

Legal Compliance 101 for Social Impact Businesses in Minnesota

Initiative Foundation
Initiators Fellowship Training

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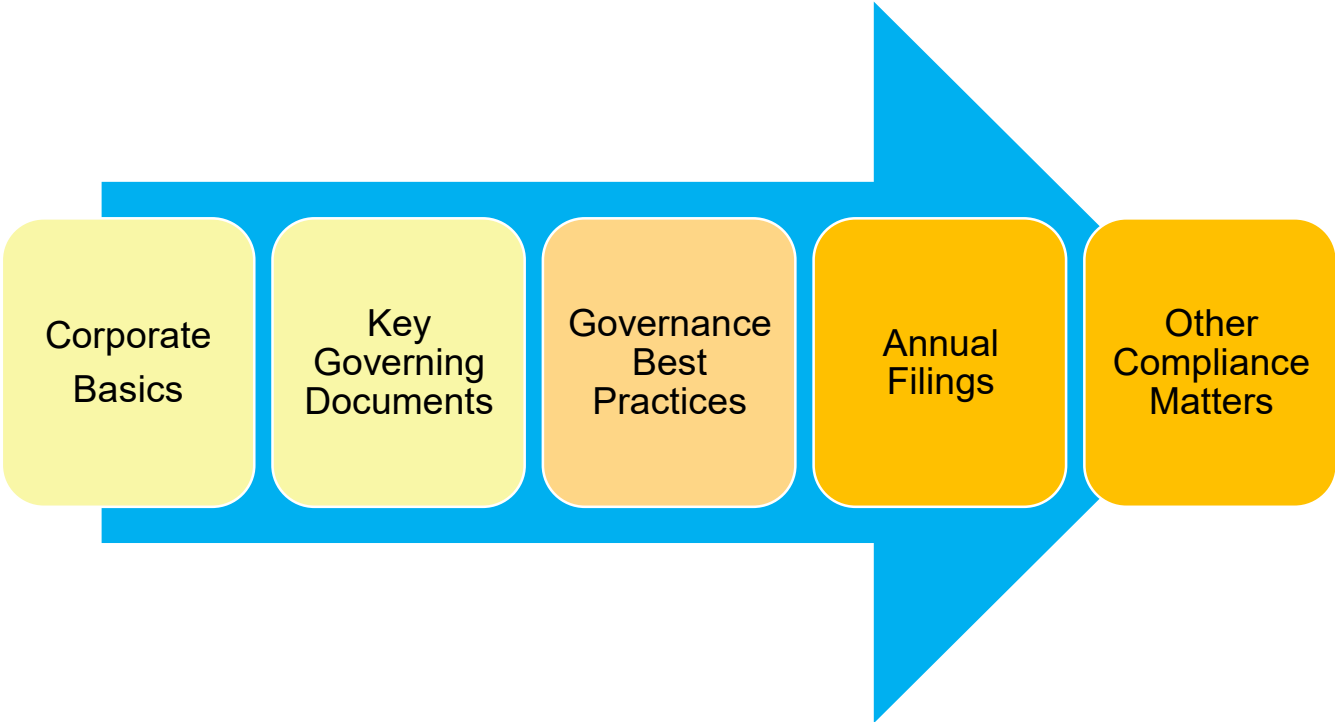
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Welcome!

- Introductions
- Goals of the Course
- Overview of Compliance Checklists and Resources
- Agenda

Agenda



Back to Basics: Overview of Minnesota For-Profit and Nonprofit Organizations

- **Corporate Formation**

- Common MN for-profit corporate forms
 - Business corporation, LLC, partnerships, public benefit corporation, etc.
- Common MN nonprofit corporate forms
 - Nonprofit corporation, charitable trust, religious corporation, quasi-governmental, etc.

- **Formation Process**

- File Articles with Minnesota Secretary of State
- Obtain EIN
- Entity is a separate legal person
 - Has separate bank account, can enter into contracts, own assets, incur liabilities

Back to Basics: Overview of Minnesota For-Profit and Nonprofit Organizations

- **Federal Tax Status**

- FPs are taxable
 - Designations: S Corp, C Corp, partnership – consult with an accountant!
- NPs may apply for tax-exempt status with IRS as a 501(c)(3) organization
 - NPs are not automatically tax-exempt
 - IRS Form 1023 application
 - Benefits and drawbacks of 501(c)(3) status
 - LLC subsidiaries can be disregarded for tax purposes
 - Nonprofits can be taxable

Back to Basics: Overview of Minnesota For-Profit and Nonprofit Organizations

- **Governance Overview**

- For-Profit Governance

- Role of Shareholders / Partners / Members
- Role of Board, committees
- Officers

- NP Governance

- Members are optional (member reserved rights)
- Role of Board, committees
- Officers

Back to Basics: Overview of Minnesota For-Profit and Nonprofit Organizations

- **Raising initial funding**

- For-Profit Fundraising

- Friends and Family
- Institutional investors – more complex
- Documenting investments appropriately

- Nonprofit Fundraising

- Donors – individuals, grantmakers, government funders
- Fiscal sponsor relationships
- Traps for the unwary: Charitable gambling, co-venturing

Key Governing Documents

- **Articles of Incorporation**
- **Bylaws**
- **Other**
 - Conflict of Interest Policy
 - Committee Charters
 - Employee Handbook
 - Social Media Policy
 - Cybersecurity Policy
 - Privacy Policy
 - Document Retention Policy
 - Whistleblower Policy
- **Special FP Documents**
 - Partnership Agreements
 - Shareholder Agreements
 - Operating Agreements
 - Member Control Agreements
 - Buy-Sell Agreements
- **Special NP Documents**
 - Gift Acceptance Policy

Governance Best Practices

- **Board members**

- Size of the board – is there an ideal size?
- Composition of the board
- Fiduciary Duties
 - Duty of Care, Duty of Loyalty, Duty of Obedience
- Other concepts
 - Reliance, delegation
- Board Tools
 - Orientation for new Board members, board buddies, and self-assessments

Governance Best Practices

- **Board meetings**
 - How often to hold meetings
 - Taking minutes
 - Confidentiality
 - Encourage candid discussion
 - Consider inviting staff to foster strong relationship of Board and management
 - Robert's Rules?

Governance Best Practices

- **Annual Actions by the Board**

- Approving federal and state tax filings (Form 1020, Form 990, others)
- Reviewing financial statements
- Approving annual budget
- Electing directors and officers, as applicable
- Conflict of Interest disclosures
- Additional Nonprofit Actions:
 - Annual filing with MN Attorney General
 - Executive Compensation
 - Grants

Governance Best Practices

- **Tools and Resources**

- See checklists for federal, state and local resources for startup for-profits and nonprofits



Annual Corporate and Tax Filings

- **Federal Tax Filings**

- FP: Form 1020, 1020-S, partnership
- NP: Form 990 (990-EZ or 990-N) and a Form 990-T if have UBTI
- Form 1099-NEC for independent contractors

- **State Filings**

- MN SOS Annual Business Renewal
- MN Assumed Name Filings
- Foreign registration in other states
- State licenses and permits

Annual Corporate and Tax Filings

- **Other For-Profit Requirements**
 - Certain capital structures may require quarterly or annual filings with the SEC
- **Other Nonprofit Requirements**
 - MN Attorney General registration
 - Professional fundraising registration
 - Registration with other states' charities officials (if solicit funds, have significant assets or activities)

Financial Controls

- **Authority of Officers**

- Clearly outline who has authority to sign checks, enter into contracts, and manage bank accounts

- **Special Approvals**

- Loans
- Capital expenditures
- Commercial contracts

- **Check Signing**

- Consider 2 signors on checks above defined \$ threshold (e.g. \$1,000 or \$10,000)

- **Contracts**

- (Have them! Read them!)

Relationships with Third Parties

- **Key principles**
 - Documentation is important
 - Keep it simple and clear
 - Think like a lawyer: What could go wrong?
- **Document relationships with:**
 - Employees
 - Independent contractors
 - Suppliers
 - Donors (for substantial gifts)
- **NP-FP relationships**
 - Special guardrails on nonprofit 501(c)(3) organizations
 - All relationships must be at FMV, arms length, no private benefit or inurement

Issue Spotting

- Insurance coverage
- Transactions with board members
- Protecting your IP assets – brand names, logos, domain names
- Employment issues – payroll, tax records, withholding, unemployment, etc.
- Regulatory and licensing matters
- Accounting processes
- Bank accounts
- Assumed name filings
- Foreign state filings if transacting business in other states
- Licenses and permits

Issue Spotting

- **Special Nonprofit Issues:**
 - Transactions with board members (excess benefit transactions)
 - Approving executive compensation
 - Property tax exemption
 - Sales tax exemption
 - Fundraising
 - Accepting charitable gifts
 - Tax-exempt bond financing

Thank You!



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