

A close-up photograph of a pencil tip pointing towards a grid on a document. The grid contains faint numbers, including '12', '13', '14', '15', '16', '17', '18', '19', '20', '21', '22', '23', '24', '25', '26', '27', '28', '29', '30', '31', '32', '33', '34', '35', '36', '37', '38', '39', '40', '41', '42', '43', '44', '45', '46', '47', '48', '49', '50'. The pencil is orange and yellow, and the grid is on a light-colored paper.

**KEEPING YOUR  
FOUNDATION LEGAL:  
AN OUTLINE FOR ED'S & BOARD MEMBERS**

Randall Hallett – Oct 2019 – NAPSF

# Who the heck is this guy??



- Former National Board Member, NSFA
  - Co-designer of the NSFA Certification Program
- Ed.D., University of Saint Thomas
  - Dissertation on Public Secondary Educational Fundraising
- Juris Doctorate, University of Missouri-Kansas City
  - Dissertation on Taxation of Gifts, Estates, and Trusts
- Masters in Bus. Administration, University of Missouri-Kansas City
- Bachelors of Science in Finance, University of Nebraska-Omaha
- 22 years of fundraising experience
  - 12 years with private secondary education institutions
  - CFRE accredited
- Currently, President of the Gobel Group

# Disclaimer

- **This presentation is designed to provide accurate information in regard to the topic covered. It is provided with the understanding that Randall Hallett is not providing legal services or advice. If legal services or other assistance is required, the services of a professional person in your area should be sought**



# Objectives for Today's Seminar

- Have an understanding of basic legal issues related to fundraising in secondary education.....



The background of the slide features a close-up, slightly blurred image of a red pencil with a sharpened lead tip, resting on a sheet of graph paper. A ruler is visible in the upper portion of the image, showing markings and some faint numbers. The overall color palette is warm and muted, with shades of beige, brown, and orange.

# SECTION 1

# HISTORY

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# Origins of Public Schools

- ❑ **Where did they start?**
- ❑ **How were they funded?**
- ❑ **Why did the start?**
- ❑ **How long did this occur?**



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# **SECTION 2**

## **BASIC “DUTIES”**

# Board Duties

- **Under well-established principles of nonprofit corporation law, a board member must meet certain standards of conduct and attention in carrying out his or her responsibilities to the organization**
- **There are three.....**



# Board Duty #1

## □ **Duty of Care**

- ▣ The duty of care describes the level of competence that is expected of a board member, and is commonly expressed as the duty of "care that an ordinarily prudent person would exercise in a like position and under similar circumstances.

# Board Duty #2

## □ **Duty of Loyalty**

- ▣ The duty of loyalty is a standard of faithfulness; a board member must give undivided allegiance when making decisions affecting the organization.
- ▣ No personal gain

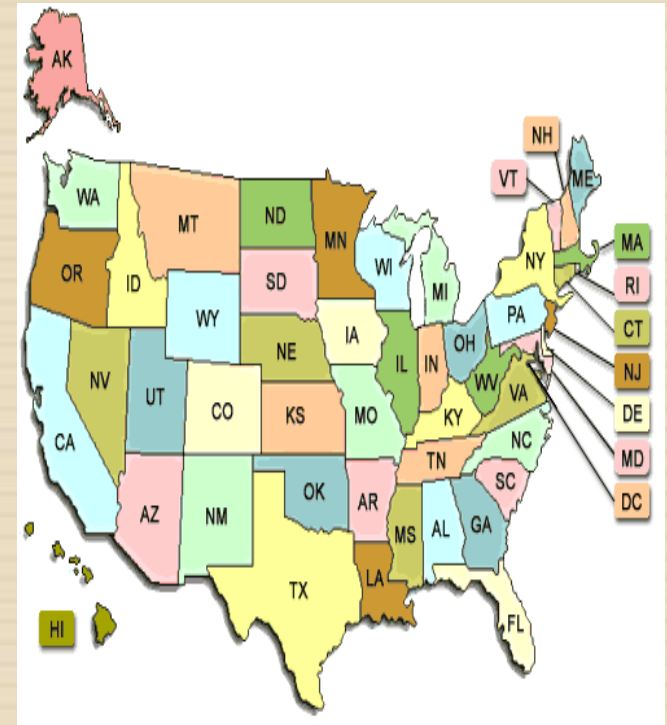
# Board Duty #3

## □ **Duty of Obedience**

- ▣ The duty of obedience requires board members to be faithful to the organization's mission. They are not permitted to act in a way that is inconsistent with the central goals of the organization

# Remember State Law

- **Several states have statutes adopting some variation of these duties which would be used in court to determine whether a board member acted improperly.**



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# SECTION 3

# SARBANES-OXLEY ACT

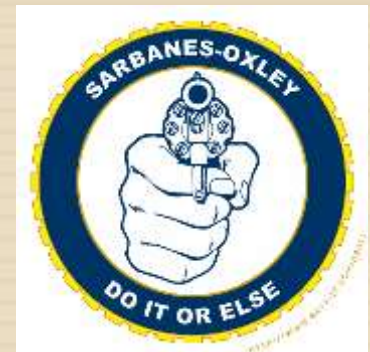
# Sarbanes-Oxley Act

## □ Sarbanes-Oxley – A Brief History

- Federal Law enacted in 2002
- Response to highly publicized scandals in publicly traded companies...
  - Enron
  - WorldCom

## □ An attempt to:

- Strengthen independence of auditing firms
- Heighten corporate responsibility
- Improve accountability
- Board of Directors/Trustees
- Management
- External Auditors



# Sarbanes-Oxley Act (SOX)

- **Non-Profits are not subject to the majority of the Act, but it may be relevant because:**
  - ▣ Several states have considered legislation which includes aspects of SOX
  - ▣ Bonding agencies and insurers may consider governance issues of SOX important
  - ▣ Accreditation review teams may expect educational organizations to develop best practices
  - ▣ Trustees who serve on non-profit board may expect adoption of certain aspects of the Act

# SO WHAT???

## SOX

### □ ***Independent Sector* convened a Board in 2004**

- Consisting of Board members, volunteers, donors, government officials and others
- Examining NFP industry governance, transparency, accountability and ethical standards
- To look at transparency, accountability, and providing oversight from abuses

**on the suggestion of the Senate Finance Committee and made RECOMMENDATIONS..**



# Out of the Panel Came...

## □ For Board members

- Compensation to board members discouraged
- Prohibition of loans to board members
- Approval of CEO compensation, *by the full board, annually and in advance of the period for which it will be paid*
- Review the organization's staff compensation periodically
- Include members with financial literacy
- Full review of organizational and governing instruments at least once every five years
- Review the 990 annually



# Out of the Panel Came...

## □ **For Organizations**

- Adopt and enforce a conflict of interest policy
- Establish a whistleblowers policy
- Establish a travel policy, including prohibiting payment of travel expenditures for spouses or other relatives unless they are involved in the business purpose
- Highest ranking officer sign the 990
- Audit requirement for organizations with revenues in excess of \$1 million annually

# And evolution takes place

- **Guess what all of this led to....**



A background image featuring a pencil on graph paper with a ruler. The pencil is positioned diagonally from the bottom left towards the center. The graph paper has a grid pattern, and a ruler is visible at the top. The overall tone is warm and professional.

# **SECTION 4**

**IRS 990**

# Proliferation

## 501(c)(3) Entities Registered with IRS

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1940:	12,500
1980:	320,000
1996:	654,186
2009:	1,328,367
2016:	1,567,913

---

**2009:** IRS approved 68,278 new 501(c)(3) entities  
(32 per hour/40 day week)

# Why a 990?

- To help the IRS and the public determine how and the extent to which a tax-exempt organization accomplishes its exempt purposes
- To determine if an organization's tax-exempt status is being exploited
- To determine if reasonable compensation is being paid to officers, directors & key employees (private inurement)

# Why a 990?

- **How does the IRS Ensure the Purposes of Form 990 are met?**
  - ▣ Penalties for preparing and filing an incomplete return.
    - Enforcement: \$200,000 and/or 5 years in jail
  - ▣ Public Inspection – The process by which the public determines how and the extent to which a tax-exempt organization accomplishes its exempt purposes.

# Losing 501c3 Designation????

## □ Who is at risk??? Is it serious???

- Deadline - Small organizations whose filing deadlines fall on or after May 17, 2010, and before October 15, 2010. Relief is not available to Form 990 and 990-PF filers
- Number of organizations at risk of losing their non-profit status
  - 340,834
- Number of educational non-profits at risk of losing their non-profit status
  - 53,935
- Re-file, pay penalty, pay fees
- *"This one-time relief benefits Form 990-N (e-Postcard) and Form 990-EZ filers only. Organizations required to file Form 990 or Form 990-PF are not eligible and are automatically revoked if they fail to file for three consecutive years."* (IRS)



# Core Form: Parts I - XI of the 990

- Part I and II: Summary information and Signature block
- Part III: Statement of Program Service Accomplishments (*describe and explain*)
- Part IV: Checklist of Required Schedules
- Part V: Other IRS Filings & Tax Compliance
- Part VI: Governance, Management and Disclosure
- Part VII: Compensation of Officers, Directors, Trustees, key employees and Other HCEs and Independent Contractors
- Parts VIII, IX, X, XI: (*financial information is largely unchanged*)

# Part I and II of the 990

## □ **The summary page includes:**

- Mission or most significant activities
- Number of members of governing body
- Total # of employees & total # of volunteers
- Financial information, including revenue, expenses, total assets, total liabilities, and net assets for the current and prior year
- New: (a) type of entity, (b) year formed, (c) state of domicile

# Part III of the 990

- Requires reporting of the organization's new, ongoing and discontinued exempt purpose achievements and related revenue and expenses.
- For 501(c)(3) or 501(c)(4) filers, report the organization's 3 largest programs & include:
  - ▣ Grants and allocations to others
  - ▣ Total expenses
  - ▣ Revenue

# Part IV of the 990

- **Used by the organization to determine which schedules it must complete and file with the IRS as part of the Form 990.**



# Schedules for the 990

- A--Public Charity Status and Public Support
- B--Schedule of Contributors
- C--Political Campaign and Lobbying Activities
- D--Supplemental Financial Statements
- E--Schools
- F--Statement of Activities Outside the US
- G--Fundraising and Gaming
- H--Hospitals
- I--Grants Inside the U.S.
- J--Compensation
- K--Tax Exempt Bonds
- L--Transactions with Interested Persons
- M--Non-Cash Contributions
- N--Liquidation, Termination, Dissolution or Significant Disposition of Assets
- O--Supplemental Information
- R--Related Organizations & Unrelated Partnerships

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# Part V of the 990

- **Used by the organization to report its compliance with other federal tax reporting (i.e. UBIT, gambling) and substantiation requirements**
- **Two new questions on the revised 990 focus on gaming & special events that may be targeted by an IRS auditor**
  - ▣ Number of Forms W-2G filed for certain gambling winnings?
  - ▣ Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?

# Part VI of the 990

- **Form 990 asks many “Yes/No” questions on governance:**
  - ▣ Does the organization have a written mission statement?
  - ▣ Does the organization have a written conflict of interest policy?
  - ▣ Does the organization have a written whistle-blower policy?
  - ▣ Does the organization have a document retention & destruction policy?
  - ▣ Did the process for determining compensation include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?
  - ▣ Is there documentation of minutes at board & committee meetings?
  - ▣ Describe in Schedule O how the organization makes its governing documents, conflict of interest policy and financial statements public



# Part VII of the 990

## □ Reporting of:

- Current officers, directors, and trustees
- Current key employees (over \$150,000 of reportable compensation)
- Current 5 highest compensated employees other than officers, directors, trustees, or listed key employees (over \$100,000 of reportable compensation)
- Former officers, key employees, and highest compensated employees (over \$100,000 of reportable compensation, with special rules for former highest compensated employees)
- Former directors and trustees (over \$10,000 of reportable Compensation in the capacity as a former director or trustee)

# Part VIII of the 990

- **Revenue includes reporting for**
  - Fundraising activities
  - Federated campaigns (such as United Way)
  - Revenue from related organizations
  - Income from investment of tax-exempt bonds
  - Royalties
  - Gross income from gaming activities

# Part IV of the 990

- **Functional Expenses now includes reporting for:**
  - Lobbying
  - Investment management fees
  - Advertising and promotion
  - Information technology
  - Royalties
  - Payments to affiliates
  - Insurance
- **Also the new form clarifies that misc. expenses may not exceed 5% of total expenses.**

# Part X and XI of the 990

- Part X is the balance sheet
- Part XI is the financial statements reporting



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# **SECTION 5**

## **GIFT & ACCEPTANCE POLICIES**

# GAP-Why Are They Necessary?

- **The 990 asks about them**

- Schedule M (*Non Cash Contributions*) of the new Form 990 asks whether the filing organization has a gift acceptance policy. Schedule M must be filed by organizations that either: (1) received more than \$25,000 in non-cash contributions; or (2) received contributions of art, historical treasures, or similar assets, or qualified conservation contributions.

- **Protect the organization**

- **Protect the employee**

- University story about a hotel

# The Basics...

- **Who can fundraise?**
- **Privacy**
- **Unacceptable gifts**
- **Acknowledgement**
- **Recognition**
- **Naming rights**
  - ▣ At what level does that become an option?
- **Endowment levels**



# The Easy Stuff...

- **Cash**
- **Checks**
  - ▣ When deposited?
- **Stocks**
  - ▣ How long should they be held?
- **Restricted Gifts**
  - ▣ Allowed?
  - ▣ Segmented?
- **In Kind**
  - ▣ Evaluation???





# Real Estate

## □ Who decides on acceptance?

- Experts?
- Subcommittee?
- Final decision?
- Research
  - Phase I and Phase II environmental studies
    - Who pays for those?
  - Title search
    - Who pays for this?

## □ Reporting to IRS

- Form 8282



# Estate Gifts

- **What type do you accept?**
- **What types do you offer?**
  - ▣ Simple Bequests, CRAT's, CRUT's, Annuities
  - ▣ Insurance
    - Who owns?
    - Lower limits?
  - ▣ Life Estate or Life Income



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# **SECTION 6**

# **EVENTS**

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# Tax Rules for Raffles

44



- Winner includes prize in gross income
- Form W-2G required if raffle prizes of \$600 or more in single year to single person
- Withholding required if prize worth more than \$5K and is at least 300 times ticket cost
- Backup withholding required if Form W-2G required and winner does not provide W-9
- Form 990 – Schedule G

# Gambling Licenses

## □ Raffle

- MN vs. KS vs. MO vs. NE

- Over state lines (*alumni*)

  - In the room only?

  - Online?

- Charitable deductions

  - Not on your life....



# Poker Tournaments

46

- Typical charity poker fundraiser
  - Participants pay for chips
  - Participants use chips to make bets
  - Winners receive cash or prizes
  
- Result: Illegal gambling
  - Criminal Act for participant and promoter
  - No exception for charities

# Poker Tournaments

47

## □ How to make poker fundraiser legal

### □ Eliminate consideration

- Ask for contributions
- Combine with dinner fundraiser
- But cannot require that participants contribute or purchase dinner

### □ Eliminate prize

- Play for pride
- Play for plaque or trophy (questionable)



# Poker Tournaments

48



- How to make poker fundraiser legal (cont.)
  - ▣ Play for prizes to charities
    - Participants pay to play
    - Participants designate (*in advance*) charity to receive prize money if they win
    - Participants receive no prize other than possibly plaque or trophy



# Tax Rules for Poker

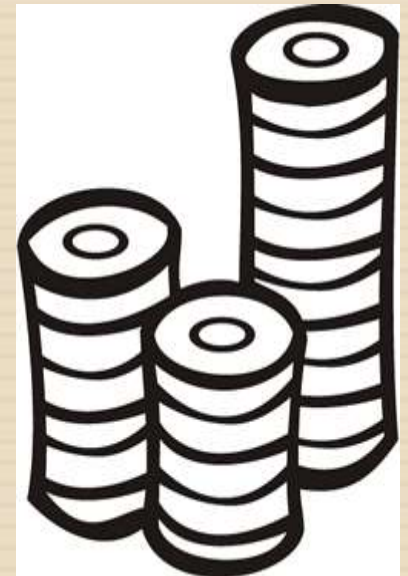
49

- Charitable Contribution Deductions
  - No deduction allowed for poker entry fee if winners can receive valuable prizes
  - Deduction allowed for portion of entry fee if no chance to win valuable prize and fee exceeds value of goods and services
  - Normal I.R.C. § 170 rules for persons who donate prizes for poker

# Tax Rules for Poker *(con't)*

50

- ❑ Winner includes prize in gross income
- ❑ Form W-2G required if raffle prizes of \$600 or more in single year to single person
- ❑ Withholding required if prize worth more than \$5K and is at least 300 times ticket cost
- ❑ Backup withholding required if Form W-2G required and winner does not provide W-9
- ❑ Form 990 – Schedule G



# Tax Rules for Auctions

51

- Most goods donated as auction items
  - ▣ Deduction limited to lesser of cost or fair market value
  - ▣ Items purchased and immediately donated for auction should have fair market value equal to cost
  - ▣ Self-created goods donated as auction items
    - Deduction ordinarily limited to cost of supplies consumed in creating goods
  - ▣ Services donated as auction items
    - No deduction for contribution of contributor's own services
    - Donation of purchased airline tickets or hotel stay should be deductible

# Tax Rules for Auctions

52

- Donor of item must have either a bank record or a written record from charity showing
  - Charity's name
  - Date of contribution
  - Amount of contribution or, if contribution is a good, location of contribution and reasonably detailed description of the good

# Tax Rules for Auctions

53



- Donor giving \$250 or more at once must have written acknowledgement from charity
  - Obtain by earlier of date return for year filed or due date (*with extensions*) for such return
  - Must include amount of cash, description of any property, and whether charity provided any goods or services as consideration for the contribution

# Tax Rules for Auctions

54

- *Purchasers of Auction Items*
  - ▣ No charitable contribution unless amount paid exceeds fair value of auction item
  - ▣ If amount paid exceeds fair value and amount paid is \$75 or more, charity must provide “quid pro quo” notice to contributor



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# SECTION 7

# CONCLUSION AND QUESTIONS

Don't Panic!!!





# Don't Panic!!!!

- **Go back and ask questions**
  - ▣ Where is.....?
  - ▣ Who filled it out or created it?
- **Make a checklist of things to do**
- **Have a conversation**
  - ▣ With the Board President/Chair
  - ▣ With the Executive Committee
  - ▣ With the Superintendent
- **Resources**
  - ▣ Make sure a lawyer and CPA are on your Board
  - ▣ BoardSource



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