



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

TOP LEGAL RISKS FOR NONPROFITS:

Managing Information, Managing Relationships, and Raising Funds

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As everyone knows, this is the time of year for resolutions! Individuals are reflecting on last year and considering making changes in the new year. It's also a good time for nonprofits to take stock of their current practices and make any needed changes.

While nonprofit organizations operate in a different tax and legal framework than for-profit organizations, nonprofits are subject to some of the same legal risks. This article highlights the top legal risks facing nonprofits.

MANAGING INFORMATION

Data Security and Privacy

To some extent, all organizations rely on personal data, such as names, phone numbers, street and email addresses, credit and debit card numbers, and photos and videos. Most data collection occurs online but some organizations collect personal data at events using sign-up sheets or questionnaires. Whatever method your organization uses to collect personal data, you need to be aware of the data security and privacy issues. Many nonprofit organizations mistakenly believe that they do not need to be concerned with such issues. While some data privacy laws specifically exempt nonprofits, donors, supporters, and volunteers, the general public still has certain expectations regarding how their personal data is collected, used and shared. Therefore, nonprofits should review their data collection procedures, ensuring that all personal data is secure, that access to it is restricted, and that it is otherwise handled in accordance with a posted privacy policy. See this article for more information about data security for nonprofits: <https://www.pbpatl.org/resources/technology/privacy/data-security-for-nonprofits-10-security-steps-to-consider/>.

Intellectual Property

This risk generally involves copyrights, trademarks and rights of publicity. It cuts both ways. Nonprofits need to protect their own intellectual property while avoiding the infringement of third parties' intellectual property. For example, many nonprofits have unique names or organizational logos, and staff may author articles. The name and logo could be protected through a trademark registration, and the authored works could be protected under copyright law. On the other hand, when a nonprofit posts event photos and videos without considering releases, uses corporate donor names and logos without permission, and posts (or "cuts and pastes") articles authored by third parties, the nonprofit runs the risk of receiving an infringement claim, which could require removing the allegedly infringing material and/or paying damages. For more information about copyrights, trademarks and protecting your intellectual property rights, see these resources: <https://www.pbpatl.org/resources/copyright-trademark/>.

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Social Media

Social media is a great way for a nonprofit to spread the word about its mission. If your organization makes social media posts, either officially or through board members, employees and volunteers, you should have a social media policy. There is really no longer a wall between our personal and professional social media lives. A social media policy can provide “do’s and don’ts” that will help protect your organization’s reputation by addressing potential issues like violations of social media platform guidelines, infringement of third-party intellectual property, unauthorized disclosures of confidential information, harassment, cyberbullying and discrimination claims, and endorsement issues. For transparency reasons, it’s very important that anyone affiliated with the nonprofit organization disclose his or her business relationship when making posts on personal social media. See this webcast for more information about social media for nonprofits: <https://www.pbpatl.org/workshops-and-webcasts/social-media-for-nonprofits/>.

MANAGING RELATIONSHIPS

Contracts

Nonprofits often engage individuals and companies for a wide range of reasons, such as independent contractors, app and website design and hosting, data storage, event planning and event sponsorships. Nonprofits should resist the urge to sign paperwork provided by a third party or use forms found online. By using proper documentation and negotiating skills, good legal counsel can help nonprofits shift some of the risks to the third party and protect the nonprofit from a number of potential issues, including intellectual property ownership and infringement, liability for injuries, deaths and property damage/loss, delays or failures to deliver services, and improper employee/independent contractor classification. For more information about addressing risks in contracts, see this webcast: <https://www.pbpatl.org/resources/contractual-risk-management-balancing-risk-opportunity/>.

Proper Classification of Employees and Contractors

As previously mentioned, it is very important for nonprofits to ensure that any contractors they are using are properly classified as contractors, and should not be reclassified as employees. The Department of Labor and IRS are paying particular attention to contractors in the workplace, and whether or not they are classified correctly. These agencies look at a variety of factors in determining whether or not a position should be held by a contractor or an employee, including economic dependence and control. Issues can also arise if employees are not correctly classified as exempt or nonexempt from the requirements of the Fair Labor Standards Act, and if the organization is not properly tracking time and paying overtime for nonexempt employees. See this article for additional information about classifying workers: <https://www.pbpatl.org/nonprofit-legal-alerts/employees-independent-contractors-and-interns-correctly-classifying-your-workers/>.

Personal Injury or Damage to Property/Services to Clients or the Public

In performing their services for clients and the public, nonprofits are often in a position where the activities being conducted may have some risk of injury or loss – are transportation services being provided? Are program participants engaging in physical activities where someone might get hurt? Is the

organization working with vulnerable populations (children, the elderly or the disabled)? These are just some of the things for which a nonprofit may be held liable. Nonprofits should consider the risks posed by their activities in assessing the levels and types of insurance that may be required, in determining whether background checks should be performed on employees and/or volunteers, in determining whether they have mandatory reporting obligations, and in determining whether liability waivers should be sought from those to whom services are provided. Additional information about these risks and how to mitigate them can be found here: <https://www.pbpatl.org/resources/nonprofits-guide-to-risk-management-and-insurance/>.

RAISING FUNDS

Accepting and Properly Acknowledging Donations

Nonprofit organizations raise funds. Most organizations that solicit funds in Georgia are required to register for charitable solicitation. Furthermore, nonprofits may receive many different kinds of donations. Donations may be financial, in-kind, as a quid pro quo or in the form of services. Different donations require different kinds of acknowledgements. These resources on fundraising can help you stay compliant with these rules: <https://www.pbpatl.org/nonprofit-legal-alerts/registering-for-charitable-solicitation-2/>; <https://www.pbpatl.org/resources/guide-to-sending-acknowledgments-for-donations/>.

Sweepstakes, Contests and Raffles

Many nonprofit organizations want to sponsor sweepstakes, contests, and other fundraising events, such as raffles, bingos, and casino nights. If not properly structured, these types of fundraising events can lead to civil fines and criminal charges. Sweepstakes (where the winners are randomly selected) and contests (where the winners are selected based on some skill-based criteria) should have official rules and may need to be registered in advance. If the organization wants to charge an entry fee or conditions entry on some other substantial participant action, the sweepstakes needs a free, alternative method of entry. In Georgia, raffles and bingos conducted by nonprofit organizations can be deemed illegal gambling if they aren't properly structured. Raffles, for example, require a raffle license and, while so-called recreational bingo games (games operated at no charge to participants in which the prizes are non-cash items valued at \$15 or less) are not deemed illegal gambling, any bingo games that charge fees to participants and/or have prizes valued at more than \$15, are deemed illegal gambling. Casino nights are generally illegal in Georgia. These resources provide additional information about fundraising events and how to avoid the risks they pose: <https://www.pbpatl.org/nonprofit-legal-alerts/are-you-taking-a-legal-gamble-with-your-fundraiser-2/>.

Keep these risks in mind throughout the new year and you'll help your organization stay fit.

This article highlighted some of the potential legal risks facing nonprofits. Many of the risks can be complicated and highly fact dependent. In addition to a thorough legal review, nonprofits should consult their insurance advisors to determine what, if any, insurance is available to mitigate some of these risks.

If you have any questions about these legal risks or how to mitigate them, please contact your PBPA attorney.