

**NONPROFIT MANAGEMENT IN WASHINGTON:
FREQUENTLY ASKED QUESTIONS**

1. What needs to be “public”:

a. Do board meetings need to be open to the public?

Washington State law does not require that meetings of a nonprofit corporation’s members or board of directors be open to the public. See [RCW 24.03.075](#); [RCW 24.03.120](#).

b. Are board minutes open to the public?

Washington State law does not require the board minutes of nonprofit corporations to be open to the public. See [RCW 24.03.135](#).

Nonprofit corporations must keep records of their board minutes on site, along with other records such as articles, bylaws, accounting and financial statements, and lists of members, board members and officers. These records must be kept reasonably available for inspection by any legal member (see note, below) of more than three months standing, or by a representative of more than five percent of all legal members. See [RCW 24.03.135](#). Finally, board minutes are frequently requested in government audits and investigations. Failure to maintain them may have negative consequences in those situations.

Note: In many nonprofits, there is an important distinction between subscribers or donors who may be informally called “members,” and *legal* members to whom the articles of incorporation or bylaws grant specific rights and responsibilities (such as electing the board or inspecting records). See [RCW 24.03.065](#).

c. Are membership lists public?

Washington State law does not require that a nonprofit corporation’s membership lists be open to the public. See [RCW 24.03.135](#). Such lists must be kept on site and reasonably available for inspection by legal members of more than three months standing, or by any representative of more than five percent of all members. See [RCW 24.03.135](#).

Note: In some modern nonprofits, there is an important distinction between subscribers or donors that may be informally called “members,” and *legal* members to whom the articles of incorporation or bylaws grant specific rights and responsibilities (such as electing the board or inspecting records). See [RCW 24.03.065](#).

2. Conflicts of interest:

a. What is a conflict of interest?

A conflict of interest exists when a board member has a material personal interest in an actual or proposed transaction (or similar other matter) that involves the nonprofit.

There are direct conflicts of interest where one or more board members can receive a monetary or other tangible benefit.

There are also indirect conflicts of interest where a board member has an investment or employment relationship with an involved person/organization, or has a personal or familial relationship with a person who is involved or stands to benefit from the transaction.

Because qualified nonprofit board members are often actively engaged across the business, civic and philanthropic community, nonprofits can expect to occasionally encounter situations involving a board member(s)'s outside interests or activities. These conflicts are not necessarily a problem, but the board should treat them with candor and care. This ensures that directors comply with their legal duty to act "in the best interests of the corporation." [RCW 24.03.127](#).

b. One of my board members is the Executive Director of another nonprofit, and is applying for the same grant as we are. Is that a conflict of interest? What do we do if it is a conflict?

This situation may present a conflict of interest because the board member has a personal employment relationship with an outside organization that has a substantial interest in the grant process.

Nonprofit boards should formally adopt a thorough conflict of interest policy to manage such situations carefully and consistently. In this instance, a typical policy (like Wayfind's sample policy, [found here](#)) might indicate that the conflicted board member should leave the room during any discussion or votes related to the particular grant.

c. One of my board members owns a building and we are interested in renting space in the building. Can we do this?

A board should contemplate such a conflicted transaction with extreme care -- but moving forward is not inherently a violation of law for most nonprofits.

For example, this board member might wish to offer the nonprofit a charitable rental discount, which would allow the nonprofit to reduce its operating cost and divert funds from overhead expenses to carrying out its mission. If such a transaction was carelessly structured, it could have negative legal ramifications for the board member or even the tax-exempt status of the nonprofit corporation itself. Accordingly, the board should follow the procedures in its

conflict of interest policy (like Wayfind’s sample policy, [found here](#)), and probably seek the assistance of a lawyer.

If the nonprofit is considered a private foundation for federal tax purposes, a transaction like this one would very likely be considered a prohibited act of self-dealing. *See* Exempt Organizations Division, [Acts of self-dealing by private foundation](#), I.R.S. (2016).

3. Board meetings:

a. Can we hold meetings in writing and over email?

Although board members may discuss a nonprofit’s business in writing or by email, they may only hold official meetings in person or by using technology that allows all participants to hear each other at the same time. Official meetings may not be held over email. The law is unclear about whether meetings may be held using a real-time online medium like a chat room. Any action the board takes in such a meeting is of uncertain validity. *See* [RCW 24.03.120](#).

b. Can we have meetings via conference call?

Yes. Washington’s Nonprofit Corporations Act permits board members and any committees of board members to hold a meeting by conference call as long as all participants can hear each other at the same time. *See* [RCW 24.03.120](#). Participants may also dial into a meeting held in person.

c. Can we have virtual meetings over Skype?

Washington’s Nonprofit Corporations Act does not explicitly allow for online meetings, but it permits meetings using “communications equipment by means of which all persons participating can hear each other at the same time.” Board meetings conducted using Skype or other videoconferencing software are allowed, assuming all members can hear each other and participate. The law does not speak clearly to the permissibility of meetings by chat room. *See* [RCW 24.03.120](#)

4. Board composition and authority:

a. Can our board have committees?

If a nonprofit’s articles of incorporation and bylaws allow it to have committees, its board may vote to create committees made up of board members, and delegate management authority to those committees. For example, Wayfind’s [sample bylaws](#) allow board resolutions creating

board temporary or permanent board committees for any legal managerial purpose (like fundraising). The board may not delegate to a smaller committee certain fundamental management powers like its powers to merge or dissolve the organization, its power to elect directors and officers, or its power to elect, appoint or remove committee members. *See generally* [Washington Nonprofit Handbook](#) page 20. The board cannot delegate authority to any committee that has non-directors as voting members.

b. What type of committees can we have?

A nonprofit board may create committees of directors to exercise any of the overall board's day-to-day management authorities, subject only to any limits in its articles of incorporation and bylaws. *See* [RCW 24.03.115](#).

Generally, boards create “standing” (permanent) committees and “special” (*ad hoc*, limited purpose) committees. Common standing committees include executive committees, governance/nominating committees, audit or finance committees, compensation committees, investment committees and compliance committees. Special committees are generally formed with more time-limited purposes such as negotiating or planning a specific event, or preparing a particular document or recommendation for the larger board.

c. What is the difference between a board committee and an advisory committee?

Advisory (or “auxiliary”) committees, councils, or other bodies often include non-board members, while board committees may only include members of the board. Participants in an advisory body may be former board members, donors, or other individuals who wish to support the nonprofit's mission or assist its current board of directors. A board of directors may not delegate any authority to an advisory committee.

d. What is the difference between a board of directors and an advisory board? Can we have both?

As discussed in question 3(c) above, advisory bodies (whether branded as boards, committees or councils) work to support a nonprofit's mission or its board members, but do not have any of the board's management authority. Advisory bodies may work closely with the board of directors, or more independently. A nonprofit may maintain one or more advisory boards in addition to its board of directors. *See generally* Simone Joyaux, [Advisory Boards and Other Bodies: Yes or No and Why or Why Not?](#), Nonprofit Quarterly (Mar. 29, 2013).

5. Voting:

a. What is a quorum?

A quorum of directors is the number that must be present (whether in person or by conference call) for the board to conduct official business. This number is usually a majority of the board. In some cases, the nonprofit's bylaws, or articles of incorporation may specify a different quorum. See [RCW 24.03.110](#). Similarly, a quorum of legal members is the number (or percentage) of members who must be present in person or by proxy in order for the members to conduct business. See [RCW 24.03.090](#).

b. Does a quorum include or is it affected by abstaining board members?

As long as a director is present in person or by phone, that director is counted toward a quorum. Any director's choice to abstain from a specific vote does not affect the quorum. See [RCW 24.03.110](#), [24.03.113](#).

c. Can a board member vote by proxy?

Directors may not vote by proxy. They must be present to vote either in person or by conference call. See [RCW 24.03.120](#); [Washington Nonprofit Handbook](#) page 28. Legal members may vote by proxy if the bylaws and articles allow voting by proxy. See [RCW 24.03.085](#).

d. Can you vote by email?

Directors may only vote at meetings, which may not be held online. See question 3(c) above. Directors may conduct business without meeting to vote, so long as the board members *unanimously* consent in writing to the specific action(s) to be taken. See [RCW 24.03.465](#). Written consent of every single director is required to vote this way. Board members may submit consent by email. See [RCW 24.03.465](#).

6. Board Members:

a. Can we have a floating board member?

Nonprofits may have floating directors, who are assigned to support particular committees or managerial functions on an as-needed basis. Washington law includes no requirement that all directors (or any directors) must be permanently assigned to any particular committee, and specifically allows nonprofit corporations to divide directors into different classes or terms. See [RCW 24.03.100](#).

b. What is the minimum number of board members?

In Washington, nonprofit corporations must have at least one director. *See* [RCW 24.03.100](#). Many other states require a minimum of three directors. While federal law does not set a minimum number of directors, the I.R.S. has in recent years occasionally denied tax-exempt status to organizations lacking what the I.R.S. considered good governance practices. This includes several cases where the I.R.S. noted small board sizes and boards that were composed primarily of family members. *See, e.g.*, Priv. Ltr. Ruls., [200845053](#), [200828029](#), [200830028](#). To avoid these issues, a nonprofit should be governed by several nonrelated directors. For example, the [Better Business Bureau's Standards for Charity Accountability](#) recommends a minimum of five voting members, and a 2004 U.S. Senate Finance Committee [discussion draft on tax-exempt organizations](#) recommended that boards have no fewer than three members.

c. Is there a maximum number of board members?

Neither Washington nor federal law specifies a maximum number of board members. In practice, large boards tend to be unwieldy and difficult to manage, and to have “free riders” who are not actively engaged and may not be fulfilling the legal duties of directors. A 2004 U.S. Senate Finance Committee [discussion draft on tax-exempt organizations](#) recommended that boards include no more than fifteen directors. Alternately, the I.R.S. has noted that organizations with large governing boards may wish to establish a clear chain of command under the leadership of an executive committee. *See* Exempt Organizations Division, [Governance and Related Topics – 501\(c\)\(3\) Organizations](#), I.R.S. (2008).

d. Can somebody under the age of 18 be a board member and enter into contracts for the organization?

Washington law prohibits young people under the age of 18 from serving as an incorporator of a new nonprofit. *See* [RCW 24.03.020](#). Washington law does not otherwise prohibit minors from serving on boards or signing contracts for a nonprofit, however, board service by minors is not advisable for the following reasons:

Minors can enter into a contract, but the contract is voidable (and can be annulled or set aside). Thus minors should not be officers of a nonprofit corporation because they cannot effectively enter into contracts for the organization. A nonprofit’s funders, grantees, and collaborators probably will not want to rely on a minor’s signing authority.

It is also unclear whether the nonprofit itself can hold a minor to the legal duties of loyalty and care required of directors. Finally, the nonprofit’s insurance policy may not cover the actions of minor directors.

7. Officers:

a. What are the required officers?

Washington nonprofits must have at least four officers: a president, at least one vice president, a secretary and a treasurer. The corporation must report the identity of each officer to the secretary of state on each annual report. *See* [RCW 24.03.125](#); [24.03.395](#). If the nonprofit corporation's articles or bylaws allow, a single person may hold one or more of these offices, except that the same person cannot hold the offices of president and secretary. *See* [RCW 24.03.125](#).

b. Do officers need to be members of the board of directors?

The officers of a nonprofit organization do not need to be members of the board. *See* [RCW 24.03.125](#). In practice, many organizations have directors serve as the corporate officers, while others (usually larger organizations) have senior employees, who report to the board of directors, serve as the corporate officers.

8. Filing requirements:

a. What do we need to do to get an EIN?

An Employer Identification Number, or EIN, is a unique nine-digit number that identifies a corporate entity to the I.R.S., much like an individual's Social Security number. A nonprofit can obtain an EIN by filing I.R.S. [Form SS-4](#) online, or by mail or fax.

Organizations will need an EIN in order to apply for recognition of tax exemption, file any information returns, or otherwise correspond with the I.R.S. Most financial institutions will also require an organization to provide its EIN to open a bank or brokerage account.

b. Which 990 do we need to file?

Most nonprofits are required to fill out one of the I.R.S. Form 990 series returns every year. Those with gross receipts totaling \$50,000 or less may fill out the shortest, "e-postcard" Form 990-N. Those with gross receipts totaling less than \$200,000 and assets totaling less than \$500,000 may file a short-form 990-EZ return. Finally, those with gross receipts totaling \$200,000 or more, or assets totaling \$500,000 or more, must file a full Form 990.

All private foundations (including those that have not yet applied for tax-exempt status but expect to be classified as private foundations) must file Form 990-PF.

In addition, any tax-exempt organizations with unrelated business income grossing more than \$1,000 must file form 990-T. Unrelated business includes any trade or business that is unrelated to the organization's exempt purpose and regularly carried on. If you have questions about whether an activity is unrelated business, contact a lawyer specializing in nonprofits.

Some specialized tax-exempt organizations, like certain employee benefit trusts and religious or apostolic organizations, must fill out different forms that are outside the scope of this FAQ.

c. How do we find out whether our nonprofit is tax-exempt or has its 501(c)(3) status?

The I.R.S. maintains an [Exempt Organizations Select Check](#) webpage that allows users to search for exempt organizations and check their federal tax status. Washington State also maintains a [Charities and Commercial Fundraiser Search](#) function that allows users to determine whether an organization has been authorized to solicit charitable donations in Washington (but this does not always mean the organization is tax-exempt!).

d. We are an out-of-state nonprofit with an independent contractor in Washington, do we need to register as a foreign nonprofit?

Foreign entities, including nonprofits, as a general rule may not conduct affairs (or “do business”) in Washington unless registered with the Secretary of State. An organization may undertake some limited activities in the state without necessarily “doing business.” Selling products through an independent contractor is one such activity. See [RCW 24.03.305](#) (citing [RCW 23.95.505](#), [23.95.520](#)).

If a nonprofit corporation is found to be doing business without registering, it will be liable to the state for any overdue registration fees and related penalties. See [RCW 24.03.305](#).

e. We have not been filing annual reports with the state and our nonprofit was administratively dissolved, what do we do?

Nonprofits that have been administratively dissolved may file a [request for reinstatement](#) with the Washington Secretary of State, at a current cost of \$35 plus any delinquent fees. The nonprofit must apply for reinstatement within five years of the dissolution effective date. See [RCW 24.03.302](#) and [RCW 23.95.615](#)).

f. We are collecting donations from the public, do we need to register as a charity?

All nonprofits that solicit charitable donations with the public must register with the Secretary of State, except for those that (1) raise less than \$50,000 per year; (2) have no paid staff; **and** (3) do not employ any outside fundraisers. *See* [RCW 19.09.081](#). There is an optional registration form for nonprofits that are not required to register under the Charitable Solicitations Act. *See* Charities Program, "[Online Registration](#)."

g. What happens if we haven't been filing a Form 990 with the I.R.S.?

If a nonprofit (required to file annual returns with the I.R.S.) fails to file a correct and complete form, it is subject to a penalty of \$20 for each *day* that the failure continues, up to \$10,000 or 5% of the organization's annual gross receipts, whichever is smaller. *See* [I.R.C. 6652\(c\)\(1\)\(A\)](#).

For nonprofits with annual gross receipts greater than \$1,000,000, these penalties are increased to \$100 per day, up to \$50,000. *See* [I.R.C. 6652\(c\)\(1\)\(A\)](#).

If your organization is in a situation where multiple returns are overdue or a return is years overdue, contact a lawyer specializing in nonprofits.

h. We were automatically revoked by the I.R.S., what do we do?

A nonprofit corporation with a revoked tax-exempt status may seek to be reinstated by filing a new application for recognition of tax exemption (Form 1023), and paying the fee. Depending on the size of the nonprofit, the length of time that has passed, and the circumstances of the lapse, the nonprofit may be eligible for a somewhat streamlined reinstatement procedure. *See* Exempt Organizations Division, [Automatic Revocation - How to Have Your Tax-Exempt Status Retroactively Reinstated](#), I.R.S. (2016) (describing [Rev. Proc. 2014-11](#)).

9. Bank accounts:

a. How do we open a bank account?

To open a bank account, a nonprofit's board must select a bank and authorize one or more managers to open and control the account. The board may authorize these activities through a specific and narrow resolution that applies only to a particular bank account, or through a broader resolution that gives more general financial control to an officer or officers. Often, the bank will have a form resolution that the board can use. *See* [Washington Nonprofit Handbook](#) page 23.

Under federal banking rules designed to deter money laundering and funding of terrorist activities, nonprofits or other corporate entities must provide a range of identifying information, possibly including documentation of the source of funds and the use to which the account will be

put. Such information will include the nonprofit's Employer Identification Number (EIN), the board resolution authorizing the account, the nonprofit's articles of incorporation, and possibly information identifying board members, officers and shareholders. *See generally* [31 CFR 1020.220](#). Obtaining an EIN is discussed in question 7(a), above.

b. Can we open a bank account if we are not incorporated as a nonprofit?

If your organization is legally incorporated as an LLC, business corporation or other state-recognized entity, you will be able to open a bank account using the methods outlined in 9(a), above.

Most banks probably will not allow an unincorporated organization to open a checking account without some form of documented government recognition, such as a business license or certificate of organization. While some banks may allow an unincorporated entity to create an account after providing only an internal organizing document like articles of association, all banks will require an EIN before opening an account for any group. *See* [31 CFR 1020.220](#).

Note. Using an individual's account to hold organizational funds can cause serious problems even with scrupulous accounting. Use of a personal account can raise (valid) doubts by internal or external supporters of an organization, and may complicate the accountholder's tax situation. *See* [Washington Nonprofit Handbook](#) page 1.

c. We are a local affiliate of a national organization; can we open a bank account in Washington?

A national nonprofit's local affiliate may be legally structured in one of several ways. A local affiliate may be (1) simply a national organization's local office, having no separate legal existence of its own; (2) a separate legal entity which the national organization controls through its governance structure or an operating agreement; or (3) a contractual affiliate, whose relationship with the national organization is governed by contract, whether or not the two are separately incorporated.

Either way, an organization cannot open a bank account without providing the bank with articles of incorporation or organization that have been filed with the state, and a resolution from the members or board giving the particular individual(s) the power to transact financial business for the company (in general or just to open and control a bank account). If the local affiliate is not a separate legal entity, then the national entity must be registered to do business in Washington. *See* 9(a)-(b), above.

10. Fiscal sponsorships:

a. What is a fiscal sponsorship?

Fiscal sponsorships are arrangements that allow donors to receive tax deductions for particular projects that may never themselves qualify for a tax exemption. To create a fiscal sponsorship, the sponsoring nonprofit organization (the “fiscal sponsor”) agrees to receive and disburse project funds on behalf of the non-tax exempt entity or project. The donor conveys the contribution to the fiscal sponsor, which reports the contribution as revenue to the I.R.S. The fiscal sponsor disburses those funds either directly to the sponsored project or entity or to others on its behalf. *See generally* [Washington Nonprofit Handbook](#) pages 2-3, 145-147.

The fiscal sponsor is legally and financially responsible for any sponsored project, including to ensure that the sponsored project is consistent with the fiscal sponsor’s tax-exempt status. The fiscal sponsor must (1) actively determine that the sponsored project will further the fiscal sponsor’s charitable purpose; (2) keep records documenting that the funds were actually used for such purposes; and (3) retain “complete control and discretion” over the use of the funds. The fiscal sponsor is effectively granting out the donor’s donation subject to particular conditions, which the nonprofit sponsor and the organizers of the sponsored project should agree to in writing. *See* [Washington Nonprofit Handbook](#) pages 145-147 (citing [I.R.S. Rev. Rul. 68-489](#), 1969-2 C.B. 210); *see also* Erin Bradrick, [Fiscal Sponsorship: What You Should Know and Why You Should Know It](#), Business Law Today, American Bar Association (2015).

b. What is the difference between a fiscal sponsorship and fiscal agent?

A fiscal agency is an arrangement that differs from a fiscal sponsorship in one critical legal respect. In a fiscal agency arrangement, the established tax-exempt organization does *not* exercise control over the final use of the funds, and acts without discretion on behalf of the actual recipient project. In such arrangements, because the exempt organization acting as fiscal agent does not exercise control and discretion over the funds, the original donor may not rely on the fiscal agent’s tax-exempt status to claim a deduction in the amount of the contribution. *See generally* Jane C. Nober, [Fiscal Agency versus Fiscal Sponsorship](#), Council on Foundations (2010).

Not all fiscal agency relationships are inherently problematic, however. A fiscal agency relationship also exists when a small nonprofit (principal) wishes to contract with a larger one (agent) for administrative support.

Final Note

Please note that this document is for reference purposes only and is not legal advice. If your organization needs legal advice, we can help provide you with an attorney.