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**JUSTICE & DIVERSITY CENTER**  
OF THE BAR ASSOCIATION OF SAN FRANCISCO

# **COMMUNITY ORGANIZATION REPRESENTATION PROJECT (CORP)**

## **Legal Compliance Clinic for Nonprofits**

July 25, 2025

# Before We Begin...

- What is CORP and who are our clients?
- How does the clinic work?
- What will volunteers be doing?
- What happens after the training?

# What is CORP?

- CORP stands for the **Community Organization Representation Project**, which is part of the Justice & Diversity Center of the Bar Association of San Francisco.
- CORP provides pro bono assistance to existing and emerging nonprofit organizations that provide direct services to low-income and underserved people in Northern California.
- CORP assist these organizations, which do not have sufficient funds to pay attorneys, with transactional and advisory needs, including but not limited to formation, registration, governance, contracts, employment, real estate, and more.

# How Does the Clinic Work?

- **12:00 – 1:30 PM: Volunteer Training**
- **01:30 – 2:00 PM: Volunteer Break**
- **02:00 – 4:00 PM: Nonprofit Compliance Audit**
- **Limited scope (time):** Volunteers are in an attorney-client relationship with the nonprofits only for the 2-hour clinic.
- **Limited scope (issues):** Volunteers only audit and advise in the areas in the checklist, which is covered in the training.
- **Teams:** Volunteers will work in teams of 2-3 attorneys.

# What Will Volunteers Be Doing?

- **During the Nonprofit Compliance Audit:**
  - Meet with your volunteer team of 2-3 attorneys
  - Begin with brief volunteer and client introductions
  - Remind them that this is a limited scope representation
  - Work through the **Compliance Checklist** to issue spot
  - Document issues and notes on the **Compliance Checklist**
  - Summarize the legal and non-legal issues you identify at the end of the clinic in the **Post Clinic Action Plan**

# Who Are We Working With Today?

- Your clients are 501(c)(3) nonprofit organizations that provide services to low income and underserved populations in Northern California, and which otherwise could not afford to hire transactional counsel to advise them on compliance issues.

# What If I Need Help?

- **Sarah Wiesner, Supervising Attorney for CORP:** [swiesner@sfbar.org](mailto:swiesner@sfbar.org)
- **Rachel Raps, Program Coordinator for CORP:** [Rraps@sfbar.org](mailto:Rraps@sfbar.org)
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# Training



Kayla Ruben  
Associate  
Attorney



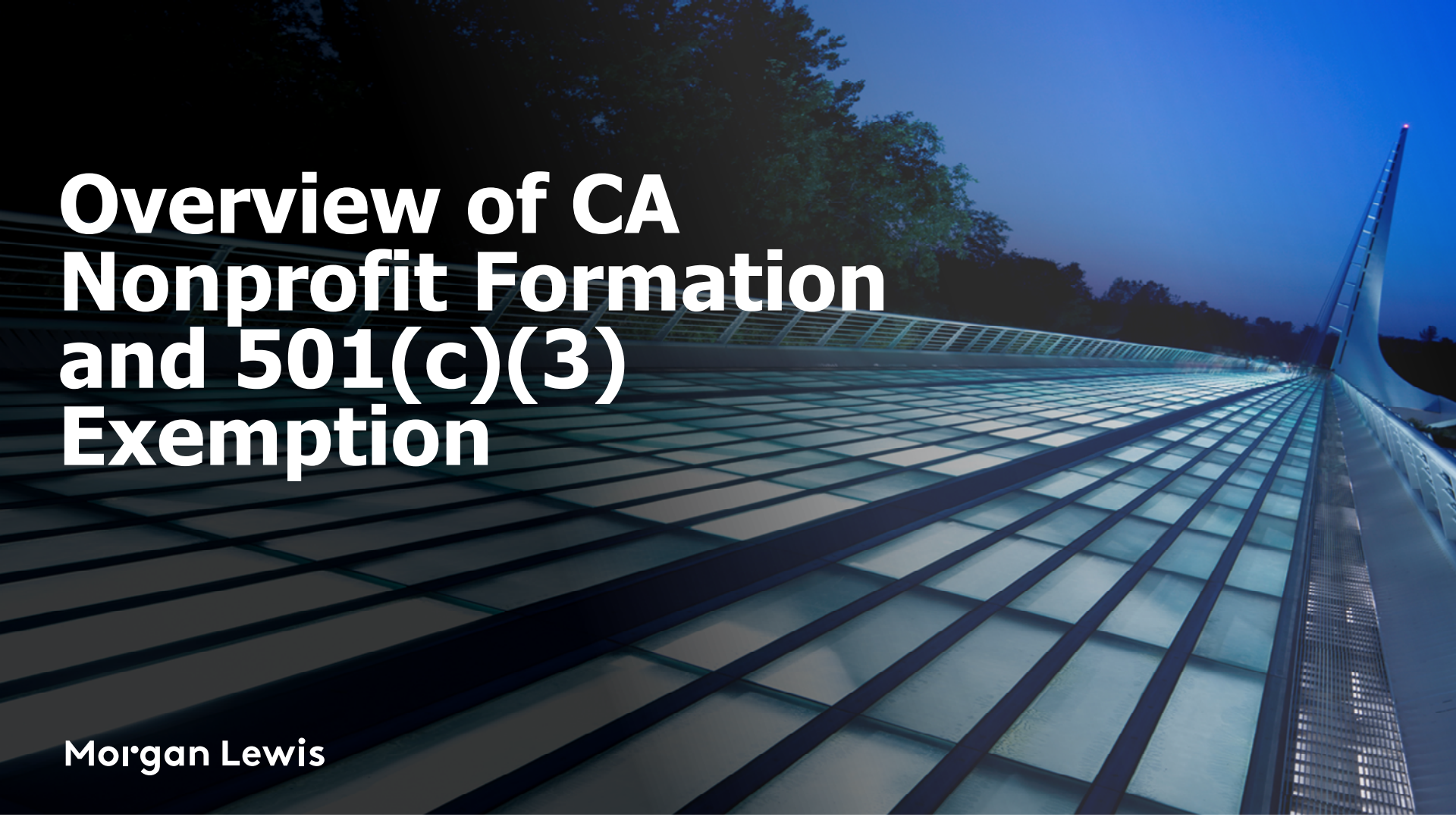
Jay Lee  
Pro Bono Counsel

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# Agenda

- Overview of California Nonprofit Formation and 501(c)(3) Exemption
- Ongoing Filing Requirements
  - Federal
  - California
  - Other States
- Other California Nonprofit Governance and Compliance Considerations
- Other 501(c)(3) Governance and Compliance Considerations
- Questions



# Overview of CA Nonprofit Formation and 501(c)(3) Exemption

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# Overview: Nonprofit Formation under California Law

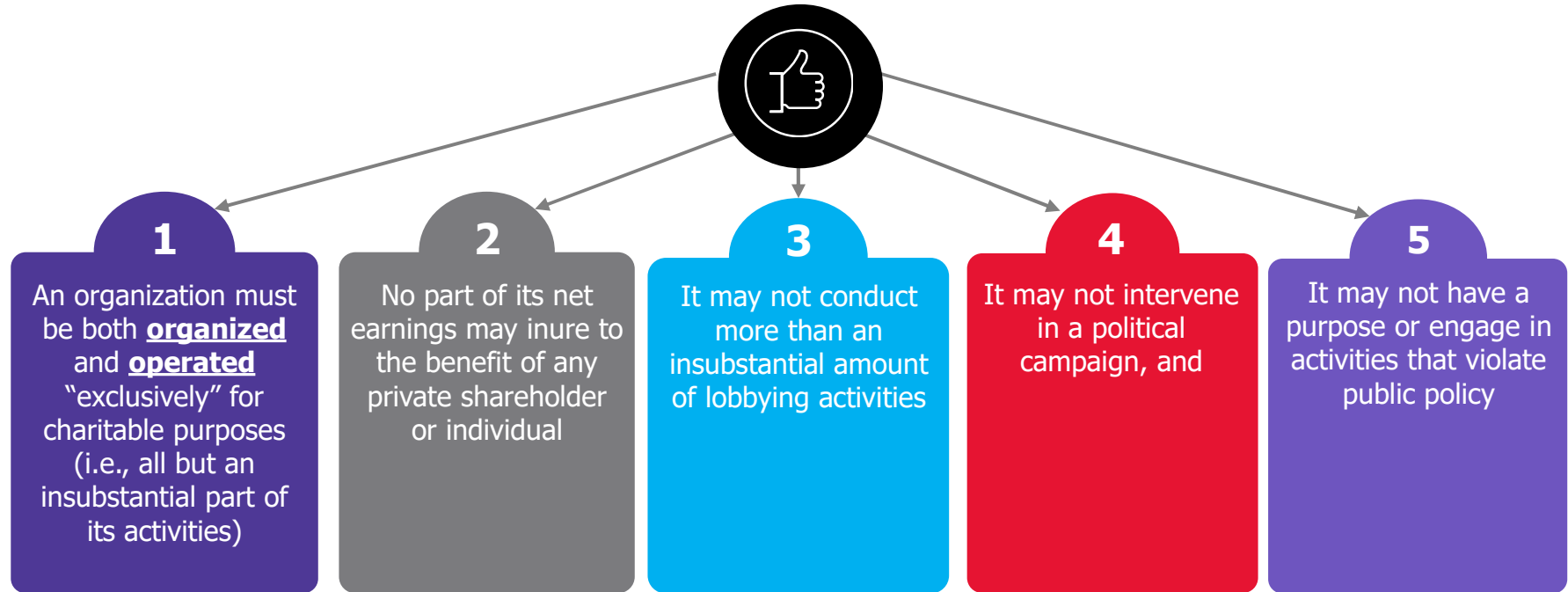
- Nonprofit Corporate Form
  - CA nonprofits may be operated under several legal forms: corporations (the most common), trusts, unincorporated associations, or limited liability companies
  - Most CA nonprofits are organized as nonprofit corporations
    - Public benefit corporations (Cal. Corp. Code §§ 5110 to 6910)
    - Mutual benefit corporations
    - Religious corporations
- Salient characteristics of CA public benefit corporations:
  - Must be formed for public or charitable purposes
  - May not be organized for the private gain of any person
  - Cannot distribute profits, gains, or dividends to any person
- May have members as provided in Articles of Incorporation or Bylaws (not required)

# Overview: Tax Exemption under Federal Law

- Organizations described in Internal Revenue Code (“Code”) Section 501(c)(3) are exempt from income tax under Code Section 501(a)
  - Organizations described in Code Section 170(c) may receive deductible charitable contributions
- To qualify under Code Section 501(c)(3) an organization must be a corporation, community chest, fund or foundation (including a trust)
  - An individual or a partnership is ineligible to qualify; however, under certain circumstances an LLC may be considered an appropriate organizational form

# Overview: 501(c)(3) Organizations

5 basic components to qualifying as a charitable organization under Code Section 501(c)(3):



# Overview: Charitable Purposes

## 501(c)(3) Purposes: Charitable, Educational, Scientific, Literary, Religious, Amateur Sports

- Charitable: relief of the poor and distressed; advancement of education or science; lessening the burdens of government; eliminating prejudice and discrimination; and combating community deterioration and juvenile delinquency (among others)
- Educational: providing instruction of the public on subjects useful to the individual and beneficial to the community

## Red Flags that an Organization May Not be Eligible for Exemption Under 501(c)(3):

- Has a primary purpose of conducting a business or commercial activity
- Conducts activities that primarily benefit one person or a small group of private interests

# Overview: Public Charity v. Private Foundation Status

- All Code Section 501(c)(3) organizations are classified as either public charities or private foundations
- Generally:
  - Public charities raise funds from many sources
  - Private foundations are supported by one or a handful of groups/persons
- Private foundations face greater restrictions on their activities, are subject to excise taxes not imposed on public charities and donors receive less favorable treatment on the deductibility of contributions to such organizations



# Overview: Incorporation & The Organizational Test

- Certificate of Incorporation
  - Mandatory clauses for Federal Tax Exemption:
    - Limitation to Code Section 501(c)(3) tax exempt purposes
      - Sample clause: “The organization is organized exclusively for charitable, religious, educational, and scientific purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding sections of any future federal tax code.”
    - Charitable dissolution clause
      - Sample clause: “Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.”
  - Other restrictions to ensure compliance with Code Section 501(c)(3)
    - No substantial lobbying
    - No private inurement

# Overview: Applying for Federal Tax Exemption

- Most organizations must file Form 1023 (IRS Application for Recognition of Exemption)
  - Generally, must file within 27 months of the end of the first month it was organized
- 1023-EZ is available for smaller organizations
- Churches are not required to file an exemption application
- Form 1023 includes questions on the organization's purposes and activities; domestic and foreign grantmaking; planned fundraising activities; compensation of officers, directors, staff and contractors; anticipated financial information (budget and balance sheet)

# Overview: Applying for CA Tax Exemption

- Most CA charities apply to the CA Franchise Tax Board (“FTB”) for exemption from California franchise and income tax
- Organizations may file Form 3500 with FTB at the same time as IRS Form 1023
  - Alternatively, an organization may wait until it receives federal tax-exempt status and then file a shorter exemption form, Form 3500A, with FTB
- *Note:* In 2025, the CA Secretary of State rolled out a new business ID system, and newly registered entities will now be issued a 12-character ID that starts with the letter “B”
  - Existing entities that already have an entity number will continue to use the same number even when the 12-character ID is implemented.

# Formation/ Tax Exemption Summary

1

## CA Articles of Incorporation

- Must state the name of the corporation, particular language indicating the corporation is a public benefit corporation and is not organized for the private gain of any person, the corporation's public and/or charitable purposes, the name and address of the corporation's agent for service of process
- Must include mandatory federal tax exemption clauses

2

## Bylaws

- Set forth the basic rules for the corporation's governance (how many directors, meetings, director appointment process, etc.)

3

## Key Governance Policies

- Conflict of Interest Policy
- Whistleblower Policy
- Document Retention Policy
- Gift Acceptance Policy

4

## Tax Matters

- Obtain taxpayer identification number (Form SS-4)
- Federal Tax Exemption (Form 1023 or 1023EZ) and IRS Determination Letter
- California State Tax Exemption (Form 3500 or 3500A) and FTB Determination Letter



# Ongoing Filing Requirements: Federal

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# Federal Filing Requirements

- Annual Form 990 (990, 990-EZ, 990-N): Annual information return filed by 501(c)(3) organizations with the IRS

| Financial Activity   | Form                      |
|--|---------------------------|
| Gross receipts normally $\leq$ \$50,000                              | Form 990-N ("e-postcard") |
| Gross receipts $<$ \$200,000, and<br>Total assets $<$ \$500,000      | Form 990-EZ or 990        |
| Gross receipts $\geq$ \$200,000, or<br>Total assets $\geq$ \$500,000 | Form 990                  |
| Private foundation - regardless of financial status                  | Form 990-PF               |

- Exceptions apply (i.e., churches and church-related organizations, certain governmental organizations)
- Public disclosure and inspection requirements - Form 1023, IRS Determination Letter and Form 990s

# Federal Filing Requirements (cont.)

- Form 990 is due by the 15th day of the fifth month after the end of an organization's annual accounting period
  - May 15 for calendar year organizations
  - May obtain a 6-month automatic extension by filing Form 8868; no need to show cause
- Exempt organizations that have gross unrelated business taxable income in excess of \$1,000 must also file a Form 990-T
- Notify IRS of:
  - Amendments to Articles or Bylaws
  - Changes in mission, purposes or activities
  - Termination, liquidation, or merger
- **Failure to file relevant Form 990 for three consecutive years will result in automatic revocation of tax-exempt status**



# Federal Filing Requirements (cont.)

- IRS uses the Form 990 to evaluate whether nonprofits are complying with federal tax law
- Form 990 is also used by many others:
  - Donors
  - State regulators
  - Watchdog and charity rating organizations
  - The press
  - Any member of the public
- Publicly available at [irs.gov/charities](https://irs.gov/charities) or [guidestar.org](https://guidestar.org) (or directly from the organization)



# Ongoing Filing Requirements: California

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# CA Filing Requirements

## Overview

- CA Franchise Tax Board (“FTB”) Form 199 (annual information return)
- CA FTB Form 109 (unrelated business income)
- CA Secretary of State Statement of Information (every other year)
- CA Attorney General Registry of Charitable Trusts
  - Initial Charitable Registration (CT-1) and Annual Renewal (RRF-1)
  - Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code, § 12580 et seq.)
- Other
  - CA State Board of Equalization Property Tax Exemption
  - CA Department of Tax and Fee Administration (CDTFA) Sales and Use Tax Exemption
  - CA and Federal Employer Withholding and Tax Obligations

# Annual FTB Form 199 and Form 109

- Must file annual Form 199 information return with FTB
  - Small organizations (<\$50k gross receipts) may file a simpler Form 199N
  - Form 199 or Form 199N must be filed on or before the 15th day of the 5th month following the close of annual tax accounting period
  - Exceptions apply (similar to Form 990 exemptions including churches and church-related organizations, certain governmental organizations)
  - **Failure to file for three consecutive years results in loss of tax exemption.**
- If an organization has more than \$1,000 in unrelated business income, must also file FTB Form 109 in addition to Form 199

# Form SI-100 Statement of Information

- Must file a Statement of Information (Form SI-100) with the CA Secretary of State
  - One-page informational form
  - Due within 90 days after incorporation, and every other year thereafter during the filing period
    - Filing period includes the formation month and immediately preceding five (5) months
    - If month of formation is December, applicable filing period is the first day of July through last day of December
- Interim filing may be needed for changes (change of address, registered agent or the registered agent's address)

# CA Charitable Registration

- The CA Attorney General has primary responsibility for supervising charities and charitable trusts
- Registry of Charitable Trusts responsible for administering registration & reporting requirements
- Filings are public record (registration status and public filings can be viewed online)
- **Initial Registration**
  - Applies to most CA nonprofit public benefit corporations
  - File Form CT-1 (Initial Registration Form) within 30 days of receiving assets (cash or other property)
    - Board/Officer List
    - Organizational activities/assets within CA
    - Copy of Articles of Incorporation and Bylaws
    - Information on federal exemption status
    - Information on paid arrangements with fundraising professionals

# CA Charitable Registration (cont.)

- **Annual Renewal**

- Organizations must file a Form RRF-1 (Registration Renewal Fee Report) each year by the fifteenth day of the fifth month after the end of the organization's fiscal year.
  - Must attach copy of Form 990 or 990-EZ
- If organization files a Form 990-N (revenue <\$50k), must also file Form CT-TR-1 and attach it to Form RRF-1
- Extensions of time are allowed for organizations that have received extensions for their federal tax return
- Registration fee is on a sliding scale based on total revenue
- If the organization's gross revenue exceeds \$2,000,000 in any fiscal year, audited financial statements are required



# Other Filing and Reporting Requirements

- CA Property Tax Exemption
  - Real and personal property owned and operated by certain nonprofit organizations (including 501(c)(3)s) can be exempted from local property tax
    - Program administered by the CA Board of Equalization and county assessors' offices
    - The most common exemption is the Welfare Exemption.
- CA Sales/Use Tax Exemption
  - Unlike many states, CA does not provide blanket exemption for sales and use taxes for nonprofits
    - Generally, a nonprofit's sales and purchases are taxable
    - Eligibility for exemption requires fact-specific analysis
- Employment
  - CA and Federal tax and reporting considerations for organizations with paid employees



# Ongoing Filing Requirements: Other States

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# Qualifying to Do Business in Other States

- Nonprofits should be aware of whether their activities in states other than their home state constitute “doing business” in other states. If so, they may need to qualify as a foreign corporation in that state
- States have different criteria for what constitutes “doing business” and often only specify what activities do not qualify
- Basic analysis:
  - Does the organization have employees in other states?
  - Does it have a physical presence (office, facility, land) in other states?
  - Does it regularly enter into contracts in other states?
  - Does it sell products or services in other states?
- Note that an organization registered for charitable solicitation purposes in other states may also be required to qualify to do business in those states (separate filing requirements)

# Charitable Registration in Other States

- 41 states plus DC require charities to register to conduct charitable solicitations
- National Association of State Charities Officials maintains national database
- May be required even where the solicitations are being conducted via a website or email
- Triggers registration and periodic reporting requirements
- Basic analysis:
  - Does the organization hold fundraising events outside of CA?
  - Does the organization target residents of a particular state for charitable fundraising?
  - Does the organization receive a significant portion of its donations from a particular state?
  - Does the organization raise funds online/by email (including “Donate Now” button)?
- If “Yes” to several of these questions, organization might be required to register.  
Organizations should engage in periodic monitoring to ensure compliance in other states

# Summary of Filing Requirements

1

## **Federal tax return on IRS Form 990**

- File every year

2

## **State tax return on FTB Form 199**

- File every year

3

## **Charitable registration renewal with the AG's Registry of Charitable Trusts (Form RRF-1 and, if applicable, Form CT-TR-1)**

- File every year

4

## **Secretary of State Statement of Information (Form SI-100)**


- File every 2 years

5

## **Filings required for activities/fundraising outside of California**

- File according to applicable schedule





# Other CA Nonprofit Governance and Compliance Considerations

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# CA Nonprofit Governance Considerations

## Board of Directors

- CA public benefit corporations must have a board of directors (minimum of at least 1 director)
- The board is responsible for overseeing the activities and operations of the organization
  - Oversee the work of officers and other senior management
  - Make policy decisions
  - Ensure the organization is faithfully carrying out its charitable mission

# CA Nonprofit Governance Considerations (cont.)

- **Directors** are fiduciaries of the organization
- **Duty of care** requires directors to perform with the level of care that **an ordinarily prudent person** in a like position would use under similar circumstances
  - This includes making reasonable inquiries as needed
- **Duty of loyalty** requires directors to make decisions in the best interest of the corporation
  - Typically arises when there is a conflict of interest involving charity and personal interests of director
- Codified under Cal. Corp. Code § 5231(a):
  - “A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner that director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.”



# CA Nonprofit Governance Considerations (cont.)

## Officers

- Appointed by the board
- Every public benefit corporation must have at least 3 officer positions
  - President (or Chair)
  - Secretary
  - Treasurer (or Chief Financial Officer)
  - No one serving as secretary, treasurer, or CFO may serve concurrently as president or board chair
  - Compensation of president or CEO and CFO or treasurer must be reviewed and approved by the Board (or authorized committee)
- Additional officers may be authorized under the Bylaws

# CA Nonprofit Governance Considerations (cont.)

## Key Governance Practices

- Meet at regularly scheduled times throughout the year and keep minutes
  - CA law does not require a minimum number of meetings but should be at least once per year
  - Minutes should include information such as: the date, time, and place of the meeting, people in attendance, a statement if quorum was met, actions taken and any resolutions adopted
  - Actions by the Board may be taken by written consent and CA law requires **unanimous consent**
- Review Form 990 (Form 990 asks whether the Board has reviewed it)
- Keep records of: Articles of Incorporation and Bylaws; minutes; membership lists; annual reports
- Provide board orientation for new directors to review policies and fiduciary duties
- Understand which officers are authorized to sign on behalf of the organization

# CA Nonprofit Governance Considerations (cont.)

## CA-Specific Governance Requirements

- Board Independence: No more than 49% of the persons serving on the Board may be “interested persons” (generally, compensated individuals and their relatives) (Cal. Corp. Code § 5227)
- “Self-Dealing” Transactions: Generally, transactions between a director and a CA public benefit corporation are permitted if statutory procedures are met (Cal. Corp. Code § 5227)
- Loans: Generally, a CA public benefit corporation may not grant loans to its directors or officers without AG approval (Cal. Corp. Code § 5236)
- CA Nonprofit Integrity Act of 2004 Compliance: Requires charitable corporations with gross revenues of \$2 million to have audited financials and to establish and maintain an Audit Committee (Cal. Govt. Code § 12586(e))
- Annual report to directors/members: CA nonprofit public benefit corporations must provide an annual report on assets, liabilities, revenue, expenses to directors/members no later than 120 days after fiscal year end (Cal. Corp. Code § 6321)

# CA Nonprofit Governance Considerations (cont.)

## Corporate Changes/Transactions Requiring CA AG Notice/Approval

- **Changes to Charitable Purposes/Activities**
  - May require amendment of Articles of Incorporation and/or Bylaws
  - Notification to the IRS, FTB and CA AG
  - **Caution:**
    - Material changes inconsistent with grant of federal/CA exemption may jeopardize exemption
    - **Assets may only be used for charitable purposes; changes may limit use of funds raised prior to amendment, unless approval from AG is obtained in advance**
- Mergers (Cal. Corp. Code § 6010)
- Sale or Transfer of All or Substantially All Corporate Assets (Cal. Corp. Code § 5913)
- Voluntary Dissolution (Cal. Corp. Code § 6011)

# CA Nonprofit Governance Considerations (cont.)

## Key Fundraising Practices and Considerations

- Maintain accurate accounting of all donations and expenses
- Maintain records and track funds raised for specific purposes (“restricted gifts”)
- Charity raffles are regulated and require registration
- Special regulations apply when nonprofits hire commercial fundraisers (an outside organization that solicits funds for compensation) or fundraising consultants and/or conduct commercial co-ventures
  - Commercial fundraisers must register with AG before a fundraising campaign begins
  - Other state registration/disclosure requirements may apply
- Must comply with donation acknowledgement requirements (discussed below)



# Other 501(c)(3) Governance and Compliance Considerations

# Acknowledgements for Charitable Contributions

- IRS imposes recordkeeping and substantiation rules on donors making charitable contributions and disclosure rules on charitable organizations that receive certain quid pro quo contributions from donors
- Donors must have a record of the contribution or a timely written communication for any monetary contribution before donors can claim a charitable deduction on their federal tax returns
- Donors are responsible for obtaining a contemporaneous written acknowledgment from a charitable organization for any single monetary contribution or noncash contribution valued at \$250 or more before donors can claim a charitable deduction on their federal income tax returns
- Charitable organizations are required to provide a written disclosure statement in quid pro quo charitable contributions where donors receive goods or services in exchange for a single payment in excess of \$75
- Additional substantiation requirements may apply to noncash (aka, “in-kind”) contributions

# Federal Governance Oversight

- Exempt organizations should, at a minimum, have the following policies in place:
  - Conflicts of interest
  - Document retention
  - Whistleblower protection
- Form 990, Part VI requires governance disclosures
  - Section A: Governing Body and Management
    - Break out of number of independent directors
    - Disclosure of business and family relationships between officers, directors, key employees
  - Section B: Policies
    - Review of Form 990 by Board
    - Compensation approval process



# Lobbying by 501(c)(3)s

- What is lobbying?: Advocating the adoption, rejection or introduction of “specific legislation” by a federal, state or local “legislative body”
- Types of lobbying:
  - Direct lobbying: communication (i) with legislators, their staff or any governmental employee who may participate in the formulation of legislation, (ii) which refers to specific legislation, and (iii) reflects a view on that legislation
  - Grassroots lobbying: communication (i) to the general public, (ii) which refers to specific legislation, (iii) which reflects a view on that legislation, and (iv) includes a “call to action” (e.g., “contact your Senator”)

# Lobbying by 501(c)(3)s (cont'd)

- Lobbying by 501(c)(3) public charities: Limited to “no substantial part” of its activities – too much lobbying may result in loss of tax exemption
  - How much lobbying is too much? Two tests:
    - No substantial part test: Facts and circumstances analysis that looks at the substantiality of lobbying activity (scope of activities, time/money spent); OR
    - “501(h)” test: dollar limit for lobbying expenditures based on the 501(c)(3)’s budget – separate sublimits for “grassroots lobbying” and “direct lobbying.” Must elect to be measured under the 501(h) test
- Lobbying by 501(c)(3) private foundations: Absolutely prohibited
- **Note:** In addition to federal tax law requirements, CA has specific lobbying registration, disclosure and reporting requirements at state and local levels

# Political Activity By 501(c)(3)s

- Political campaign intervention absolutely prohibited: Cannot promote, attack, support or oppose any candidate for public office – any political activity results in penalty tax and may result in loss of tax exemption
- Generally, 501(c)(3) public charities may conduct certain nonpartisan activities\* related to the election:
  - Voter and candidate education on public interest issues
  - Voter registration
  - Get-out-the-vote drives
  - Candidate questionnaires and voter guides
  - Candidate debates and forums

# Unrelated Business Income Tax (UBIT)

- UBIT is a tax on gross income (minus deductions) earned by an exempt organization on an “unrelated trade of business” defined as:
  - A trade or business
  - Regularly carried on
  - Not substantially related to the organization’s exempt purpose
- Impact of UBIT on 501(c)(3) organizations
  - Tax at highest corporate tax rate (pay tax on Form 990-T, applicable state form)
  - Because a 501(c)(3) organization must be operated “exclusively” for charitable purposes, it cannot engage in “too much” business activity unrelated to its exempt purpose.

# Unrelated Business Income Tax (UBIT) (cont'd)

- What is a “related” trade or business?
  - Business must “contribute importantly” to the accomplishment of the organization’s exempt purpose (other than the need to earn funds for the organization’s exempt activities)
  - Basic Analysis: Does the actual conduct of the trade or business contribute to the achievement of the organization’s exempt purpose?
- General rule: If income is subject to UBIT, the organization may deduct expenses “directly connected” with carrying on the trade or business
- If UBIT is a component of an exempt activity, may divide expenses between exempt and nonexempt activities on a reasonable basis
- The 2017 Tax Cuts and Jobs Act requires exempt organizations to calculate unrelated business taxable income (UBTI) separately for each unrelated trade or business

# Unrelated Business Income Tax (UBIT) (cont'd)

## Certain Activities are Not Considered "Trade or Business Activities"

- Activity conducted by volunteers
- A trade or business carried on primarily for the convenience of members, students, patients, officers or employees (examples include hospital or museum gift shops and cafeterias. Note, however, that the fragmentation rule may be applied to treat sales of certain items as producing unrelated business income)
- A trade or business where substantially all of the merchandise is donated, e.g., a thrift shop
- Distribution of low-cost articles incidental to charitable solicitation (indexed annually for inflation)
- "Qualified sponsorship payments" received by an exempt organization – donor does not receive any substantial return benefit other than the use or acknowledgement of the sponsor's name, logo or products (this does not include advertising)

# Unrelated Business Income Tax (UBIT) (cont'd)

## **Passive income is generally excluded when calculating unrelated business income**

- Rents: exemption does not apply (1) where rent is tied to income/profits derived from leased property (as opposed to gross sales), (2) for services not customarily rendered with leased property
- Royalties: includes payments for rights such as trademark, copyright, mailing list, BUT nonprofit must take care not to take an active role
- Dividends, interest, annuities, and other investment income
- Exceptions apply

# Questions

**THANK YOU!**