

Regulatory Compliance and Filing Requirements

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Introduction

Ensuring that your nonprofit complies with all applicable federal and state laws and regulations and makes each of the required regulatory filings is one of the board's most fundamental obligations. In order to keep abreast of all compliance and filing requirements, the board should be active in requesting updates on legal issues facing the organization, and regularly seek out educational opportunities to stay current on legal compliance matters.

It's important to note that in organizations with executive leadership and larger staff, board members should not generally be involved in the day-to-day management of the organization. Instead, the board should provide active, high-level oversight of senior management. In turn, executive staff and other management staff should be responsible for performing or delegating most of the tasks described in this module. In addition, policies should be put in place detailing the type and frequency of information provided to the board.

The following examples are common legal and regulatory requirements that every board should be aware of, but they may not constitute a comprehensive list:

State Compliance, Filings and Reports

Periodic Reports. All nonprofits that are organized as nonprofit corporations must file a periodic report with the Secretary of State's [Business Organizations Program](#). These reports are filed on an annual basis.

Updates to Corporate Information. The nonprofit needs to make sure that its registered agent and address, as well as its principal office address, are kept up to date. These can be updated easily on the Secretary of State's website.

Statement of Foreign Entity Authority. Foreign nonprofits (those organizations incorporated outside of Colorado) must file a Statement of Foreign Entity Authority with the Secretary of State.

Registering Your Charity in Colorado. Charitable organizations soliciting contributions in Colorado need to file a registration statement with the Secretary of State's [Charities Program](#), which must be renewed on an annual basis. Note that the Colorado Charitable Solicitations Act defines "charitable

organization” and the term “solicit” fairly broadly, so even non-501(c)(3) organizations or even for-profit organizations that are making charitable appeals can be subject to its requirements.

Multi-state Registration. Charitable organizations soliciting contributions on a regional or national basis may need to register in multiple states. Thirty-eight states plus the District of Columbia have a charity registration law. The National Association of State Charity Officials (NASCO) has a useful contact list on its [website](#) of states with charity regulators.

Charitable Gaming. If you wish to conduct bingo games or hold raffles in Colorado, you must have been in existence for at least five years, have a dues-paying membership and hold a license issued by the Secretary of State’s [Bingo/Raffle Program](#).

Lobbyist Registration and Campaign Activity If your organization pays you to lobby, you need to register as a lobbyist with the Colorado Secretary of State’s Office. Volunteer lobbyists who receive no more than reimbursement of expenses must register with the clerks of the Colorado House of Representatives and Senate. In addition, under federal law, lobbying activity cannot be more than an insubstantial part of a nonprofit’s overall activities and partisan campaign activities are prohibited for all 501(c)(3) organizations.

Trademarks and Trade Names. At the state level, trademarks and trade names can be filed on the Secretary of State’s [website](#). You can also find information about registering trademarks and copyrights on the US Patent and Trademark Office website (www.uspto.gov).

Corporate Records. Colorado nonprofit corporations are required to keep certain corporate records and allow voting members (if any) to inspect these records.¹ These records include:

- Articles of incorporation - a legal document filed with the Secretary of State. Provisions in the articles of incorporation control over any provisions in the bylaws.
- Bylaws - this is a legal document describing elements of the structure and process of the board of directors and membership (if any) that are not covered in the articles of incorporation. Organizations are not required to file their bylaws with the Secretary of State, but they may attach them to the articles of incorporation if they choose.
- Appropriate accounting records, including financial statements prepared for periods ending during the last three years, showing in reasonable detail its assets and liabilities and results of the organization’s operations.
- Minutes of all meetings of the board of directors.
- A record of all actions taken by the board of directors without a meeting.
- A record of all actions taken by a board committee in place of the board of directors on behalf of the nonprofit corporation.
- A record of all waivers of notices of meetings of members (if any) and of the board of directors or any committee of the board of directors.
- A list of the names and addresses of all members (if any) in alphabetical order, by class, showing the number of votes to which each member is entitled

¹ C.R.S. 7-136-101 and 102.

- Copies of resolutions adopted by its board of directors relating to the qualifications and rights of its members or any category of members (if any).
- Minutes of all members' meetings (if any) and records of all action taken by members without a meeting, for the past three years
- Copies of all written communications within the past three years to members generally as members (if any).
- A list of the names and business or home addresses of its current directors and officers.
- A copy of its most recent periodic report filed with Colorado Secretary of State.

Paid Solicitors

Registration. If a charity engages a paid solicitor, it should actively oversee and monitor the activities of the solicitor. Organizations with staff can delegate much of the oversight activity to its executive staff, but the board should request regular briefings on solicitation campaigns being run by a paid solicitor. These briefings should include a summary of the contract with the paid solicitor, confirmation that the contract complies with the laws of each state where solicitations occur, the status of any required regulatory reports, and any possible challenges. This includes gaining reasonable assurances that its paid solicitor is in full compliance with the Colorado Charitable Solicitations Act (CCSA). Review any scripts used by the paid solicitors, confirm that the contract between the charity and the paid solicitor includes all of the required provisions and disclosures, understand who will have ultimate ownership of the donor list, make sure the paid solicitor is registered and in good standing with the secretary of state, verify that it files a solicitation notice at least 15 days prior to beginning any solicitations on behalf of the charity, and make sure that it files a campaign financial report within 90 days of the conclusion of the solicitation campaign (see below for more details). Verify that the proper written acknowledgements are being sent to donors, and review the campaign financial reports and the paid solicitor's terms of compensation to confirm that the organization is receiving a reasonable percentage of the gross receipts. If the cost of fundraising seems unreasonably high to you, instruct staff to consult the data on the Secretary of State's website to comparison shop for a better deal. Finally, remind the paid solicitor about the disclosure requirements for oral and written solicitations, and confirm that they have reviewed those requirements with their callers. See C.R.S. § 6-16-105, 105.3, and 105.5 for a list of the required disclosures.

Records of Solicitation Campaigns. In addition to registering their organization with the Secretary of State, charities should ensure that any paid solicitors they work with create and maintain, for not less than two years after the completion of a fundraising campaign, the following records:

- Copies of all written confirmations or any standardized written confirmations
- The name and residence address of each employee, agent, or other person involved in the solicitation as is on record at the time of such solicitation
- The locations and account numbers of all bank or other financial institution accounts into which the paid solicitor has deposited receipts from the solicitation
- Records indicating the quantity of donated tickets or sponsorships actually used or received by donees or beneficiaries
- A complete record and accounting of the receipts and disbursements of funds derived from any solicitation campaign. This accounting must clearly identify any person or organization to

whom or to which any part of such funds are transferred and must describe with specificity the purpose for which any expenditure is made and the amount of each expenditure. Funds spent directly for any charitable purpose or transferred to any charitable organization as represented in the solicitations shall be clearly delineated as such.

- All written records relating to pitches, sales approaches, or disclosures used during any solicitation campaign and all instructions provided to paid solicitors concerning the content or solicitations.
- All contracts or agreements made with charitable organizations or other represented beneficiaries of solicitations
- For each contribution, records indicating the name and address of the contributor, the amount of the contribution if monetary, and the date of the contribution, together with the name of the individual paid solicitor who solicited the contribution.
- Any person involved in solicitations who claims an exemption from the definition of paid solicitor in C.R.S. § 6-16-103(7) must maintain records of ruling letters and other communications from the Internal Revenue Service regarding tax-exempt status.

Tax Payments, Withholding and Filings

Employee withholding taxes

- As an employer, the organization is responsible for withholding certain taxes from employees' pay checks. Federal employment taxes include the following: Federal income tax withholding (FITW), Social Security and Medicare taxes (FICA), and Federal unemployment taxes (FUTA).
- More information on this topic is available on the IRS website at <http://www.irs.gov/Charities-&-Non-Profits/Employment-Taxes-for-Exempt-Organizations>. See in particular IRS Publication 15 (2013), Circular E, "Employer's Tax Guide," and IRS Publication 15A, "Employer's Supplemental Tax Guide."
- In addition, nonprofits with employees in Colorado must collect and remit wage withholding taxes. You can find more information about withholding taxes on the Colorado Department of Revenue's website <http://www.colorado.gov/cs/Satellite/Revenue/REVM/1177017542100>.
- Finally, you should check with local municipalities to determine if they assess any additional taxes or fees on employees or employee wages.

Federal Income Taxes. Organizations that are exempt from federal income tax under section 501(c) nonetheless must pay federal income tax on unrelated business taxable income ("UBTI"), and file Form 990-T to do so. Organizations with UBTI should not forget about their obligation to make estimated tax payments.

State Income Taxes. Colorado tax-exempt status piggy-backs on federal tax-exempt status, so a nonprofit organization that is tax-exempt under section 501(c) is not required to file a Colorado corporation income tax return, unless it has unrelated business taxable income (UBTI). If a nonprofit corporation does have UBTI during the tax year, it needs to file Form 112, "Corporation Income Tax Return" with the Colorado Department of Revenue and pay tax. You can find this form and additional information at: <http://www.colorado.gov/cms/forms/dor-tax/894.htm>.

State Sales Tax Exemption.

- Colorado provides an exemption for 501(c)(3) charitable organizations from state-collected sales and use tax for purchases made for use exclusively in the conduct of their charitable functions and activities. This exemption does not apply to locally collected sales and use tax levied by home rule cities.
- Home rule jurisdictions make their own tax regulations, so you need to contact them directly for information.
- To apply for a state-level sales-tax exemption, your organization must file the Colorado Sales Tax Exemption Application form (Form DR0715) with the [Colorado Department of Revenue](#).
- Note: while 501(c)(3) organizations may be exempt from paying sales tax on items they *purchase* for use in their activities, they may still be required to collect sales tax from their customers for items they *sell* in the course of their activities.

State Sales Tax License.

- Nonprofits that sell goods and services are generally required to obtain a sales tax license from state and/or local taxing jurisdictions and collect any applicable sales taxes.
- Your organization can use the Colorado Sales Tax Withholding Account form (CR0100) to apply for a state-level license with the [Colorado Department of Revenue](#).
- The state and some local taxing jurisdictions exempt “occasional sales” with specific limits on revenue generated and the number of days per year that sales can occur. Contact the Department of Revenue and local taxing jurisdictions for more information.

Property Tax Exemption. Certain properties that are owned and used for religious, charitable, and private school purposes are exempt from property taxations. Property owners can apply for a property tax exemption with the Colorado Department of Local Affairs - Division of Property Taxation - Exemptions Section. Currently, exempt property owners are required to pay a filing fee and file annual reports online with the Division of Property Taxation to maintain this property tax exemption.

Insurance

Unemployment Insurance. Nonprofit and charitable organizations are covered by the Colorado Employment Security Act (ESA) if they have four or more employees for some portion of a day in each of 20 different weeks within the current or preceding calendar year. This program is administered by the Division of Employment and Training of the Colorado Department of Labor and Employment. Nonprofit organizations are not required to purchase unemployment compensation insurance through the State of Colorado, but they are required to register with the Unemployment Division if they have more four or more employees. If a nonprofit organization does not purchase unemployment insurance from the State of Colorado, it becomes a direct reimbursing, meaning that claims filed will be paid by the State and the nonprofit must reimburse the State. Alternatively, a nonprofit organization may elect to apply for an unemployment insurance account with the Colorado Department of Labor and Employment by filing Form UITL-100. You can find this form, a copy of the ESA, and other information related to unemployment insurance at the Colorado Department of Labor and Employment’s website: <http://www.colorado.gov/cs/Satellite/CDLE-UnempBenefits/CDLE/1248095315884>.

Workers’ Compensation Insurance.

- Workers' compensation regulations vary by state. In Colorado, with limited exceptions, all employers must provide workers' compensation coverage for their employees if one or more full or part-time persons are employed. This includes nonprofit organizations.
- The state workers' compensation system is administered by the Colorado Department of Labor and Employment - Division of Workers' Compensation. The division publishes several guides to the workers' compensation system; visit their website for more information at <http://www.colorado.gov/cs/Satellite/CDLE-WorkComp/CDLE/1240336932511> .
- For historians, the Colorado DLE also has an interesting, brief history of workers' compensation insurance on its [website](#).

Additional Federal Filings

IRS Form 1023/1024. Most organizations seeking tax exemption must file either Form 1023 or 1024 with the IRS. An interactive version of Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, is available at <http://www.stayexempt.irs.gov/>. The form includes prerequisite questions, auto-calculating fields, supplemental pages for requested information, help buttons and links to relevant information. It can be printed and submitted, just like the standard Form 1023. Organizations applying for recognition of exemption under a provision other than section 501(c)(3) generally use Form 1024.

IRS Form SS-4. To apply for an employer ID number (EIN) from the IRS, use the Form SS-4 Application for EIN, which you can find on <http://www.irs.gov>.

IRS Form 990

The Form 990 is a federal tax reporting requirement, and some version of it must be filed with the Internal Revenue Service (IRS) annually by the 15th day of the fifth month after the organization's fiscal year ends unless the organization obtains an extension.

The following chart summarizes which version of the Form 990 an organization should file:

Financial Activity	Filing Requirement
Gross receipts ≤ \$50,000	Form 990-N (e-Postcard)
Gross receipts < \$200,000, and Total assets < \$500,000	Form 990-EZ or Form 990
Gross receipts ≥ \$200,000 or Total assets ≥ \$500,000	Form 990
Private foundation (regardless of financial activity)	Form 990-PF
Unrelated business income	Form 990-T

Be aware that the organization will lose its tax exemption automatically if a Form 990 is not filed with the IRS for three consecutive years, and this includes all of the subordinate organizations under a group exemption whose parent organization fails to file a group return for three consecutive years.

Many states require the Form 990 as part of an organization's state charity registration, or else allow an organization to submit a copy of its Form 990 to satisfy its state registration requirements, but this is not required in Colorado.

Finally, bear in mind that certain exempt organizations do not need to file any form of 990 (e.g., churches and mission societies). However, the majority of nonprofits will need to meet a filing requirement as discussed in this course.

There are serious consequences for neglecting this aspect of the organization's operations, and you really don't want them happening to your organization. If its tax-exempt status is auto-revoked, an organization will no longer be able to assure donors that donations to it are tax-deductible, it may need to file a Form 1120 corporate income tax return for any years that its tax exemption is auto-revoked, and it will experience long delays in re-applying for tax-exempt status.

Certain organizations are required to file a Form 990 (rather than the simplified Form 990-EZ or -N), including sponsoring organizations of donor advised funds and controlling organizations described in 512(b)(13) of the Internal Revenue Code. Other organizations must file either a Form 990 or Form 990-EZ, even if they have gross receipts under \$50,000, including foreign and U.S. possession organizations and section 509(a)(3) supporting organizations. If you're unsure which form to file, be sure to check with your tax advisor or legal counsel. Except for private foundations that must always file a Form 990-PF, it is acceptable for any organization to file a full Form 990 rather than a Form 990-EZ or Form 990-N, but it must be a complete return (please note that this course is designed for directors of public charities; directors of private foundations may wish to seek other educational resources that specifically cover preparation and review of the Form 990-PF for private foundations).

See the "Filing the Form 990" module for more detail on compiling and analyzing these important documents.

Form 990-PF. Although most private foundations are exempt from state charity registration requirements due to their lack of solicitation of contributions from the general public, U.S. Treasury regulations require them to file copies of their Form 990-PF with the Colorado Attorney General. This is separate from the state charity registration requirement.

Form 990-T. File this form if you need to pay federal income tax on unrelated business taxable income ("UBTI"). Organizations with UBTI should not forget about their obligation to make estimated tax payments.

Required Public Disclosures. The Internal Revenue Code also requires nonprofit tax-exempt organizations to make their tax-exemption determination letter, their application for tax-exempt status (IRS Form 1023 or 1024,) and their 990 returns (including 990-T) for the most recent three years available to the public for inspection upon request. Note that the application for tax-exempt status includes not only the Form 1023 or Form 1024 itself, but any subsequent correspondence to/from the IRS during the application process, as well as any amendments to the application.

Miscellaneous Requirements

Do-not-call List. Although there is an exemption in the Colorado No-Call Law and the federal "Do-Not-Call" Provisions of the Telemarketing Sales Rule for charitable organizations, remember that the Federal Trade Commission's Telemarketing Sales Rule (TSR) requires all organizations to place individuals on an internal Do Not Call list upon request.

Colorado Uniform Prudent Management of Institutional Funds Act (UPMIFA). UPMIFA governs management and investment decisions by charities and provides guidance for those who manage and invest the funds. UPMIFA sets the prudence standards for investment decision making and spells out more of the factors a charity should consider in making management and investment decisions. It requires a charity and those who manage and invest its funds to:

1. Give primary consideration to donor intent as expressed in a gift instrument;
2. Act in good faith, with the care an ordinarily prudent person would exercise;
3. Incur only reasonable costs in investing and managing charitable funds;
4. Make a reasonable effort to verify relevant facts;
5. Make decisions about each asset in the context of the portfolio of investments, as part of an overall investment strategy;
6. Diversify investments unless due to special circumstances, the purposes of the fund are better served without diversification;
7. Dispose of unsuitable assets; and
8. In general, develop an investment strategy appropriate for the fund and the charity.

In addition, UPMIFA provides guidelines for endowment spending, allows institutions to address fluctuations in the value of the endowment, and governs the release and modification of donor restrictions.