

NONPROFIT AGENDAS: HOW TO APPROACH SUCCESSION PLANNING SEPTEMBER 2010

BE SURE TO LOBBY BY THE RULES

Most nonprofits are involved in lobbying at one time or another. But do you know which rules to follow if your not-for-profit participates in these activities? The answer depends on your type of organization, what kind of activity it's conducting and how much lobbying is involved.

What's political activity?

First, don't confuse lobbying with political activity. Political activity is participating in the campaign of an *individual* for public office at the federal, state or local level. If your organization gives money to support a candidate for a state senate seat, for example, it has engaged in a political activity.

Nonprofits (except political organizations) are discouraged from participating in *any* political activity. And charities are prohibited from taking part in political activities.

What does lobbying include?

Lobbying is campaigning for an *issue* — not an individual — to influence legislation. Legislation includes an action by Congress, any state legislature or any local governing body. Supporting your state's passage of new nonsmoking laws by organizing a mail campaign, for instance, is lobbying.

There are two types of lobbying: direct and grassroots. Some examples of *direct lobbying* are:

- Testifying at public hearings held by legislative committees,
- Directly corresponding or meeting with legislators, and
- Publishing materials that advocate specific legislative action, as in the mail campaign example mentioned above.

Grassroots lobbying is an appeal to citizens to contact their legislators and urge them to take a specific stance on a legislative matter.

What isn't lobbying?

Certain actions are permitted without restrictions and aren't considered to be lobbying:

- Nonpartisan analysis, study or research — for example, your organization publishes a brochure that summarizes both sides of an argument on a specific issue.
- Technical advice or assistance to a governmental body — for instance, the state legislature is considering banning smoking and asks your nonprofit to provide the results of scientific studies on the health effects of smoking.
- An appearance before a legislative body about proposed legislation that could affect your organization's existence, powers, duties, tax-exempt status or the deduction of contributions to your organization.
- Any communication with a government official not for the purpose of influencing legislation.

Additionally, educational communications between your organization and its bona fide members about legislation or proposed legislation (but not encouraging members to contact their legislators) isn't lobbying — for example, if the city council is considering building a new dog

pound, and the local humane society informs its members how this would impact the community's population of homeless dogs.

When is lobbying a problem?

Typically, nonprofits get into trouble when they do too much lobbying. Tax laws discourage excessive lobbying by noncharity nonprofits by prohibiting organizations from deducting the portion of member dues used for lobbying.

Charities face more rigorous consequences because they can lose their exempt status if a *substantial* part of their activities involves lobbying. Unfortunately, "substantial" has never been defined for charities trying to follow the rules.

If you're concerned that your charity is doing more than a minimal amount of lobbying, you can make a safe-harbor election under Internal Revenue Code Section 501(h) by filing Form 5768. Once Form 5768 has been filed, you'll be assessed an excise tax of 25% for any excess lobbying. The limit on lobbying expenditures is based on the percentage of lobbying expenditures compared to total expenditures for your exempt purpose.

The exempt status will be revoked only if the charity's average lobbying expenditures over a four-year period exceed 150% of the allowed amount. For example, if the Schedule C calculation described above results in a four-year average lobbying expenditure of \$460,000, but the ceiling amount allowed was only \$300,000, the organization's exempt status will be revoked.

Following the rules

Advocacy, including lobbying, is a part of the purpose of many nonprofits. And if an organization follows the rules, it can have an influence on legislators without risking regulatory noncompliance.

DIFFERENT STROKES

There's more than one way to form an alliance

When you think of collaborative efforts among not-for-profit organizations, you might think of a banding together to achieve a common goal, such as raising money for Haitian earthquake victims, fostering relief efforts to end world hunger or raising funds to build a community center. But organizations also team up when their objectives differ — not only with other nonprofits, but with for-profit entities, too.

Share and share alike

Certainly there are opportunities for organizations to join forces with others to decrease overhead costs. Sharing overhead such as office space, equipment and supplies, telephones and other utilities, janitorial and IT services, and administrative staff offers an opportunity for seemingly unlikely organizations to work together.

If you're worried that the organizations might get in each other's way, arrange to "take turns." Two entities could form an alliance with the agreement that one entity works early in the day and the other evenings. This could work, for instance, with a nonprofit that consists of social workers who field calls after-hours. It could easily share space with an entity that has a more conventional business day. Such an arrangement also might appeal to a small organization with a staff of working moms (or dads) who wish to work later in the day.

Take it further

On Shareable.net, author Janelle Orsi discusses "coworking" arrangements, in which there's a shared day-to-day working environment, but the two entities carry out independent activities. Again, the organizations share overhead — and, in this arrangement, perhaps even ideas.

With co-working, both entities don't even need to be nonprofits or share the same space in a typical way. A nonprofit soup kitchen, for example, could use the kitchen of a for-profit café for a few hours a day and contribute a small percentage to the latter's overhead.

Or just share people

Sometimes sharing just staff members is attractive. Certain noncompetitive areas are ideal for this setup, such as sharing accounting or IT personnel. If your organization doesn't need a full-timer in these positions, it could share an employee — and split the employee's salary — with another nonprofit.

Sharing competitive staff positions is typically a different story. Grant writing and program development are crucial to most nonprofits' survival. And since many compete for the same grant money or individual and business contributions, how can you be sure that the shared employee is putting forth equal effort for both organizations?

If you're ready to hire a shared employee, here are some suggestions for making it work:

Get to know the candidate. Many capable individuals are on the market right now — some with a *passion* for a particular nonprofit niche and motivated to help multiple organizations. These are the types of people you want to target. Just make sure that the applicant understands that he or she will be working for all of the organizations, or one of them might get short-changed.

- **Enter into an agreement.** The shared employee should sign an agreement that outlines all the tasks they'll be responsible for and to whom they'll report. The agreement should be clear about the expectations, including time spent for each entity and how the time will be tracked. You also should enter into a shared agreement with the other entity. This would detail the terms of the arrangement, including compensation, should a question arise.
- **Consider a bonus structure.** The grant writer or development staff member would receive monetary compensation based on a percentage of the grant money or other contributions raised for the organizations. The nonprofit for which the money was raised would be responsible for the bonus.
- **Ease the road for shared personnel.** A person in a development position, for instance, could organize a joint fundraiser for the two entities or develop a joint direct mail campaign. Proceeds from the joint effort would be shared.

Is an alliance in your future?

If you do decide to try sharing, start small with one relationship or organizational function. And if that works to your nonprofit's advantage, expand sharing to other realms.

Remember, this type of alliance isn't for everyone. But if you can make it work, your organization can reap huge benefits — from cutting costs to expanding your volunteer network to bringing in more grants and donations. Track and manage your relationships well and you'll likely succeed.

EVENT FINANCING: THREE WAYS TO LAND A SPONSOR

With the economy gaining steam, some not-for-profits are considering bringing back the annual events that they eliminated a few years ago. But others, experiencing delayed effects from the recession, are canceling these events until more funding materializes.

One way to ensure you'll be able to hold your special occasion is to get a financial sponsor. Here are three ways to attract one:

1. **Present good data.** To be viewed as a viable opportunity by a potential sponsor, your event needs to attract the right demographics. So prepare detailed information about past attendees — where they live, their buying power, professions or business affiliations, and the lifestyle niches they might represent, such as young entrepreneur, active retiree or stay-at-home mom.

Potential sponsors will want to know if your event typically receives media coverage and if they can be included in any planned promotional activities. Create a complete picture of the reach you're offering, but be careful not to guess or exaggerate. You don't want to promise something you can't deliver.

2. **Offer a variety of packages.** Develop a broad range of sponsorship options priced by the number of outreach opportunities they include. Lower-level sponsorships, for example, might include program listings, while a higher-level sponsorship could include prominently placed banners with the sponsor's logo. The content of sponsorship packages will depend on the event's scope and your organization's mission.

Offer "early bird" specials such as sponsorship acknowledgments in event notices on your Web site and Facebook page and in Twitter posts.

3. **Deliver what you promised.** To help ensure your sponsor returns next year, fulfill everything promised in your sponsorship package. Forgetting to include a sponsor's logo or failing to mention its participation during a conference's closing session can not only alienate the sponsor, but also could be considered, in some circumstances, fraudulent. Besides, happy sponsors are much more likely to return.

ONLINE DONATION PORTALS ARE CONTRIBUTOR-FRIENDLY

Every charity needs an effective way to receive donations. If your Web site has that capability, do contributors find it easy — and appealing — to donate money to your organization? If not, or if your site isn't set up to handle online donations, consider combining forces with an online donation portal, such as Network for Good or JustGive.org, or a community foundation with a federated giving program.

Hundreds of 501(c)(3) organizations are discovering that, by using the online donation services of another organization, they can avoid having to reinvent the proverbial wheel.

Portals make it easy

If you align with an online donation partner, that organization will tell you what you need to do technology-wise on your end to get the service up and running. Once it's launched, donations that begin on *your* Web site automatically will travel to your partner's site, where they're processed. In short, the giver decides on the amount to give and gives it; the online portal handles almost everything else, including online security. Network for Good, for example, assures that "donations will be made safely and your personal information will not be shared with others without your permission."

Your donation partner receives a portion of each donation, generally 3% to 4½%. To further bolster giving, the portal typically offers the contributor the option of taking the "commission" out of the donation or adding it to it. For example, someone who donates \$100 to a food pantry may choose to give \$104.50 so that the charity receives the full \$100.

New donors can find you

One big advantage of registering with a donation portal is that potential donors who don't know your organization — but want to donate to your cause — will likely find you. For example, potential contributors worried about wildlife affected by the oil spill in the Gulf of Mexico might visit

the Network for Good Web site and find a list of charities accepting donations to help threatened wildlife in that region.

The potential donor would see more than a dozen appropriate nonprofits, from the Alabama Wildlife Center, which “sends staff and volunteers that have experience cleaning oiled wildlife to work at cleaning stations on the Gulf Coast,” to the Wildlife Sanctuary of Northwest Florida, which is “ready to mobilize and provide appropriate care to injured or orphaned indigenous wildlife.” Potential donors hit a “Donate Now” button and make a contribution to a cause they care about while investing little time or effort.

Contributors get receipts

What’s also useful is that donation portals automatically send the giver a confirmation e-mail after the contribution is completed. Contributors can print the confirmation page — with the amount donated, the charity’s name, the date, and an acknowledgment that the funds were received. The latter can serve as a receipt for tax purposes.

Plus, information on the portals helps contributors see the tax benefit of their charitable contribution. JustGive.org, for example, displays a chart that shows the deduction for people in various tax brackets who make a cash donation of \$100. It also explains how income tax Form 1040 helps givers determine the exact amount of their deduction, which will vary depending on their tax bracket and whether they file as a single person or jointly.

Looking ahead

Motivational aids, such as this tax benefit information, make it nearly effortless for donors to give to an organization whose mission ties to their philanthropic goals. And, along with possibly enhancing your organization’s short-term funding, participation in these external avenues will likely help beef up your donor base for the long haul.

SHOULD YOU ACCEPT TEXT MESSAGE DONATIONS?

With the help of celebrities, athletes and the First Lady, tens of thousands of donations have been received via text messaging for Haiti relief efforts. So, should your charity tap into text messaging to help bring in donations?

Organizations can use both ends of the short messaging system, better known as text messaging. For example, a charity can send one message to thousands of people requesting donations for a specific cause. And donors can instantly send back a text message (usually a name or specific number) to your organization. The donors will then see the amount of their donation on their next phone bill and the service provider will have an agreement in place to get the funds transferred to your organization.

The advantages: It’s quick and easy, and can reach thousands of people who may have never donated to your organization. And it’s perfect for targeting a younger generation of contributors, a demographic you likely want to target.

The disadvantages: Some people might think your text message is a scam and won’t contribute. Plus, unless your e-mail list is well maintained, it’s possible that you’ll solicit from states where your organization isn’t registered, which can cause additional filings and fees. Also, tracking contributors could be difficult — you may be unable to solicit from them again.

HOW TO APPROACH SUCCESSION PLANNING

Does your organization have a succession plan in place? And, if it does, is it well documented? Some nonprofits delay detailed succession planning, thinking of it as a project they'll get to "someday." But that's a mistake.

Like making plans for the future in your private life, creating a succession plan for your organization is a necessity. And the earlier you start planning, the better. You'll come across information that needs to be documented for the successor — and you might also spot some issues that need to be cleared up before the transition.

Three ways to look at it

Three approaches to succession planning are common among nonprofits:

- **Strategic leader development.** This approach focuses on identifying talented individuals who have, or are capable of developing, skills to carry on your organization's goals *before* the top executive or other key person has left. As soon as a successor is identified, the executive director (ED) should begin delegating some leadership duties to this individual. This approach gives the current ED time to train and assist the incoming leader until he or she can competently handle the new duties.
- **Emergency.** Emergency succession planning emphasizes continuing to achieve the organization's goals and carry out its mission after an unforeseen event, such as death or disability. In preparation, the key individuals should develop a list of their duties and step-by-step details on fulfilling them. They should ask themselves: How was I trained for this position? How have my responsibilities changed over time? What did I learn later that I wish I'd known from the start? Board members should be involved in any type of succession planning, but especially in emergency planning because they're obliged to see that the organization is competently led without interruption. A small nonprofit, even if it has the capacity for nothing else, should have an emergency succession plan for its ED.
- **Defined departure.** This plan is appropriate when the key person has announced his or her retirement one to two years ahead of time. The goal is to build leadership strength: The key person wants to know that the organization can function well after his or her retirement, and the nonprofit requires the same degree of assurance. Setting a target departure date with the board of directors is typically the first step because it prompts those involved to develop a timeline.

Transition training

Having both individuals work at the same time is one of the most effective ways to transition duties. Consider: Your finance director (FD) announces nine months in advance that he will be retiring, and your succession plan names a successor. While the two work together, have the successor assume some of the FD's duties, such as helping to enhance policies and procedures, doing some of the organization's filings, and reviewing payroll. Gradually shift more work from the FD to the successor.

If the successor isn't already in the organization, consider hiring him or her a few months before the targeted transition date. To make the process run smoothly, again it's important that the two individuals work together. The successor, for instance, might be unfamiliar with your nonprofit's accounting systems or internal controls. So hands-on training by the exiting leader would be beneficial.

No matter which approach you use, consider forming a succession planning committee if more than one key person eventually will be replaced. This will allow members of the organization with various types of expertise to provide feedback in the areas most affected by the departures. For smaller not-for-profits, forming such a committee may not be feasible.

It's also important to document the succession plan. Although it might take some time away from other duties now, it could prevent a host of problems later.

Getting started

If you find yourself struggling over how to start, you can find numerous free or low-cost succession planning toolkits online, as well as others that are more costly. Many of them will walk you through the process step by step. Some also offer templates and worksheets to help you keep track of goals and tasks and gauge timelines.

Insurance for Key People

As today's leaders age and a new generation steps up to the plate, every organization should ask, "Could we continue to achieve our mission without our CEO, CFO, executive director and other key individuals?"

Key person insurance can protect an organization in the event of a sudden death or disability. This type of plan can help ensure that the nonprofit's operations and mission are still carried out without major disruptions due to the loss of a key employee.

For example, let's say the executive director — suddenly disabled by a stroke — had been the nonprofit's chief administrator *and* its primary fundraiser. Temporarily hiring two individuals with these critical skills is likely to be more expensive than the cost of finding a permanent replacement. But key-person insurance proceeds could provide for this while the search is underway.

NEWS FOR NONPROFITS

Tax credit for health insurance coverage

Smaller nonprofits may be eligible for a new tax credit in 2010 if they provide health insurance coverage to their employees. It's a refundable credit, so, even if your organization pays no tax, you'll receive a tax refund if:

- Your total number of full-time equivalent (FTE) employees working 30 or more hours per week is under 25,
- The average annual wages of those employees is less than \$50,000, and
- Your nonprofit pays at least one-half of the insurance premiums for these employees at the single coverage rate.

The maximum credit is 25% of premiums paid by the nonprofit. Employers with 10 or fewer FTEs and average wages less than \$25,000 qualify for the maximum credit. It's phased out as the employee count reaches 25 and the average wage climbs to \$50,000.

Beware of donation snafus

Fundraising consultant Amergent recently tested the online giving systems of 30 organizations. It found that 33% of donations to charities' own Web sites failed to go through, mainly because the system required mailing addresses to match the credit card billing address. In other cases, the would-be donor didn't follow through to completion or the donation process itself was incomplete. To avoid such issues, make sure you test your setup for workability, or accept contributions through a donation portal.

Lowering UBIT

As more nonprofits try to find new sources of revenue, a greater number are being required to file IRS Form 990-T for unrelated business income tax (UBIT). Deductions can be taken for expenses directly related to the unrelated income. But also be aware of some less obvious deductions.

Expenses that are incurred for personnel, equipment and facilities for both exempt and unrelated functions can be allocated between the two functions. For example, if an employee performs duties in accomplishing the exempt purpose, but also oversees the rental of part of the building whose rent is subject to UBIT, a portion of the compensation of that employee could be allocated to the unrelated business income to lower the taxable amount.

Other expenses to consider are interest expense, depreciation, lease expenses and other costs incurred in carrying out the unrelated activity. But note that charitable contributions may be deducted *regardless* of whether they're directly connected to the unrelated activity. So if your organization makes charitable contributions to other charities, you can take a deduction on Form 990-T for the contribution.

Keeping track of ARRA funds

Watch out: Receipt and expenditure of American Reinvestment and Recovery Act (ARRA) funds can impact your compliance audit requirements, even if the funding doesn't seem significant to your overall budget. Organizations are required to identify and track ARRA funds separately — even if they're for a program that is already federally funded. Here are some other points to keep in mind:

- The 2010 OMB Circular *A-133 Compliance Supplement* is a starting point for understanding reporting and auditing requirements.
- Your financial advisor can work with you on the scope and timing of your regular audit if they know in advance that you've received ARRA funding.
- OMB is encouraging auditors to promptly inform management of any deficiencies in internal controls related to ARRA funding.
- If your auditor identifies any control deficiencies during preliminary fieldwork related to ARRA funding that are — or are likely to become — significant deficiencies or material weaknesses, he or she may communicate these problems to management in writing.

SPOTLIGHT ON MP&S

Richard Nathan Appointed to Board of Charity Navigator

Richard Nathan, MP&S Principal and founder of Tailored Technologies, the firm's wholly owned technology and management consultancy, has been appointed to the board of Charity Navigator, America's largest evaluator of charitable organizations. In this role, Mr. Nathan will help set strategic direction for Charity Navigator and leverage his more than 25 years of experience serving the business and nonprofit communities to identify opportunities that will enable charities to use technology effectively and efficiently.

Tom Engelhardt Wins 2010 NY Enterprise Report Award

Tom Engelhardt is a 2010 recipient of the *New York Enterprise Report* "Best Accountants for Growing Businesses" award. Mr. Engelhardt, a partner in the firm's Accounting and Auditing Group, was recognized by the publication for his consulting and advisory work with a leading New York City branding agency which he helped remain financially viable during the economic crisis. Mr. Engelhardt was honored at an awards reception sponsored by Citibank this summer at the Trump Soho hotel in New York City.

Don May Publishes Intelligence on Role of Valuation in Securities and Hedge Fund Litigation

Don May, a Director in the Litigation and Corporate Financial Advisory Services Group at MP&S, has authored two thought pieces on the distortion of common Wall Street style valuation techniques and the critical role that proper valuation plays in hedge fund and securities-related litigation. The articles, which were published in the *Securities Litigation Report* and the *Hedge Fund Law Report* publications, are available in the MP&S Library on the firm's website.

Privately Held Businesses in Distress

Like all businesses, privately owned businesses have been hard hit by the recession. Owners and entrepreneurs are struggling with a drastically reduced base of business, operations that are out of sync with the times and the overhang from an infrastructure that was built for the boom years, not the lean years.

But unlike many leaders of large businesses, private business owners are often reluctant to declare an emergency – or are in denial that one even exists. Pride and passion – the same qualities that helped them launch and build the business – can become liabilities when conditions turn bad. Lawrence Cohen, Executive Consultant at Marks Paneth & Shron, has written a white paper that explores this topic in detail. The paper is available in the Marks Paneth & Shron Library on the firm's website.

MP&S FAST FACTS

- Among the 35 largest accounting firms in the nation and a leader in accounting and auditing (*Accounting Today*)
- The 13th largest accounting firm in the New York Area (*Crain's New York Business*)

FOR FURTHER INFORMATION

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