interests of more than one party</li> <li>• addressing tax concerns (including unrelated business income/UBIT)</li> <li>• pursuing a new activity</li> </ul>			
<p>If yes, could the new entity form as a non-profit, tax-exempt entity? To be a non-profit organization, the activities of the entity must not:</p> <ul style="list-style-type: none"> <li>• result in private inurement;</li> <li>• engage in excess lobbying;</li> <li>• engage in electioneering; or</li> <li>• participate in private benefit transactions.</li> </ul>			
<p>If the new entity could qualify as a nonprofit, should it nonetheless form as a for-profit entity based on other factors, such as whether the founders want to own it or sell it later?</p>			
<p>If the decision is to register the new entity as a for-profit, have you determined what type of entity it should be? (e.g., corporation or an LLC.) Considerations for deciding which for-profit form to choose include:</p> <ul style="list-style-type: none"> <li>• tax treatment under local law;</li> <li>• whether the entity will recruit investors; and, if yes,</li> <li>• the ability of investors to purchase equity in an enterprise of either form under local law.</li> </ul>			
<p>If the enterprise is best served by forming as a corporation, should it adopt a hybrid corporate form, such as a benefit corporation? Considerations for deciding whether to form as a hybrid corporation include:</p> <ul style="list-style-type: none"> <li>• whether a hybrid form is available in the state of incorporation;</li> <li>• whether the enterprise intends to balance pursuing a public good against pursuing an economic return for its investors;</li> <li>• whether the enterprise has taken branding steps to show serious commitment to the public good; and</li> <li>• whether the desired social purpose goals can be achieved through a B Corp certification rather than modifying the corporate form.<sup>2</sup></li> </ul>			
<p>If the enterprise is best served by forming as an LLC, should it be a low-profit limited liability company ("L3C")? Considerations for deciding whether to form as a L3C include:</p> <ul style="list-style-type: none"> <li>• whether this form is available in the state of organization; and</li> <li>• whether you anticipate the enterprise will receive program-related grants from a charitable foundation.</li> </ul>			
<p>Should you register two new entities, a for-profit entity and a nonprofit entity, so that the enterprise can take advantage of benefits from each form in its different activities?</p>			

# BUSINESS PLANNING

The process of planning and executing a business may be foreign or seem overly complex to social entrepreneurs lacking business experience. However, we encourage all social entrepreneurs, whether new or experienced, to review this section on general business planning to ensure that they consider the “big picture.”

Business Planning	Yes	No	N/A
Do you have a detailed, written business plan for the organization, including the organization’s goals and objectives? It would be useful to include: <ul style="list-style-type: none"> <li>• An executive summary outlining the services you provide and your customer base</li> <li>• Your target audience and the social or environmental impacts your business is designed to achieve</li> <li>• A clear understanding of the profit structure and revenue flow</li> <li>• A marketing plan for advertising your goods and services</li> <li>• Areas you have identified to outsource tasks, as needed</li> <li>• Your plan for setting and reevaluating goals</li> </ul>			
Do you have a clear plan for managing any social purpose requirements, reporting requirements, and associated enforcement mechanisms you may be subject to as a social enterprise? <sup>3</sup>			
Do you have a clear plan for managing the tax obligations you may be required to comply with, especially if registered as a non-profit?			
Have you identified state and federal regulations which may be applicable to your organization? <ul style="list-style-type: none"> <li>• Employment Laws (e.g. worker status, wage and salary, hours, severance pay, laws regarding volunteers)</li> <li>• Consumer Protection Laws</li> <li>• Licenses and permits</li> <li>• Telecommunications laws</li> <li>• Environmental regulations</li> </ul>			
Have you recently conducted a detailed Strengths, Weaknesses, Opportunities, Threats (“SWOT”) analysis?			
Have you taken action on the results of your SWOT analysis?			
Do you have a clear written strategic plan for the organization?			
Do you have a clear plan for how you will attract initial capital?			
Do you have a clear plan for the organization during a down-market recession or a sudden and unexpected drop in profits?			
If the proposed organization is a non profit, would a fiscal sponsorship with an existing 501(c)(3) serve as a suitable alternative to meet your short-term or long-term desired objectives?			

# GENERAL ORGANIZATION MATERIALS

When you form an organization, it is important to maintain the official copy of the formation documents for your records. The following section covers important issues regarding those documents.

General Organization Materials	Yes	No	N/A
Do you have a copy of your articles of organization, incorporation, or partnership agreement and all amendments? Are these documents up to date and do they satisfy the current needs of the company?			
Do you have a copy of your bylaws and all amendments? Are these documents up to date and do they satisfy the current needs of the company?			
<b>If a trust:</b> do you have a copy of your trust instruments and all amendments? Are these documents up to date and do they satisfy the current needs of the company?			
<b>If a corporation:</b> Are there copies of all organizational documents in the Corporate Minute Book?			
Do you have a list of current members, trustees, directors, officers and committees?			
Do you have a copy of your organizational chart?			
Do you have a copy of your Certificate of Authority for each jurisdiction in which the enterprise is registered to "do business?"			
Do you have copies of all appropriate state corporate filings (including annual reports) to keep your company in good standing?			
Do you have a list of each jurisdiction where the enterprise provides services or otherwise conducts activities?			
Do you have a list of each jurisdiction where the organization solicits funds along with registration deadlines?			
Do you have a list of each jurisdiction where the enterprise owns or leases real property or tangible personal property?			
Do you have a list of each jurisdiction where the enterprise pays wages, salaries or other remuneration to any person?			
Do you have a list of each jurisdiction where the enterprise files any state or local return or form?			
Do you have a business license in each jurisdiction in which you conduct business? <sup>4</sup>			
Do you engage in a business that requires a federal license or permit? (E.g., importing or transporting animals, animal products, biologics, biotechnology or plants across state lines; alcoholic beverages; aviation; firearms, ammunition and explosives; fish and wildlife)			
Has the company's ownership or structure changed? If so, you may need a new federal and/or state tax Employer Identification Number (EIN). <sup>5</sup>			
Do you have a business name that is different from your personal name, the names of your partners or the officially registered name of your company?			
If yes, have you registered your trade name or "Doing Business As" name?			

## TAXATION AND TAX EXEMPTION

All entities have tax compliance obligations, including “tax-exempt” entities, and the consequences of falling short of those obligations can be steep. But tax obligations are highly jurisdiction-specific. Therefore, it is important for social entrepreneurs to investigate the tax laws applicable to their entity with local counsel and to rigorously implement the requisite compliance policies.

To assist social entrepreneurs and local counsel in tax compliance, this section provides general questions and considerations to ensure they identify and fulfill federal tax law obligations. Social entrepreneurs are advised to seek guidance on their local and state tax obligations from local counsel, who are best positioned to identify applicable laws and best practices in their jurisdiction. A brief checklist on state and local tax compliance is included at the end of this section to aid local counsel in doing so.

### Tax Compliance for Not-For-Profit Entities<sup>6</sup>

Best Practices in Maintaining Federal Tax-Exempt Status	Yes	No	N/A
<b>Exempt Purpose.</b> Does the organization’s purpose as stated in the articles of incorporation reflect at least one of the exempt purposes described in Section 501(c)(3)?			
<b>Unrelated Business Income.</b> If the organization receives any revenue from a source other than grants or charitable donations, has the organization determined whether that revenue is “unrelated business income”? Unrelated business income is income that is: <ul style="list-style-type: none"> <li>• from a <i>trade or business</i> (i.e. any activity which is carried on for the production of income from the sale of goods or the performance of services);</li> <li>• that is <i>regularly carried on</i> by the exempt organization; and</li> <li>• that is <i>not substantially related</i> to the performance by the organization of its exempt functions.</li> </ul>			
If the organization does receive unrelated business income, has the organization ensured that its unrelated business activities constitute something less than a “substantial” portion of its overall activities? (Although no percentage test exists for substantiality, organizations have been barred from exempt status when a third of their activities was unrelated business.) <sup>7</sup>			
If a substantial portion of the organization’s activities is unrelated business, has the organization developed a rationale for how its “primary purpose” remains the exempt function listed in its articles of incorporation?			
Can the organization categorize any of its unrelated business activities as one of the following “excepted” categories: <ul style="list-style-type: none"> <li>• A trade or business in which substantially all the work is performed for no pay</li> <li>• A trade or business carried on primarily for the convenience of the members of the charitable organization</li> <li>• Selling merchandise that has been contributed to the nonprofit</li> </ul>			
<b>Private Inurement.</b> Has the organization implemented a plan to show that, whenever its resources are transferred to a private party, they are transferred in furtherance of its exempt purpose?			

Best Practices in Maintaining Federal Tax-Exempt Status	Yes	No	N/A
<p>If not, can the organization establish that any instances of undue compensation, unreasonable transaction, distribution of profits, or other instances of private benefit from its resources, did not, singly or jointly, imply that the organization is organized and operated for the benefit of any person in their private capacity?</p> <ul style="list-style-type: none"> <li>• “Persons” to examine include: the organization’s founders, trustees, directors, officers, members of their families, entities controlled by these individuals, or any other persons having a personal and private interest in the activities of the organization.</li> </ul>			
<p><b>Political Activities.</b> Does the organization have a policy for avoiding direct or indirect (1) participation or intervention in (2) any political campaign (3) on behalf of or in opposition to any candidate (4) for elective public office?</p>			
<p>If not, has the organization in fact participated or intervened in any political campaign on behalf or in opposition to any candidate for elective public office?</p>			
<p>If yes, can the organization claim that its participation or intervention was incidental or unintentional (in which case the IRS may choose to fine the organization but not revoke its tax exemption)?</p>			
<p><b>Legislative Activities.</b> Has the organization taken any action with respect to legislation by Congress, any state legislature, any local council, or any similar legislative body?</p>			
<p>Has the organization taken any action with respect to any public referendum, initiative, constitutional amendment, or similar public procedure?</p>			
<p>If yes to either, has such action constituted “any substantial part” of the organization’s activities? Substantiality may be measured under one of two standards:</p> <ul style="list-style-type: none"> <li>• <i>Default Rule:</i> Unless the organization elects otherwise, substantiality is measured by the organizational financial expenditure, time expenditure, and amount of influence exercised in relation to legislative lobbying</li> <li>• <i>Elective Rule:</i> The organization may elect that the substantiality of its legislative activities be measured according to a strict expenditures test (consult local counsel for definition and how to make election)</li> </ul>			

Best Practices for Identifying and Paying Federal Tax Liabilities <sup>8</sup>	Yes	No	N/A
<p><b>Taxation of Unrelated Business Income.</b> Has the organization implemented a plan to keep track of unrelated business income separate from its other revenue?</p>			
<p>Has the organization implemented a plan to identify business expense deductions that are directly connected with the carrying on of the unrelated business activity?</p>			
<p>Has the organization implemented a plan to make quarterly estimated payments of the tax on unrelated business income under the same rules requiring quarterly estimated payments of corporate income taxes?</p>			
<p>Has the organization implemented a plan to report revenue and expenses associated with unrelated business activities to the IRS on a Form 990-T tax return?</p>			

<b>Best Practices in Recordkeeping<sup>9</sup></b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
Do you have an EIN number? <sup>10</sup>			
Do you have a copy of your application for recognition of exemption from federal income tax under the Internal Revenue Code § 501(c)(3), and supporting materials, including follow-up correspondence?			
Do you have a copy of your IRS letter recognizing tax-exempt status?			
Do you have a copy of all subsequent correspondence from IRS regarding exempt status?			
Do you have a copy of your federal filings for the last three years (990, 990-N, 990 EZ, etc.)			
Do you have records of supporting information for your federal filings for the last three years?			
Do you have a copy of State and Local Department of Revenue Filings for the last three years?			
Have you been audited by the Internal Revenue Service? If so, do you have copies of audit determinations or deficiencies filed by the Internal Revenue Service?			
Do you have a list of all real (i.e., land) and tangible (other than land) personal property owned by the organization?			
Do you have copies of all ownership documents for all real (i.e., land) and tangible (other than land) personal property owned by the organization?			
Do you have copies of all leases, for both real and personal property, and subleases?			
Do you have records of employees, employee compensation, and employee taxes paid for the past four years?			

**General State and Local Tax Compliance**

<b>State and Local Taxation<sup>11</sup></b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
Has the organization determined the applicable state tax laws? <sup>12</sup>			
Has the organization determined the applicable local tax laws?			
Do you have the required state tax ID number?			
If a non-profit entity, has the organization sought exemption from the following typical state and local taxes? <ul style="list-style-type: none"> <li>• Sales taxes</li> <li>• Tangible or intangible personal property taxes</li> <li>• Real property taxes</li> <li>• Corporate or franchise taxes</li> </ul>			
If the organization has successfully obtained an exemption from a local or state tax, has the organization identified whether the requirements for maintaining that state or local exemption differ from the requirements for maintaining any existing tax exemption(e.g., under federal law)?			
If yes, has the organization implemented a plan to satisfy the requirements for maintaining its tax-exempt status under the relevant state or local law?			
Has the organization reviewed whether it needs to obtain a charitable solicitation license from the state(s) in which it operates? <sup>13</sup>			
Does the organization have employees in multiple states?			
Has the organization developed a system for complying with the tax withholding requirements of each state in which the organization has employees?			

## CORPORATE MAINTENANCE

Once you form your organization and begin operations, you must comply with general corporate maintenance requirements. You should evaluate each of these issues annually or biennially, depending on your jurisdiction. Please note that benefit reporting is specific to benefit corporations and LLCs.

Corporate Maintenance	Yes	No	N/A
Have you maintained Non-Profit Annual Reports or Annual Benefit Reports? Depending on the jurisdiction, the reporting requirement away cover from three to ten years.			
Have you provided (available) Non-Profit Annual Reports or Annual Benefit Reports to the Corporation's Division or Secretary of State's Office, respectively?			
Have you complied with the third-party standard review, if required, for your Annual Benefit Reports? (e.g. corporation or LLC)			
Have you recently converted from a traditional entity to a registered social enterprise (i.e. benefit corporation or L3C)? If yes, your state may require notice of any changes in your designated entity status.			
Have you publicly posted your Annual Benefit Report from current or previous years, subject to the requirements in your jurisdiction?			
If applicable, have you filed any relevant certificates identifying changes for the following: <ul style="list-style-type: none"> <li>• Certificate of change in principal office</li> <li>• Certificate identifying change of fiscal year, including any changes to the date of the fiscal year end</li> <li>• Certificate identifying any changes in the appointment of, revocation of appointment, or change in address of resident agent</li> <li>• Certificate of change in trustees, directors, or presiding officers</li> </ul>			
Has the applicable jurisdiction provided confirmation of articles of organization or incorporation and amendments filings?			
Does your board of directors review the Bylaws once a year to make sure that actual practice is consistent with your governing documents? <ul style="list-style-type: none"> <li>• Date of annual review: _____</li> </ul>			
Are there any special documents or materials relating to the operations of the organization, including informational brochures?			
Do you have a copy of your record retention policy?			
Have you determined whether any policy statements of the organization are being upheld? (policy manual if developed)			
Do you have the minutes from all meetings of the governing board?			
Have you revoked the check-signing authority of former staff and board members?			
Is your registered agent still at the address filed with the Secretary of State?			
Can you rely on your registered agent to give you any mail they receive regarding the corporation?			
If you have employees: Are you making timely unemployment insurance payments to the state or have you notified the state that you are a reimbursing employer? <sup>14</sup>			
Whether or not you are making unemployment insurance payments, are you submitting quarterly reports to the relevant state Unemployment Department?			
If you have staff that work overtime or have unusual hours, have you complied with the record keeping and corporate maintenance requirements associated with federal and state wage and hour standards governing overtime?			

## ALTER EGO & VEIL PIERCING (FOR LIMITED LIABILITY ENTITIES)

Many social entrepreneurial organizations adhere closely to a single founder’s vision, but if a limited liability entity<sup>15</sup> and the individual are not treated as distinctly separate personalities, both could face serious legal implications. Key stakeholders and organizational personnel could be held personally liable for the organization’s misdeeds, and, in some jurisdictions, the organization may even be held liable for stakeholders’ personal debts. Organizations can protect against this risk and limit its impact by diligently respecting the corporate form as an entity separate from its founder.

Alter Ego & Veil Piercing	Yes	No	N/A
<p>Do the organization and key stakeholders commingle personal and entity assets (for example, by paying personal expenses with corporate funds)?</p> <ul style="list-style-type: none"> <li>• Best practices for avoiding commingling of assets include having a business checking account and credit card, and using these only for business expenses, as well as keeping equipment and property separate.</li> </ul>			
Does the organization have adequate business capitalization for starting and maintaining the organization’s operations?			
Is all business capital (either equity buy-in or loan proceeds) properly designated to the organization, rather than its founder or owner?			
<p>Do company officers and managers execute all contracts and other company documents in their representative capacity?</p> <ul style="list-style-type: none"> <li>• Representatives should sign documents in such a way that indicates that they are not signing in their personal capacity: “John Doe, as President of ABC Corporation”</li> </ul>			
Does the organization hold regular meetings of the board of directors and shareholders, and keep appropriate meeting minutes to the extent required by the organizational documents and relevant state laws?			
<p>Does the organization maintain all necessary corporate formalities in the jurisdiction in which it is organized and qualified to do business?</p> <ul style="list-style-type: none"> <li>• Common formalities (which vary by jurisdiction) include regularly updating bylaws or the operating agreement, filing annual reports, keeping a stock or membership ledger, etc.</li> </ul>			
Does the organization document all major business decisions and retain these records for at least seven years?			
Have all transactions between key stakeholders and the organization been properly vetted through the company’s conflict-of-interest policy?			
Does the organization make its organizational status known by way of branding, marketing, business cards, and company invoices?			

## ENTITY BOARD INTEGRITY

The directors and officers of an organization have fiduciary obligations to that organization. Specifically, they must act reasonably, they must act in the best interest of the organization, and they must act in adherence to the organization's mission. The following section provides information and best practices related to ensuring that directors and officers fulfill these obligations.

Entity Board Integrity	Yes	No	N/A
Does the Board have a process for taking and maintaining accurate minutes for each of its meetings?			
Are the directors fulfilling their three fiduciary duties? <ul style="list-style-type: none"> <li>• Duty of Care: Are the directors acting reasonably in (1) collecting, (2) reviewing, and (3) making decisions based on the information they have?</li> <li>• Duty of loyalty: Are the directors exercising their powers (1) in good faith and (2) in the best interest of the organization (not their own or anyone else's interest)?</li> <li>• Duty of Obedience: Are the directors acting in accordance with (1) all applicable laws, (2) the organization's own stated policies and (3) the organization's mission?</li> </ul>			
Has the board adopted a formal conflict of interest policy and code of conduct to help directors and officers understand when a situation might pose a conflict? <sup>16</sup>			
Has the board implemented a process to protect whistleblowers?			
Has the board adopted policies and procedures for fiscal management? <sup>17</sup>			
Has the board adopted a gift (in-kind donation) acceptance policy?			
Has the board adopted an expense reimbursement policy?			
Has the board adopted an ethics code or code of conduct for directors and employees? <sup>18</sup>			
Has the board implemented a process for evaluating compliance with that code? <sup>19</sup>			
Has the board adopted policies for retention of documents and to prevent their destruction consistent with the Sarbanes-Oxley Act and document-retention best practices?			
Has the board implemented a process for complying with IRS public disclosure requirements? <sup>20</sup>			
Has the board implemented a policy on transparency and public disclosure consistent with the organization's values and mission?			
Does the board have a compensation committee or a full-board process for regularly evaluating the performance of senior staff and setting their compensation?			
Does the board have a finance committee or a full-board process for reviewing financial statements, evaluating internal expense controls, and interacting with independent auditors? <sup>21</sup>			
Do you have an audit committee (a committee responsible for dealing with outside auditors) with independent directors and at least one financial expert?			

# FUNDRAISING

Fundraising is a crucial consideration in furthering your organization’s mission. Many social entrepreneurs will conduct some form of fundraising, and the following issues are key fundraising considerations.

Compliance and Best Practices	Yes	No	N/A
Is your fundraising plan tied to an annual budget?			
Have you considered whether your organization may be eligible to apply for a Community Development Financial Institutions (CDFI) Certification? <sup>22</sup>			
If your organization seeks financial support from impact investors, have you documented the following? <ul style="list-style-type: none"> <li>• Intentionality regarding the desired social or environmental impact</li> <li>• Expected return on financial investment</li> <li>• A broad spectrum of return expectations and asset classes</li> <li>• Scalability through impact measurement</li> </ul>			
Have you considered whether your jurisdiction provides an advantage for using specific fundraising platforms (e.g. crowdfunding)?			
Do you have copies of all agreements regarding fundraising, including agreements with outside fundraisers?			
Is your entity registered to raise funds, including but not limited to: <ul style="list-style-type: none"> <li>• Certificate of solicitation in all states where fundraising is conducted</li> <li>• Registration of Fundraisers (when required by state)</li> <li>• Registration of Professional Solicitors Professional fundraising counsel, and commercial coventurers (when required by state.)</li> </ul>			
Have you conducted a review of fundraising requirements for any other state from which you are receiving funding?			
Do your fundraising materials clearly describe how the funds will be used?			
Do your fundraising materials include qualifiers to avoid use restrictions?			
Do your fundraising materials disclose any charges on proceeds if any portion is used to fund administrative or fundraising costs?			
Have you reviewed the scope of limitations or explicit restrictions on funds?			
Do your internal organizational materials include exceptions which may impact cash reserves for emergencies, changes in organization, and “act of god” situations?			
Can funds be pledged to your organization?			
Have you created an endowment? If so, please attach all relevant documentation. <sup>23</sup>			
If you plan to host raffles, bazaars, or gambling events, have you reviewed state regulations for a list of permitted organizations and specific rules and regulations for these events?			
Have you considered the percentage paid to a fundraiser with respect to charitable events as an issue for tax exemption?			
Do you disclose the deductibility of gifts and dinners to donors? If so, do you instruct the donor on how much is deductible?			
Do you allocate funds between fundraising costs and funds? If so, keep current and accurate records for accounting purposes.			
Do you have policies for contribution of in-kind valuations?			
Do you have policies for crediting planned gifts?			

Compliance and Best Practices	Yes	No	N/A
Do you receive large gifts as donations? If so, be sure to obtain qualified appraisals when needed (e.g. for closely held stock or property).			
Do you acknowledge in writing gifts over \$250?			
Have you provided written disclosures for donations of at least \$75?			
Have you provided written disclosures for donations where there was an exchange of goods and services with another nonprofit?			
Do you have copies of all grant proposals submitted by the organization for funding from governmental and private sources?			
Do you have copies of newsletters and bulletins of the organization?			
Do you monitor content of all communications (e.g. brochures, letters, telephone calls, emails) for truth, accuracy, avoidance of unauthorized promises or restrictions?			
Do you keep donor list records? If so, be sure that they are maintained as confidential.			
Is there any intellectual property with any licensing restrictions that may inhibit the company's ability to raise funds?			
Have you complied with state registration of charitable solicitation organizations and paid fundraising requirements?			
Have you considered the Charleston Principles which guide the use of online internet fundraising platforms? <sup>24</sup>			
Are you earning income from a trade or business that is regularly carried on, but is not substantially related to the organization's exempt purpose? If so, this income may be subject to Unrelated Business Income Tax or UBIT (IRC section 511).			

# EMPLOYMENT LEGAL ISSUES

Every social entrepreneur must be mindful of employment law as they expand their business and hire employees, independent contractors, interns, and volunteers. The consequences of incorrectly classifying an individual into one of these categories are numerous and costly. Some of the relevant legal issues are provided below. Keep in mind that most federal employment laws have a state law equivalent, which may impose additional requirements or restrictions. Local jurisdictions also sometimes have employment laws that add to the compliance obligations. It is always advisable to consult counsel for guidance in this heavily litigated area.

## Legal Issues Pertaining to Employees

Best Practices	Yes	No	N/A
Does the organization maintain a database of all employees, contractors, interns, and volunteers?			
Does the organization have an employee policy manual or handbook? The manual should set forth policies for: <ul style="list-style-type: none"> <li>• Recruitment, hiring, and promotion</li> <li>• Performance and evaluation</li> <li>• Social media usage</li> <li>• Discipline and discharge</li> <li>• Dispute resolution</li> <li>• Wages and benefits</li> <li>• Employee leave</li> <li>• Safety and health</li> <li>• Sexual harassment</li> <li>• Nondiscrimination</li> <li>• Equal employment</li> </ul>			
Are the organization’s practices in line with its stated, express policies?			
Does the organization disseminate its policies to all employees?			
Is there any language in the organization’s employee policy manual that creates contractual obligations for the company?			
Does the organization administer employee training that includes a review of its policies, is effective, and is sufficient under state requirements regarding legally mandated training?			
Does the organization have interviewing procedures that are regularly followed, and have the relevant personnel been instructed on what questions they can and cannot ask during an interview? <ul style="list-style-type: none"> <li>• If yes, are these procedures regularly updated as state law changes with respect to permissible interviewing questions?</li> </ul>			
Does the organization collect required federal and state tax forms from all employees as appropriate (IRS Form W-4, I-9, etc.)?			
Does the organization have written employment agreements with key employees, such as those with specialized knowledge or technical skills applicable to critical organizational functions?			

Best Practices	Yes	No	N/A
Does the organization comply with the federal and state wage and hour laws and employee benefits regulations, including proper classifications of exempt and non-exempt employees?			
Are the organization's policies regarding employee leave (e.g. vacation, sick pay, unpaid leave, etc.) in compliance with the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), applicable workers' compensation laws, and applicable state laws?			
Does the organization's hiring, accommodation, and termination procedures comply with the Americans with Disabilities Act (ADA) and state equivalents?			
Does the organization have Construction Safety and Occupational Safety and Health Act (OSHA) compliance programs?			
Does the organization comply with the Drug-Free Workplace Act?			
Are the organization's policies and practices regarding employee privacy and access to personnel files in compliance with applicable state laws?			
Are there forms and procedures in place to document harassment and other complaints?			
Are the organization's disciplinary and termination practices consistent?			
Does the organization require and conduct exit interviews?			

### Legal Issues Pertaining to Independent Contractors

Best Practices	Yes	No	N/A
Does the organization keep appropriate records of all independent contractors providing services to the organization? <sup>25</sup>			
Are all individuals treated as independent contractors by the organization truly independent contractors under the definition used in your jurisdiction? Although the definition varies under federal law and by state, some common considerations include: <ul style="list-style-type: none"> <li>• The degree of the organization's control over the worker</li> <li>• The worker's own investment in the project relative to that of the organization</li> <li>• The worker's opportunity for profit and loss</li> <li>• The permanency of the parties' relationship</li> <li>• Whether the work performed requires special skill</li> <li>• Whether the worker's services are integral to the organization's business<sup>26</sup></li> </ul>			
Does the organization have a written agreement with each independent contractor documenting the terms of the relationship in light of the considerations mentioned above?			
Does the organization pay contractors by project or a flat fee at regular intervals, rather than by hour, week, or month?			
Does the organization issue a Form 1099-MISC to each contractor paid \$600 or more in a particular year?			

## Legal Issues Pertaining to Unpaid Interns<sup>27</sup>

Best Practices	Yes	No	N/A
Does the organization have a formal, uniform, and well-documented internship program, with a defined purpose and scope?			
Does the organization have intern training manuals and procedures, including policies for gifts and reimbursement of expenses? If so, maintain an up to date copy for your records.			
Is the internship similar to training which would be given in an educational environment?			
Is the internship experience primarily for the intern's benefit?			
Has the organization ensured that the interns do not displace paid workers, instead working under the close supervision of existing staff?			
Has the organization ensured that it derives no immediate advantage from interns' activities?			
Has the organization made clear that interns are not necessarily entitled to a job at the conclusion of the internship?			
Do interns clearly understand that they are not entitled to wages for the time spent in the internship?			
Does the organization have written agreements with all interns or offer letters documenting that the internship complies with the above requirements?			

## VOLUNTEER LEGAL ISSUES

Best Practices	Yes	No	N/A
Do you have volunteer training manuals and procedures, including policies for gifts and reimbursement of expenses? If so, maintain an up to date copy for your records.			
Do the volunteers provide services without the expectation or receipt of compensation?			
Do the volunteers provide services on a part-time basis?			
Has the organization ensured that the volunteers do not displace paid workers or perform work that would otherwise be performed by employees?			
If an employee of the organization is providing services to the organization as a volunteer in addition to the services she provides as an employee, has the organization ensured that the volunteered services are different in type from the employed services?			
Do the volunteers receive a stipend? If so, is the stipend one of the following: <sup>28</sup> <ul style="list-style-type: none"> <li>• A reasonable reimbursement of expenses incurred while volunteering,</li> <li>• A reasonable fringe benefit, or</li> <li>• A nominal fee that does not exceed 20% of what the non-profit would pay to hire a full-time employee for the same services</li> </ul>			
Does the organization have a standard volunteer agreement documenting that volunteers are providing services without expectation or receipt of compensation?			

# CONTRACTS

Contracts are the instruments by which organizations govern their relationships with clients, suppliers, governments, employees, and other partners. Contracts that are entered into transparently and that are thorough, vetted, clear and appropriately maintained in written records can help organizations achieve their organizational goals, avoid liability, and avoid disputes. The following section is intended to help organizations establish a contracting process that conforms to these goals on a consistent basis.

Best Practices in Contracting <sup>29</sup>	Yes	No	N/A
Does the organization have a formal process for requesting proposals when it seeks to contract for goods or services?			
<p>Does the organization include provisions for each of the following in its contracts (except where clearly unnecessary):</p> <ul style="list-style-type: none"> <li>• Price               <ul style="list-style-type: none"> <li>▪ Consider whether to include renegotiation triggers</li> </ul> </li> <li>• Clear payment terms               <ul style="list-style-type: none"> <li>▪ Fixed price vs. time-and-materials</li> <li>▪ Clear payment obligations upon contract termination</li> <li>▪ Withholding of payment until all items are delivered (if purchasing goods or services)</li> <li>▪ Avoidance of third parties receiving payments due you</li> </ul> </li> <li>• Timeline for delivery</li> <li>• Scope of work required of each party</li> <li>• Ownership of final products, including intellectual property</li> <li>• Definitions of all material terms, obligations, and defaults</li> <li>• Warranties</li> <li>• Indemnification</li> <li>• Liability</li> <li>• Whether the contract is intended to create an independent contractor or an employee relationship (if either)</li> <li>• Dispute resolution               <ul style="list-style-type: none"> <li>▪ Litigation vs. alternative dispute resolution</li> <li>▪ Jurisdiction and venue (specific place) for resolution</li> </ul> </li> <li>• Attorney's fees</li> <li>• Remedies for breaches</li> <li>• The contract is executed by all parties involved</li> </ul>			
<p>Does the organization have a process for reviewing contracts prior to entering into them? Such a process often includes:</p> <ul style="list-style-type: none"> <li>• Contracting guidelines for non-legal staff</li> <li>• A process for ensuring those guidelines are followed</li> <li>• Counsel from outside legal, fiscal, and other advisers</li> </ul>			
Does the organization insist on plain and unambiguous terms in its contracts?			

<b>Best Practices in Contracting<sup>29</sup></b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
Has the organization identified the risks in its contracts/contracting? Risks include: <ul style="list-style-type: none"> <li>• the obligations of each party to each contract;</li> <li>• the tax and tax exemption implications of those obligations;</li> <li>• the antitrust implications;</li> <li>• the employment implications; and</li> <li>• the regulatory implications.</li> </ul>			
Does the organization have a process for keeping and organizing copies of all contracts?			
Does the organization track whether its contracts have been completed by collecting signatures to that effect from the parties to each contract upon its completion?			
Does the organization track expiration dates on important contracts and leases?			
Have all important agreements been reduced to writing?			
Do any contracts in which the organization is obligated to provide services or goods state or imply unnecessary warranties?			

## **INTELLECTUAL PROPERTY**

Intellectual property is a key business asset of the 21<sup>st</sup> century, yet its importance to startup organizations and social entrepreneurs is often misunderstood. Below are useful considerations.

<b>Best Practices for Managing Intellectual Property</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
Do you have copies of any trademark and copyright applications, registrations, assignments or similar documents the organization owns?			
Have trademark and patent registrations been obtained for all organization products, processes, logos, trade names and slogans?			
Are <sup>TM</sup> , (SM), <sup>®</sup> and/or <sup>©</sup> and the associated years located prominently in and on the organization’s literature, websites, vehicles, buildings, and elsewhere consistently? <sup>30</sup>			
Does the organization have a program and policy for protecting trade secrets?			
Have all employees signed appropriate confidentiality, invention assignment and non-compete provisions?			
Have you memorialized licensing agreements for any entity you wish to provide limited use of your intellectual property and trade secrets?			
Have you memorialized work made for hire agreements for any third-party creating content for your organization?			
Has the organization obtained permission to use any intellectual property owned by another organization? (including trademarks or copyrights, etc.)			
Have the licensing terms (i.e., length of time) for any intellectual property rights, been evaluated for IP allocation provisions?			

# COMMUNICATIONS, WEBSITE, CLOUD & INTERNET USE

Organizations should craft and maintain a communications policy as early as possible, to avoid problematic interactions with the media. Communications on the internet, whether to business partners, the broader public, or internal constituents, may impose legal requirements on organizations with an internet presence.<sup>31</sup>

Communications, Website, Cloud & Internet Use	Yes	No	N/A
Do you have a system by which you register material published by the organization?			
Do you have standards for publications?			
Has the organization developed and reviewed its policy regarding public statements and key organizational officials speaking to the media?			
Has the website registered and controlled all alternative domain names?			
Has the organization ensured that its domain name(s) do not infringe on another organization's trademarks or service marks?			
Does the website have a suitable Privacy Policy and Terms of Use, including appropriate terms for e-shopping, e-donations, and any other payment processing functions?			
If the website collects personal information from children under the age of 13, does it comply with the disclosures and requirements of the Children's Online Privacy Protection Act (COPPA)?			
Does the website comply with all required disclosures for miscellaneous types of content, including customer reviews and endorsements and results-based claims?			
If the website allows visitors to post text, video, or image files, does it have a User Submission Policy and comply with the Digital Millennium Copyright Act? <sup>32</sup>			
Has the organization's website obtained all applicable consents for use of third party content and website links?			
Does the website have appropriate and robust security measures for data collection and payment processing?			
Has the organization engaged in any charitable solicitation through the internet that might expose it to the licensing requirements of another jurisdiction?			
If the organization is a non-profit, has it complied with the IRS's lobbying and political campaign activity rules on its website?			
Do any employees use social media for official or personal purposes where the sharing of intellectual property may be at risk? <ul style="list-style-type: none"> <li>• Possible legal implications include vicarious liability for employees' actions on social media and defamation lawsuits. The organization should also consider the potential for negative publicity as a result of employee statements.</li> </ul>			
Do you have an internal social media policy to decrease the likelihood of the above?			
Do you have a policy for the use of copyrighted works to avoid liability within the doctrine of "fair use"?			

# RISK MANAGEMENT

Risk management involves the practice of monitoring possible legal, financial, ethical, or mission-based losses and implementing policies to reduce and avoid such loss (or losses).

No enterprise is too small or too large to engage in risk management. New enterprises should integrate risk management into their work early, so they can avoid what can be crippling losses and, more importantly, foster a healthy organizational culture as the enterprise grows. Established enterprises should review and re-integrate risk management best practices into their organizational policies to stay ahead of new and evolving loss possibilities.

The following section is intended to assist enterprises of all sizes in developing and maintaining adequate risk management policies and practices. The chart proceeds from the simplest steps to more substantial ones. Each organization should determine for itself, with the help of local counsel, which risk management steps to take.

Risk Management Best Practices <sup>33</sup>	Yes	No	N/A
Has the enterprise adopted a risk management policy?			
Does the enterprise’s policy identify all potential risk areas? Consider the following common risk areas: <ul style="list-style-type: none"> <li>• <b>Strategic risk:</b> any risks that may hinder the enterprise in reaching its business objectives</li> <li>• <b>Operational risk:</b> any risks inherent in the processes used by an enterprise to deliver or provide its goods or services</li> <li>• <b>Financial risk:</b> the state of the enterprise’s balance sheet and outstanding risks to its financial resources</li> <li>• <b>Compliance risk:</b> any risks of non-compliance with legal requirements relevant to the enterprise (e.g., IRS reporting requirement)</li> <li>• <b>Legal risk:</b> any risks that could lead to potential litigation or other legal loss (e.g., risks of employment litigation or loss of trademark)</li> <li>• <b>Reputational risk:</b> any risks to the company’s brands and the way it is perceived by the public</li> <li>• <b>Environmental risk:</b> any risks of undue environmental damage and liabilities thereof</li> <li>• <b>Information technology risk:</b> any risks to information storage and security of operating systems</li> <li>• <b>Political risk:</b> any risks of political instability or terrorism which may affect operations, either in the US or abroad</li> </ul>			
Does the policy assess how all risks compare in their likelihood and interact with one another (e.g., to compound or mitigate one another)? To assist in this assessment, consider the following: <ul style="list-style-type: none"> <li>• Was the policy formulated after discussion between all parts of the enterprise’s activities?</li> <li>• Was the policy formulated after input from senior, middle, and line employees?</li> </ul>			

Risk Management Best Practices <sup>33</sup>	Yes	No	N/A
<p>Does the policy integrate all the information collected to set the enterprise's risk tolerance or appetite level? In setting that level, consider the following:</p> <ul style="list-style-type: none"> <li>• Shareholder/stakeholder expectations</li> <li>• Desired credit rating</li> <li>• Willingness to expand product/service range and geographical coverage</li> <li>• Willingness to accept volatility in earnings/donations/grant funding</li> <li>• Financial capacity to withstand loss</li> <li>• Risks deemed absolutely unacceptable</li> </ul>			
<p>Was the policy designed in a way that allows for actual implementation? Consider the following:</p> <ul style="list-style-type: none"> <li>• Does the policy create qualitative and/or quantitative metrics for measuring the kind or amount of risk tolerated?</li> <li>• Are the measures designed to assist employees in conforming their behavior and decision-making to the stated risk tolerance?</li> <li>• Does the policy include a mechanism for updating the risk measures when new information is obtained?</li> </ul>			
<p>Has the enterprise implemented procedures to ensure that the risk management policy is followed? Consider the following procedures:</p> <ul style="list-style-type: none"> <li>• Has the Board undertaken training in risk management policy and principles?</li> <li>• Does the Board discuss risk-management concerns on a regular (as opposed to ad hoc or "as needed") basis?</li> <li>• Has the Board created a risk management committee or adopted a full-board process for risk management oversight?</li> <li>• Has the Board clarified to its members, to enterprise officers, and to enterprise employees the value that the risk management policy adds to the enterprise?</li> <li>• Has the enterprise distributed risk management policies to current officers, employees, and volunteers (as appropriate)?</li> <li>• Has the enterprise trained its officers and employees on risk management policy and principles?</li> <li>• Has the enterprise appointed one officer or more to oversee risk management compliance across the enterprise?</li> <li>• Has the enterprise appointed officers to oversee risk management compliance in each of the enterprise's activities?</li> </ul>			

# INSURANCE

By maintaining insurance coverage, organizations can protect themselves against many kinds of liability. Additionally, states often require businesses operating in certain sectors to obtain insurance coverage.

Insurance <sup>34</sup>	Yes	No	N/A
Does the organization have written copies of all agreements, insurance policies, and related correspondence with insurance companies?			
Does the organization have certificates of insurance?			
Does the organization regularly evaluate existing insurance coverage for: <ul style="list-style-type: none"> <li>• The sufficiency of such coverage</li> <li>• Whether such coverage is the most cost effective</li> <li>• Whether current premiums are reasonable</li> </ul>			
Does the organization coordinate an insurance bidding process every three to five years?			
Is the organization aware of all cancellation and nonrenewal provisions in its insurance policies?			
Do all insurance contracts contain an omnibus named insurance clause? <ul style="list-style-type: none"> <li>• E.g., The entity and any other affiliated, associated or subsidiary organization and/or their subsidiaries in which the entity has or has had, a controlling interest or exercises management, now or hereafter constituted.</li> </ul>			
Does the organization have the following common types of insurance policies, as needed: <ul style="list-style-type: none"> <li>• Commercial general liability insurance</li> <li>• Directors and officers’ liability insurance</li> <li>• Property insurance</li> <li>• Automobile insurance</li> <li>• Worker’s compensation insurance</li> <li>• Police and fire accident insurance</li> <li>• Flood insurance</li> <li>• Professional liability insurance (for doctors, lawyers, realtors, etc.)</li> <li>• Employment practices liability insurance</li> <li>• Business owner’s insurance</li> </ul>			
Does the organization’s general liability insurance cover: <ul style="list-style-type: none"> <li>• General liability/tort liability</li> <li>• Products/completed operations</li> <li>• Contractual liability</li> <li>• Liquor liability</li> <li>• Riot and civil commotion</li> <li>• Athletic participants</li> </ul>			
What is the scope of the coverage of your directors and officers liability insurance? Does it include affiliated entities and essential coverage?			

<b>Insurance<sup>34</sup></b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
Does the organization's property insurance cover: <ul style="list-style-type: none"> <li>• Fire and all risks</li> <li>• Contractor's equipment</li> <li>• Computer equipment</li> <li>• Boiler and machinery</li> <li>• Monies and securities</li> <li>• Forgery and dishonesty</li> <li>• Fidelity/faithful performance</li> <li>• Valuable papers</li> <li>• Business interruption</li> </ul>			
Does the organization require all entities with which the enterprise deals to furnish certificates of insurance to evidence certain minimum requirements?			
Does the organization include indemnification and/or "hold harmless" provisions in all its agreements with other persons and entities?			
Has the organization established enforceable insurance requirements for vendors, contractors, and lessees?			
Has the organization established procedures for documenting, investigating, and reporting liability claims to the insurer?			
Has the organization maintained records of all liability insurance policies and related bond materials for the past 20 years?			

## LEGAL PROCEEDINGS AND ADVICE

It is important, when certain situations require seeking legal advice, that you maintain records of the situation and the advice you receive. It is also important to consider the costs of legal proceedings and whether your insurance will mitigate the impact on your organization.<sup>35</sup> This is especially important if the organization has multiple attorneys representing it or if it needs to change counsel during representation.

<b>Legal Proceedings and Advice</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>
Do you have a means of tracking any legal or administrative proceedings?			
Do you retain materials for previous or pending litigation or claims?			
Do you have copies of previous legal advice that your organization has received from counsel?			
Is your insurance coverage broad enough to cover the costs of any personal liability for directors, officers, and employees which could arise from a legal proceeding?			
Do you document the course of action you have taken following any legal advice?			

# RECORD RETENTION

A record-retention policy is a document-management policy: it specifies what types of documents an enterprise will retain, how the enterprise will retain them, and for how long the enterprise will retain them. Organizations should note that the adoption of a written record-retention policy is one of several good governance practices that the IRS highlights on the Form 990.

A strong record-retention policy is foundational to effective organizational governance. A record-retention policy allows everyone in the organization to know where documents produced by the organization should be going on a regular basis. This transparency, in turn, allows the organization to track relevant records when internal or external audits, investigations, or decision-making procedures require them. In this way, a record-retention policy enables the organization’s board, responsible officers, and others to exercise effective oversight and management over the organization.

The following section is intended to assist enterprises of all sizes in adopting practical and thorough record retention policies.<sup>36</sup>

Record Retention Best Practices <sup>37</sup>	Yes	No	N/A
Has the organization adopted a record-retention policy?			
Is the organization’s record-retention policy written?			
Does the organization’s record-retention policy apply equally to documents saved in the cloud, on a server, or in a filing cabinet?			
Does the organization’s record-retention policy answer the following key questions? <ul style="list-style-type: none"> <li>• what documents should be retained;</li> <li>• how the organization will retain those documents;</li> <li>• where the organization will retain those documents; and</li> <li>• for how long the organization will retain them</li> </ul>			
Does the organization’s record-retention policy instruct that documents be retained for, at least, the length of time within which a relevant risk could materialize?			
Does the organization’s record-retention policy account for certain types of documents or specific documents that the organization should retain for the sake of history or institutional memory?			
Was the organization’s record-retention policy developed after consultation of the following: <ul style="list-style-type: none"> <li>• the professional advisor/accountant who prepares the organization’s annual returns to the IRS;</li> <li>• state and local laws governing record retention;</li> <li>• the organization’s risk management policy; and</li> <li>• the organization’s mission and strategic goals</li> </ul>			

Record Retention Best Practices <sup>37</sup>	Yes	No	N/A
<p>In consulting state and local laws governing record retention by the organization, has the organization examined laws in, at least, each of the following categories:</p> <ul style="list-style-type: none"> <li>• corporate governance,</li> <li>• credit card transactions,</li> <li>• donor records,</li> <li>• employment matters,</li> <li>• fundraising activities,</li> <li>• licenses (for such things as raffles),</li> <li>• insurance,</li> <li>• investments and banking,</li> <li>• serving or treating patients,</li> <li>• programs and activities,</li> <li>• real estate sales,</li> <li>• leases and other contracts with vendors,</li> <li>• tax-exempt certificates issued by the state</li> </ul>			
<p>Does the organization's record-retention policy instruct that the following records be retained permanently:</p> <ul style="list-style-type: none"> <li>• Articles of Incorporation</li> <li>• Audit reports, both from internal and independent audits</li> <li>• Corporate resolutions</li> <li>• Checks</li> <li>• Determination Letter from the IRS, and correspondence relating to it</li> <li>• Financial statements (year-end)</li> <li>• Insurance policies</li> <li>• Minutes of board meetings and annual meetings of members</li> <li>• Real estate deeds, mortgages, bills of sale</li> <li>• Tax returns</li> </ul>			
<p>Does the organization's record-retention policy include a preamble to its policy, emphasizing the connection between a document retention policy and the fiduciary duty of the board of directors?<sup>38</sup></p>			
<p>If the organization serves minor children, does the organization's record-retention policy instruct that records relating to minor children be retained at least until the child reaches majority age plus the time allowed by the State statute of limitation for the child-now-adult to bring a claim against the nonprofit?</p>			
<p>Does the organization's Board have a committee in charge of, or a full-Board process dedicated to, ensuring that the organization's record-retention policy is being followed?</p>			

## REPORTING REQUIREMENTS

A landmark legal opinion, *In re Caremark Intern. Inc. Derivative Litigation*,<sup>39</sup> requires that there are procedures to ensure that important developments relating to compliance are reported to the board and meaningfully discussed.

Reporting Requirements	Yes	No	N/A
Are there periodic reports to the board about audits of company compliance procedures in general and, in particular, about any problems that have been discovered?			
Is there meaningful discussion at the board level of how potential problems are being handled?			
Are there procedures to report potential compliance problems to the board outside of regular meetings?			
Is the board fully informed of exactly what the company does when a compliance problem is found, i.e., what changes are made in the program, who is disciplined, how much, and for what?			

## ACCESSIBILITY & DISABILITY ASSISTANCE

All organizations must comply with relevant federal and state accessibility and disability regulations. Full compliance is especially relevant in the context of social enterprise organizations, where transparency takes on special importance. Furthermore, many federal and government grants require total compliance with the Americans with Disabilities Act (ADA) and Sections 504 and 508 of the Rehabilitation Act *before* any funds are released. Ongoing compliance is therefore particularly relevant to organizations that wish to remain eligible for these funds.

Accessibility & Disability Assistance <sup>4041</sup>	Yes	No	N/A
Has the organization performed an assessment of its compliance with all relevant federal, state, and local disabilities laws?			
Is the organization in compliance with all federal, state and local disabilities laws?			
Are all sites operated by the organization, including sites only used by employees, fully accessible and in compliance with relevant accessibility guidelines?			

# DISASTER PREPARATION

Disaster preparation is of particular importance to social entrepreneurs and other organizations moving at a fast pace. An organization may be struck by the tragic loss of a principal or may have to confront the effects and dangers of a natural disaster. Social enterprises, like any other organization, must insure that they are prepared to confront the worst before it happens.

Disaster Preparation <sup>42</sup>	Yes	No	N/A
Does the organization have flood coverage and economic business interruption coverage insurance policies?			
If your office was destroyed in a natural disaster, do you have: <ul style="list-style-type: none"> <li>• all serial numbers, original costs, photos, and videos of the property, equipment and other physical assets?</li> <li>• the ability to recreate all of the organization’s data, including accounts receivable?</li> <li>• the contact information of all key individuals necessary to keep the organization operational?</li> <li>• the ability to restore service?</li> </ul>			
Do you have designated individuals who are responsible for each of the above tasks?			
Have you conducted a Business Impact Analysis?			
If any key organizational stakeholder was suddenly disabled, is there an emergency chain of command that is: <ul style="list-style-type: none"> <li>• aware of the individual’s schedule for the next few months?</li> <li>• able to replicate the individual’s organizational responsibilities?</li> <li>• able to access the individual’s records as required for organizational operations?</li> </ul>			
Do you have a written and tested disaster recovery plan in place that addresses: <ul style="list-style-type: none"> <li>• Resource management</li> <li>• Emergency response</li> <li>• Crisis communications</li> <li>• Business continuity</li> <li>• Information technology</li> <li>• Employee assistance</li> <li>• Incident management</li> </ul>			
If funding to the organization were suddenly delayed or suspended, would the organization be able to stay operational for a period of time? <sup>43</sup>			
If you answer “yes” to the above question, how long would the organization be able to stay operational with funding delay or suspension?			
If a staff member absconded with key documents, would you be able to determine what was taken and when?			

# BUSINESS AREA SPECIFIC COMPLIANCE ISSUES

## International Compliance

Organizations that operate internationally must monitor legal risk and fulfill compliance obligations arising from both US law and the laws of the foreign country or countries in which the organization operates. A rule of thumb is that US-based organizations operating internationally should maintain strict control of procedures necessary to compliance with US obligations and seek foreign counsel only after conducting due diligence and when necessary to understand or navigate foreign law. The following section provides steps an organization and its US counsel may follow to maintain international operations in accordance with this general rule.

International Compliance	Yes	No	N/A
<b>US Compliance.</b> For any international operation, has the organization identified relevant US compliance obligations?			
Has the organization established control procedures to ensure the organizational managers responsible for international operations have the authority, oversight, and information to fulfill US compliance obligations?			
Specifically, has the organization established procedures to ensure compliance with the Foreign Corrupt Practices Act <sup>44</sup> and any applicable US trade restriction? <sup>45</sup>			
<b>Foreign Legal Risk Management.</b> Has the organization examined whether the general legal climate of the foreign country or countries in which it intends to operate creates any undue risks? The organization should examine at least the following: <ul style="list-style-type: none"> <li>• The state of the rule of law</li> <li>• Litigation norms</li> <li>• Common business practices</li> </ul>			
If a new legal entity needs to be created in a foreign country, has the organization examined <ul style="list-style-type: none"> <li>• Any unique legal forms available in the country;</li> <li>• Any unique entity regulations imposed in the country; and</li> <li>• Any unique taxation issues that creating an entity in the country may present (e.g., the availability of tax credits, exemptions, and subsidies)?</li> </ul>			
Has the organization identified all applicable laws and regulations in the foreign country? The organization should examine laws and regulations in, at least, the following areas: <ul style="list-style-type: none"> <li>• Employment (salary/wages, hours, severance pay, volunteering, and required record keeping and reporting)</li> <li>• Consumer protection</li> <li>• Licensing and permitting</li> <li>• Telecommunications</li> <li>• Environmental protection</li> </ul>			

International Compliance	Yes	No	N/A
<p>Has the organization examined whether its fundraising model is compatible with the laws and norms of the foreign country? Common areas of law and culture to examine include:</p> <ul style="list-style-type: none"> <li>• Laws on foreign investment</li> <li>• Laws on charitable solicitations and charitable contributions</li> <li>• Public contracting (procurement) laws</li> <li>• Public programs funding social entrepreneurship</li> <li>• Cultural attitudes towards charitable giving</li> </ul>			
<p>If the organization has valuable intellectual property, has the organization:</p> <ul style="list-style-type: none"> <li>• Determined if any risks would arise from the intellectual property climate in the foreign country;</li> <li>• Determined what actions it may take to maximize intellectual property protections in the foreign country; and</li> <li>• Determined the degree to which U.S. protections will be effective in the foreign country?</li> </ul>			
<p>If the organization is partnering with local people, organizations, or institutions, has the organization developed a procedure for examining the backgrounds, expertise, and intentions of its partners? The organization should examine, at least, the following categories of partners:</p> <ul style="list-style-type: none"> <li>• Employees</li> <li>• Suppliers</li> <li>• Distributors</li> <li>• Joint Venturers</li> </ul>			
<p>Has the organization studied and evaluated the risks and legal issues arising from any operations conducted through foreign financial institutions?</p>			
<p><b>Employees and Employee Safety.</b> Has the organization established procedures for maintaining adequate supervision of, and communication with, employees working in the organization’s international operations?</p>			
<p>Has the organization established a strategy and procedures for assimilating into the organization’s culture employees working in the organization’s international operations?</p>			
<p>Has the organization distributed information to all personnel in the foreign country about passport/visa/other documentation requirements?</p>			
<p>Has the organization registered its presence in the country with the local US Embassy or Consulate?</p>			
<p>Has the organization made plans or preparations for staff evacuation in case of emergencies?</p>			

## Staff Training

Training is essential to both avoiding undue legal liabilities and enhancing staff effectiveness. This section provides best practices which can help organizations implement training programs that achieve both goals. The checklist items proceed from least resource-intensive to most, so organizations of different sizes may implement some but not all the recommendations below.

Staff Training <sup>46</sup>	Yes	No	N/A
Has the organization developed and distributed to all organization members a training manual for management, staff and independent contractors?			
Has the organization incorporated into its training programs materials on the three most important subjects from a legal perspective--sexual harassment, discrimination, and safety? <sup>47</sup>			
Has the organization developed training programs that satisfy training requirements under federal laws and regulations? <sup>48</sup>			
<p>Has the organization developed an in-person training program that follows employee training best practices? Consider the following practices:</p> <ul style="list-style-type: none"> <li>• Does the organization establish each training program it implements to directly support its strategic objectives?</li> <li>• Does the organization provide new hires with a thorough orientation that includes exposure to management, organizational culture, and relevant organizational procedures?</li> <li>• Does the organization provide ongoing training opportunities connected to clearly articulated job descriptions, work processes, and risk management priorities?</li> <li>• Does the organization vary its training methods to include instructor-led training, coaching-based training, and experiential training, among others?</li> <li>• Does the organization have a process for ensuring that management leads by example on continuous learning?</li> </ul>			
<p>Are all members of the organization aware of and trained to handle any risks peculiar to the geographic areas in which they are working? Examples of risk-heightening areas include:</p> <ul style="list-style-type: none"> <li>• disaster areas,</li> <li>• polluted areas,</li> <li>• areas prone to crime and violence, and</li> <li>• natural areas with risk-creating ecosystems</li> </ul>			
Are all members of the organization aware of the extent to which the organization, its members, and local, national and regional law enforcement may be able to view their electronic or handwritten communications?			
Have all members of the organization been instructed on communication procedures appropriate to the locality or country in which the organization is operating?			

## The Sarbanes-Oxley Act

The Sarbanes-Oxley Act of 2002 was enacted in response to corporate accounting scandals and primarily regulates the auditing practices of publicly-traded companies. However, two particular provisions of Sarbanes-Oxley are applicable to private companies and non-profit organizations as well: the Whistleblower provision and the Document Retention provision. The rest of the Sarbanes-Oxley provisions, such as those governing audit committees and financial statements, can be voluntarily adopted by social entrepreneurs as “best practices.”<sup>49</sup>

Sarbanes-Oxley	Yes	No	N/A
Has the organization developed and adopted a whistleblower policy that addresses employee complaints and prevents retaliation in accordance with the Sarbanes-Oxley Act? <sup>50</sup>			
Has the organization developed and adopted a document retention and destruction policy that aims to prevent the destruction of documents to be used in an official proceeding, in accordance with the Sarbanes-Oxley Act?			

## Green Business

Many social businesses are certified green businesses, which either manufacture or sell organic or eco-friendly products. Below are a few considerations for such businesses.

Green Business	Yes	No	N/A
Do you have a certification from an independent, third-party?			
Do you include an “ecolabel” on your product’s label and other marketing materials?			
Have you considered best practices for protecting your social mission consistent with the organization’s legal mandate?			

## MANAGING THE ATTORNEY-CLIENT RELATIONSHIP

As this checklist demonstrates, every social entrepreneur is likely to encounter legal questions at some point. Lawyers can help social entrepreneurs navigate complex legal landscapes, solve legal and business problems, protect entrepreneurs’ rights, and enhance entrepreneurs’ effectiveness as agents of social change. Lawyers owe certain duties to their clients, and clients, in turn, can take certain steps to make the lawyer-client relationship more productive. When consulting or hiring an attorney, it is important to keep the following items in mind.

Managing the Relationship with Your Lawyer <sup>51</sup>	Yes	No	N/A
Do you have in-house legal counsel or outside counsel whom you regularly consult about legal questions and compliance obligations?			
Do you have a written agreement with your attorney regarding the terms of the relationship?			
Does your attorney have the specialization necessary to address legal issues unique to your organization?			
Do you know the fee structure that your lawyer charges, and is it memorialized in a written fee arrangement? Lawyers usually charge for their services (1) hourly, (2) on a flat fee basis, or (3) on a contingency basis.			

Managing the Relationship with Your Lawyer <sup>51</sup>	Yes	No	N/A
<p>Did your attorney charge a retainer fee?</p> <ul style="list-style-type: none"> <li>• Retainer fees must be kept in a trust account until enough work is done to consider the money earned. You should receive regular written billing statements showing how the retainer amount has been earned over time.</li> </ul>			
<p>Does your lawyer carry professional liability insurance (commonly known as malpractice insurance)?</p>			
<p>Do you know what your lawyer's duties are to you, as part of the attorney-client relationship? These duties should be spelled out in a written representation agreement. Some of these duties include:</p> <ul style="list-style-type: none"> <li>• Using good judgment, diligence, and competence to represent you</li> <li>• Carrying out your lawful wishes</li> <li>• Keeping the information you provide about your matter confidential</li> <li>• Charging a reasonable fee</li> <li>• Protecting your funds</li> <li>• Providing updates about significant progress in your matter</li> <li>• Refraining from discrimination</li> </ul>			
<p>Do you practice the following in managing your relationship with the lawyer:</p> <ul style="list-style-type: none"> <li>• Be truthful</li> <li>• Cooperate</li> <li>• Communicate clearly and regularly</li> <li>• Attend scheduled meetings</li> <li>• Pay your legal bills</li> <li>• Be respectful</li> </ul>			
<p>Have you taken the following steps to prevent problems from arising in the course of the attorney-client relationship:</p> <ul style="list-style-type: none"> <li>• Agree upon goals at the start of the relationship</li> <li>• Decide how and how often you will communicate</li> <li>• Keep records of all contact with your lawyer</li> <li>• Request records of the work performed on your behalf, including time spent and amount charged</li> <li>• Do not sign blank documents</li> <li>• Do not sign powers of attorney to cash checks</li> <li>• Avoid relationships with your lawyer that could cause conflicts of interest</li> </ul>			
<p>If you terminate your lawyer's services, do you:</p> <ul style="list-style-type: none"> <li>• Send a written letter and keep a copy for your records?</li> <li>• Request a refund of the unearned portion of your retainer fee?</li> </ul>			
<p>If your attorney behaves unethically or unprofessionally under your state's rules of professional conduct, do you know what your options are for reporting the misconduct and protecting your rights?</p> <ul style="list-style-type: none"> <li>• The highest state court of each state generally has procedures for handling professional misconduct by attorneys.<sup>52</sup></li> </ul>			



## ENDNOTES

---

<sup>1</sup>Prepared by the George Washington University Law School Small Business and Community Economic Development Clinic in 2017-18 in partnership with Ashoka—Innovators for the Public.

<sup>2</sup>To learn more about B Corp certification, visit: <https://www.bcorporation.net/what-are-b-corps>. Additional certifications can be found by visiting the U.S. Small Business Administration's website here <https://certify.sba.gov>.

<sup>3</sup>For an example, see J. Haskell Murray, *Corporate Forms of Social Enterprise: Comparing the State Statutes*, <https://www.law.umich.edu/clinical/internationaltransactionclinic/Documents/May%202011%20Conference%20Docs/Corporate%20Forms%20of%20Social%20Enterprise.pdf> (last visited Oct. 14, 2017) (explaining that, in New Hampshire, “the secretary of state shall administratively dissolve the social enterprise in accordance with state procedures” for noncompliance with social enterprise obligations).

<sup>4</sup>For more information, see *DC Doing Business Guide*, WDCEP, <https://wdcep.com/reports/doing-business-guide/> (last visited Mar. 3, 2018).

<sup>5</sup>For more information, see *Do You Need a New EIN?*, IRS.gov (Sep. 25, 2017), <https://www.irs.gov/businesses/small-businesses-self-employed/do-you-need-a-new-ein>.

<sup>6</sup>For a helpful resource on IRS compliance for nonprofits, see IRS, *Compliance Guide for 501(c)(3) public charities*, at 21, available at: <https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>

<sup>7</sup>See *Orange County Agricultural Soc’y, Inc. v. Comm’r*, 893 F.2d 647 (2d Cir. 1990), *aff’g* 55 T.C.M. 1602 (1988).

<sup>8</sup>For a helpful resource on Form 990 compliance, see American Council on Education, *Checklist for Form 990 Compliance* (2008), available at <https://www.councilofnonprofits.org/sites/default/files/documents/checklist%20from%20American%20Council%20on%20Education.doc.pdf>

<sup>9</sup>For a helpful resource on record-keeping best practices, see NEO Law Group, *Nonprofit Corporation Legal Audit*, available at: <http://www.nonprofitlawblog.com/nonprofit-corporation-legal-audit>

<sup>10</sup>To learn more about EIN numbers or get an EIN number from the IRS, visit: <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers>

<sup>11</sup>For a helpful resource on state compliance, see National Council of Nonprofits, *State Filing Requirements for Nonprofits*, available at: <https://www.councilofnonprofits.org/tools-resources/state-filing-requirements-nonprofits>

<sup>12</sup>For a list of links relevant to nonprofit compliance in each state compiled by the IRS, visit: <https://www.irs.gov/charities-non-profits/state-links>

<sup>13</sup>For a helpful resource on charitable solicitation requirements, see National Council of Nonprofits, *Charitable Solicitation Registration*, <https://www.councilofnonprofits.org/tools-resources/charitable-solicitation-registration>.

<sup>14</sup>Employers pay either contributions (taxes) or reimbursements. Unemployment insurance payments (benefits) provide temporary financial assistance to unemployed workers who meet state law requirements. A reimbursing employer pays the amount the approximate amount UIA paid in quarterly benefits on wages paid to the worker to former workers who receiving unemployment benefits.

<sup>15</sup>Common limited liability entities include corporations, limited liability corporations (LLCs), limited partnerships (LPs), and limited liability partnerships (LLPs).

<sup>16</sup>For helpful resources on ethics, good governance, and conflicts of interest in nonprofits, consult the following:

- National Council of Nonprofits, *Ethics and Accountability for Nonprofits*, <https://www.councilofnonprofits.org/tools-resources/ethics-and-accountability-nonprofits>;
- National Council of Nonprofits, *Good Governance Policies for Nonprofits*, <https://www.councilofnonprofits.org/tools-resources/ethics-and-accountability-nonprofits>;
- National Council of Nonprofits, *Conflicts of Interest*, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>

<sup>17</sup>For more guidance on nonprofit financial management and control, see National Council of Nonprofits, *Financial Management*, <https://www.councilofnonprofits.org/tools-resources/financial-management>

<sup>18</sup>For guidance on how to establish a code of ethics or conduct an ethics audit at your nonprofit, see National Council of Nonprofits, *Code of Ethics for Nonprofits*, <https://www.councilofnonprofits.org/tools-resources/code-of-ethics-nonprofits>

<sup>19</sup> For guidance on how to establish an ethics review process, see National Council of Nonprofits, *Conducting an Ethics Audit at Your Nonprofit* (2011), <https://www.councilofnonprofits.org/sites/default/files/documents/Conducting%20an%20Ethics%20Audit%20at%20Your%20Nonprofit.pdf>

<sup>20</sup> For more information on nonprofit disclosure requirements, consult the following resources:

- National Council of Nonprofits, Public Disclosure Requirements for Nonprofits, <https://www.councilofnonprofits.org/tools-resources/public-disclosure-requirements-nonprofits>;
- National Council of Nonprofits, Financial Transparency, <https://www.councilofnonprofits.org/tools-resources/financial-transparency>

<sup>21</sup> For more information on board control processes, See National Council of Nonprofits, *Internal Controls for Nonprofits*, <https://www.councilofnonprofits.org/tools-resources/internal-controls-nonprofits>

<sup>22</sup> See CDFI Fund, <https://www.cdfifund.gov>.

<sup>23</sup> An endowment is “a fund that is made up of gifts and bequests that are subject to a requirement that the principal be maintained intact and invested to create a source of income for an organization. Donors may set up an endowment to fund a specific interest; and a nonprofit’s governing body may set up an endowment. In any case, an endowment requires that the principal remain intact in perpetuity, or for a defined period of time, or until sufficient assets have been accumulated to achieve a designated purpose.” See Joanne Fritz, *Endowment*, <http://nonprofit.about.com/od/glossary/g/endowment.htm>. (last visited Nov. 17, 2017).

<sup>24</sup> See The Association of Fundraising Professionals, *The Charleston Principles* (last visited, March 12, 2018), available at <http://www.afpnet.org/ResourceCenter/ArticleDetail.cfm?ItemNumber=3309>

<sup>25</sup> For more guidance on what kind of records to keep, visit <https://www.thebalance.com/documents-when-hiring-a-contract-worker-398608>.

<sup>26</sup> For more information on the different tests used to define independent contractor and the consequences of misclassification, visit <http://www.nfib.com/Portals/0/PDF/AllUsers/legal/guides/independent-contractors-guide-nfib.pdf>.

<sup>27</sup> For more information about unpaid internships under federal law, visit <https://www.dol.gov/whd/regs/compliance/whdfs71.htm>.

<sup>28</sup> For more information about volunteer stipends, visit <http://www.ecfa.org/Documents/InternsandOtherShortTermWorkers-JackStraus.pdf>.

<sup>29</sup> For helpful resources on contracting and contracting processes, see the following:

- Nonprofit Contracts: Best Practices, Negotiation Strategies, Practical Tips, and Common Pitfalls (2012), [http://www.venable.com/files/Publication/d56fa9a4-9fbc-4984-bd27-629d61699030/Preview/PublicationAttachment/b133c78c-13d1-49c3-b507-77013c4dd0d1/Handout\\_for\\_5-17-12.pdf](http://www.venable.com/files/Publication/d56fa9a4-9fbc-4984-bd27-629d61699030/Preview/PublicationAttachment/b133c78c-13d1-49c3-b507-77013c4dd0d1/Handout_for_5-17-12.pdf)
- Developing a Contracting Process Checklist, Practical Law Checklist 6-618-5872, <https://drive.google.com/open?id=14ABGcXhC-GhVJv-UHEtORCKhzzA6H8Fc>;
- Contract Management Overview, Practical Law Practice Note Overview 2-618-0697, <https://drive.google.com/open?id=IP99v8KNJ9mpIOwmn3Sn9JJuUASB5UTaC>

<sup>30</sup> Patents, trademarks, and copyrights are three types of intellectual property protection. They are different and serve different purposes. Patents protect inventions and improvements to existing inventions. Trademarks include any word, name, symbol, or device, or any combination used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others, and to indicate the source of the goods. Copyrights protect literary, artistic, and musical works. See *Copyrights, Patents, and Trademarks - General Information Trademark, Patent, or Copyright?*, UNITED STATES PATENT AND TRADEMARK OFFICE, <https://www.uspto.gov/trademarks-getting-started/trademark-basics/trademark-patent-or-copyright> (last visited Oct. 29, 2017).

- Please note that a service mark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. A service mark may be any word, name, symbol, device, or any combination, used, or intended for use, in commerce, to identify and distinguish the services of one provider from the services provided by others, and to indicate the source of the services. See *Difference Between a Trademark and a Service Mark*, ANSWERS.USA.Gov, [http://answers.usa.gov/system/selfservice.controller?CONFIGURATION=1000&PARTITION\\_ID=1&CMD=VIEW\\_ARTICLE&USERTYPE=1&LANGUAGE=en&COUNTRY=US&ARTICLE\\_ID=10045](http://answers.usa.gov/system/selfservice.controller?CONFIGURATION=1000&PARTITION_ID=1&CMD=VIEW_ARTICLE&USERTYPE=1&LANGUAGE=en&COUNTRY=US&ARTICLE_ID=10045) (last visited Nov. 29, 2017).

<sup>31</sup> This is a rapidly-developing area of the law that should be closely monitored by organizations with an internet presence. For more information on current best practices and disclosure requirements, see *Website Compliance Checklist*, PHIL NICOLOSI

LAW, P.C., <http://www.internetlegalattorney.com/website-compliance-checklist/> or *Privacy and Data Security Toolkit*, WESTLAW PRACTICAL LAW (maintained), <https://us.practicallaw.thomsonreuters.com/8-500-3810>.

<sup>32</sup>Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860 (codified as amended in scattered sections of 5, 17, 28, and 35 U.S.C.). The Digital Millennium Copyright Act (DMCA) offers website owners who comply with certain requirements protection against liability for content posted on their websites by third parties (e.g., user posts). DMCA also permits Copyright owners to demand removal of their copyrighted works by following certain procedures. For more information on DMCA compliance, see Gordon Reese & Scully Mansukhani, *DMCA Safe Harbor and Takedown Notice Checklist*, Lexology.com (last visited March 12, 2018), available at <https://www.lexology.com/library/detail.aspx?g=2fbfbf70-a133-4e90-8a50-fd7b41405bc5>

<sup>33</sup>For more information on risk management best practices, the following resources may be helpful:

- Enterprise Risk Management, Practical Law Article 8-501-5484 (2010);
- BNA Tax & Accounting Portfolio, William G. Shenkir & William S. Farish, *Enterprise Risk Management* (Accounting Policy and Practice Series);
- North Carolina State University Poole College of Management, Enterprise Risk Management Initiative, Risk Management Framework Articles, available at: <https://erm.ncsu.edu/library/categories/category/risk-management-frameworks>;
- Enterprise Risk Management Initiative, Risk Management (ERM) Basics Articles, available at: <https://erm.ncsu.edu/library/categories/category/risk-management-erm-basics>; Enterprise Risk Management Initiative, Risk Management Tools and Techniques Articles, available at: <https://erm.ncsu.edu/library/categories/category/risk-management-tools-and-techniques>.

<sup>34</sup>For more information about different types of insurance policies and how to purchase coverage, visit <https://fitsmallbusiness.com/business-insurance/> or <https://www.iii.org/publications/insuring-your-business-small-business-owners-guide-to-insurance/small-business-insurance-basics>.

<sup>35</sup>Jerold Oshinsky and Gheiza M. Dias, *Liability of Not-for-Profit Organizations and Insurance Coverage for Related Liability*, 4 INT'L CENTER FOR NOT-FOR-PROFIT LAW, Issue 2-3 (2002).

<sup>36</sup>For an example of a record retention schedule, see Sample Document Retention Schedule, ShredCorp, available at <http://www.shred-corp.com/guidelines.pdf>

<sup>37</sup>For model policies, guidance regarding specific aspects of record retention, and other relevant information on developing, adopting, and enforcing a record-retention policy, see National Council of Nonprofits, Document Retention Policies for Nonprofits, <https://www.councilofnonprofits.org/tools-resources/document-retention-policies-nonprofits>

<sup>38</sup>For example: “WHEREAS, the adoption of a document retention policy sets guidelines and facilitates directors’ fulfillment of the duty of care, establishes transparency and ensures compliance.”

<sup>39</sup>See *In re Caremark Intern. Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996).

<sup>40</sup>For more information on ADA compliance for small businesses, visit <https://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.pdf> and <https://www.eeoc.gov/eeoc/publications/adahandbook.cfm>.

<sup>41</sup>For more information on ADA compliance for non-profit organizations, visit <http://cct.org/wp-content/uploads/2015/08/2015ADAComplianceGuide.pdf>

<sup>42</sup>For more disaster preparation resources and planning guides, please visit the following resources:

- *Preparedness Planning for Your Business*, READY.GOV, <https://www.ready.gov/business>.
- *Small Business Disaster Planning Guide*, SCORE.ORG, <https://s3.amazonaws.com/mentoring.redesign/s3fs-public/Small%20Business%20Disaster%20Planning%20Guide-SCORE-BROTHER-Final.pdf>.
- *Prepare My Business*, <http://www.preparemybusiness.org>.
- American Red Cross, Get Started: Emergency Preparedness Checklist for Small Businesses, OSHA.GOV, [https://www.osha.gov/dte/grant\\_materials/fy07/sh-16618-07/sm\\_business\\_emergency\\_checklist.pdf](https://www.osha.gov/dte/grant_materials/fy07/sh-16618-07/sm_business_emergency_checklist.pdf).

<sup>43</sup>One notable disaster relief program is the U.S. Small Business Administration’s Disaster Loan Program. For more information, please visit <https://www.sba.gov/ptp/disaster>.

<sup>44</sup>The Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, et seq.) prohibits payments to foreign government officials for the purpose of obtaining or retaining business. For more information, please visit <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>.

<sup>45</sup> Kauffmann Entrepreneurs, Expanding Abroad III: Legal Issues, available at <https://www.entrepreneurship.org/articles/2001/07/expanding-abroad-iii-legal-issues>

<sup>46</sup> In developing effective staff trainings, the reader may find the following resources helpful:

- TrainingToday, Ensure Your Training is Effective, <http://trainingtoday.blr.com/article/ensure-your-training-is-effective/how-to-conduct-an-effective-training-session/>
- TrainingToday, How to Conduct an Effective Training Session, <http://trainingtoday.blr.com/article/how-to-prepare-for-training/>
- TrainingToday, How to Prepare for Training, <http://trainingtoday.blr.com/article/leadership-skills-for-every-type-of-boss/>
- TrainingToday, Leadership Skills for Every Type of Boss, <http://trainingtoday.blr.com/article/most-effective-training-techniques/>
- TrainingToday, The Most Effective Training Techniques, <http://trainingtoday.blr.com/article/most-effective-training-techniques/>

<sup>47</sup> For an extensive and practical guide to organizing trainings on these three subjects, see TrainingToday, Developing a Training Plan for Legal Compliance, available at <http://trainingtoday.blr.com/article/developing-a-training-plan-for-legal-compliance/>

<sup>48</sup> For extensive guidance on federal training requirements, consult the following:

- TrainingToday, Federal Training Requirements, available at <http://trainingtoday.blr.com/article/developing-a-training-plan-for-legal-compliance/>;
- TrainingToday, OSHA Training requirements, available at <http://trainingtoday.blr.com/article/osha-training-requirements/>

<sup>49</sup> For more information about both the mandatory provisions and the voluntary best practices, please visit <https://trust.guidestar.org/the-sarbanes-oxley-act-and-implications-for-nonprofit-organizations>.

<sup>50</sup> For more information on nonprofit compliance requirements under the Sarbanes-Oxley Act, consult the following:

- BoardSource, *The Sarbanes-Oxley Act and Implications for Nonprofit Organizations*, GUIDESTAR (Mar. 2003), <https://trust.guidestar.org/the-sarbanes-oxley-act-and-implications-for-nonprofit-organizations>;
- *Nonprofits and Sarbanes-Oxley*, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/groups/probono\\_public\\_service/resources/program\\_management/nonprofits\\_sarbanes\\_oxley.html](https://www.americanbar.org/groups/probono_public_service/resources/program_management/nonprofits_sarbanes_oxley.html).

<sup>51</sup> For more information on managing the attorney-client relationship, visit <https://www.sconet.state.oh.us/publications/consumersguide.pdf>.

<sup>52</sup> The Supreme Court is often the state's highest court, although the name of the state's highest court differs by state.