

Exempt Organizations Corporate Legal Services

Corporate Governance

In the age of Sarbanes-Oxley, the governance practices even of nonprofit organizations may be subject to significant scrutiny. And today “good governance” often means more than meeting legal minimums. Caplin & Drysdale’s attorneys have experience not only in advising clients on legal requirements relating to corporate governance, but also in helping organizations meet current standards of best practice. We are also thought leaders in nonprofit corporate governance through our involvement with the American Bar Association’s Nonprofit Organizations and Exempt Organizations Committees, the Panel on the Nonprofit Sector, and other fora. We can help your organization meet the high expectations of its stakeholders by ensuring that it has appropriate structures, practices, policies, and procedures. We assist both organizations reeling from recent crises of governance and those seeking to prevent problems before they arise.

We regularly advise clients on matters including:

- creating effective and appropriate structures for board operations;
- establishing and implementing corporate policies relating to conflicts of interest, whistleblowers, investments, and document retention;
- establishing advisory boards and other bodies that increase an organization’s access to knowledge and resources;
- determining the responsibilities of trustees, directors, and officers under state-law fiduciary standards; and
- designing alternative governance structures using members, designated bodies, committees, and other mechanisms.

Structuring Enterprises

Nonprofit organizations face more choices than ever before in structuring or reorganizing their operations. Whether you are interested in establishing a new charity exempt from tax under section 501(c)(3), using “disregarded entities” like LLCs to further your charity’s mission, exploring the possibilities of public benefit corporations or L3Cs, or adapting your organization’s existing structure to new circumstances, the attorneys at Caplin & Drysdale can help you navigate complex tax and corporate laws to identify a solution that will help you accomplish your organization’s mission.

A variety of considerations come into play in determining what structure is most appropriate for an organization. Our attorneys can help you identify pertinent legal issues relating to your organization’s sources of funding, activities, and goals that will help you establish a strong foundation for its future.

Our services include:

- advising on questions relating to choice of entity and jurisdiction;
- drafting organizational and governing documents (including articles of incorporation, bylaws, and director and membership agreements);
- identifying appropriate categories of tax exemption and obtaining tax-exempt status;
- advising on the corporate and tax aspects of mergers, consolidations, and reorganizations and drafting related corporate documents; and
- winding-up and dissolving sun-setting organizations.

Corporate Transactions

Today charities and other nonprofit organizations are involved in more-complicated transactions than ever before. From traditional grants to innovative program-related investments, from cost-sharing and affiliation agreements with related organizations to government contracts and grants, Caplin & Drysdale's attorneys have great experience with the range of transactions that nonprofit organizations engage in. That experience extends especially to negotiating, structuring, and documenting international alliances and collaboration between nonprofit organizations and to creating and memorializing sponsorship, licensing, and other agreements with for-profit partners. Given the breadth of our clients' varied work and corresponding needs, we are inventing and drafting new kinds of agreements all the time.

Joint Ventures and Social Enterprise Activities

Exempt organizations are finding that partnerships with businesses or other nonprofits can bring them revenue or functional capacity they never had before. We have worked with both nonprofit and for-profit clients to arrange joint ventures and ensure they do not jeopardize the nonprofit partner's tax-exempt status or produce other adverse tax consequences for the nonprofit, like unrelated business taxable income. We have also helped nonprofit and for-profit clients create social enterprises of various kinds, using new forms of enterprise such as the benefit corporation and the L3C or complex structures involving a combination of for-profit and nonprofit organizations. An increasing number of these joint ventures and social enterprises use the Internet for mission-related activities, lobbying, fundraising, or commercial exploitation of intellectual property. We have anticipated these developments and are working with our clients to shape government policy to accommodate Internet-based ventures and other activities.

Intellectual Property Law

Tax-exempt organizations often own and develop valuable intellectual property that they use in fulfilling their exempt purposes, including databases, publications, inventions, websites, trademarks, logos, and trade names. We counsel nonprofit and related for-profit entities on the protection, enforcement, and

management of intellectual property rights, with emphasis on trademark, copyright, licensing, and website and domain-name issues. We advise on management of intellectual property portfolios to maximize the protection and value of these assets to the client. We also help clients with:

- negotiating and drafting trademark assignment and licensing agreements, and trademark dispute settlement agreements, including consent-to-use and co-existence agreements
- analyzing conflicting marks and the federal registration and maintenance of marks with the U.S. Patent and Trademark Office;
- developing strategies for enforcement of marks and infringement claims, including preparing cease-and-desist letters and actions in the PTO;
- advising clients on copyright rights, work-for-hire and reverse work-for-hire issues, mechanisms for copyright protection, and registration of copyright rights with the U.S. Copyright Office; and
- negotiating and drafting copyright assignment and licensing agreements, as well as software- and website-development agreements.

Types of Clients We Represent

- Public Charities
- Educational Organizations
- Environmental Organizations
- Churches And Religious Organizations
- Universities
- Research Organizations
- Museums
- Disaster Relief Organizations
- Healthcare Organizations
- Grantmaking Foundations
- Family Foundations
- Company Foundations
- Operating Foundations

- Social Welfare Organizations
- Political Organizations and Committees
- Trade Associations
- Labor Unions
- Fraternal Organizations
- Foreign Charities and Nonprofits
- Social Enterprises

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