

# Introduction

## WHY SHOULD DIRECTORS AND MANAGERS BE CONCERNED ABOUT THE LEGAL LANDSCAPE?

At first glance, it might seem that a book of this length and complexity, about a potpourri of legal topics, would be of little use to a director or executive of a nonprofit organization. Why not rely on the expertise of line staff or hire outside professionals or counsel to advise the top policy-makers of the organization?

Because, as President Harry Truman said, “The buck stops here.” You and your fellow directors and executives are the persons who are ultimately responsible for the actions — good and bad — of your nonprofit. If you are the responsible persons, then you need to be in control. It is impossible to have that control without a passing familiarity with the important legal issues for nonprofits so that — at the very least — you know what questions to ask staff or outside counsel and what options are available in different situations.

*The Nonprofit Legal Landscape* can serve directors and executives as a useful reference tool for the most important laws and legal concepts that require their awareness. When confronted with a legal issue involving your nonprofit, you can refer quickly to *The Nonprofit Legal Landscape* in order to bring yourself rapidly to the next level of understanding.

Increasingly, nonprofit organizations are operating in a legal and quasi-legal environment. To an unprecedented degree, nonprofit groups are being subjected to intensifying regulation by all levels of government: federal, state, and local. Regulators, who used to focus primarily on for-profit companies’ operations, are now using their public authority to examine, investigate, and change nonprofits as well. Legal concepts that used to apply solely to profit-making businesses are being expanded by courts and state attorneys general to cover nonprofit groups. Federal and state laws regulate in detail how nonprofits can be created, governed, and operated — and many impose significant penalties for noncompliance, including the possible loss of tax-exempt status. While much of this expanded scrutiny of nonprofits is healthy and welcome, it poses new challenges to nonprofit board members and chief executives.

This text will lead readers through this legal maze in two important ways: 1) by helping to avoid legal problems before they begin, and 2) by teaching how to cope with such problems once they have arisen. For example, you are in a board meeting and you learn that your nonprofit has paid a substantial sum to develop a new logo. Because you have read Chapter 5 of *The Nonprofit Legal Landscape* on intellectual property, you know to ask whether trademark protection of the new logo has been sought in order to avoid possible infringement of others’ marks, as well as to secure and preserve through trademark protection a new, valuable asset of your nonprofit. Your basic knowledge — and a few well-phrased questions — may very well save the organization from problems and losses down the road.

Likewise, *The Nonprofit Legal Landscape* can help you cope with problems after they have appeared. At another board meeting, you might hear that the organization's contribution to the retirement plan of several senior executives was dramatically increased last year. Since you've read Chapter 7 on employee benefits law, you know that such "discrimination" in favor of executives and against lower-paid employees may be illegal in the type of retirement plan your nonprofit has established. Your words of warning may alert the organization to seek legal counsel before the imbalance in the plan evolves into a legal and tax nightmare.

The personal liability to which you subject yourself as a member of a nonprofit board of directors is another reason to utilize this book. As described in Chapter 3, directors have specific and well-defined duties to the nonprofit they serve, violation of which can subject them to liability. And, while there are many caveats and protections available to board members, it is still possible to be held personally liable for some actions of the board as a whole or of the nonprofit's staff.

*The Nonprofit Legal Landscape* is organized as a soup-to-nuts guide beginning with the options and advantages available for organizing a nonprofit, as well as the all-important tax considerations that are fundamental to any nonprofit. In Chapter 3, directors' legal duties and responsibilities are thoroughly examined, and liability and indemnification explained. The next chapter explains the significant lobbying and electioneering restrictions that tax-exempt nonprofits must observe — and which are easy for directors and executives to run afoul of. Protection and preservation of a nonprofit's valuable intellectual property follow.

Substantial space is devoted in this book to various facets of employment and employee benefits law. Nonprofits are bound by a burgeoning number of statutes and cases that affect the employer-employee relationship. Staying out of employment-related troubles can be a major preoccupation of nonprofits; these chapters tell you how to do that. The increasing importance of immigration law to nonprofits — both those that wish to hire noncitizens and those that wish to serve noncitizen clients — is also explored. Larger nonprofits will also want to take heed of the restrictions on operation identified in the chapter on antitrust law.

Finally, the last chapters look at various ways a nonprofit can cope with an investigation or lawsuit by government, client, or employee, and describes the process for each.

*The Nonprofit Legal Landscape* is designed to give you a yardstick against which you can measure the practices and policies of your nonprofit and to highlight areas that may need your further examination or attention. We hope it achieves these goals so that, as a responsible director or executive of a nonprofit, you can be fully aware of the legal environment within which your organization operates — for its sake, as well as your own.