Investigative Solutions Group, Unlimited

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Non-Profit Business Guidelines

No legal advice given
The ISGU Non-Profit Guidelines is designed for educational purposes only and is not engaged in rendering legal advice or professional services. The information provided through this manual should not be used except as guidelines for Non-profit organizations as the name implies. It is not a substitute for legal advice and all information may or may not be applicable in the state your operate in. Much of this information is available through the IRS, The Texas Comptroller's office and the Texas Secretary of State.

Section 1

Basic Outline of How to Build Your 501 3 (c)

501(c)3 FACT SHEET*

Forming a new non-profit is a process that involves two distinct steps. Generally, interested parties that are not yet a 501(c)3 will need to file articles of incorporation with the appropriate agency in their state (usually the state's secretary of state). Next, they will also need to secure federal income tax exemption by filing the appropriate forms with the Internal Revenue Service (IRS). Local bar associations may be able to direct Councils to "pro bono" or reduced-cost legal services from lawyers experienced in the non-profit sector. Please be aware that it usually takes 4 to 6 months to go through the process.

When in the process of procuring and filing the appropriate forms required to apply for non-profit incorporation, interested parties may want to contact the state charity registration office. Be aware that procedures vary from state to state; so each party should consult with an attorney.

Steps and Considerations in Attaining 501(c)3 Status

1. Take the issue to the interested parties. Make sure everyone understands the difference between non-profit and independent entity status. If appropriate, vote upon which status the group wishes to pursue, and brainstorm strategies for communicating the desire to become independent with all current cooperators.

2. Consult with a lawyer with experience working in the non-profit sector. These services may be available pro bono.

3. Preparation:

- Budget for the application fee.
- Obtain Tax ID Number using form IRS Form SS4: Application for Employee Identification Number.
- Develop a budget for the next two years.
- Prepare bylaws and articles of incorporation. These may be modified versions of the bylaws and articles of incorporation other similar organizations have submitted to the IRS in their 501 (c)3 applications.
- Designate a committee of "incorporators" who will have primary responsibility for developing by-laws and dealing with preparation of other documents for the IRS application.
- Parties and their incorporators will develop and approve the by-laws and the rules governing how candidates will run for and serve on the Executive Board.
- Incorporators will not automatically become Executive Board members of the non-profit, but must run for their positions just as required of all Executive Board candidates.
- File articles of incorporation with Probate Judge.
- When incorporation paperwork is received and bylaws are written, file for 501 (c)3 status with the IRS.

4. Compile documents for application to submit to IRS:

- Form 8718: User Fee for Exempt Organization Determination Letter Request (this form is basically a cover page for your application).
- Complete relevant parts 1-4 of form 1023, the Application for Recognition of Exemption. Depending upon the kind of exempt organization the organization chooses to be, you will be using different schedules on form 1023.
- Financial statements and budgets.
- Bylaws.
- Incorporation documents.
- Signatures.
- Check for State Filing Fee.

5. Form 1023 requirements:

- Part 1: Administrative information, address (cannot be a PO Box), attach incorporation document, bylaws and articles, signature by officer.
- Part 2: Describe activities in detail. Must specify that your organization is not financially accountable to another organization or involved in politics or influencing legislation.
- Part 3: Administrative information. Examine the application and fill out relevant "schedules" according to any special activities of your Council.
- Part 4: Financial statements. May want to base this on a template developed by an accountant or one used by other similar organizations in their non-profit status applications.

6. Help and forms are available on the IRS website at www.irs.gov. To find the correct amount for user fees and the length of time to process a request call 1.877.829.5500 for assistance from the IRS.

Common Mistakes made by New 501(c)3

We recognize that each State is different and certain requirements may be different when responding to IRS.

Form 990: IRS Form 990 is the annual "Return of Organization Exempt From Income Tax,". It is not required when gross receipts are less than $25,000. It might be a better idea to file a "blank" Form 990, than to not file at all. To file a "blank" return, complete all the identifying information at the top of the return, check the box indicating that gross receipts are normally less than $25,000, sign and date the return, and send it to IRS, Ogden, Utah 84201.

Employment Taxes: It is never a good idea to ignore a Form 941, "Employer's Quarterly Federal Tax Return," sent to you by the IRS. If you do not need to file the return, because you had no payroll for the quarter, or because you have no employees, complete the return anyway, and send it in (keeping a copy for your own records). It is tempting, when hiring workers for the first time, to treat them as independent contractors rather than employees. Withholding, quarterly deposits, etc. can be a bother. But misclassification of employees is, by far, the most common issue that IRS auditors raise with non-profit organizations. There are times, of course, when workers really are independent contractors. Many organizations overlook the need to report compensation of $600 or more to the IRS. Awards, fees, and similar payments must be reported on Form 1099-MISC, which must be sent

to the recipient no later than January 31st, and to the IRS, with a Form 1096 transmittal, no later than February 28.

There are 8 types of tax-exempt 501(c)3 organizations: charitable; religious; educational; scientific; literary organizations; those that test for public safety; support national and international sports competitions; and those that work to prevent cruelty to children or animals. Many community and economic development organizations have chosen to classify themselves as educational organizations. However, be aware that 501(c)3 public charities are supposed to receive at least one third of their support from the general public. Some organizations find themselves relying heavily on donations from founders or board members, or going back year after year to the same foundations or corporations for income, which may not count as "public" support.

Unrelated Business Income

Many organizations keep their members informed with a regular newsletter or via the website, and help defray the costs by accepting paid advertising. Unfortunately, the IRS considers this advertising income to be unrelated to exempt purposes, and therefore taxable. Up to $1,000 in unrelated income can be earned without having to pay tax, but an organization that receives at least $1,000 in advertising or other unrelated receipts must file Form 990-T, and pay any tax due.

Frequently Asked Questions on Tax Exempt Status
How do we get a tax ID number?

Use IRS Form SS-4 to obtain an EIN (Employer Identification Number), an identifying number for all Federal tax purposes, whether you plan to have employees or not. You can apply for an EIN separately if you need one immediately (for banking, for instance), or instead attach a completed Form SS-4 to your application for tax-exempt status. NOTE: This number does not, in any way, indicate whether or not your organization is exempt from tax!

How much will it cost to get our tax-exempt status?

The IRS has charged a non-refundable processing fee for exemption applications since 1987. There is currently a two-tier fee schedule. Organizations whose gross receipts have averaged, or will average, not more than $10,000 per year pay $150. Larger organizations pay $500. A new IRS Revenue Procedure announcing the fees comes out each January; if you are submitting your application late in the year, there may be some benefit to getting it in before January 1st.

Other costs you might incur when setting up a new non-profit organization include incorporation, charitable solicitation and other state or local registration fees (for your articles of incorporation, bylaws and exemption application professionally prepared).

How long will it take to get our tax-exempt status?

The IRS is currently saying that it takes an average of 120 days to process an application. Roughly a quarter to a third of the applications they receive do not require further work, and are processed in six to ten weeks.

Can we ask for donations before we get our tax-exempt status?

The "effective date" of your group's tax-exempt status will be the day it was originally created. This means that contributions that your organization received after incorporation, but before the IRS issued your exemption letter will not be tax exempt.

Can we pay salaries to our board members? Can we rent a building owned by a board member, or purchase equipment from a board member?

Tax law always permits the payment of reasonable compensation for goods or services actually rendered. If the IRS finds that amounts received by insiders are unreasonably high, however, they can fine both the insider who received the payment, and the board members who approved the payment. It is a good idea, therefore, to fully document the board's decision-making process when any kind of payment will be made to an insider.

Hints to Remember:

- When listing your board members on your incorporation papers, make sure that you do not list everybody, or they will all have to sign!
- When the IRS returns your application for clarification, ensure that all documents are promptly returned so as not to delay your application.
- Be sure that you photocopy everything you send to IRS, as documents can be lost.

Business Organization Common Questions
Formation: General Guidelines

1. How do I form a "C" corporation, an "S" corporation, or a "501(c)(3)" corporation?

Filing a Certificate of Formation with the Secretary of State creates a for-profit corporation, professional corporation, close corporation, or nonprofit corporation. Designations such as "S," "C," or "501(c)(3)" refer to federal tax provisions. For information on federal tax issues, including how they might affect what you need to include in your Certificate of Formation, consult a private attorney and/or contact the Internal Revenue Service.

2. Can I file a Certificate of Formation online?

Yes! Certificates of Formation can be filed online through SOSDirect 24 hours a day, 7 days a week.

3. Do corporations and LLCs file annual reports with the Secretary of State?

Corporations and LLCs (whether Texas or foreign) do not file annual reports with the Secretary of State; however, corporations and LLCs are subject to state franchise taxes and must file annual franchise tax reports. As part of the report, they file a Public Information Report (PIR) that lists the names of officers and directors at the time the report is filed.

4. How do I form a minority-owned business?

For information on certifying a "historically underutilized business," please contact the Texas Building and Procurement Commission at (512) 463-3419. The Texas Business Organizations Code does not address the formation of minority-owned businesses.

5. Do you have to be a U.S. citizen or a U.S. resident to incorporate and/or own a corporation in Texas?

No. Texas law does not restrict who can form or own shares in a corporation, other than requiring the organizer to be a person capable of entering into a contract. An entity may impose residency or citizenship requirements in its Certificate of Formation or other governing documents, if desired. For information on restrictions that might apply to the entity you are creating, consult your attorney or the IRS.

6. Can a person younger than 18 be a director, officer, or shareholder of a corporation?

Yes. Texas law does not restrict who can own shares in or manage a corporation. An entity may impose requirements in its Certificate of Formation or other governing documents, if desired. For

information on restrictions that might apply to the entity you are creating, consult your attorney or the IRS.

7. What is a registered agent? What are the agent's duties? Where may a registered office be located? Can the Secretary of State be the registered agent of a corporation, limited liability company, or limited partnership?

A registered agent is an individual Texas resident, a domestic entity, or a foreign entity that has qualified or registered to transact business in Texas that is responsible for receiving service of process or official notices addressed to an entity.

An entity's registered office must be a physical address where the registered agent can be served with process during business hours. It cannot be a post office box that is part of a commercial mail or message service unless that commercial enterprise is the registered agent or the registered office is in a city with a population under 5,000.

The Secretary of State cannot serve as an entity's registered agent.

8. Does a corporation have to issue stock? What is par value? How do you determine the par value of the corporation's stock? Is there a minimum or maximum value for corporate stock?

A for-profit corporation must issue (sell) shares of stock in order to provide the corporation with its own capital, separate from its owners' money. Shares of stock sold by the corporation represent proportionate ownership interests held by shareholders in the corporation. "Par value" is the minimum amount for which a share may be sold. There is no minimum or maximum par value that must be assigned. Shares may also have "no par value," which means that the Board of Directors will assign a value to the stock below which the shares cannot be sold. There is no minimum number of shares that must be authorized in a Certificate of Formation; however, the corporation cannot sell more shares than it is authorized to issue.

9. Where can I get a corporate seal, stock certificates, and a minute book?

Texas law does not require a business to have a seal; therefore the Secretary of State does not have information or regulations on how to design a seal or where to obtain one. Seals, stock certificates, and minute books can be purchased from book stores, office supply stores, or corporate service companies.

10. Can I file my corporation's bylaws with the Secretary of State?

No. A corporation keeps its bylaws at its principal office. No statute permits the filing of bylaws with the Secretary of State; therefore, the Secretary of State cannot accept them for filing.

11. Can I register a trade name?

Texas law does not provide for registration of a business's trade name, whether that business is incorporated or unincorporated.

Individuals and unincorporated entities that do business using an assumed name (often referred to as a "dba") must file an Assumed Name Certificate with the county clerk in each county in which business premises are maintained.

If a corporation, LLC, or LP does business under a name other than the legal name in its Certificate of Formation, it must file Assumed Name Certificates with the Secretary of State and the county or counties where its registered office and principal office are located.

12. Will filing a Certificate of Formation keep others from using my company name?

No. Generally, every business must protect its own intellectual property and good will. Filing a Certificate of Formation only prevents the Secretary of State from filing a subsequent Certificate of Formation for an entity with a name that is the same as, deceptively similar to, or similar to your company name.

13. How can I protect a trade name nationwide?

The Secretary of State recommends that you consult a private attorney about trademarks, service marks, and other intellectual property matters.

14. Can one person be the sole shareholder, director, and officer of a corporation?

Yes. The Texas Business Corporation Act and the Texas Business Organizations Code require that for-profit corporations and professional corporations have at least one director, one president, and one secretary. A single natural person can be the president, secretary, sole director, and sole shareholder.

In the case of a nonprofit corporation, the Texas Nonprofit Corporation Act and the Texas Business Organizations Code require a nonprofit corporation to have at least three directors, one president, and one secretary; however, in a nonprofit corporation, the same person cannot be both the president and secretary.

In both for-profit corporations and nonprofit corporations, officers and directors must be natural persons.

15. Do I need to publish a notice before incorporating a business?

No. The provision in the Texas Miscellaneous Corporation Laws Act requiring that an existing unincorporated business intending to incorporate without a change in its name publish its intent to incorporate in the local newspaper for four consecutive weeks was repealed in 2003.

16. What are the differences between a corporation, a limited liability company (LLC), a limited partnership (LP), a limited liability partnership (LLP), and a limited liability limited partnership (LLLP)? What are the benefits of forming a corporation?

Corporations, LLCs, and LPs formed by filing a Certificate of Formation with the Secretary of State. Corporations are owned by shareholders, managed by a board of directors, and administered by officers. LLCs are owned by members and managed by members, managers, or both. Both corporations and LLCs must pay Texas franchise taxes. An LP is a partnership of one or more limited partners and one or more general partners. LPs do not pay Texas franchise taxes. Each of these entities shields its owners from personal liability for the debts and obligations of the entity and may offer tax advantages that are not available to sole proprietorships and general partnerships.

An LLP is either a general partnership or an LP that registers annually with the Secretary of State and carries a minimum of $100,000 in errors and omissions insurance. If an LP registers as an LLP, it can be called a limited liability limited partnership (LLLP). Registering as an LLP (or LLLP) offers limited protection to general partners from personal liability for any debt or obligation of the partnership arising from an error, omission, negligence, incompetence, or malfeasance committed by another partner or representative of the partnership.

The Secretary of State cannot determine which entity would be best for any individual situation. A private attorney can assist with that determination.

Nonprofit FAQs
Formation:

1. What is a nonprofit corporation?

A nonprofit corporation is created by filing a Certificate of Formation with the Secretary of State. See Form 202 (Word, PDF). A "nonprofit corporation" is a corporation no part of the income of which is distributable to members, directors, or officers. A nonprofit corporation may be created for any lawful purpose, which purpose must be stated in its Certificate of Formation.

2. Is a nonprofit corporation exempt from taxes?

A Texas nonprofit corporation is not automatically exempt from federal or state taxes. To become exempt, it must meet certain requirements and apply with both the IRS and the Texas Comptroller of Public Accounts.

3. How does a nonprofit organization, including a nonprofit corporation, become tax-exempt?

Exemption from federal taxes is determined by the IRS. IRS Publication 557, "How to Apply for Recognition of Exemption for an Organization," describes the rules and procedures for requesting exemption. Questions about federal tax-exempt status can be directed to:

IRS
Exempt Organizations
1100 Commerce
Dallas, Texas 75242
(214) 767-6023 [Customer Service]
(214) 767-0040

Exemption from Texas state taxes is determined by the Texas Comptroller of Public Accounts . Questions can be directed to:

Texas Comptroller of Public Accounts
Exempt Organizations Section
(800) 531-5441 or (512) 463-4600
tax.help@cpa.state.tx.us

4. How do I form a "501(c)(3)" corporation?

Filing a Certificate of Formation with the Secretary of State creates a nonprofit corporation. Designations such as 501(c)(3) relate to federal tax provisions only. If you need information regarding those provisions or how they might affect a Certificate of Formation, you should contact your own tax counsel or the Internal Revenue Service. The Secretary of State's Form 202 meets minimum state law requirements but does not include any additional statements that the IRS might require for tax-exempt status.

5. Do you have to be a U.S. citizen or a US resident to incorporate a nonprofit corporation in Texas? Do you have to be 18 or older to be an officer or director?

No. Neither the Texas Business Organizations Code nor the Texas Non-Profit Corporation Act restricts who can form or be a director in a corporation. An entity can impose age, residency, or citizenship requirements in its Certificate of Formation or other governing documents, if desired. For information on restrictions that might apply to the entity you are creating, consult your attorney, tax counsel, and/or the IRS.

6. What is a registered agent? What are the agent's duties? Where may a registered office be located? Can the Secretary of State be the registered agent of a corporation, limited liability company, or limited partnership?

A registered agent is an individual Texas resident, domestic entity, or foreign entity that has qualified or registered to transact business in Texas that is responsible for receiving service of process or official notices addressed to an entity.

An entity's registered office must be a physical address where the registered agent can be served with process during business hours. It cannot be a post office box that is part of a commercial mail or message service unless that commercial enterprise is the registered agent or the registered office is in a city with a population under 5,000.

The Secretary of State cannot serve as an entity's registered agent.

7. Where can I get a corporate seal, stock certificates, or a minute book?

Neither the Texas Non-Profit Corporation Act nor the Texas Business Organizations Code requires a corporation to have a corporate seal; therefore the Secretary of State does not have information or regulations on how to design a seal or where to obtain one. Seals, stock certificates, and corporate minute books can be purchased from book stores, office supply stores, or corporate service companies.

8. Can I file my corporation's bylaws with the Secretary of State?

No. The bylaws of a corporation are documents kept by the corporation at its principal office. No statute permits the filing of bylaws with the Secretary of State; therefore, the Secretary of State cannot accept them for filing.

9. Can one person be the sole director and officer of a nonprofit corporation?

The Texas Non-Profit Corporation Act and the Texas Business Organizations Code require a nonprofit corporation to have at least three directors, one president, and one secretary. The same person cannot be both the president and secretary. Officers and directors must be natural persons.

10. Can a nonprofit corporation pay a salary to its officers, directors and/or employees?

Yes. Any corporation may pay reasonable compensation for services rendered to the corporation.

11. Can a nonprofit corporation give political contributions?

Generally, political and social action activities are permissible purposes for a nonprofit corporation; however, certain activities may affect a nonprofit corporation's tax-exempt status. For more information, contact the Texas Ethics Commission, (512) 463-5800, the Federal Elections Commission, or the IRS.

12. Who has authority to investigate the activities of a nonprofit corporation?

The Attorney General has statutory authority to (1) investigate charities that operate as nonprofit corporations, and (2) inspect the books and records of all corporations, including nonprofit corporations. The Secretary of State has no such authority.

The IRS can revoke a nonprofit corporation's tax exemption for violations of federal tax laws.

13. Are the books and records of a nonprofit corporation available for inspection?

The Texas Non-Profit Corporation Act and the Texas Business Organizations Code require nonprofit corporations to maintain financial records and minutes of certain proceedings and make them available to members for examination and copying. The board of directors is required to prepare or approve an annual financial report. In general, all records, books, and annual reports must be available to the public for inspection and copying. These provisions do not apply to (1) corporations that solicit funds only from their members; (2) corporations that do not intend to solicit and do not actually receive contributions in excess of $10,000 during a fiscal year from sources other than their members; (3) proprietary schools; (4) religious institutions; (5) trade associations or professional associations whose principal income is from dues and member sales and services; (6) insurers; (7) charitable organizations concerned with conservation and protection of wildlife, fisheries, or allied natural resources; or (8) alumni associations.

Under certain circumstances, a nonprofit corporation's books and records are available to the public under the Texas Open Records Act (chapter 552 of the Government Code). Section 552.003(1)(A) of the Open Records Act defines "governmental body" to include the "part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." For more information on the Open Records Act, contact the Attorney General.

14. Does a nonprofit corporation file IRS Form 990 with the Secretary of State?

No; however, under certain circumstances, a nonprofit corporation files Form 990 or 990-PF with the Charitable Trust Section of the Texas Attorney General.

Unincorporated Nonprofit Associations:

1. What is an unincorporated nonprofit association?

The Texas Uniform Unincorporated Nonprofit Association Act (TUUNAA), as codified in the Texas Business Organizations Code, defines an unincorporated nonprofit association as an unincorporated organization consisting of three or more members joined by mutual consent for a common nonprofit purpose. All unincorporated nonprofit associations, whether or not the entities are tax exempt, are subject to TUUNAA. For more information, see Form 208 (Word, PDF) .

2. Does an unincorporated nonprofit association have to file anything with the Secretary of State?

No. An unincorporated nonprofit association may, but is not required to, file an appointment of an agent for service of process (Form 706 Word, PDF). In addition, the association may, but is not required to, file a statement of authorization as to real property with the county clerk.

Registration:

1. Does my foreign nonprofit corporation need to file an Application for Registration?

A foreign filing entity must file an Application for Registration if it "transacts business" in Texas. Texas statutes do not specifically define "transacting business;" however, BOC § 9.251 lists 14 activities that do not constitute "transacting business." Generally, a foreign entity is transacting business in Texas if it has an office or an employee in Texas or is otherwise pursuing one of its purposes in Texas. The Secretary of State cannot give a legal opinion as to whether a particular foreign entity is "transacting business" in Texas.

2. If the foreign entity intends to or is already transacting business in Texas, what are the penalties for not filing an Application for Registration?

If a foreign entity transacts business in Texas without registering,

the entity cannot maintain an action, suit, or proceeding in a Texas court until it registers;
the attorney general can enjoin the entity from transacting business in Texas;
the entity is subject to a civil penalty equal to all fees, taxes, and penalties that would have been imposed if the entity had registered when it was first required to do so; and
if the entity has transacted business in the state for more than ninety (90) days, the Secretary of State will impose a late filing fee for an Application for Registration equal to the registration fee for each year or part of year of delinquency.
Amnesty Period. A foreign entity that should have obtained a Certificate of Authority to transact business in Texas before January 1, 2006, but failed to do so will not be penalized so long as it files an Application for Registration on or before January 31, 2006. BOC § 402.012.

3. Does a foreign nonprofit corporation have to register to transact business in Texas if its only contact with the state is solicitation of funds or donations?

A nonprofit corporation that actively solicits funds in Texas may be "transacting business" in Texas and should file an Application for Registration; however, if the corporation's contacts with Texas are only through interstate commerce (for example, by mail or by telephone) or independent contractors, then the corporation is probably not "transacting business" in Texas.

Amending Or Correcting:

1. Must I file a Statement of Change of registered office address when the location has not changed, but the address has been changed due to a postal or "911" change?

Yes. A corporation must continuously maintain a registered office address in Texas. Texas statutes do not distinguish between a "voluntary" change of address and an "involuntary" change of address. The only way to change a registered office address is to file a Statement of Change . See Form 401 (Word, PDF) .

2. How can I correct a typographical error in a filed instrument?

You can file Form 403 (Word, PDF) to correct (1) inaccurate records of an action referred to in the instrument, (2) inaccurate or erroneous statements of fact, and/or (3) defects in execution, acknowledgement, or verification.

3. Can I use Form 403 (Articles/Certificate of Correction) to cancel a filing instrument?

No. Articles or Certificates of Correction can only be used to correct errors or inaccuracies in drafting or execution of a filed instrument. Articles or Certificates of Correction cannot cancel a filing or add, alter, or delete a statement which would have caused the instrument not to conform to law at the time it was originally filed.

4. If a foreign corporation with a Certificate of Authority or registration to transact business in Texas converts, or "re-domesticates," under the laws of its home state to a corporation formed and governed under the laws of another jurisdiction, what must it file with the Texas Secretary of State?

A foreign entity that "re-domesticates" must amend its Certificate of Authority or registration to show its new jurisdiction of formation. See Form 406 (Word, PDF). If the entity is not governed by the Texas Business Organizations Code (BOC), Form 406 must be accompanied by a certificate from its

new jurisdiction of formation evidencing the re-domestication. If the entity is governed by the BOC, it does not have to submit any evidence of re-domestication.

Reserving a Name:

1. If I reserve a name for an LLC or LP, can I use the name to form a nonprofit corporation?

Yes. Name reservations are now "generic" and can be used to form any type of filing entity.

2. Can a reserve a name online?

Yes! You can file name reservations through SOSDirect 24 hours a day, 7 days a week.

3. Can I withdraw or cancel a name reservation before the end of the 120-day reservation period?

Yes. See Form 507 (Word, PDF) .

4. Can I renew a name reservation?

Yes! A name reservation may be renewed by filing a new application during the 30-day period preceding the expiration of the current reservation. See Form 501(Word, PDF).

5. Is there a limit on the number of times I can reserve an entity name?

No.

Assumed Name:

1. If I file an assumed name with the Secretary of State or with the county clerk does this mean no one else will be allowed to use the name?

No. Filing an Assumed Name Certificate does not give you any right to use the assumed name in a way that violates the law, including the laws of unfair competition, unfair trade practices, copyright, and trademark, and it does not prevent anyone else from filing the same assumed name or using the name to form a new entity. The Secretary of State will file an Assumed Name Certificate without determining what rights, if any, you have to use the name. Consequently, more than one person can have the same assumed name on file.

An Assumed Name Certificate provides information about the underlying business's identity and location.

Generally, it is up to you to protect your intellectual property, including your business name and good will.

2. Must an Assumed Name Certificate have an original signature and be notarized?

Assumed Name Certificates filed with the Secretary of State do not need to be notarized. See Form 503 (Word, PDF). Faxed copies and photocopies are acceptable.

Assumed Name Certificates filed at the county level must be signed by an officer, general partner, member, manager, representative, or attorney in fact, and notarized. A certificate that is signed and acknowledged by an attorney in fact must include a statement that the attorney in fact has been duly authorized in writing by the principal to sign and acknowledge the Assumed Name Certificate to be filed. Do not use Form 503 for county-level filings. Contact each county for information on its filing procedures.

3. Does a corporation have to file an Assumed Name Certificate in every county in which it does business?

No. The Texas Assumed Business or Professional Name Act require a corporation to file its Assumed Name Certificate with the Secretary of State and, if the corporation is required to maintain a registered office address in Texas in the county clerk's office of the county in which the registered office is located and in the county of its principal office. In the case of a corporation that is not required to maintain a registered office address or that does not maintain a registered office address, the Assumed Name Certificate would be filed with the Secretary of State and in the county clerk's office of the county in which its office is located in Texas.

4. Can I amend an Assumed Name Certificate to change incorrect or dated information?

No. If there is a material change in information, a new Assumed Name Certificate must be filed within 60 days. A material change would include a change in registrant's name, address, or form of business.

Name Changes:

1. How does my business entity change its name?

An entity that is governed by the Texas Business Organizations Code (BOC) changes its legal name by filing a Certificate of Amendment. See Form 424 (Word, PDF) . An entity that is not governed by the BOC changes its legal name by filing Articles of Amendment. See Forms 404-409.

Dissolution and Termination:

1. Can the incorporators or organizers of a nonprofit corporation dissolve the corporation when the corporation never began business?

No. Neither the Texas Nonprofit Corporation Act nor the Texas Business Organizations Code permits a nonprofit corporation to dissolve or terminate by act of its incorporators or organizers under any circumstances.

2. Can a nonprofit corporation be reactivated after it has filed Articles of Dissolution or a Certificate of Termination with the Secretary of State?

The Texas Non-Profit Corporation Act does not provide for a nonprofit corporation to revoke dissolution proceedings. Once the Secretary of State issues a Certificate of Dissolution, the corporation cannot be reinstated or reactivated.

The Texas Business Organizations Code provides that a nonprofit corporation can revoke a voluntary decision to wind up at any time before a Certificate of Termination is filed. After a Certificate of Termination is filed, the corporation can be reinstated within 3 years under certain circumstances. See Form 811(Word, PDF).

Required Reports:

1. Is an electric cooperative formed under the Utilities Code required to file a Periodic Report under article 9.01 of the Texas Nonprofit Corporation Act or § 22.357 of the Texas Business Organizations Code?

Yes. The Texas Miscellaneous Corporation Laws Act, article 1302-1.03, provides that all corporations organized under special statutes are subject to the provisions of the Texas Nonprofit Corporation Act

(TNPCA) to the extent the special statute is not inconsistent with the TNPCA. The TNPCA, article 1396-10.04G, provides that all corporations organized on a nonprofit basis under special statutes, which do not contain some of the provisions found in the TNPCA, are subject to those provisions of the TNPCA. Similarly, the Texas Business Organizations Code provides that a not for profit corporation created under a special statue is subject to Title 1 and Chapter 22, to the extent not inconsistent with the special statute. Consequently, all nonprofit corporations, regardless of the statute under which they are formed, must file a report.

2. Can I change the preprinted information on my Periodic Report?

You can change the following preprinted information on the report simply by crossing it out and filling in the correct information:

- registered agent's name
- registered office address
- You cannot change the corporation's name simply by crossing it out; instead, you must file Articles of Amendment or a Certificate of Amendment. See Name Changes, above.

3. Can I file a Periodic Report even if the Secretary of State has not asked for one?

Yes. Although a nonprofit corporation is not required to notify the Secretary of State of changes to officer/director information, a nonprofit corporation can file a Periodic Report even if the Secretary of State has not asked for one; however, filing a voluntary report does not affect your duty to timely-file a report when the Secretary of State asks you to.

4. What happens if I don't file my Periodic Report within the time specified by the Secretary of State?

A nonprofit corporation that fails to file the Periodic Report within 30 days from the date that the report is sent by the Secretary of State forfeits its right to transact business in Texas. A forfeited corporation cannot maintain any action, suit, or proceeding in any Texas court or amend its Articles of Incorporation or Certificate of Formation. It can, however, defend any action or suit; furthermore, forfeiture does not impair the validity of any contract.

The corporation can relieve itself of forfeiture by filing the Periodic Report within 120 days of the date the Secretary of State mailed notice of forfeiture. If the corporation does not file the report within this 120-day period, the Secretary of State will involuntarily dissolve or terminate the corporation, or revoke its Certificate of Authority or registration.

5. If a nonprofit corporation is involuntarily dissolved, terminated, or revoked for failure to file its Periodic Report, can it reinstate?

Yes. It can reinstate at any time by filing the required report (Form 802 Word, PDF) and paying the filing fee.

Dissolution and Termination:

1. Does a company have to inform the Secretary of State that it has merged with another company or gone out of business?

Generally, Texas law requires an entity to file an instrument with the Secretary of State for mergers, dissolutions, terminations, and withdrawals.

2. If an entity dissolves, can its registered agent still be served with process?

Texas law does not specifically address this question; however, the registered agent's obligation is generally to the corporation or to the limited liability company, not to the individual persons operating or owning the entity. Accordingly, it is understood that the registered agent is not obligated to accept service of process for a dissolved entity unless the agent is otherwise contractually obligated to do so. The Texas Rules of Court provide that service of process on a dissolved corporation may be made on the president, directors, general manager, trustee, assignee, or other persons who were in charge of the corporation at the time it was dissolved.

3. What are the liabilities of an entity's officers, directors, or managers when the entity is forfeited for non-payment of franchise tax?

Liabilities resulting from tax forfeiture are addressed in the Texas Tax Code and the cases that interpret those statutes. For information on these issues, please contact your attorney or the General Law section of the Legal Services Divisions, Office of the Comptroller of Public Accounts, (512) 463-4600.

4. If a foreign entity qualifies or registers to transact business in Texas and later dissolves in its home jurisdiction, what does it need to file with the Texas Secretary of State?

The foreign entity should terminate its Certificate of Authority or registration. See Form 612.

Limited liability partnerships (LLPs) and limited liability limited partnerships (LLLPs):

1. What are the differences between a corporation, a limited liability company (LLC), and a limited liability partnership (LLP)?

Corporations, LLCs, and LPs are formed by filing a Certificate of Formation with the Secretary of State. Corporations are owned by shareholders, managed by a board of directors, and administered by officers. LLCs are owned by members and can be managed by its members, one or more managers, or both. LPs are owned by limited partners and general partners, and managed by general partners. Both corporations and LLCs must pay Texas franchise tax, but they may have different federal tax liabilities. LPs are not subject to Texas franchise taxes. These entities offer limited protection to their owners and managers from personal liability for their debts and obligations and may also offer tax advantages that are not available to sole proprietorships and general partnerships.

A limited liability partnership (LLP) is either a general partnership or a limited partnership (LP) that registers annually with the Secretary of State and carries a minimum of $100,000 in errors and omissions insurance. If an LP registers, it can be called either a limited liability partnership (LLP) or a limited liability limited partnership (LLLP). Registering as an LLP or LLLP offers limited protection to general partners from personal liability for any debt or obligation of the partnership arising from an error, omission, negligence, incompetence, or malfeasance committed by another partner or representative of the partnership.

The Secretary of State cannot offer the legal advice necessary to determine whether you should or should not form a corporation or LLC or register as an LLP. Only a private attorney can give you such legal advice.

2. Does an out-of-state LLP have to register with the Secretary of State before it transacts business in Texas?

Yes. See Form 307. The fee for registration is $200 for each partner that resides in Texas, but no less than $200 and no more than $750. Registration must be renewed each year. See Form 308 .

3. Does an LLP need to inform the Secretary of State that it has dissolved or otherwise terminated its existence?

Neither the Texas Revised Partnership Act nor the Texas Business Organizations Code addresses the question of whether an LLP needs to inform the Secretary of State that its underlying partnership has dissolved or otherwise terminated. If appropriate, an LLP can withdraw its registration. See Form 704. The Secretary of State can remove from its active records the registration of an LLP or LLLP whose registration has been withdrawn or revoked or has expired and not been renewed.

Reinstatement:

1. If a corporation or LLC is forfeited for failure to file franchise tax returns and/or pay franchise taxes, is there a time-limit for reinstatement?

No. When an entity fails to file franchise tax returns and/or pay franchise taxes, the Secretary of State forfeits it under the Texas Tax Code. An entity forfeited under the Tax Code can reinstate at any time by (1) filing all required franchise tax returns, (2) paying all franchise taxes, penalties, and interest, and (3) filing an application for reinstatement Form 801 for Form 811, accompanied by a letter of eligibility from the Texas Comptroller of Public Accounts stating that the entity has satisfied all of its franchise tax obligations and is eligible for reinstatement.

2. If the Secretary of State involuntarily terminates, cancels, or dissolves a domestic entity or revokes a foreign entity's certificate of authority or registration for failure to maintain a registered agent, file a required report, or pay a required fee, is there a deadline for reinstatement?

Maybe. The timeframe for reinstating after an involuntary termination, dissolution, or revocation for non-tax reasons varies depending on the type of entity and whether or not it is governed by the Texas Business Organizations Code.

All BOC entities Non-BOC for-profit corporations Non-BOC LLCs Non-BOC PAs Non-BOC LPs Non-BOC non-profit corporations
A voluntarily terminated or dissolved domestic entity 36 months 120 days 120 days 120 days 120 days At any time before the effective date of the Articles of Dissolution
An involuntarily terminated, cancelled, or dissolved domestic filing entity No time limit; however, only considered to have continued in existence without interruption if reinstated within 36 months. 36 months 36 months 36 months No time limit after being cancelled for failure to file a Periodic Report No time limit after being cancelled for failure to file a required report; otherwise, 12 months.

A foreign entity whose registration or certificate of authority has been revoked 36 months. No time limit after being cancelled for failure to file a Periodic Report

3. What happens if an LP does not file its Periodic Report within the time specified by the Secretary of State?

If an LP fails to file its Periodic Report within 30 days from the date that the Secretary of State sends the report, it forfeits its right to transact business in Texas. While forfeited, it cannot maintain any action, suit, or proceeding in any Texas court or amend its Certificate of Limited Partnership, Certificate of Formation, or registration. It can, however, defend any action or suit; furthermore, forfeiture does not impair the validity of any contract.

The LP can relieve itself of forfeiture by filing the Periodic Report within 120 days of the date the Secretary of State mailed notice of forfeiture. If the LP does not file the report within this 120-day period, the Secretary of State will involuntarily cancel or terminate the LP or revoke its Certificate of Authority or registration.

4. If an LP has had its Certificate of Limited Partnership, Certificate of Formation, or registration as a foreign LP canceled or terminated for failure to file a Periodic Report, how and when can it be reinstated?

To reinstate its certificate or registration, the LP must file the required report, Form 804 and pay the appropriate filing fee and late fee. There is no time limit for when the LP can reinstate.

How do I get a Certificate of Good Standing for tax clearance purposes?

The Comptroller of Public Accounts provides information concerning requirements for obtaining a certificate of account status for purposes of dissolution, merger or conversion. (Pub. 98-336D) For further information, contact the Texas Comptroller of Public Accounts at:

(512) 463-4600 or (800) 252- 1381
TDD (800) 248-4099
tax.help@cpa.state.tx.us
Corporate FAQ'S

1. Now that I've formed my corporation, does the Secretary of State issue my federal employer identification number (EIN or FEIN)?
No. The Secretary of State does not issue employer identification numbers. For information on EINs, contact the Internal Revenue Service.

2. Does the Secretary of State keep ownership records for corporations, LLCs, limited partnerships, or other entities?

No. The Secretary of State does not keep any ownership records. Information about the shareholders of a corporation, equity owners or members of an LLC, or partners in an LP is maintained by the business entity and is not filed as a matter of public record.

3. Can the Secretary of State investigate complaints about a corporation or other business entity?

No. The Secretary of State is a ministerial filing officer. We can tell you an entity's name, registered agent, registered office address, and status. We cannot investigate or regulate the internal affairs of any entity, including how it runs meetings, does business, elects officers, or treats its shareholders.

4. What is a "certificate of good standing" and how do I get one?

A "certificate of good standing" is a certification regarding an entity's tax account status. It is issued by the Texas Comptroller of Public Accounts.

The Secretary of state can issue a "certificate of status," which is official evidence of an entity's existence or authority to transact business in Texas. It provides an entity's current legal name, its date of formation, and a statement of the entity's status. A "certificate of status" is often required when qualifying or registering to do business in other jurisdictions. For information on how to order certificates from the Secretary of State, click here.

5. Can the Secretary of State provide me with a copy of the Texas Business Corporation Act, Texas Business Organizations Code, or other statutes?

No. The Secretary of State cannot provide copies of the Texas Business Corporation Act, Texas Business Organizations Code, or any other statutes. Statutes can be found in law libraries or accessed at Texas Legislature Online. Paper copies may be obtained from legal publishers.

6. Why didn't I receive a file-stamped copy of my Certificate of Formation?

In order to receive a file-stamped copy of a filing instrument, you must submit a duplicate copy of the filing instrument. The Secretary of State does not reject filing instruments that are not accompanied by a duplicate copy if the filing instrument otherwise conforms to the statutory requirements. In addition, the Secretary of State is not required to attach a file-stamped copy of an instrument when no duplicate copy has been provided.

7. What document should be filed when a foreign corporation or limited liability company ceases to exist in its jurisdiction of formation?

A foreign entity that has filed an Application for Registration or a certificate of authority to transact business in Texas must terminate or amend its registration or certificate of authority whenever it ceases to exist in its home jurisdiction whether by merger, conversion, dissolution, or otherwise. See Tex. Bus. Corp. Act art. 8.14C; Tex. Non-Prof. Corp. Act art. 1396-8.14C; Tex. Limited Liability Co. Act art. 7.09C; and Tex. Bus. Org. Code § 9.011(d).

In order to terminate, the entity must submit a certificate from the proper filing officer in the entity's jurisdiction of formation (usually the Secretary of State) evidencing the termination. The certificate can either be a certificate evidencing the fact that the entity merged, converted, or dissolved, or a certified copy of the merger, conversion, or dissolution. Form 612 (Word, PDF) can be used as a cover letter to the certification required for termination. The filing fee is $15 ($5 for nonprofit corporations and cooperative associations).

Alternatively, if a foreign entity is governed by the Texas Business Organizations Code and it converts in its jurisdiction of formation, it can amend its registration to transact in Texas so that the converted entity succeeds to its registration. Similarly, if a foreign entity is governed by the BOC and it merges out of existence in its jurisdiction of formation, it can amend its registration so that a surviving entity succeeds to its registration. See Form 406.

Information was found on web sites for the IRS, The Secretary of State for Texas and the Texas Comptroller website and is meant to be a collection of basic information and is in no way legal advice or to be construed as an active Plan of Action. Please seek legal counsel to see if any of this information is applicable to your organization or group.

Links:

Texas Secretary of State:
http://www.sos.state.tx.us/

SOSDirect – File Forms On Line with the Secretary of State
http://www.sos.state.tx.us/corp/sosda/index.shtml

State of Texas Forms for Businesses and Non Profits Formed After to 2006
http://www.sos.state.tx.us/corp/forms_boc.shtml

State of Texas Forms for Businesses and Non Profits Formed Prior to 2006
http://www.sos.state.tx.us/corp/forms.shtml

Texas Comptroller
http://www.window.state.tx.us/

Franchise Account Status – Are you in compliance with the Comptroller's Office?
http://www.window.state.tx.us/taxinfo/coasintr.html

State of Texas Tax Forms
http://www.window.state.tx.us/taxinfo/taxforms/00-forms.html

IRS
http://www.irs.gov/

IRS Charities and Non-Profits Section
http://www.irs.gov/charities/index.html

IRS – Search for Charities and Non Profits who are in good standing with the IRS
http://apps.irs.gov/app/pub78

IRS Forms
http://www.irs.gov/formspubs/index.html

Form Needed as OUTLINED IN 501 3 (c) Facts

Examples included at the end of this manual

Forms - State of Texas

Form 202
Form 307
Form 308
Form 401
Form 403
Form 404
Form 405
Form 406
Form 407
Form 408
Form 409
Form 424
Form 501
Form 503
Form 507
Form 612
Form 704
Form 801
Form 804
Form 811

IRS Forms

SS4
8718
1023
990
990-T
941
1099 - MISC
1096

Section 2

Non-Profit Corporations and The Board

What is a Board of Directors? What Does a Board Look Like?

A corporation, whether for-profit or nonprofit, is required to have a governing Board of Directors. To explain, a corporation can operate as a separate legal entity, much like a person in that it can own bank accounts, enter into contracts, etc. However, the laws governing corporations require that a corporation ultimately is accountable to its owners (stockholders in the case of for-profits and the public with nonprofits). That accountability is accomplished by requiring that each corporation has a Board of Directors that represents the stockholders or the public.

Members of a governing Board have certain legally required (fiduciary) duties, including duties of care, loyalty and obedience (some states and countries use different terms -- for example, in Canada, the duties of care and loyalty are often stressed). For-profit Boards often are referred to as "corporate" Boards, which really is a misnomer because both nonprofit and for-profit corporations are required to have Boards -- not just for-profit corporations.

The phrase "Board operations" often refers to the activities conducted between Board members and can include development and enactment of Board bylaws and other Board policies, recruitment of Board members, training and orientation of Board members, organizing Board committees, conducting Board meetings, conducting Board evaluations, etc. The phrase "governance" often refers to the Board's activities to oversee the purpose, plans and policies of the overall organization, such as establishing those overall plans and policies, supervision of the CEO, ensuring sufficient resources for the organization, ensuring compliance to rules and regulations, representing the organization to external stakeholders, etc. The nature of Board operations and governance depends on a variety of factors, including explicit or implicit use of any particular Board model, the desired degree of formality among Board members and the life-stage of the Board and organization.
Governing Boards can have a variety of models (configurations and ways of working), for example, "working Boards" (hands-on, or administrative, where Board members might be fixing the fax one day and strategic planning the next), "collective" (where Board members and others in the organization usually do the same types of work -- it's often difficult to discern who the Board members actually are), "policy" (where Board members attend mostly to top-level policies), "Policy Governance" (trademark of Carver Governance Design, where there are very clear lines and areas of focus between Board and the CEO), etc. All of these models are types of governing Boards.

Boards can have a broad range of "personalities." For example, Boards of large for-profit and nonprofit corporations might be very formal in nature with strong attention to Parliamentary procedures, highly proceduralized Board operations, etc. In contrast, Boards of small nonprofit or for-profit corporations might be very informal in nature. Some people believe in life stages of Boards, including that they 1) start out as "working" Boards where members focus on day-to-day matters in addition to strategic matters, 2) evolve to "policy" Boards where members focus mostly on strategic matters, and 3) eventually become large, institutionalized Boards that often have small executive committees and maybe many members some of which are "big names" to gain credibility with funders or investors.

For-Profit ("Corporate") Boards Compared to Nonprofit Boards

People might be surprised to read that there are more similarities between for-profit and nonprofit Boards than there are differences -- after all, both types of organizations are required to have Boards because both types are corporations, thereby having similar fiduciary responsibilities among members. Members of both types of Boards must attend to the many activities involved in Board operations and governance. Both types of organizations must conform to rules and regulations for operations of corporations within their states/provinces and countries, including for employment laws and tax filings (each type of organization files different types of federal tax forms). Thus, many of the

topics included throughout this overall Library topic on Boards are relevant to both types of organizations.

Certainly, there are differences. For-profit Board members often are paid, whereas nonprofit Board members usually are not (except to be reimbursed for expenses). For-profit Board members uniquely attend to decisions about dispersing profits to owners (to stockholders), for example, in the form of stock equity and dividends, whereas nonprofit Board members do not seek to maximize and disperse profits to the owners -- the owners of nonprofits are members of the public. Nonprofit Board members often must participate in robust fundraising by soliciting funds from individuals, foundations, corporations and government entities. Nonprofits corporations often enjoy certain tax advantages, including tax-exemption (being able to avoid payment of certain taxes) and charitability (so donors can deduct donations from their taxes). To retain that charitable tax status, Board and staff members of nonprofits must refrain from exceeding certain limits of lobbying and self-dealing.

Ten Basic Responsibilities of Nonprofit Boards

- **Determine the Organization's Mission and Purpose**

  ☐ A statement of mission and purposes should articulate the organization's goals, means, and primary constituents served. It is the board of directors' responsibility to create the mission statement and review it periodically for accuracy and validity. Each individual board member should fully understand and support it.

- **Select the Executive**

  ☐ Boards must reach consensus on the chief executive's job description and undertake a careful search process to find the most qualified individual for the position.

- **Support the Executive and Review His or Her Performance**

  ☐ The board should ensure that the chief executive has the moral and professional support he or she needs to further the goals of the organization. The chief executive, in partnership with the entire board, should decide upon a periodic evaluation of the chief executive's performance.

- **Ensure Effective Organizational Planning**

  ☐ As stewards of an organization, boards must actively participate with the staff in an overall planning process and assist in implementing the plan's goals.

- **Ensure Adequate Resources**

  ☐ One of the board's foremost responsibilities is to provide adequate resources for the organization to fulfill its mission. The board should work in partnership with the chief executive and development staff, if any, to raise funds from the community.

- **Manage Resources Effectively**

☐ The board, in order to remain accountable to its donors, the public, and to safeguard its tax-exempt status, must assist in developing the annual budget and ensuring that proper financial controls are in place.

- **Determine and Monitor the Organization's Programs and Services**

  ☐ The board's role in this area is to determine which programs are the most consistent with an organization's mission, and to monitor their effectiveness.

- **Enhance the Organization's Public Image**

  ☐ An organization's primary link to the community, including constituents, the public, and the media, is the board. Clearly articulating the organization's mission, accomplishments, and goals to the public, as well as garnering support from important members of the community, are important elements of a comprehensive public relations strategy.

- **Serve as a Court of Appeal**

  ☐ Except in the direst of circumstances, the board must serve as a court of appeal in personnel matters. Solid personnel policies, grievance procedures, and a clear delegation to the chief executive of hiring and managing employees will reduce the risk of conflict.

- **Assess Its Own Performance**

  ☐ By evaluating its performance in fulfilling its responsibilities, the board can recognize its achievements and reach consensus on which areas need to be improved. Discussing the results of a self-assessment at a retreat can assist in developing a long-range plan

Should Staff Contact With the Board Be Restricted?

Restricting contact between board and staff usually results in suspicion on the part of the board and resentment from the staff. We suggest the following guidelines:

1. There are no restrictions on contact, but the executive director must be informed about meetings. (Example: a voice mail message from the Controller saying, "Hey, I just wanted you to know I'm meeting with the board treasurer next week to go over cash flow projections. Let me know if you have any concerns or things you want me to bring up.")

2. Board members can request information and reports (such as another copy of the budget or last month's client statistics report), but must stop short of directing staff work by asking for reports that are not already prepared (new reports can be requested of the executive director).

3. Personnel grievances must go through the channels specified in the personnel policies. Board members should direct staff complaints to those channels.

4. There should be a defined channel by which staff can raise concerns to the board about the way the executive director is running the organization.

We suggest that such complaints and concerns be directed to the board president ONLY, not to any other board member. As representatives of the public, the board needs to know if staff has serious criticisms to raise, but it's only fair to the executive director AND to the board president for these to be handled in a defined way. The board president can choose to raise the concerns to the executive director, or to bring them to the board for investigation.

Should an employee be a member of the board?

Here's a scenario:

You're hiring a new employee and your first choice wants to be a member of the board. They feel board membership will give them the stature she needs to represent the agency in the community. Some board members are against the idea, while others (mostly corporate folks) think it's fine. Should the employee be a member of the board?

If you grant them their wish, your new employee might regret being a member of the board. If, for example, your board is split on an issue, their vote would mean voting against half their board.

State laws vary on this. In California, for instance, the law permits staff members to be on nonprofit boards as long as 50% or more of the board members are neither staff nor "interested parties" (such as relatives of staff). Most for-profit corporations have their CEOs (Chief Executive Officer) as the Chair of the Board. Organizations with board members familiar with that corporate model, and organizations that expect their directors to lead the board, are more likely to have executive directors on the board.

Before agreeing to board membership for the director, the board should discuss the **impact on sensitive matters such as performance review, salary and contract negotiation, and board-staff relations**. There is also the **possibility of a conflict of interest,** especially since an employees duties and those as a board member compliment but do not necessarily mirror one another.

There may be other ways to give the new employee the stature they feel they need: perhaps a series of coffees introducing their to community leaders, a more significant role in working with the board than the previous director experienced, or a printed announcement of their selection. What ever you decide, you and the director should review and reconsider the decision in a year.

What is a conflict of interest?

Conflict of interest is difficult to define, yet many people think they know it when they see it. The legal definition of conflict of interest, usually set out in state laws governing nonprofit corporations, is very specific and covers relatively few situations. Most conflicts fall into a gray area where ethics and public perception are more relevant than statutes or precedents.

Conflict of interest arises whenever the personal or professional interests of a board member are potentially at odds with the best interests of the nonprofit. Such conflicts are common: A board member performs professional services for an organization, or proposes that a relative or friend be considered for a staff position. Such transactions are perfectly acceptable if they benefit the organization and if the board made the decisions in an objective and informed manner. Even if they do not meet these standards, such transactions are usually not illegal. They are, however, vulnerable to legal challenges and public misunderstanding.

Loss of public confidence and a damaged reputation are the most likely results of a poorly managed conflict of interest. Because public confidence is important to most nonprofits, boards should take steps to avoid even the appearance of impropriety. These steps may include:

Adopting a conflict-of-interest policy that prohibits or limits business transactions with board members and requires board members to disclose potential conflicts.

Disclosing conflicts when they occur so that board members who are voting on a decision are aware that another member's interests are being affected.

Requiring board members to withdraw from decisions that present a potential conflict.

Establishing procedures, such as competitive bids, that ensure that the organization is receiving fair value in the transaction.

Non-Profit Liability Exposures

A non-profit organization faces many liability exposures. These liability exposures can be broken down into different categories. These categories are defined really by the insurance coverage that responds to them. The main liability exposures to non-profit organizations are as follows:

General Liability Exposures	**Slip & Fall.**
Workers Compensation	**Do you really need worker's compensation insurance?**
Professional Liability	**Some professional liability exposures may not be covered by Directors and Officers Insurance.**
Employee Benefits Liability	**Leave it to the Professionals**
Fiduciary Liability	**Be careful with that financial advice!**
Auto Liability	**Don't own a vehicle? You still have the exposure.**
Directors & Officers Liability	**The great unknown.**

General Liability Exposures

Known as premises liability or office liability coverage. These are the most commonly insured types of liability exposures. This coverage comes as part of a " package" providing building and contents coverage. The Insured Perils under General Liability are as follows:

Bodily Injury	Means Bodily Injury, Sickness, or Disease

	sustained by any person which occurs during the policy period, including death at any time resulting there from.
Property Damage	(1) physical injury to or destruction of tangible property which occurs during the policy period , including loss of use thereof at any time resulting there from. (2) loss of use tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.
Personal Injury	Other than Bodily Injury arising out of one or more of the following offenses: False arrest, detention or imprisonment. Malicious prosecution. Wrongful entry or eviction. Oral or written libel and slander. Oral or written violation of privacy.

Worker's Compensation Exposure and Coverage

Worker's Compensation provides coverage in two parts. Part one is the statutory benefits for the injured employee. Part two is the "Employer's Liability" coverage.

You are required by law to pay certain benefits to employees injured on the job. In exchange for these guaranteed benefits, the employee gives up direct legal action against you for bodily injury liability. The employee, however, can take action against a third party, and that third party can then take legal action against you. This is where employer's liability coverage comes into play. Employer's Liability coverage is part of the worker's compensation policy and will respond to these "third party over" type claims. An example of this type of claim is as follows:

Employee is working at their desk, and the desk fails, falling on the employee and causing a compound fracture in the employee's leg. The employee collects his worker's compensation benefit. The injured employee then hires an attorney to sue the manufacturer of the desk. The desk manufacturer then sues the YOU since you used the desk for something other than its intended purpose. The employer's liability coverage will respond to this type of claim.

Worker's Compensation coverage is REQUIRED by law.

Please remember that you have NO defense in the event an employee is injured and you do not carry worker's compensation coverage. You WILL pay the statutory benefit to the injured employee. Bankruptcy is not an option. The personal assets of the directors and officers WILL be attached if there are no other assets. Directors and Officers coverage WILL NOT defend the D&O's and the organization if you fail to maintain workers compensation coverage.

Professional Liability

Directors and Officers Insurance does indeed provide coverage for Professional Liability. However, there are two very important reasons why you should look at a separate policy for professional liability

Directors and Officers does not provide for Bodily Injury claims.

Certain organizations, such as clinics or counseling centers, may be sued due to bodily injury caused by the act or decisions by a professional at that non-profit organization. Directors and Officers coverage excludes coverage for claims of bodily injury. The general liability policy provides coverage for bodily injury claims, but excludes professional liability exposures altogether.

The directors and officers policy may specifically exclude coverage for certain business practices of a non-profit organization.

For example. Most directors and officer policies that our office has available provides coverage for Y2K. However, if your business is helping other non-profit organizations become Y2K compliant, than the directors and officers policy will specifically exclude that exposure.

Employee Benefits Liability Exposure and Coverage

Employee Benefits Liability applies to errors made by the human resources individual in your organization responsible for administering the employees benefits. Liability arising from providing erroneous information concerning group health, COBRA, worker's compensation, and other employee benefits can be insured by purchasing an employee benefits liability policy. This coverage can be extended from your general liability coverage with some insurance companies. This coverage is NOT provided by directors and officers insurance.

Fiduciary Liability Exposure

Fiduciary Liability arises when promised results are not met, or when you are accused of giving bad financial advice. Directors and officers coverage does pick up this exposure to a degree. You will NOT have any coverage if you recommend Pension investments to your employees. Pension fiduciary liability can be avoided by offering a range of financial choices and having your pension plan administered by a third party.

Auto Liability Exposure and Coverage

Liability arising out of the ownership or use of an automobile. If you own vehicles, purchase the insurance. If you do not own vehicles, add hired and non-owned auto liability to your General Liability coverage. If you frequently rent vehicles, add hired physical damage coverage to your auto policy and avoid paying the rental car waiver fees.

Directors & Officers Liability Exposures & Coverages

The exposures facing directors and officers are unique and complex. Any action taken by a board member can be legally challenged by a third party. In addition, the scope and impacts of the directors and officers duties are continually expanded by the courts. Direction of the non-profit organization has an impact not only on the organization, but on the employees and volunteers of the organization. Directors and Officers are now held accountable for the business practices of the organization such as hiring and firing of employees. With this in mind, you need to obtain a directors and officers policy that is expanded to include these additional perils.

The following items are addressed in this section.

Wrongful Acts	**The legal basis for the traditional exposures facing officers and directors of a non-profit organization.**
Employment Practices Liability	**The "growth industry" in claims against non-profit directors and officers.**
Personal Injury	**Libel, Slander, etc.**

These Wrongful Acts, Employment Practices and Personal Injury claims can arise from the following areas.

Common Law (Three Duties)
Tax Law
Civil Rights
Regulatory Actions
Solicitation of Funds
Bankruptcy
Breach of Contract.
Criminal Acts

Directors & Officers Insurance: Exposures, Coverage and Sound Advice.

Do you really know what kind of risks individuals assume when serving on your board? Is there really any risk at all? How can these risks be insured? Is directors and officers insurance necessary? Did you know that the scope of liability assumed by directors and officers is constantly expanding?
Directors and Officers insurance is more complex and varied than your typical policy. Learn the key differences of this coverage along with what to look for in an ideal directors and officers policy,

Directors & Officers Liability Exposures	**The exposures assumed by directors and officers and insured by a directors and officers policy including:** **1. Wrongful Acts** **2. Employment Practices Liability** **3. Personal Injury.**
Why protect Directors and Officers?	**Why is Directors and Officers coverage necessary? Aren't the directors and officers exempt or covered elsewhere?**
Let the buyer beware!	**The similarities and the three huge differences between a directors and officers policy and a typical liability policy.**
How to Buy Smart.....	**What to look for when shopping for a directors and officers liability policy.**

Why Protect Directors and Officers?

Why protect Directors and Officers at all? Between Immunity Statutes, personal insurance and waivers of liability, these board members should be adequately covered. Good point, let's look at the protection afforded by these devices along with what is NOT provided.
Also, let's look at the benefits of providing this important insurance protection to the directors and officers.

Protection for Directors and Officers through their personal insurance or through volunteer Protection Statutes.

Protection for Directors and Officers through Transfer or Waiver of Liability.

Benefits to the Non-Profit Organization in protecting its Directors and Officers.

Protection for Directors and Officers through personal insurance or through volunteer protection statutes top

Q. Since actions of the directors and officers are personal, why do we, as a non-profit organization have to obtain coverage? After all, aren't the directors and officers immune from liability due to volunteer protection statutes? Even if they do not have immunity from legal action, their personal homeowner's liability coverage should protect them.

A. Personal Acts of directors and officers are not adequately covered by volunteer protection statutes and personal liability insurance:

Volunteer protection statutes are inadequate

To limit the liability of volunteer board members, many states have enacted volunteer protection statutes. Generally these State and Federal Statutes are inadequate since:

Does not apply to allegations of gross negligence or willful misconduct, a common allegation.

Does not apply to violations of federal statutes.

Coverage provided by personal homeowner's policies is inadequate.

Industry Standard HO-3 personal homeowner's policy.

Policy does not provide any coverage.

Expanded homeowner's policies, such as those written with Fireman's Fund and Insurance Group

Personal Injury coverage provided for "business acts" with respect to serving on a non-profit board for no remuneration. No Wrongful Acts coverage.

Expanded homeowner's policy written with Royal Insurance.

Provides up to $20,000.00 in Wrongful Acts coverage for being a volunteer in a non-profit organization. Employee benefits liability is NOT covered

Protection for Directors and Officers through Transfer or Waiver of Liability.

Q Our by-laws have a provision which reads as follows:

SECTION 16.INDEMNIFICATION BY CORPORATION OF DIRECTORS AND OFFICERS
The directors and officers of the corporation shall be indemnified by the corporation to the fullest extent permissible under the laws of this state.

Doesn't this provide complete protection to the directors and officers?

A Yes and no.

Some liability exposures cannot be transferred by law, (exculpatory agreement). This provision in the by-laws does not protect other members of the non-profit .

If liability is transferred to the organization, how will organization pay?

As a non-profit organization you have funds earmarked for a charitable purpose along with funds for administrative expenses. There has never been an instance in Illinois were funds for charitable purposes have been allowed to be used for the defense of legal action taken against the organization. Are the costs going to come out of the administrative expenses?

Q. Can't we just eliminate our liability by having parties that do business with us sign waivers holding us harmless from all liability arising out of our actions?
A. A contractual provision purporting to relieve or "excuse" a party of liability for negligence is an exculpatory contract. Court rarely favor these disclaimers of liability. Courts will interpret them narrowly against the party attempting to limit its liability and often declare them illegal since they can go against public policy.
In other words, waivers are meaningless.

Benefits to the Non-Profit Organization in protecting its Directors and Officers.
Brain Drain:
You want to attract the "best and the brightest" for their talents. Potential volunteers may be reluctant to join if not adequately protected for their actions as Directors and Officers
Social Responsibility:
A moral obligation to protect those that help and serve your organization.
Perpetuation and reputation of non-profit entity:
You do not want it to get around town that serving as a board member in your organization can result in a personal financial hit.
You want to make sure that you have the resources for competent legal representation to ensure that your non-profit organization can survive a lawsuit for alleged wrongful acts with its reputation intact.

Remember, these acts by the directors and officers have an effect on the non- profit organization. The organization, including its employees, trustees and volunteers should be a named insured on a directors and officer policy. Acts leading to a claim covered by a directors and officers policy can result from actions of all of the individuals of the organization, not just the directors and officers.

Directors and Officers Insurance:
Let the Buyer Beware!

Let's face it, purchasing insurance nowadays is just like purchasing any other commodity. All the coverages are the same so you go with the best price. This may be true with some types of insurance coverages, but it is definitely not the case with directors and officers liability insurance. Directors and officers insurance is completely different in how it is written and what is covered. This page contains the significant differences between directors and officers insurance and other types of insurance contracts. Of course, there are some similarities. Perhaps the best way to describe the purchasing process for directors and officers insurance is to.....

Let the Buyer Beware!

There are big differences between Commercial General Liability coverage and Directors and Officers Liability coverage
Insurance companies offer many types of directors and officers policies. The coverage can range from the bare minimum to all of the bells and whistles.

Let's compare the make-up of a directors and officers policy to the type of policy that is most familiar to the insurance buying public: Commercial General Liability Coverage.

Commercial General Liability coverage is the most common of coverages written. This coverage is usually incorporated as part of a "Package" providing liability and property coverage for a business location. The contracts really do not vary

from company to company and the primary determining factor in purchasing coverage comes down to price. The shopping process is most similar to purchasing personal auto and homeowner's insurance. This type of coverage really is a commodity. Price is usually the sole determining factor when selecting a insurance company.

Directors and Officers coverage is a "special markets" coverage. How the coverage is triggered is different, (claims made vs. occurrence), How the contract is written is different, (non-standardized vs. standardized). & how the coverage is underwritten is different). You cannot purchase a directors and officers policy in the same manner that you would purchase a commercial "package" policy or a personal home and auto policy. Price should NEVER be the sole determining factor when selecting an insurance company

Q. Are there any similarities between the General Liability policy and the Directors and Officers Liability policy?

A. Yes, they are both insurance contracts. All insurance contracts are set up pretty much the same. A breakdown of the structure of an insurance contract is as follows:

1. Declarations

2. Insuring Agreements

3. Exclusions

4. Conditions

Let's look at these four parts of an insurance contract one at a time:

1. Declarations:
The statements that are entered into what are otherwise blank spaces in the printed policy form. Declarations serve to personalize the policy by identifying the named insured and describing each activity to be insured.

2. Insuring Agreement:
Summarizes the Insurance Company's obligation under the contract. Includes:

- What perils are covered
- Definitions of terms used in insurance contract.

3. Exclusions:
Obviously, eliminates coverage that the insurance company does not intend to provide.

4. Conditions:
Summarizes the insured's obligations under the contract.
Additionally, the policy will have endorsements modifying one or all the above mentioned parts of the contract.

All insurance contracts are contracts of adhesion. This means that you will be given the benefit of the doubt in a legal dispute with the insurer since you did not have a hand in writing the contract. Remember the words "legal dispute" This means taking the insurance company to court. This is something to avoid. The trick is to purchase a contract that spells out coverage in a relatively clear matter.

There are Three HUGE Differences between General Liability policies and Directors & Officers Liability Policies:

Occurrence vs. Claims Made
Standardized Vs Non-Standardized Contracts
Underwriting Differences.

Occurrence vs. Claims Made
General Liability policies are almost always written on an Occurrence basis. Directors and officers policy are almost always written on a claims made basis. An explanation and comparison of these types of policies are as follows:

Commercial General Liability	**Directors and Officers Liability**
Occurrence Form	**Claims Made Form**
Coverage triggered when claim occurred versus when Claim filed. If loss occurred in 1997, then that policy that was in effect in 1997 will respond.	***IF claim occurs in 1997 and claim is made against the insured in 1999 then policy in effect as of 1999 will respond. The policy in effect in 1997 will NOT respond.***
Occurrence policy never disappears. Policy will respond to claim as long as circumstances leading to claim occurred while policy was in effect.	***Claims made policy disappears after it expires. It is like it never existed at all. A TAIL can be purchased for an additional premium.***

Example using the Occurrence policy form:

Medical clinic has a policy with XYZ insurance company with a $500,000.00 limit and a $1,000.00 deductible for the period from 1/1/97 to 1/1/98. On 10/1/97, an employee is fired. On 1/1/98, the insured renews with ABC Insurance Company with a $2,000.00 deductible and a $1,000,000.00 limit of liability On 3/1/98, the employee fired on 10/1/97 files a claim against the non profit organization for wrongful termination. The policy with XYZ Insurance Company will respond to this claim. The insured will have a $1,000.00 deductible and up to $500,000.00 in coverage to respond to this claim since the occurrence is the time the employee was fired.

Example using Claims Made policy form:

Medical clinic has a policy with XYZ insurance company with a $500,000.00 limit and a $1,000.00 deductible for the period from 1/1/97 to 1/1/98. On 10/1/97, an employee is fired. On 1/1/98, the insured renewal with ABC Insurance Company with a $2,000.00 deductible and a $1,000,000.00 limit

of liability. On 3/1/98, the employee fired on 10/1/97 files a claim against the non-profit organization for wrongful termination. The policy with ABC Insurance Company will respond to this claim because the claim was made against the insured after the 1/1/98 renewal date. This is in spite of the fact that the circumstances leading to the claim occurred during the prior policy period on 10/1/97. The insured will have a $2,000.00 deductible and up to $1,000,000.00 in coverage to respond to this claim.

Why is Directors and Officers coverage written on a claims made basis?

Tort Law
Regulatory Changes

Legal action concerning wrongful acts of a non-profit organization are relatively recent. The erosion of protection statutes for non-profit organizations along with recent regulatory changes has resulted in a sharp increase in courtroom activity in just the past few years. This sudden increase in legal activity results in rapidly changing rules for legal responsibility on the part of the directors and officers and the non-profit organization.

Tort Law

The changing nature of tort liability with respect to wrongful acts along with the recent explosion in employment practices liability claims demand a flexible contract that can respond to changing definitions. Since coverage under a claims made policy is not permanent, the insurer can provide coverage for a rapidly evolving exposure at a competitive premium. If the insurance company is "locked" into one definition for an unlimited period of time when that definition is being changed and expanded by the courts, then they could never offer coverage at a price that is affordable.

Regulatory Changes

There are Continual regulatory "surprises" affecting the coverage provided by Directors and Officers Liability. Perfect example: ADA. Coverage for ADA claims come off of the directors and officers policy. There are very few regulatory "surprises" affecting General Liability coverages. Most regulatory actions have already occurred. Any regulatory changes now have little impact relative to the big picture.
These regulatory changes are, like any law, poorly written. The courts have to hammer out the meaning of the law or regulation. The insurer must have a policy that is flexible to respond to the changing definitions.

Important things to remember about Claims Made policies.

Retroactive Date: (AKA Pending or Prior Date)

You have to determine that prior acts are covered by the contract and if this prior acts coverage is limited by a retroactive date. The retroactive date will be part of the declarations. No claims will be covered if the loss OCCURRED prior to this retroactive date.

Extended reporting period: (AKA "Tail")

If you let the claims made policy expire, you have the right to purchase an extended reporting period, or tail. On the claims made policy, this Tail gives you coverage for claims

reported after the expiration date as long as the claims occurred prior to the expiration date.

EXAMPLE:
Your organization has a claims made liability policy that expires on 10/1/99 and you do NOT purchase the "Tail" and let the coverage lapse. On 9/1/99 an employee is terminated. On 4/1/00, this employee makes a claim against the organization for wrongful termination. Guess what? You do have not coverage since you did not elect to purchase the Tail. The directors and officers may be held personally liability for this employment practices liability claim against the organization

Standardized vs. Non-Standardized Contracts
General Liability policies are standardized, meaning most insurance companies use the exact same forms with the exact same legal language.
Directors and Officers contracts are not standardized. You have to be more careful and read the contract carefully when selecting a D&O insurer. Some of the reasons why general liability contracts are standardized and directors and officers are not standardized are as follows:

Interpretation by the Courts
Age of Liability Class
Marketplace

Standardized General Liability Policy.	**Non-Standardized Directors and Officers Liability Policy.**
Interpretation by the courts. Insurance contracts are made up of words and phrases. Insurance Companies are reluctant to veer from words and phrases that have been tested and modified in the "blast furnace of tort law." Remember, words in a legal contract are not defined by a dictionary, they are defined by the courts *within the context of the contract*. Remember, "it depends on what your definition of 'is' is"?	
Most language in a typical Commercial General Liability policy has been tempered in this tort law blast furnace. The changes are still ongoing, but the impact is marginal relative to the overall exposure. Companies are not going to veer away from the readily accepted language in a typical insurance contract. This is why you will never see "plain Language" insurance policies.	There is some standardization from contract to contract in Directors and Officers Liability coverages, but it has to do with language that applies in any insurance contract. The other aspects of the policy are still being hammered out in that "Blast Furnace" of tort law. Generally the courts "broaden" the definition of the words in the contract perhaps beyond the coverage intended by the insurer. This is ongoing. Insurance Companies respond by using more narrow definitions in the contract.
Age of Liability Class.	

The words and their conceptual meaning are pretty clear since they have been interpreted in the tort system for a long period of time.	Words and their contextual meaning are still unclear since legal actions related to directors and officers and employment practices liability are relatively new in the tort system and are rapidly evolving.
Marketplace	
Many insurance carriers – Many insureds with similar exposures. These insurance carriers have banded together and formed the Insurance Services Office, (ISO), The ISO is a non-profit organization that functions as a clearing house for information to be shared amongst member insurance companies. One of the services provided by ISO is standardized insurance contracts.	Few insurance carriers – Fewer insureds Number of carriers still relatively few. Numbers are growing. Insurance carriers have not yet banded together to pool their loss information and develop a standardized contract.

Someday, directors and officers liability contracts will be standardized. Until that time, you must carefully compare each contract when you receive quotations. The insurance companies should ALWAYS send a copy of the contract with any quotations they issue.

Underwriting Differences

You cannot purchase a directors and officers policy like other insurance coverages. The following three differences make it much more difficult to shop for the best directors and officers coverage for your organization. Care has to be taken on making sure the claims made provisions are not restrictive, you have to compare each contract with the other, and you have to submit a ton of material when applying for coverage.

The three big differences between a directors and officers policy and other insurance contracts are as follows:

How the policies are rated.	
What kind of information is required by the insurance company.	
How the policy is issued.	
Commercial General Liability	**Directors and Officers Liability**
How policies are rated	
A GL policy, you can get out a book, plug in some numbers, and voila! You have the rate!	Unlike General Liability policies, D&O is underwritten on a case by case basis. No class rating. Premium is less dependent upon the application to be completed and more upon the information provided
Information required by the insurance company	

Usually a simple, unsigned application with minimal information like: area of premises, annual sales, construction of building.	Directors and officers insurance requires a completed, sign application, Copy of financial records, copy of By-laws, Copy of Brochure, List of Directors and Officers, newsletters, etc. etc.
Differences in how the policies are issued	
Coverage can be immediately bound over the phone. No special exclusions attached to the policy unless signed off by the insured.	Coverage cannot be bound until all information required is reviewed. Exclusions particular to your Organization can be attached without you signing off.

You must always read the proposal and conditions when receiving quotes for directors and officers insurance. Each company can and does provide widely different coverages. Always demand a copy of the policy contract with the quotation.

Directors and Officers Insurance: How to Buy Smart.

Remember, you have to carefully review each directors and officers insurance proposal along with the policy contract to make sure you are receiving adequate protection for your premium dollar. Let's analyze the expanded directors and officers liability policy available from Chubb Insurance. This expanded policy is called an Association Liability policy and expands the named insured to include the Organization along with employees, volunteers, trustees and the directors & officers.
Chubb offers an excellent product with excellent representation. Let's analyze the policy by breaking it down into its four main components:

Declarations
Insuring Agreement
Definitions
Exclusions
Conditions

Two additional areas have to be looked at when searching for the ideal contract. These items are as follows:

Endorsements Specific to your Organization
Other things to look for in an ideal contract.

DECLARATIONS

The declarations page contains the information particular to the individual insured. The information particular to your organization and coverage details are entered or typed into a declarations page. The following seven items are the most important parts of the Declaration page. Pay special attention to these items when reviewing proposals for your non-profit organization.

Insurance Company	Nothing is more important than the insurance carrier yours elect to write your directors and officers insurance. Purchasing Directors and Officers Insurance is really like retaining a law firm. The coverage is only as good as the company standing behind the contract. There are several outside organizations like the two listed below that can provide financial information on insurance companies: AM Best Rating Services Moody's Financial Rating
Named Insured	Is the named insured correct? Are all subsidiaries (especially for profit subsidiaries) and interests listed on the policy?
Limits of Liability	Is the limit adequate? Are the defense costs included or outside of the policy limit?
Policy Period	Does the policy run for just one year? Longer terms are available and recommended.
Deductible	Select highest deductible you can afford. Does the deductible apply to defense costs?
Reporting Period	Applies to claims made policies. Is the additional premium for this option reasonable
Retroactive Date	Is there a retroactive date? Pending or Prior Date? What is it?

INSURING AGREEMENT

The insuring agreement spells out the obligation of the insurance company to the insured. This includes the insuring clause which lists what perils are covered along with definitions of key words in the contract.

INSURANCE – INSURING AGREEMENT

In consideration of payment of the premium and subject to the Declarations, limitations, conditions, provisions, and other terms of this policy, the Company agrees as follows:
Insuring Clause
The **Company** shall pay on behalf of an **Insured** all **Loss** which such **Insured** becomes legally obligated to pay on account of any **Claim** first made against such **Insured** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for:
Wrongful Act,
Employment Practices, or
Personal Injury or Publishers Liability

committed, attempted, or allegedly committed or attempted, by such Insured before or during the Policy Period.

Spousal Liability

If a **Claim** against an **Insured Person** includes a claim against the lawful spouse of such **Insured Person** solely by reason of such spouse's status as a spouse or such spouse's ownership interest in property which the claimant seeks as recovery for an alleged **Wrongful Act** of such **Insured Person**, all loss which such spouse becomes legally obligated to pay on account of such claim shall be treated for purposes of this policy as a **Loss** which such **Insured Person** becomes legally obligated to pay on account of the **Claim** made against such **Insured Person**. All limitations, conditions, provisions and other terms of coverage (including the Deductible Amount) applicable to such **Insured Person's Loss** shall also be applicable to such spousal loss. However, coverage shall not apply to the extent any **Claim** alleges any act or omission by such Insured Person's spouse.

All words in boldface are defined in the policy contract.

As you can see, the policy applies to wrongful acts, employment practices, and personal injury. You should not consider a directors and officers policy that does not include all of these perils.

Spousal liability simply extends coverage to the spouse of the insured person defended by the contract with respect to the claim against the insured person.

DEFINITIONS

One of the most important parts of the policy. The definitions give you the scope of coverage provided by the insured perils. You must always read the definition of the insured perils to see what is REALLY covered under the policy.

INSURANCE – DEFINITIONS

Claim means a:

written demand for monetary damages, civil proceeding commenced by the service of a complaint or similar pleading, criminal proceeding commenced by the return of an indictment, or formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, against an Insured for a Wrongful Act, including any appeal there from.

Defense Costs means

that part of Loss consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the trustees, committee members, volunteers, directors, officers or employees of an Organization) incurred in defending any Claim and the premium for appeal, attachment, or similar bonds.

Employment Practices means

a Wrongful Act constituting wrongful dismissal, discharge or termination of employment, breach of any oral or written employment contract or quasi-employment contract, employment related misrepresentation, violation of employment discrimination laws (including harassment), wrongful failure to employ or promote, wrongful discipline, wrongful deprivation of a career opportunity, failure to grant tenure, negligent evaluation, employment related wrongful infliction of emotional distress.

Employment practices coverage is the least standardized coverage from policy to policy. Just because the policy says that employment practices is covered does not mean that you are adequately insured. Let's compare the definition above with a definition from another insurance company:

"Such Wrongful Acts include, but are not limited to: discrimination, whether based upon race, sex, age, national origin, religion, disability or sexual orientation; sexual or racial harassment; libel, slander or other defamation; invasion of privacy; or interference with or breach of any employment contract, whether oral, written, express or implied."

As you can see, the number of items that would trigger coverage are considerably less. The definition gets around this by including the expression, "not limited to". However, I would not want to depend upon the insurance company's interpretation of this statement in the event a claim occurs. In the case of employment practices liability it is best that the legal basis that are covered are spelled out.

Financial Impairment means

the status of any Organization resulting from (i) the appointment by any state or federal official, agency or court of any receiver conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the Organization, or (ii) such Organization becoming a debtor in possession.

Insured

means any Organization or any Insured Person.

Insured Capacity means

the position held by any Insured Person in any Organization, but shall not include any position in any entity other than such Organization, even if such Organization directed or requested that such Insured Person serve in such other position.

Insured Person

means any natural person who has been, now is or shall become a duly elected director or trustee, duly elected or appointed officer, employee or committee member (whether or not salaried) of an Organization, and any natural person acting in a voluntary capacity on behalf of an Organization and at the specific direction of such Organization.

Insured person should include the above and the organization itself, not just directors and officers.

Interrelated Wrongful Acts means

all causally connected Wrongful Acts.

Loss means

the total amount covered under this policy which any Insured becomes legally obligated to pay on account of any Claim made against any Insured for Wrongful Acts for which coverage applies, including, but not limited to, damages, judgments, settlements, costs and Defense Costs. Loss does not include (i) any amount not indemnified by an Organization for which any Insured Person is absolved from payment by reason of any covenant, agreement or court order, (ii) any amount incurred by any Organization (including its board of directors or any committee of the board of directors) in connection with the investigation or evaluation of a Claim or potential Claim by or on behalf of any Organization, (iii) fines or penalties (including punitive or exemplary damages) imposed by law, (iv) the multiple portion of any multiplied damage award, (v) the future salary or benefits of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement order or other resolution, or (vi) matters uninsurable under the law pursuant to which this policy is construed.

Does not include punitive damages

Does not include future salary of reinstated employee

Does not insure matters uninsurable under the law.

Organization means

any entity designated in Item 1 of the Declarations.

Personal Injury or Publishers' Liability means

a Wrongful Act constituting false arrest, wrongful detention or imprisonment, malicious prosecution, defamation, invasion of privacy, wrongful entry or eviction, infringement of copyright or trademark, unauthorized use of title, plagiarism, or misappropriation of ideas.

Definition is pretty much the same from company to company.

Policy Period means

the period of time specified in Item 3 of the Declarations, subject to prior termination in accordance with section 20 of this policy.

Policy Year means

the period of one year following the inception of this policy or any. anniversary thereof, or, if the time between inception or any anniversary and the termination is less than one year, the lesser period.

Pollutants

means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or local counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants shall also means any other air emission, odor, waste water, oil, oil products, infectious or medical waste, asbestos or asbestos products and any noise.

Subsidiary means
any non-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986, as amended, if more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors in such organization is owned or controlled, directly or indirectly, in any combination, by one or more Organizations.
Any for-profit subsidiaries must be specifically listed in the Declarations in order to be covered.
Wrongful Act means
any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by an Organization or an Insured Person, individually or otherwise, in their Insured Capacity, or any matter claimed against such Insured Person solely by reason of serving in such Insured Capacity.
The definition of Wrongful Acts from company to company is pretty much the same.
In conclusion, always read the definitions since they will change or perhaps, limit the coverage under the contract. The employment practices definition should be closely examined since the definition will vary greatly from insurance company to insurance company.

EXCLUSIONS

The exclusions list what the insurance company does not intend to cover under the policy. These exclusions do give back some coverage for certain circumstances.
Exclusions –
The Company shall not be liable for Loss on account of any Claim based upon, arising from, or in consequence of:
Any circumstance if written notice of such circumstance has been given under any policy of which this policy is a renewal or replacement and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such Loss, in whole or in part, as a result of such notice.
Will not provide coverage for claims made on prior policy period.
Any demand, suit or other proceeding pending, or order, decree or judgment entered for or against any Insured on or prior to the Pending or Prior date set forth in Item 6 of the Declarations, or the same or any substantially similar, fact, circumstance or situation underlying or alleged therein.
No coverage for claims made prior to retroactive date in declarations.
Any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such Insured, if a judgment or other final adjudication adverse to such Insured establishes such a deliberately fraudulent act or omission or willful violation.
No coverage for deliberate, illegal acts.
such Insured having gained in fact any profit, remuneration or advantage to which such Insured was not legally entitled.
No coverage for unlawful gain by an insured.
Based upon, arising from, or in consequence of (i) the actual, alleged or threatened discharge, release, escape or disposal of Pollutants into or on real or personal property, water or the atmosphere; or (ii) any direction or request that the Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants, or any voluntary decision to do so; including but not limited to any Claim for the financial loss to any Organization, its security holders or its creditors based upon, arising from, or in consequence of the matters described in (i) or (ii) of this exclusion. Provided, however that this exclusion shall not apply to any Claim for wrongful dismissal, discharge or termination of employment of any Insured Person in retaliation for such Insured Person's actual or threatened disclosure of the matters described in (i) or (ii) of this exclusion.
No coverage for pollution. However, employment practices coverage applies in the event an employee sues the organization for wrongful termination due to whistleblowing of polluting activity.
any written, oral, express or implied contract or agreement; provided, however, that this exclusion shall not apply to (i) Employment Practice, or **(ii)** that part of Loss which constitutes Defense Costs.
Breach of contract not covered. Cost to defend is covered.

Breach of employment contract IS covered.

The Company shall not be liable for Loss on account of any Claim:
For mental or emotional distress (except with respect to Employment Practices), bodily injury, sickness, disease, or death of any person, loss of use of tangible property whether or not it is damaged or destroyed, or damage to or destruction of any tangible property.
Bodily Injury and Property Damage is excluded. However
Emotional distress for employment practices is provided.
For an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, amendments to or rules or regulations promulgated pursuant to these laws, or similar provisions of any federal, state or local statutory law or common law. Provided, however, that this exclusion shall not apply to any Claim for retaliatory treatment of an Insured Person with respect to actual or threatened disclosures by such Insured Person of any actual or alleged violation of the Fair Labor Standards Act or the Occupational Safety and Health Act.
Employee Benefits liability coverage is excluded.
For liability of others assumed by any Insured under any written, oral, express or implied contract or agreement except to the extent that an Insured would have been liable in the absence of the contract or agreement; or
Contractual Liability excluded.

Brought or maintained by or on behalf of any Insured except:
A Claim that is a derivative action brought or maintained on behalf of an Organization by one or more persons who are not Insured Persons and who bring and maintain such Claim without the solicitation, assistance or participation of any Insured, or a Claim for Employment Practices.
Insured vs. insured is excluded except those brought on behalf of the organization against an insured person.
Insured vs. Insured does not apply to Employment Practices.

CONDITIONS
Pretty much standard from company to company.

PARTICULAR ENDORSEMENTS

Remember, this type of coverage will usually have endorsements and exclusions that are particular to your non-profit organization. It is VERY IMPORTANT that you obtain full copies of the endorsements in question and read them over carefully. The only time these endorsements are attached is when the insuring company is uncomfortable with some aspect of your operations.
There will always be an endorsement that makes the overall contract comply with particular laws in your State.

OTHER THINGS TO LOOK FOR:
Duty to Defend
This provision obligates the insurance company to defend you for claims. This is better than reimbursing you for claims expenses, since you will not have to come up with funds other than the deductible.
Option to Settle.
Some insurance companies give you the right NOT to settle the claim. However, if you elect not to settle, the insurance company will only pay out their original settlement offer amount plus defense costs.

Since the policy is a legal contract, it will not be written in plain English. However, the wording should not be vague, confusing, or incomprehensible. Avoid contracts that use these tactics to obscure

coverage provided by the policy. Remember, READ EVERYTHING. Insist that you obtain the COMPLETE quotation from your agent or insurance company!

Information was found on http://hahnline.com and is meant to be a collection of basic information and is in no way legal advice or to be construed as an active Plan of Action. Please seek legal counsel to see if any of this information is applicable to your organization or group.

SHAPE UP YOUR BOARD of DIRECTORS
By Jean Block

No, I am not going to discuss calisthenics for your Board ... but perhaps the issues surrounding fiduciary responsibilities are just as strenuous!
Federal and State oversight of nonprofits and their Boards is probably a reality for the future. In fact, certain portions of the Sarbanes-Oxley Act apply to nonprofits already, according to BoardSource and the Independent Sector. These include the requirement for a written whistle-blower policy and a document destruction and retention policy.
Source: www.BoardSource.org. www.independentsector.org.
It is simply no longer appropriate for people to join your Board and rely on the "I'm just a volunteer doing good deeds" mentality. Board members should consider carefully the legal responsibilities of serving on your Board. And your organization must take care to provide current and potential Board members with the information and training they need to serve appropriately.
The following is excerpted and condensed from a great resource: *Right from the Start: Responsibilities of Directors and Officers of Not-for-Profit Corporations*, published by the New York Attorney General. To see the entire resource, go to www.oag.state.ny.us/charities/charities.html
Prospective Board members should:
Review the Articles of Incorporation, Bylaws and minutes;
Get a list of current Board members and understand what is expected of Board members;
Review the recent 990s and financial statements; Assess whether reports have been filed in a timely manner;
Understand internal controls and policies;
Review recent audits and management letters; Ensure conflict of interest and code of ethics policies are in place;
Understand Board and Committee operating structure;
Ensure Director & Officer liability insurance and employee fidelity insurance are in place;
Review current budget and cash flow projections… to name a few.
Board members should understand the ***Duty of Care***. This requires a director to be familiar with the organization's finances and activities and to participate regularly in its governance. Directors must act in "good faith." They must:
Attend all Board and committee meetings and participate actively in decision-making, coming prepared to act;
Participate in strategic planning;
Ensure adequate internal financial controls and policies;
Participate in the periodic review of the CEO/Executive Director, and more.
Board members should understand the ***Duty of Loyalty***. This Duty deals strictly with issues involving conflict of interest issues and how to identify and deal with them.
Board members should also understand the ***Duty of Obedience***. Board members must ensure that the organization complies with applicable laws and regulations and its internal governance policies, including:
Dedicating the organization's resources to the mission;
Ensuring the organization does not carry out unauthorized activities;
Complying with all appropriate laws, filing required reports, paying all taxes;
Providing copies of appropriate financial reports and documents to members of the public who request them

What are the responsibilities of individual board members?

Individual Board Member Responsibilities
Attend all board and committee meetings and functions, such as special events.
Be informed about the organization's mission, services, policies, and programs.
Review agenda and supporting materials prior to board and committee meetings.
Serve on committees or task forces and offer to take on special assignments.
Make a personal financial contribution to the organization.
Inform others about the organization.
Suggest possible nominees to the board who can make significant contributions to the work of the board and the organization
Keep up-to-date on developments in the organization's field.
Follow conflict of interest and confidentiality policies.
Refrain from making special requests of the staff.
Assist the board in carrying out its fiduciary responsibilities, such as reviewing the organization's annual financial statements.

Personal characteristics to consider
Ability to: listen, analyze, think clearly and creatively, work well with people individually and in a group.
Willing to: prepare for and attend board and committee meetings, ask questions, take responsibility and follow through on a given assignment, contribute personal and financial resources in a generous way according to circumstances, open doors in the community, evaluate oneself.
Develop certain skills if you do not already possess them, such as to: cultivate and solicit funds, cultivate and recruit board members and other volunteers, read and understand financial statements, learn more about the substantive program area of the organization.
Possess: honesty, sensitivity to and tolerance of differing views, a friendly, responsive, and patient approach, community-building skills, personal integrity, a developed sense of values, concern for your nonprofit's development, a sense of humor.

Information was found on and http://www.nonprofitcenterwf.org/board.htms meant to be a collection of basic information and is in no way legal advice or to be construed as an active Plan of Action. Please seek legal counsel to see if any of this information is applicable to your organization or group.

Section 3

Business Policies And Procedures

How To Build and Maintain a Healthy Business Environment

Negligent hiring lawsuits are costing companies millions of dollars a day in judgments. You can not afford to neglect such basic hiring policies as checking the background of someone who will be driving your vehicles, operating your machinery and working close proximity with your other employees and your customers. This includes both paid employees and volunteers. Many businesses go under each day due to these lawsuits, and just a few cursory checks might have saved them from closing their doors.

Some of the problems that can be avoided by diligent hiring procedures and employee policies that are clear and maintained are:

Employee Turnover

Employees not suitable for position

Erroneous resumes or information on applications

Questionable or unsuitable applicants

Federal compliancy with the EEOC and FCRA guidelines

Continuing training and motivation for management and employees

Internal Conflict Resolution

Downsizing or Placement Decisions
Product Segmentation:

Overall, businesses are spending way too much on employees who leave in six months and this idea is foremost on most manager's minds these days. Education and training for a new employee is equivalent to a $10,000 investment. To lose that investment in less than six months is disastrous. To help lower the cost of hiring and increase employee retention it is important for any organization to have effective hiring procedures, maintain a safe work environment and have common sense guidelines that allows all employees a safe place with open communications. When employees know what to expect from their employer and what is expected of them, and they are in a safe environment, doing a job they are well suited for, it is then that an organization can consider itself to healthy and whole as a business.

Why You Need to Conduct Pre-Employment Background Checks

Employers are increasingly being held accountable by the courts to reasonably assure that their employees do not have a history of violence or are not sexual predators - such as maintenance workers hired by a school.
Human resource experts estimated that 30% of applicants falsify material aspects of the experience, work history, criminal convictions, or professional licensing. The only means to be certain is to verify the applicant's contentions.
According to one Rebecca Speer, a workplace-violent attorney, legal expenses for negligence lawsuits for issues including negligent hiring, supervision, security, training, and retention average $2.2 million. Add to that the extent of productivity losses that a company may suffer due to violence in the workplace, including theft and loss of income. Thus, to minimize such risks, companies need to implement a well-crafted hiring process that screens out violence-prone candidates before they become employees. And this is where criminal background checks come in.

Top 10 Reasons

The top 10 reasons why pre-employment background checks add to your company's success!

1. Human resources experts estimate that 30% of applicants falsify material aspects of their application.

2 Past behavior is the best predictor of future behavior.

3. Protect your employees and company property from someone with a history of violence, sex crimes, violence, theft, or illicit drug use.

4. Discharging an employee, even if the employee lied, can result in wrongful or unfair termination actions, and workers' compensation claims.

5. One "bad apple" can spoil the whole bunch.

6. Recruiting, hiring, training, and find a replacement for the "wrong employee" can cost thousands.

7. People of "good character" seldom have a criminal history.

8. "Due diligence" in advance of litigation is the best way to defend expensive human resources litigation.

9. The best employees make for a happy, efficient, loyal, and profitable company.

10. Pre-employment back checks increases your stability, your company's reputation, and profitability.

Volunteer Liability
and the Volunteer Protection Act of 1997

If your organization takes advantage of a dedicated, unpaid labor force (volunteers), you should be aware of how to protect both your organization and your volunteers from legal claims.

The Volunteer Protection Act of 1997 removes volunteers (any individual performing services for a nonprofit organization or governmental entity who does not receive compensation—other than reasonable reimbursement or allowance for expenses—in excess of $500 per year) from liability for negligent acts or omissions committed while acting within the scope of their duties as volunteers. The Act does not, however, relieve a volunteer from all responsibility for his or her actions. Specifically, the Act does not protect volunteers if their acts or omissions result from:

- willful or criminal misconduct
- gross negligence
- reckless misconduct
- conscious, flagrant indifference to the rights or safety of the individual the volunteer harms

In addition, the Act does not cover volunteers if the harm is caused by the operation of a motor vehicle, vessel, aircraft, or other vehicle for which the state requires an operating license or insurance. Also, any misconduct that constitutes a crime of violence, a hate crime, a sexual offense, or violates a federal or state civil right law is not protected by the Act. Finally, the volunteer is not protected if he or she was under the influence of intoxicating alcohol or any drug at the time of misconduct.

To limit the legal exposure of your organization and its volunteers:

1. Treat your volunteers like you treat your paid staff

   - Develop volunteer position descriptions
   - Use and carefully screen volunteer applications
   - Train and closely supervise your volunteers

2. Promptly investigate and respond to any s actions.∗complaints or concerns regarding a volunteer
3. Secure insurance protection for your volunteers, as well as your staff, officers, and directors.

What Does the Fair Credit Reporting Act Say

DEFINITIONS:I. Definition
A. Consumer Report: "any written, oral, or other communication.. by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for... employment purposes"
1. Investigative Consumer Report: "a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer... or wit others with whom he is acquainted or who may have knowledge concerning any such items of information."
B. Consumer: "an individual"
C. Consumer reporting agency (CRA): anyone who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or part in the practice of assembling or evaluating...information on consumers to third parties, and uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports,"
D. Employment purposes: use of a consumer report relating to the evaluation of an individual for

Consumer report.
ANY INFORMATION GATHERED BY ANY THIRD PARTY COMPANY THAT COULD RESULT IN ADVERSE ACTION ON AN EMPLOYEE.
(1) In general. The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for

(A) Credit or insurance to be used primarily for personal, family, or household purposes;
(B) Employment purposes; or
(C) Any other purpose authorized under section 604 [§ 1681b].
"Investigative consumer report"
INFORMATION GATHERED BY INVESTIGATIVE MEANS OTHER THAN THE USE OF CREDIT RECORDS. THIS INCLUDES NEIGHBORHOOD CHECKS, CRIMINAL/CIVIL CHECKS, INTERVIEWS, ETC.
means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

"Consumer reporting agency"
AN AGENCY HIRED BY THE COMPANY OF THE SUBJECT TO PROVIDE ANY REPORTING ABOUT THE SUBJECT.
means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
"Employment purposes"

…used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.
"Medical information"
means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.
Adverse action.
Means ANY ACTION THAT COULD NEGATIVELY AFFECT INSURANCE COVERAGE.
a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;
ANY NEGATIVE ACTION THAT AFFECTS CURRENT EMPLOYEES OR POTENTIAL EMPLOYEES.
a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
ANY ACTION THAT COULD AFFECT ANY PERSONS LICENSE TO WORK
a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D) [§ 1681b]; and
an action taken or determination that is
adverse to the interests of the consumer.

WHAT THIS MEANS TO ANY COMPANY THAT NOW OR AT ANY POINT MIGHT INVESTIGATE AN EMPLOYEE

What is a "Consumer Report"? Reference checks, background checks, drug testing in some cases, driving records, criminal/civil checks, neighborhood interviews, college checks, any information on an employee gathered from an online database can be considered a consumer report.

Online databases do not update their records regularly enough to comply with the FCRA. The FCRA requires that the records obtained be CURRENT AT THE TIME OF REPORTING, which the online services are generally not.

What is required to comply with the FCRA in using consumer reports?

Before taking adverse action against an individual based on information in whole or in part from a consumer report, a company must provide to the individual a copy of the report and the "Prescribed Statement Of Consumer Rights" form.

After the adverse action, the company must provide
notice of the adverse action,
the name, address and telephone number of the consumer reporting agency,
a statement that the CRA did not make the decision to take adverse action and has no details on the action itself.
Notice of the consumer's rights to obtain a free copy of the report and to dispute the accuracy or completeness of what was in the report

The responsibilities of any CRA that provides a consumer report are to disclose "clearly and accurately", all the information in the consumer's file at the time of the request, they sources of investigation in the file, a list of everyone who received a copy of the consumer report within the past 2 years, and the "Prescribed Summary Of Consumer's Rights" form.

The consumer can dispute the consumer report. Once disputed, the CRA has 30 days to verify and respond to the dispute, unless the consumer provides additional relevant information during the dispute, then that time period is extended to 45 days. Disputed information must be removed, and cannot be reinserted unless it is verified to be accurate and true.

Prevention is your first line of defense. If you are not aware if you are in complete compliance, verify that you are. If your company and its attorneys are not well versed on the FCRA, you can be guaranteed that the plaintiff's attorneys will be.

Example of Pre-Employment Forms that are compliant with the FCRA
Employer's Authorization

I authorize NAMI to request and receive consumer reports concerning the previously named individual and to provide these reports to us.

I understand that these reports are subject to the FCRA, and agree that should these consumer reports have a possible adverse effect on the employment of this individual, that he/she will be provided with a copy of their Summary of Rights under the Fair Credit Reporting Act. The report and my Summary of Rights will be provided prior to taking any adverse action against the individual. If adverse action is taken, the individual will be provided a notice of the adverse action; the name, address, and telephone number of the consumer reporting agency that furnished the report to your along with a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the individual with the specific reasons why the adverse action was taken; and provide a notice of the consumer's right to obtain a free copy of the consumer report from the consumer reporting agency and to dispute the accuracy or completeness of the information in the report.
The company also understands that the accuracy of information submitted by the Requester will directly determine the accuracy of search results. NAMI cannot be held liable for inaccuracies contained in public record information, databases accessed, or requests submitted by the Requester. While the information furnished is from reliable sources, its accuracy is not guaranteed. All information should be verified as to accuracy, timeliness and legal applications prior to preparation of report(s) or usage of information. Use of available data may be subject to the FCRA and other applicable laws. The client assumes full responsibility for the release of any information obtained with these reports. The company also agrees that by accepting this consumer report and using this report in any method, that it has received the disclaimer sheet which accompanies the report and has:

1. Not misrepresented its requirements for this report,
2. Has all required waivers for this report
3. No intentions to resell this information

Company Name _____

Authorized agent's signature _____

Printed name of authorized agent _____

Date signed _____

CONSENT FOR UTILIZATION OF CONSUMER REPORTS FOR EMPLOYMENT

The purpose of this form is notifying you that a Consumer Report and/or an Investigative Consumer Report will be conducted on you in the course of consideration for employment. This may include procurement of an investigative consumer report, (defined as a report that includes information as to your character, general reputation, personal characteristics or mode of living.
Consumer Reports include any and all information that NAMI provides to the employer concerning you.

I, _____, hereby authorize NAMI and_____ (potential employer), with my signature below to access one or more of my consumer reports for employment purposes. Additionally, I authorize NAMI , and my potential employer to obtain consumer reports pertinent to my employment. This release shall remain in effect for the length of my employment. I understand that I have the right to obtain a free copy of this consumer report if: (1) Any adverse action/ decision is made based on the information in the consumer report, & (2) if the request is made in writing within 60 days of the adverse action. If an Investigative Consumer Report is conducted, I will be notified in writing within 3 days from request of said report.

I, _____, understand that should my consumer report have a possible adverse effect on my employment that I will be provided with a copy of my Summary of Rights under the Fair Credit Reporting Act. The report and my Summary of Rights will be provided prior to taking any adverse action against you. If adverse action is taken, you will be provided:

A. Notice of the adverse action;
B. The name, address, and telephone number of the consumer reporting agency that furnished the report to your employer along with a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide you with the specific reasons why the adverse action was taken;
C. Notice of the consumer's right to obtain a free copy of the consumer report from the consumer-reporting agency and to dispute the accuracy or completeness of the information in the report.
D. I understand that I have the right to dispute directly with the CRA the accuracy and completeness of any information provided by the CRA.

By signing below, you grant permission to _____ or any of its affiliated or subsequent companies to obtain such a report or reports at any time. You also grant permission to all parties to release information regarding your previous or current military service, employment, education, driving history or criminal matters to NAMI , including information, which may be deemed negative.

Signature_____
Date:_____ SSN _____

Printed Name _____
Witnessed by _____

A Summary of Your Rights
Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as if you pay your bills on time or have filed bankruptcy -- to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. 1681-1681u, at the Federal Trade Commission's web site (*http://www.ftc.gov*). The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

- **You must be told if information in your file has been used against you.**

  Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment -- must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.

- **You can find out what is in your file.**

  At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.

- **You can dispute inaccurate information with the CRA.**

If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs -- to which it has provided the data -- of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.

- **Inaccurate information must be corrected or deleted.**

  A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. **However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified.** If your dispute results in any change to your report, the CRA cannot reinsert into your file a

disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.

- **You can dispute inaccurate items with the source of the information.**

If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error.

- **Outdated information may not be reported.**

In most cases, a CRA may not report negative information that is more than seven years old; including Civil suits, civil judgments, records of arrest, paid tax liens, bad debts and any other item of information; ten years for bankruptcies.
"Records of convictions of crimes" are exempted from the seven year rule.
(Consumer reports on individuals expected to earn more than $75,000 per year are exempt from all the time limitations.)

- **Access to your file is limited.**

A CRA may provide information about you only to people with a need recognized by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business.

- **Your consent is required for reports that are provided to employers, or reports that contain medical information.**

A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.

- **You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.**

Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.

- **You may seek damages from violators.**

If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT:
CRAs, creditors and others not listed below	Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 202-326-3761
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-518-6360
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs Washington, DC 20429 800-934-FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 202-720-7051

SEXUAL HARASSMENT

Sexual harassment is a legal concept developed originally to address a particular type of sexual discrimination. Briefly, sexual harassment is unwelcome behavior of a sexual nature that makes someone feel uncomfortable or unwelcome in the workplace by focusing attention on their gender instead of on their professional qualifications. The concept applies now to both women and men, to adults and to children.
Sexual harassment is usually defined as behavior by someone higher in status or power toward someone lower in status or power, although harassment by peers or customers is also recognized as a problem. The unequal balance of power is an intrinsic element of the legal definition of sexual harassment.
The EEOC requires all organizations with more than 15 employees to develop a sexual harassment policy, to make that policy public, and train employees in issues of sexual harassment. If you're not sure whether or not you're being harassed, talk to someone in the human resources department of your organization.

Facts About Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.
Sexual harassment can occur in a variety of circumstances, including but not limited to the following: The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.

The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a *non-employee*.

The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

Unlawful sexual harassment may occur without economic injury to or discharge of the victim. The harasser's conduct must be unwelcome.

It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available. When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

Sexual Harassment comes in two forms -- **"quid pro quo**" and **"hostile working environment**."

The former is pretty straight- forward: "sleep with me or you're fired." Essentially, "**quid pro quo**" harassment involves making conditions of employment (hiring, promotion, retention, etc.) contingent

on the victim's providing sexual favors. Very few people have a problem with this, and I'm not going to spend any more time on it unless someone has questions.
Hostile working environment

"**Hostile working environment**" harassment is the one people are really arguing about. So what is it?

"When the workplace is permeated with 'discriminatory intimi- dation, ridicule, and insult,' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment,' Title VII is violated." *Harris v. Forklift Systems, Inc.*, 114 S.Ct. 367 (1993) (quoting *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)).

"'[M]ere utterance of an ... epithet which engenders offensive feelings in an employee does not sufficiently affect the conditions of employment to implicate Title VII. Conduct that is not severe enough to create an OBJECTIVELY hostile or abusive work environment -- an environment that a **REASONABLE PERSON** would find hostile or abusive -- is beyond Title VII's purview. Like- wise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." *Harris* (again, quoting *Meritor*; ALL CAPS added for emphasis by this writer).

"[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include [a] the frequency of the discriminatory conduct; [b] its severity; [c] whether it is physically threatening or a mere offensive utterance; and [d] whether it unreasonably interferes with an employee's work performance." *Harris* (logical indicators [a], [b], etc. added by this writer).

This is *the* law on sexual harassment, as handed down by a *unanimous* Supreme Court in 1993. (Justices Scalia and Ginsburg wrote concurring opinions, essentially arguing that only [d] above -- whether the speech/conduct unreasonably interferes with an employee's work performance -- should have been the *only* guiding criteria necessary. I take a middle view, arguing that [d] should be NECESSARY and that [a], [b] and [c] may be used by the finder-of-fact in making a determination of whether [d] exists. Both concurring Justices agreed that the [d] criteria would have been met in the *Harris* case, and thus the court found 9-0 in favor of Harris.)

Putting it in layman's terms

So, how can the law of "hostile working environment" be put into layman's terms? Here's my attempt:

HWE -- [a] speech and/or conduct, [b] of a sexually discriminatory nature, [c] which was neither welcomed nor encouraged, [d] committed by or permitted by a superior, [e] which would be *so* offensive to a reasonable person as to [f] create an abusive working envi- ronment and/or [g] impair his/her job performance.

Piece-by-piece:

[a] "speech and/or conduct" -- sexual harassment can be mere words ("dumb ass woman," *Harris*), words in conjunction with conduct (asking the employee to dig coins out of one's own pants pocket, *Harris*) or conduct alone (fondling a woman's breast, *Weeks v. Greenstein*).

[b] "of a sexually discriminatory nature" -- remember that Title VII IS NOT A SPEECH CODE. This is a *discrimination* law. The issue is not the content of the speech or the precise nature of the conduct so much as whether that speech/ conduct is directed at the employee on the basis of his/her gender (or has a disparate impact on the basis of gender).

[c] "which was neither welcomed nor encouraged" -- if the defendant (employer) can show that the plaintiff (employee) welcomed and/or encouraged the speech/conduct, there is no discrimination claim available. This ties in to the *Harris* requirement that the victim must *subjectively* have been offended by the speech/conduct. That is, the plaintiff *can't* argue "Well, I wasn't offended at the time, but after I got fired for stealing I talked to some people and found out that a *reasonable* person *would* have been offended, I decided to sue anyway ...."

[d] "committed by or permitted by a superior" -- again, Title VII IS NOT A SPEECH CODE. It's a *discrimination* law. Thus, the plaintiff must show that his/her *superior* "knew or should have known" about the speech/conduct and did not intervene. (Obviously, if the superior is the one doing the harassments, the requirement is met.) So what does "knew or should have known" mean? It means that "an ordinary, reasonable prudent person in like or similar circumstances" would have known. It means the employer *can't* say "Yeah, a reasonable supervisor would have known this was going on, but I'm a lousy supervisor and *I* didn't know, so don't hold me liable ...."

[e] "would have been *so* offensive to a reasonable person" -- One of the biggest myths about sexual harassment law is that "the woman gets to decide what she likes and what she doesn't." Balderdash. The law has *always* had a "reasonable person" standard (though *Harris* did away with the previous terminology of "reasonable woman"). It's not enough that a given employee was offended. That employee might, after all, be unreasonably sensitive or thin-skinned. The plaintiff must show that "an ordinary, reasonable, prudent person in like or similar circum- stances" would have been similarly offended. In other words, the plaintiff *can't* argue "Well, I know a *reasonable* person would have shrugged this off, but *I'm* not reasonable and *I* was offended ...."

[f] "create an abusive working environment and/or" -- this is an area where the law needs to be developed. I would argue that this element should be conjunctively (and) linked with [g], below. However, *Harris* seems to indicate a disjunctive (or) link, and until we know better, we ought to assume the more general (or) linkage. So what does this mean? It means an environment which manifests hostility or abuse toward one or more employees, on the basis of his/her/their gender. It means an environment where the employee is *distinctly* (remember, this is an objective standard) made to feel unwelcome, unwanted, scorned, ridiculed, intimidated ... on the basis of his/her gender. It is, in the words of Justice Scalia, an environment where "working conditions have been DISCRIMINATORILY altered" for some employees. (Emphasis added.) The underlying theory seems to be that the harrasser is attempting to get the victim to either quit, or screw up enough to get fired (though the latter falls under [g], below). It's a matter of "I may have to hire you, but I can make you so miserable you won't want to stay" ... on the basis of gender. Once again, Title VII IS NOT A SPEECH CODE. It's a *discrimination* law.

[g] "impair his/her job performance" -- this may be seen as merely an extension of [f] (above), or it may be that [f] is a way to demonstrate this element. Either way, this element implies that the speech/conduct is so offensive that a reasonable person's job performance would be impaired. At this level, we *are* talking about trying to make life so miserable that the victim will screw up enough to get fired. An example: let's assume that Defendant MegaCorp fired Plaintiff Vicki, citing as its reasoning that "she didn't get the filing done in a regular and orderly manner." Vicki is able to show that the file room was right next to the men's restroom, and that more often than not, when she went to the file room Mr. Jackson would be in the door of the restroom saying "C'mon in and file *this*, sweetcakes!" Thus, she was reluctant to go back there. Jackson's harassment impaired her job performance, and if she can show that a superior knew or should have known about the harassment and didn't intervene, she can recover.

Situation is not as dire as you've heard

That's what sexual harassment law *is*, under Title VII. One hopes this has dispelled a few myths and misunderstandings, but a couple of miscellaneous points ought to be noted:
MYTH -- "I can't afford to even take the chance of getting sued, so I'm going to fire anyone on first complaint. Even if I *win* the lawsuit, the legal bills will kill me."

FACT -- The prevailing party in a Title VII action can recover his/her/their/its attorney's fees from the losing party. A claim for attorney's fees must be pled, and there are some (HIGHLY technical) grounds under which it might not be granted. But it *is* available.

MYTH -- "This law is the product of radical man-hating feminists."

FACT -- Gender discrimination was added to the Civil Rights Act of 1964 by *men*. Indeed, it was added by *conservative* men who thought it would make the bill fail. It didn't. (And just how many radical man-hating feminists *were* there in 1964?)

MYTH -- "Every female employee is a ticking time bomb; there's nothing I can do to protect myself."

FACT -- A businessperson can protect him/herself quite easily. Develop a sexual harassment policy which is consistent with the law. (Many companies have instituted truly draconian policies, which is both overkill and unfair to their employees.) Apply that policy consistently and fairly. To quote an old law professor of mine, "You can substantially minimize the likelihood of being hanged for murder by the simple expedient of not killing people."

Filing a Charge

Federal Employees: Please see our fact sheet on Federal Sector Equal Employment Opportunity Complaint Processing.

If you believe you have been discriminated against by an employer, labor union or employment agency when applying for a job or while on the job because of your **race**, **color**, **sex**, **religion**, **national origin**, **age**, or **disability**, or believe that you have been discriminated against because of opposing a prohibited practice or participating in an equal employment opportunity matter, you may file a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC). Charges may be filed in person, by mail or by telephone by contacting the nearest EEOC office. If there is not an EEOC office in the immediate area, call toll free 800-669-4000 or 800-669-6820 (TDD) for more information. To avoid delay, call or write beforehand if you need special assistance, such as an interpreter, to file a charge.

There are strict time frames in which charges of employment discrimination must be filed. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, adhere to the following guidelines when filing a charge.

Title VII of the Civil Rights Act (Title VII) charges must be filed with EEOC within 180 days of the alleged discriminatory act. However, in states or localities where there is an antidiscrimination law and an agency authorized to grant or seek relief, a charge must be presented to that state or local agency. Furthermore, in such jurisdictions, you may file charges with EEOC within 300 days of the discriminatory act, or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier. It is best to contact EEOC promptly when discrimination is suspected. When charges or complaints are filed beyond these time frames, you may not be able to obtain any remedy.

Americans with Disabilities Act (ADA) - The time requirements for filing a charge are the same as those for Title VII charges.

Age Discrimination in Employment Act (ADEA) - The time requirements for filing a charge are the same as those for Title VII and the ADA.

Equal Pay Act (EPA) - Individuals are not required to file an EPA charge with EEOC before filing a private lawsuit. However, charges may be filed with EEOC and some cases of wage discrimination

also may be violations of Title VII. If an EPA charge is filed with EEOC, the procedure for filing is the same as for charges brought under Title VII. However, the time limits for filing in court are different under the EPA, thus, it is advisable to file a charge as soon as you become aware the EPA may have been violated.

If you are experiencing sexual harassment, there are a variety of steps you can take. Ignoring sexual harassment does not make it go away. The harasser may interpret a lack of response as encouragement! You may want to do more than one of these things...

Know your rights. Sexual harassment is illegal. The EEOC requires all organizations with more than 15 employees to have policies and procedures to deal with sexual harassment. Find out what your rights are and what procedures are in place to help you. Begin by talking with a representative of the human resources department in your organization. You can check the definitions and sample cases on this website or read about sexual harassment in books and articles. You can find more information on other web pages. Your local library should also have information on this topic.

Speak up at the time. Be sure to say "NO" clearly, firmly and without smiling. There is a chance that the harasser does not realize the behavior is offensive; you must be firm in saying that you are offended. If you decide to file charges later, it's helpful (although not necessary) to have objected to the behavior. If you smile or act unsure of yourself, the harasser may think you're saying "Yes" instead of "No." Practice with a friend until you can say "That behavior offends me" in a way that is firm and clear.

Keep records. Keep track of what happens in a journal or diary and keep any letters or notes or other documents or artifacts you receive. Write down the dates, times, places, and an account of what happened. Write down the names of any witnesses.

Identify an advocate. An advocate is someone who is supposed to help you use the resources of the schools or workplace effectively. Most schools and employers have Affirmative Action Offices where you can talk to someone who will help you. Advocates should have training to help you with both informal and formal procedures to deal with your situation.

Write a letter. People have successfully stopped sexual harassment by writing a letter detailing the behavior that is offensive and asking the person who is harassing them to stop the behavior. The letter should be polite, unemotional, and detailed. Such a letter seems to be more powerful than a verbal request. The recipient of the letter seldom writes back; the person usually just stops the behavior.

Report sexual harassment to the appropriate person in the organization. Schools and employers are required to have policies and procedures for dealing with sexual harassment. You can use those policies and procedures to make an informal or a formal complaint against the person who harasses you.

File a complaint with your state agency that deals with employment discrimination. Many states have laws against employment discrimination and sexual harassment. Your first legal step should be to file a complaint with the appropriate organization in your state. The research librarian at your public or university library can help you find information on state laws and how to file claims.

File a complaint with the EEOC. If the organization does not deal with your situation, you can file a complaint with the EEOC. The Equal Employment Opportunity Commission is a federal agency that enforces federal anti-discrimination laws. Some states automatically notify the EEOC if you file a complaint with your state agency, or you can file with both. There are some quite strict statutes of limitations for filing claims. If the harassment is serious enough to require legal action, do not delay in making a complaint. Become familiar with appropriate procedures to avoid problems. If the EEOC finds that you have a valid claim, that agency may prosecute the claim for you or may notify you that you have authority to bring a claim against your employer in federal court.

Facts About Federal Sector Equal Employment Opportunity Complaint Processing Regulations (29 CFR Part 1614)

Newly revised Part 1614 of the federal sector equal employment opportunity (EEO) complaint processing regulations makes the procedures for processing complaints more effective. This revised regulation requires all federal agencies for the first time to establish or make available Alternative Dispute Resolution (ADR) programs. The counseling process and the procedures for requesting a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge also are revised. Administrative judges now have the authority to dismiss complaints and issue decisions on complaints when a hearing is requested. The revised regulation also includes changes to the class complaint procedures, appeal procedures, and attorney's fees provisions.

PROTECTION FROM DISCRIMINATION

The statutes enforced by EEOC make it illegal to discriminate against employees or applicants for employment on the bases of race, color, religion, sex, national origin, disability, or age. A person who files a complaint or participates in an investigation of an EEO complaint, or who opposes an employment practice made illegal under any of the statutes enforced by EEOC, is protected from retaliation.

There are federal protections from discrimination on other bases including sexual orientation, status as a parent, marital status, political affiliation, and conduct that does not adversely affect the performance of the employee.

FILING A COMPLAINT WITH A FEDERAL AGENCY

Employees or applicants who believe that they have been discriminated against by a federal agency have the right to file a complaint with that agency. The first step is to contact an EEO Counselor at the agency within 45 days of the discriminatory action. The individual may choose to participate in either counseling, or in ADR when the agency offers ADR. Ordinarily, counseling must be completed within 30 days and ADR within 90 days. At the end of counseling, or if ADR is unsuccessful, the individual may then file a complaint with the agency.

The agency must conduct an investigation of the complaint, unless the complaint is dismissed. If a complaint is one containing one or more issues that must be appealed to the Merit Systems Protection Board (MSPB), the complaint is a "mixed case." It is then processed under the Board's procedures. For all other EEO complaints, once the agency finishes its investigation the complainant may request a hearing before an EEOC administrative judge or an immediate final decision from the agency.

In cases where a hearing is requested, the administrative judge issues a decision within 180 days and sends the decision to both parties. Where discrimination is found, the administrative judge orders appropriate relief. If the agency does not issue a final order within 40 days after receiving the administrative judge's decision, the decision becomes the final action of the agency. If the agency issues an order notifying the complainant that the agency will not fully implement the decision of the administrative judge, the agency also must file an appeal at the same time.

An individual, acting as a class agent, also may file a class complaint with an agency. Class complaints must be certified by an EEOC administrative judge in order to be accepted for processing.

FILING AN APPEAL WITH EEOC

A dissatisfied complainant may appeal to EEOC an agency's final action within 30 days of receipt. The agency may appeal a decision by an EEOC administrative judge within 40 days of receiving the administrative judge's decision.

On class complaints, a class agent may appeal an agency's final decision on the merits of the class complaint within 30 days from receipt, or a class member may appeal the final decision on his or her claim for individual relief within 30 days from receipt of the final decision.

If the complaint is a "mixed case," the complainant may appeal the final agency decision to the MSPB or ask the Board for a hearing. Once the Board issues its decision on the complaint, the complainant may petition EEOC for review of the Board decision concerning the claim(s) of discrimination.

REMEDIES

EEOC's policy is to seek full and effective relief for each and every victim of discrimination. The remedies may include:
posting a notice to all employees advising them of their rights under the laws EEOC enforces and their right to be free from retaliation;
corrective or preventive actions taken to cure or correct the source of the identified discrimination;
nondiscriminatory placement in the position the victim would have occupied if the discrimination had not occurred;
compensatory damages;
back pay (with interest if applicable) and lost benefits; and
stopping the specific discriminatory practices involved.

1. comments of a sexual nature, including sexually explicit statements, questions, jokes, anecdotes, or graphic material (e.g., sexually explicit visuals such as pin-ups);

2. unnecessary or unwanted touching, patting, massaging, hugging or brushing against a person's body or other conduct of a physical nature;

3. remarks of a sexual nature about a person's clothing or body;

4. insulting sounds or gestures, whistles, or catcalls;

5. invading someone's personal space or blocking her/his path;

6. unwelcome and inappropriate letters, telephone calls, electronic mail, or other communications; consensual – romantic or sexual relationship which causes adverse treatment of third parties or

7. creates a hostile or intimidating working or learning environment for third parties;

8. stalking (which is also criminal behavior)

9. sexual assault (which is also criminal behavior)

stalking (which is also criminal behavior);

g. sexual assault (which is also criminal behavior).

Sexual Harassment Scenarios
Places of Higher Learning

1. A freshman seeks help in a class from his female Teaching Assistant. After going over his questions, she suggests that they get together over a pizza and coffee, remarking that his grades would certainly improve is he were to get to know her better in a more relaxed way so that he could be less apprehensive in class. He is confused by her suggestion and declines, and then finds that she can seldom find time to help him.

2. A student is nervous and angry because her instructor makes sexually suggestive remarks and uses inappropriate language in his class. She notices that many of the men seem to enjoy the class, but that many of the women seem embarrassed and tend to skip class. Her male friends tell her that she is being too 'narrow-minded'.

3. A female graduate student enjoys the attentive and intellectually challenging mentor relationship she has with her thesis advisor. When he suggests that she might join him at a conference related to her research, she is appreciative. However, she is puzzled when he wants to have dinner with her to discuss the trip, begins making comments on her attractiveness, and suggests they should spend more time together outside the formality of their work environment.

4. A group of students repeatedly tells dirty jokes in the presence of someone who they know would be made uncomfortable by this.

5. A second semester junior is considering changing her major because a required course is taught only by an instructor who requires several individual conferences with students. Women who have taken the course have said that they were uncomfortable with the teacher because of extended time taken with them, suggestive looks, and very personal comments that were made to them, but not to male students. In discussing this worry with her advisor, the student is told that she will survive like everyone else because she needs the course, that no-one has ever made an official complaint, and that she will find the teacher intellectually challenging if she will ignore personal idiosyncrasies.
6. A female student declines several polite request of a TA for a date. After the third request, she makes it clear that she now finds his attention bothering and intrusive rather than flattering, and politely insists that it stop. He then begins to send her notes and to 'run into her' after classes in an area where he did not go before.

7. A group of male residents continually make suggestive comments which are obviously upsetting to a group of female students. Their requests that the men stop are unheeded. They say the women are just too uptight, and need to 'relax and not take life so seriously'.

8. Posting sexually provocative pin-ups or posters in a work or academic environment.

Work Place Environment

1. A woman employee accepted a lunch invitation from her male supervisor to discuss a possible job promotion. At lunch he made it clear a sexual relationship with him was a necessary part of the new job. When she attempted to leave, the supervisor threatened to punish her and later she was demoted and received unfavorable job evaluations.

2. A male assembly line supervisor "welcomed" a new woman worker by making sexually suggestive comments to her and touching her in sexually aggressive ways. She complained to her foreman who told her to consider the supervisor's action as a compliment. After repeated complaints, she told was she would lose her job if she continued to complain.

3. A female state employee complained that her supervisor threatened to deny her a promotion if she didn't give him sexual favors. Testimony given during an internal departmental investigation revealed that more than a dozen other women were victims of similar threats from the same supervisor
A professor who works down the hall stands over your desk, watches you, and touches you in a way that upsets you or interferes with your work. As a result, you may think about leaving your job.

4. A supervisor promises you a promotion in return for sexual favors and implies that you might get bad job evaluations or be fired if you refuse.
* * *
5. A co-worker repeatedly asks you out, ignores your refusals, follows you, and won't leave you alone.
* * *
6. A student working in your lab has covered the walls of the office with pinups, and makes obscene and insulting remarks to you when you ask the supervisor to remove them.

Tips for keeping your workplace harassment-free
To prevent a hostile work environment, managers should:

- Create a sharply written policy that specifically addresses a hostile work environment.
- Amend Internet usage policies to specifically address the issue of sexual harassment.
- Train employees on what sexual harassment is and how to avoid it.
- Reach out and inquire if a problem is suspected.
- Take each complaint and report seriously.
- Look into complaints and reports immediately.
- Know the policies and procedures.
- Document all information gathered in the investigation of a claim.
- Don’t overreact and don’t jump to conclusions. Managers who act too zealously toward an accused employee could end up in court just as quickly as those who do nothing.
- Communicate with involved parties, but protect privacy and confidentiality rights.
- Stay connected! Watch extra closely for any signs of a hostile work environment.
- Update firewalls.
- Use filtering software and monitor usage logs.

SAMPLE OF EMPLOYEE HANDBOOK POLICIES AND PROCEDURES

Volume

1

NAMI TEXAS

National Alliance on Mental Illness

Employee Handbook

NAMI TEXAS

Employee Handbook

Fountain Park Plaza III
2800 S. I-35, Suite 140
Austin, TX 78704
(512) 693-2000

NAMI
EMPLOYEE HANDBOOK

Dear Employee,

Welcome to NAMI!

We are excited to have you as part of our progressive team. You were hired because we believe you can contribute to the achievement of our goals and to the bottom line of success, and share our commitment to our mission statement.
NAMI is committed to distinctive quality and unparalleled customer service in all aspects of our business. As part of the team, you will discover that the pursuit of excellence is truly a rewarding aspect of your career with NAMI . As a team member, you must "own" the results of your productivity.

This employee handbook contains the key policies, goals, benefits, and expectations of NAMI ; and other information you will need as part of our team.

Our mission statement:

The mission of NAMI is to improve the lives of all persons affected by serious mental illness by providing support, education and advocacy through a grassroots network.

NAMI is dedicated to supporting the inclusion of individuals with mental illness throughout the organization.

NAMI will provide guidance, coordination and resources to promote communication and education through its affiliates by:

- Establishing a network of local support groups/affiliates that will serve as influential resources for the decisions that affect persons with serious mental illness in Texas.
- Establishing NAMI as the pivotal voice for persons affected by serious mental illness.
- Combating stigma through education and raising public awareness that mental illnesses affect everyone and treatment works.
- Moving all partners of the mental health system toward the common goal of a comprehensive recovery-based model that meets the needs of persons (including children, adolescents, and adults) with serious mental illnesses in the community.
- Empowering interested community stakeholders to become informed participants at the national, state, county and local level through education in order to understand the comprehensive community mental health system and the needs of decision makers for knowledge that will allow for decisions to be made that will result in successful political and financial outcomes

The success of NAMI is determined by our success in operating as a unified team. We have to earn the trust and respect of our customers every day in order that the customer makes the decision to choose our services. We sell service and people provide service. There are no magic formulas.

Creative, productive employees who are empowered to make suggestions while thinking “outside the box” guarantee our success. Your job, every job, is essential to fulfilling our mission to "provide distinctive quality and unparalleled customer service" everyday to more people who "trust and respect" us. The primary goal at NAMI , and yours, is to live our mission statement and continue to be an industry leader. We achieve this through dedicated hard work and commitment from every employee. It is the desire of NAMI ’s management, from top to bottom, to have every employee succeed in his or her job, and assist in achieving our goals.

You should use this handbook as a ready reference as you pursue your career with NAMI . Additionally, the handbook should assure good management and fair treatment of all employees. At NAMI , we strive to recognize the contributions of all employees.

Welcome aboard. We look forward to your contribution.

Sincerely,

NAMI
EMPLOYEE HANDBOOK

This employee handbook has been prepared for your information and understanding of the policies, philosophies and practices and benefits of NAMI . PLEASE READ IT CAREFULLY. Upon completion of your review of this handbook, please sign the statement below, and return to your personnel representative by the due date. A reproduction of this acknowledgment appears at the back of this booklet for your records.

I, _____, have received and read a copy of the NAMI Company (The Company) Employee Handbook, which outlines the goals. policies, benefits and expectations of The Company, as well as my responsibilities as an employee.

I have familiarized myself, at least generally, with the contents of this handbook. By my signature below, I acknowledge, understand, accept and agree to comply with the information contained in Employee Handbook provided to me by The Company. I understand this handbook is not intended to cover every situation which may arise during my employment, but is simply a general guide to the goals, policies, practices. benefits and expectations of The Company.

I understand that The Company Employee Handbook is not a contract of employment and should not be deemed as such, and that I am an employee at will.

_____
(Employee signature)

Please return by: _____
(put date here)

NAMI
EMPLOYEE HANDBOOK
Equal Opportunity

NAMI . is an Equal Opportunity Employer. This means that we will extend equal opportunity to all individuals without regard for race, religion, color, sex, national origin, age, disability, and handicaps or veterans status. This policy affirms NAMI 's commitment to the principles of fair employment and the elimination of all vestiges of discriminatory practices that might exist. We encourage all employees to take advantage of opportunities for promotion as they occur.

NAMI
EMPLOYEE HANDBOOK
Personnel Records

It is important that the personnel records of NAMI be accurate at all times. In order to avoid issues or compromising your benefit eligibility or having W2's returned, NAMI expects that employees will promptly notify appropriate personnel representative of any change in name, home address, telephone number, marital status, number of dependents, or any other pertinent information which may change.

NAMI
EMPLOYEE HANDBOOK
Attendance

Employees are expected to arrive at work before they are scheduled to start and be at their workstation productively engaged in NAMI business by the scheduled start time. All time off must be requested in advance and submitted in writing, as outlined in the appropriate categories; except sick leave. See Sick Leave and other categories for specific details.

NAMI views attendance as one of the most important facets of your job performance review. All unapproved absences will be noted in the employee's personnel file. Excessive absences, including for Sick Leave, will result in disciplinary action, up to and including termination.

NAMI
EMPLOYEE HANDBOOK
Equipment

NAMI will provide you with the necessary equipment to do your job. None of this equipment should be used for personal use, nor removed from the physical confines of NAMI - unless it is approved and your job specifically requires use of company equipment outside the physical facility of NAMI .
Computer equipment, including laptops, may not be used for personal use - this includes word processing and computing functions. It is forbidden to install any other programs to a company computer without the written permission of the department head. These forbidden programs include, but are not limited to, games, online services, screen savers, etc. The copying of programs installed on the company

computers is not allowed unless you are specifically directed to do so in writing by your supervisor.
The telephone lines at NAMI must remain open for business calls and to service our customers. Employees are requested to discourage any personal calls - incoming and outgoing - with the exception of emergency calls. No long distance calls are to be made on company phones which are not strictly business related.

NAMI
EMPLOYEE HANDBOOK
Confidentiality

NAMI requires all employees to sign a confidentiality agreement as a condition of employment, due to the possibility of being privy to information, which is confidential and/or intended for the company use only. All employees are required to maintain such information in strict confidence. This policy benefits you, as an employee, by protecting the interests of The Company in the safeguard of confidential, unique and valuable information from competitors or others.
Should an occasion arise in which you are unsure of your obligations under this policy, it is your responsibility to consult with your reporting manager. Failure to comply with this policy could result in disciplinary action, up to and including termination.

NAMI
Dress Code

As an employee of NAMI , we expect you to present a clean and professional appearance when you represent us, whether that is in, or outside of, the office. Management, sales personnel and those employees who come in contact with our public, are expected to dress in accepted corporate tradition. A specific list of suggested do's and definite don'ts, including a specific definition of business casual, is available from your personnel representative and will be posted in each work area.
It is just as essential that you act in a professional manner and extend the highest courtesy to co-workers, visitors, customers, vendors and clients. A cheerful and positive attitude is essential to our commitment to extraordinary customer service and impeccable quality.

NAMI
EMPLOYEE HANDBOOK
Safety and Accident Rules

Safety is a joint venture at NAMI . NAMI provides a clean, hazard free, healthy, safe environment in which to work in accordance with the Occupational Safety and Health Act of 1970. As an employee, you are expected to take an active part in maintaining this environment. You should observe all posted safety rules, adhere to all safety instructions provided by your supervisor and use safety equipment where required. Your work place should be kept neat, clean and orderly.
It is your responsibility to learn the location of all safety and emergency equipment, as well as the appropriate safety contact phone numbers. A copy of the Emergency Procedures will be kept in each work area on top of the supervisor's desk.

All safety equipment will be provided by NAMI , and employees will be responsible for the reasonable upkeep of this equipment. Any problems with or defects in, equipment should be reported immediately to management.
As an employee, you have a duty to comply with the safety rules of NAMI , assist in maintaining the hazard free environment, to report any accidents or injuries - including any breaches of safety - and to report any unsafe equipment, working condition, process or procedure, at once to a supervisor.
Employees may report safety violations or injuries anonymously to the Safety Committee, if they are not the injured or violating party. NO EMPLOYEE WILL BE PUNISHED OR REPRIMANDED FOR REPORTING SAFETY VIOLATIONS OR HAZARDS. However, any deliberate or ongoing safety violation, or creation of hazard, by an employee will be dealt with through disciplinary action by NAMI , up to and including termination.
Worker's Compensation Insurance pursuant to the laws of the various states in which we operate covers all work related accidents.

NAMI
EMPLOYEE HANDBOOK
Anti-Substance Abuse

NAMI takes seriously the problem of drug and alcohol abuse, and is committed to provide a substance abuse free work place for its employees. This policy applies to all employees of NAMI , without exception, including part-time and temporary employees.
No employee is allowed to consume, possess, sell or purchase any alcoholic beverage on any property owned by or leased on behalf of NAMI , or in any vehicle owned or leased on behalf of NAMI . No employee may use, possess, sell, transfer or purchase any drug or other controlled substance, which may alter an individuals- dual's mental or physical capacity. The exceptions are aspirin or ibuprofen based products and legal drugs, which have been prescribed to that employee, which are being used in the manner prescribed.
NAMI will not tolerate employees who report for duty while impaired by use of alcoholic beverages or drugs.
All employees should report evidence of alcohol or drug abuse to a supervisor or a personnel representative immediately. In cases where the use of alcohol or drugs pose an imminent threat to the safety of persons or property, an employee must report the violation. Failure to do so could result in disciplinary action for the non-reporting employee.
Employees who violate the Anti-Substance Abuse Policy will be subject to disciplinary action, including termination. It is our policy at NAMI to assist employees and family members who suffer from drug or alcohol abuse. You may be eligible for a medical leave of absence, and we encourage any employee with a problem to contact your personnel representative for details.
As a part of our policy to ensure a substance abuse free workplace, NAMI employees may be asked to submit to a medical examination and/or clinically tested for the presence of alcohol and/or drugs. Within the limits of federal and state laws, we reserve the right, at our discretion, to examine and test for drugs and alcohol. Some such situations may include, but not be limited, to the following:
All employees who are offered employment with NAMI ;
Where there are reasonable grounds for believing an employee is under the influence of alcohol or drugs;

As part of an investigation of any accident in the workplace in which there are reasonable grounds to suspect alcohol and/or drugs contributed to the accident;
On a random basis, where allowed by statue;
As a follow-up to a rehabilitation program, where allowed by statute;
As necessary for the safety of employees, customers, clients or the public at large, where allowed by statute; and
When an employee returns to duty after an absence other than from accrued time off such as vacation or sick leave.
This is only a summary of NAMI 's Anti-Substance Abuse Policy. You have been provided, and are required to read, the full policy. The full policy goes into greater detail and includes such subjects as definitions, testing methods, consequences of testing refusal, confidentiality, rights of employees and The Company, appeal procedures, notice of applicable statutes, voluntary assistance, etc. It is your responsibility to obtain a copy from your personnel representative if one has not been provided to you. You will be required to sign a consent form agreeing to NAMI 's Anti-Substance Abuse Policy in full.

It is a condition of your continued employment with NAMI that you comply with the Anti-Substance Abuse Policy. **NOTHING IN THE ANTI-SUBSTANCE ABUSE POLICY SHALL BE CONSTRUED TO ALTER OR AMEND THE AT-WILL EMPLOYMENT RELATIONSHIP BETWEEN NAMI AND ITS EMPLOYEES.**

NAMI
EMPLOYEE HANDBOOK
Sexual harassment

NAMI will not, under any circumstances, condone or tolerate conduct which may constitute sexual harassment on the part of its management, supervisors or non-management personnel. It is our policy that all employees have the right to work in an environment free from any type of illegal discrimination, including sexual harassment. Any employee found to have engaged in such conduct will be subject to immediate discipline up to and including discharge.
Any employee found to be engaged in the conduct of sexual harassment will be subject to immediate discipline up to and including discharge.
Sexual harassment is defined as:
Making submission to unwelcome sexual advances or requests for sexual favors a term or condition of employment;
Basing an employment decision on submission or rejection by an employee of unwelcome sexual advances, requests for sexual favors or verbal or physical contact of a sexual nature;
Creating an intimidating, hostile or offensive working environment or atmosphere either by
a) Verbal actions, including calling employees by terms of endearment; using vulgar, kidding or demeaning language; or
b) Physical conduct, which interferes with an employee's work performance.
We, at NAMI , do encourage healthy fraternization among its employees; however, employees, especially management and supervisory employees, must be sensitive to acts of conduct, which may be considered offensive by fellow employees and must refrain from engaging in such conduct.

It is, also, expressly prohibited for an employee to retaliate against employees who bring sexual harassment charges or assist in investigating charges. Retaliation is a violation of this policy and may result in discipline, up to and including termination. No employee will be discriminated against, or discharged, because of bringing or assisting in the investigation of a complaint of sexual harassment.

NAMI
EMPLOYEE HANDBOOK
Smoking

NAMI endeavors to provide a healthy environment, therefore prohibits any form of tobacco consumed in company buildings. Additionally, no smoking is allowed within ten (10) feet of exterior entranceways.

NAMI
EMPLOYEE HANDBOOK
Job Objectives, Performance Reviews, Salary ReviewS

Within one week of employment, job change or promotion, every employee will be given job objectives which detail the requirements and expectations of the position for which the employee was hired. NAMI will measure your job performance against these objectives. After every evaluation, job objectives will be redated and reviewed, if no changes are made; or rewritten as appropriate. In either case, the reporting supervisor review and discuss the objectives with the employee and the employee will sign a statement indicating agreement with, and understanding of, these objectives.
Performance reviews are normally conducted every six (6) months from the date of hire, with the exception of a three-month review at the end of your probationary period. All performance reviews are based on merit, achievement, job description fulfillment and performance at your position. Wage increases will be based upon this review, as well as past performance improvement; dependability; attitude; cooperation; any necessary disciplinary action; adherence to all employment policies; and your position in your salary range. Your reporting supervisor will review and discuss your salary range and your position within that range during your performance reviews. When you are promoted to a higher-level position, you are automatically eligible for an increase as dictated by the salary range of that position.

NAMI
EMPLOYEE HANDBOOK
Employment Categories

Permanent Full-Time is an employee who has no termination date and who is regularly scheduled to work 37.75 to 40 hours per week.
Permanent Part-Time is an employee whose position has no termination date and who is scheduled to work 20 or more hours, but less than 37.75 hours per week.
Temporary Full-Time is an employee who is hired or promoted for certain length of time and who is scheduled to work 37.75 hours per week.

Temporary Part-Time is an employee who is hired or promoted for a certain length of time and who is scheduled to work 20 hour or more, but less than 37.75 hours per week.

Volunteer is a person who operates as a full or part-time employee, entitled to the same consideration of training, fair treatment and protection as a temporary or full time employee with **THE EXCEPTION that a volunteer will NOT receive payment or remuneration for their work product and/or duties.**

NAMI
Business Ethics and Conduct

The successful business operation and reputation of NAMI is built upon the principles of fair dealing and ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.

The continued success of NAMI is dependent upon our members' trust, and we are dedicated to preserving that trust. Employees owe a duty to NAMI and its member libraries to act in a way that will merit the continued trust and confidence of the public.

NAMI will comply with all applicable laws and regulations, and it expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

In general, the use of good judgment, based on high ethical principles, will guide employees with respect to lines of acceptable conduct. If a situation arises where it is difficult to determine the proper course of action, an employee should discuss the matter openly with the employee’s immediate supervisor and, if necessary, with the Administration for advice and consultation.

Compliance with this policy of business ethics and conduct is the responsibility of every NAMI employee. Disregarding or failing to comply with this standard of business ethics and conduct may lead to disciplinary action, up to and including possible termination of employment.

NAMI
Employee Work Product

An employee "Work Product" is subject matter developed (in whole or in part) by an employee of the Cooperative, as part of his/her responsibilities, which pertains to Cooperative business, whether or not produced during regular working hours or by using the Cooperative's facilities. Such Work Product may include, for example, ideas, concepts, inventions, computer software, writings, art works and copyrightable or patentable materials in any format.

The employee will promptly make the Work Product available to the Cooperative. All such Work Product shall be owned by the Cooperative. In this regard, the employee shall, upon request and without additional compensation (except by mutual agreement with the Cooperative) execute any documents necessary to protect or perfect the Cooperatives right in the work product. Any decision to file formal applications for proprietary rights protections shall be solely within the discretion of the Cooperative. The Cooperative will pay any related expenses, and the employee shall fully cooperate with respect to the filing of such applications, including execution of any necessary documents.

Upon termination of employment for any reason, the employee shall ensure that the Cooperative has copies of any and all materials related to the Work Product sufficient for the Cooperative to continue use of the Work Product.

NAMI
Conflicts of Interest

NAMI expects its employees to conduct business according to the highest ethical standards of conduct and to devote their best efforts to NAMI . Employees owe a duty of loyalty to NAMI and, as such, are expected to conduct business within guidelines that prohibit actual or potential conflicts of interest. This policy establishes only the framework within which NAMI wishes to operate. The purpose of these guidelines is to provide general direction so that employees can seek further clarification on issues related to the subject of acceptable standards of operation. Contact the Cooperative Director for more information or questions about conflicts of interest.

Transactions with outside firms must be conducted within a framework established and controlled by the NAMI Board. Business dealings with outside firms should not result in unusual gains for those firms.

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in a personal gain for that employee or for a relative as a result of NAMI 's business dealings. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage.

No "presumption of guilt" is created by the mere existence of a relationship with outside firms. However, if employees have any influence on transactions involving purchases, contracts, or leases, it is imperative that they disclose to an officer of NAMI as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Personal gain may result not only in cases where an employee or relative has a significant ownership in a firm with which NAMI does business, but also when an employee or relative receives any kickback, bribe, substantial gift, or special consideration as a result of any transaction or business dealings involving NAMI .

NAMI
EMPLOYEE HANDBOOK
Payroll

NAMI employees are paid bi-weekly. Our payroll process includes:

Direct Deposit

While an employee can certainly have his/her actual pay check delivered direct to their desk each pay period, NAMI provides, and encourages, direct deposit of paychecks. This is a service which saves you time and provides added security. With this option, each paycheck will be automatically deposited to your checking or savings account (or divided between the two) as your direct. Each payday, you still receive a pay stub for your records -- much like a voided check with all the same information which would appear on your regular check -- except the face of the check is voided. No trips to the bank are necessary because your salary appears in

your bank account on payday, or in some cases the night before. Direct Deposit will be initiated one pay period following the receipt of the signed authorization form from the employee.

Payroll Deductions

As required by law, NAMI will deduct Federal Social Security and Income Tax from your payroll check each pay period. Group Insurance premiums for eligible employee and dependent family members will be deducted from payroll check each pay period, once the employee completes the appropriate authorization forms.

NAMI
EMPLOYEE HANDBOOK
Work hours and reporting

Workday

The normal workday is eight (8) hours for non-exempt, with 40 hours being a normal work week. Exempt employees generally work the same hours, but may be required to work more hours as the work dictates. While you are generally expected to work the number of hours stated above, NAMI does not guarantee that you will actually work that many hours in any given day or week (or to be paid for such hours if you do not work that many hours).

Overtime work is only performed when necessary and approved in advance by your department head. You are expected to work necessary overtime when requested to do so, and non-exempt employees will receive time and one-half pay for time worked exceeding 40 hours in any given work week. Full time employees will be paid double time for hours worked on a company holiday, if they are not scheduled to work on that holiday. Part-time employees will be paid one and one-half times the regular rate of pay for working on a company holiday. Exempt employees are not entitled to overtime pay. All overtime payments will be made in the pay period following the period the overtime was worked.

Time Clock and Time Cards

Where applicable, NAMI employees must punch in before beginning their work shift and punch out at the end of their shift. All such employees are expected to work their entire shift. Any such employee punching five (5) minutes late will be docked fifteen (15) minutes of pay, or punches out later than the time their scheduled shift ends, without prior authorization, will be paid for the scheduled time only. Any digression from the above requirements could result in a reprimand to the employee.

You are not allowed to punch the time clock of another employee. Should your time card be incorrectly punched, for any reason, your supervisor will note the correct start and/or end time, and initial the correction. Your supervisor must approve all time cards.

For employees required to complete time cards, the cards must be filled out with all hours worked and turned into your supervisor every other Friday as designated by NAMI , by 9:30 A.M. Vacations days, sick days, holidays, and absences such as jury duty, funeral leave or military training, must be specifically noted on the time cards for days on which they occur. Vacation and holidays should be counted as full workdays. All time cards must be approved and signed by your supervisor prior to being sent to personnel.

NAMI
EMPLOYEE HANDBOOK
HOLIDAYS

NAMI RECOGNIZES THE FOLLOWING HOLIDAYS: NEW YEARS DAY, GOOD FRIDAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, THANKSGIVING, CHRISTMAS AND TWO FLOATING HOLIDAYS.

When a holiday falls on a weekend, NAMI will designate the Friday preceding or Monday following as the observed holiday at the discretion of The Company. Regular full-time employees are paid eight (8) hours for each holiday; regular part-time employees are paid for holidays based upon the number of hours they are normally scheduled. Temporary employees are not paid for holidays, unless they are specifically requested to work on the designated holiday (see Overtime).

The two (2) floating holidays are available to all full-time employees beginning the first of January following the employees first anniversary. Once eligible, the floating holiday is available annually. Floating holidays must be scheduled with, and approved, by your supervisor at least three (3) weeks in advance of the requested date, and may not be taken consecutively. Floating holidays may not be carried forward to be used in the following year.

NAMI
EMPLOYEE HANDBOOK
Vacation

After twelve months of employment, NAMI full-time employees are entitled to one paid day of vacation for each month or partial month of service during the previous year, up to a maximum of 10 working days during the first five (5) years. Part-time employees will receive prorated paid vacation hours based on the regular number of hours worked against an eight (8) hour workday.

Example: If you started work on June 16, 1997, you are entitled to seven (7) vacation days in 1998. Each calendar year succeeding the first year of service, NAMI employees receive ten (10) vacation days per year, earned on a monthly basis. In January following the fifth (5th) year of service, employees receive fifteen (15) vacation days, credited monthly, based on a twelve month calendar. In January, following the tenth (10th) year of service, each employee receives twenty (20) vacation days.

Example: The same employee who started on June 16, 1997, is entitled to ten (10) days in 1999 and twenty (20) days in 2008.

Vacation is earned and credited on January 1st of each year, is available for use after March 31st for vacation credited for the current year; and available immediately for vacation carried over from the previous year. Only up to five (5) days of vacation may be carried over into the next year.

A vacation schedule of all employees is to be completed for each department or location, by January 31st of each year; Changes may be made to the schedule with three weeks notice and the approval of the supervisor of the department. The vacation request change must be submitted in writing to the supervisor three weeks prior to the anticipated vacation date.

Every effort will be made by NAMI to accommodate vacation requests, unless business circumstances do not permit. Vacation may be taken in full or half days only.

Employees who resign in good standing and give proper notice of termination, are entitled to receive payment for accrued vacation, not yet taken. If the employee has taken more vacation than actually accrued at the time of resignation, the unearned vacation will be deducted from the employee's final paycheck. Employees who terminate with less than 6 months service are not eligible to be paid for accrued vacation.

NAMI
EMPLOYEE HANDBOOK
Sick Leave

NAMI provides payment of income (sick leave) for eligible employees when that employee is away from work due to illness. Employees will be eligible for sick leave after completion of 90 calendar days of service, and if the work at least thirty (30) hours per week. Sick leave is payable the same as the employee's regular salary, and is subject to the same withholding elections.
Sick leave will be accrued at the rate of a half (1/2) day for each month of service for eligible employees. The balance of unused, but accrued, sick leave days will be carried forward from one year to the next, up to a maximum of 30 days. All sick leave used by employees will be charged against the employee's total sick leave balance. Employees eligible for retirement from NAMI will be paid for all accrued, but unused, sick leave if the total is greater than 25 days.
Any employee that is out on sick leave longer than two days, must return to work with a doctor's certificate stating the nature of the illness and the employee's fitness to return to duty.
If an employee is unable to work due to illness, the employee must notify his immediate supervisor as soon as possible after the onset of the illness, and certainly by the time the employee was to report to work. It is not permissible to be gainfully employed elsewhere while out on sick leave. Any employee doing so will be considered to have voluntarily quit without notice and to not be in good standing at the time of resignation.
Sick leave may be taken in hourly increments for non-exempt employees, while exempt employees will be charged for sick leave for full day absences only, as exempt employees are not paid for overtime.
NAMI permits use of available sick leave for use during absence due to the birth or adoption of a child to an employee. The sick leave will be in addition to other available time (see Maternity section).
Industrial accidents and illness are covered by Worker's Compensation Insurance pursuant to the requirements of the laws in the various states in which NAMI operates. The sick leave policy outlined above does not apply to those illnesses or injuries that are covered by an applicable worker's compensation policy.

NAMI
Family Medical Leave Act

NAMI has a Family and Medical Leave Policy that is in compliance with The Family and Medical Leave Act of 1993 (FMLA), which is unpaid leave absence. Eligible employees must be employed by NAMI at least twelve (12) months (but this period need not be consecutive) and have worked at least 1250 hours of service during the twelve month period prior to the request. NAMI locations with less than 50 employees within a seventy-five mile radius are not covered under this leave policy or the FMLA. Forms for leave requests are available from your personnel representative.

Under the Leave Policy a total of up to twelve (12) weeks unpaid leave of absence is available to eligible employees under the following circumstances:
The birth of a child, but only within the first twelve months of the birth. This may not be used in conjunction with the Maternity Leave policy or the Sick Leave exception policy regarding maternity.
The placement of a child for adoption or other legal placement, within the first twelve months of the adoption or placement.
The need to care for a dependent, spouse or parent who has a serious medical condition.
The serious health condition of the requesting employee, which renders the employee unable to perform the functions of his/her position.
During the unpaid leave, employees retain the same medical and dental coverage and must still contribute the same amount toward medical benefits as he/she paid before the leave began. (See benefits exception below) Upon return to NAMI at the end of the leave, the employee will be restored to his/her former position with the same rights, benefits, pay and other terms and conditions which existed prior to the leave; or to an equivalent position with equivalent rights, benefits, pay and other terms and conditions of employment.
The Company reserves the right to deny leave reinstatement to key employees, where such denial is necessary to prevent substantial and grievous economic injury the company's operations. Key employees will be notified of the company's intention to deny reinstatement as soon as a determination is made that such injury would occur. In the event such employee decides not to return to work from unpaid leave, he/she will remain on leave for the balance of the leave period and then be terminated. Key employees are defined as the highest- paid ten percent of employees employed by the company within seventy-five mile radius of the facility where the employee is employed.
Employees will be required to use all accrued vacation and floating holidays prior to being granted unpaid leave as outlined above for the birth or placement of a child, or to care for a seriously ill family member. The birth parent may choose to use the unpaid twelve-week leave or to utilize the 6 week paid maternity leave, but cannot use both. If the employee requests the leave due to his/her own serious health condition, the employee may also be eligible for sick leave pay or short term disability payments if the condition of the leave meets the qualifications of those plans.
Employees requesting leave for their own or an eligible family member's serious health condition, will be required to provide medical certification. Medical certification must be provided thirty (30) days in advance of the request for leave when possible.

NAMI may, at its discretion, require a second medical opinion on the health condition and periodic recertification at The Company's expense.
Other exceptions/provisions:
When both spouses work for NAMI , their aggregate leave in any twelve- month period may be limited to twelve weeks total, if the leave is taken for the birth or adoption of a child.
Intermittent or reduced leave may be taken in case of a serious health condition, either an employee's own or that of a child, spouse or parent, when medically necessary. The birth or placement of a child does not qualify for intermittent or reduced leave.
Employees out on unpaid leave will be required to contact their super- visors, at least every four (4) weeks, to report on their status and intention to return to work at the end of their leave.

Benefits based on an accrual basis (e.g. vacation, sick leave, floating holidays, etc.) will not accrue during unpaid leave under this policy.
While on unpaid leave, an employee will not accrue seniority or service time for eligibility for a performance review, salary review, salary review, adjustment or bonus.
Employment benefits which are accrued prior to the unpaid leave will not be lost.
As previously stated, group health insurance will continue on the same basis as prior to the leave, as long as the employee continues to pay his/her contribution as required before the unpaid leave.
An employee on leave for his/her own serious health condition, will be required to provide certification from his/her health care provider that the employee is able to return to work and perform all of the functions of the job to which the employee is returning.

NAMI
Maternity Leave

NAMI employees are allowed up to six (6) weeks of leave after they have given birth to or following the adoption of a child. During this time, such employees will be paid at 70% of their regular salary. Additional time may be allowed under extraordinary circumstances (see Sick Leave) and with the permission of your supervisor and department head.

NAMI
EMPLOYEE HANDBOOK
Funeral Leave

NAMI allows three (3) days off, with pay, for a death in your immediate family. Immediate family includes parents, spouse, children, brothers, sisters, mother-in-law, father-in-law, grandparents, or grandchildren.
You may request up to an additional two (2) days, which must be approved by your immediate supervisor and the department head. If accrued vacation is available, this benefit will be used for the additional two days; otherwise, the additional two days will be unpaid.
Funeral leave for death of other than immediate family must be approved by your immediate supervisory and the department head. Absence for such a death is limited to two (2) days and will be unpaid.

NAMI
EMPLOYEE HANDBOOK
JURY DUTY

We, at NAMI , support employees called to fulfill their civic duty to serve jury duty when called. You must provide your immediate supervisor with a copy of your jury summons as immediately, as possible, upon receiving the summons. Your regular salary will continue as before jury duty for each day served, up to 40 hours per week, for a maximum of four (4) weeks.
Adequate proof of service must be provided in order to receive your regular salary during your absence for jury duty. When you return to work, you should provide your

immediate supervisor with verification from the court of the number of days you served on the jury, and the amount that you were paid per day.
If the amount you are compensated by the court, per day, exceeds twenty ($20) dollars per day, your regular pay will be offset by the excess amount. Extenuating circumstances, which would cause this deduction to become a penalty, must be discussed with and approved by your immediate supervisor. If you are released from jury duty with at least four (4) hours remaining in your work day, you should return to work for the remainder of the day.
Should extraordinary circumstances exist, at the time of your call to jury duty, which would make your absence severely detrimental to the operation of our company, we reserve the right to contact the court to request that your service be postponed.

NAMI
EMPLOYEE HANDBOOK
Military Service

NAMI proudly grants time off work for employees in the military reserve training program.
After six (6) consecutive months of employment with NAMI , an employee will receive one week's base regular pay for the two week period he/she is away serving reserve duty. You may elect to utilize accrued vacation for the second week you are away at training, if desired. If he/she is employed less than six (6) months, leave will be granted without pay for the time away for reserve duty.
All employees in the military reserve training program should provide a copy of their report orders to their immediate supervisor as immediately as possible.

NAMI
Insurance

NAMI (The Company) makes health insurance, life insurance and accidental death coverage (group benefits) available to eligible employees (see definitions) and their eligible family members. The Company pays the majority of the premiums for the group benefits, with the employee sharing the balance of the cost. Single and family plans are set at different contribution rates. Long term disability benefits are also offered at no cost to employees.
The low cost of these benefits is an important part of each eligible employee's compensation package. Eligible employees may also purchase optional life insurance for spouses and dependents.
Eligible employees are all full-time employees who have completed ninety (90) calendar days of employment; and part-time employees who work at least twenty-five (25) regular hours a week and have completed ninety (90) calendar days of employment.
Specific details on coverage and benefits are outlined in NAMI 's Health Benefit Handbook. It is provided to you during employee orientation. You will also receive authorization forms for all benefits at orientation. Please see your personnel representative if you have not been scheduled for orientation or have not received the Benefit Handbook.

NAMI
EMPLOYEE HANDBOOK
Short-term Disability

Short term disability (STD) benefits provide income continuation during periods of serious illness resulting in total disability. You are "totally disabled" if you are unable to perform your job due to major illness or accidental bodily injury. NAMI employees bear no cost for this plan benefit which provides up to 180 days of short term disability benefits within a twelve-month period.

The employee's total disability period must exceed ten (10) consecutive working days to qualify for STD benefits; and all Sick Leave benefits must be exhausted before an employee can request STD benefits. Once the initial ten (10) day waiting period is met, STD benefits will be retroactive to the first unpaid day of absence (if sick leave benefits are exhausted).

Regular full-time and regular part-time employees of NAMI are eligible for this benefit once they have completed ninety (90) calendar days of service and work at least thirty (30) days per week on a regular basis.

Under STD benefits, eligible employees are paid 80% of their normal base salary. This means the employee will be paid based upon your regular rate of pay excluding overtime, bonus, vacation, and any other accrued paid leave or additional compensation. STD benefits may not exceed 80% of your base salary, unless augmented by available accrued vacation. If additional payments from worker's compensation or state disability, while you are on STD benefits, increase your overall benefits to exceed 80%, your STD benefits will be reduced accordingly.

Group health benefits will continue on the same basis as prior to the onset of STD benefits. STD benefits will be subject to all payroll withholding elections of the employee which were in effect prior to the short term disability.

It is important that an employee provide their supervisor with the treating doctor's statement as soon as you know an illness or injury will result in an absence greater than ten (10) days. The doctor's statement must identify the nature of your disability and the date you are expected to be able to return to work. NAMI may require a second medical opinion, at its own expense, and periodic recertification s. If there are discrepancies in the first and second opinions, we may require a third doctor to render a medical opinion. This third doctor will be selected jointly by NAMI and the employee, and the third opinion will be binding both on us and the employee.

Upon returning to work, you must provide a release, or return to work form, from the doctor treating your illness or injury.

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Upon returning to work, you must provide a release, or return to work form, from the doctor treating your illness or injury.

NAMI
EMPLOYEE HANDBOOK
Continuation of Medical/COBRA

Upon termination from NAMI for any reason other than gross misconduct, an employee may elect to continue group medical coverage at group rates as long as the employee pays the required monthly premium. It is also possible to convert other group plans to individual plans. Details on the conversion of any benefits will be discussed with you at the time of your termination by a personnel representative. You may, of course, request information on this subject at any time prior to actual termination.

NAMI
EMPLOYEE HANDBOOK
Worker's Compensation

Employees who are injured on the job at NAMI are covered by Worker's Compensation Insurance. It is your responsibility to immediately notify your immediate supervisor - or in the absence of your supervisor, the next available supervisor - of any injuries you sustain while on the job at NAMI .
This supervisor will notify your personnel representative. We encourage injured employees to seek immediate medical attention. All medical expenses related to the treatment of an injury, sustained on the job, are paid in full direct to the medical providers. After a specified waiting period, you are also eligible for disability payments set forth by state law, where necessary.
The Worker's Compensation plan is administered by a separate insurance company who will be notified by your personnel representative. You will be contacted by a

representative of the administering company. Information on the current company administering this plan will be provided to you by your personnel representative and is available on posters displayed in your work area. Additional information on Worker's Compensation Insurance is available through the Personnel office.

NAMI
EMPLOYEE HANDBOOK
Retirement Plans

NAMI employees have the opportunity to participate in a retirement plan which allows employees to save a portion of their compensation for retirement. After one year of service, employees are eligible to participate in the plan. Contributions to this plan are pre-tax dollars, which means the amount specified by the employee is taken from his/her salary before federal income is taken out. The employee is then taxed on the remaining salary, resulting in additional savings. It should be noted that any distribution from the 401(k) plan will be subject to tax, whether that be early or qualified distribution. Early distribution may also carry a monetary penalty. See your personnel representative for more details and a copy of the NAMI Employee Savings Plan.

Contributions by the company are based on the amount contributed by the employee, with NAMI matching 30% of the employee's contribution. As with employee contributions, taxes on company contributions and their related earnings, are deferred until distribution from the plan. Company contributions are not fully vested to the employee until after a five year period; employee contributions are fully vested from the time of contribution.

Employees are urged to seek advice from a financial expert prior to any distribution from the 401(k) plan. NAMI also contributes to the 401(k) for employees participating in this plan.

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NAMI
EMPLOYEE HANDBOOK
Tuition Assistance

It is our belief that education leads to self improvement which improves the value of the employee to NAMI . In that vein, we encourage higher education to prepare employees for greater responsibility within The Company. NAMI will pay for courses that are directly related to your present job or which will help you prepare for more responsibilities or promotions. Your supervisor and your personnel representative, who can provide more specific information on courses covered by this plan, must approve all courses. Only employees working thirty (30) regular hours or more per week are eligible.
The plan reimburses expenses for any approved course started after your full-time employment with NAMI begins, but reimbursement of expenses will not begin until you have completed six (6) months of full-time employment. Courses and seminars, and related fees, books and materials, directly related to the general and customer service industry are reimbursed to eligible employees at 100%. Tuition for courses taken to complete an approved business degree is also reimbursed at 100%, except that related fees, and costs of books and materials are not covered.
To qualify for reimbursement, the employee must successfully complete the course or seminar with a grade of "C" or better; or where applicable, obtain a completion certificate.
The maximum reimbursement amounts are $3,000 per year for courses in a degreed program, and $1,500 per year for all other courses or seminars.
Contact your personnel representative for proper request forms. These forms must be completed and reviewed by your supervisor, and the Personnel Director, at least 10 business days prior to your enrollment in any course or seminar.

NAMI
Employee Assistance Program

We encourage our employees to seek assistance, as needed, from qualified professionals. When personal problems and difficulties are identified and appropriately treated in their early stages, the likelihood of a successful outcome is improved. Our Employee Assistance Program (EAP) helps employees deal with problems in a confidential and safe environment.
Should you require assistance with any problem, which is impacting your personal and/or professional life, we encourage you to call.
The confidential number is 1-800-555-5555.
These calls are not monitored and are manned by a privately owned counseling referral service. We, at NAMI , will never be aware of your contact to this service, nor will any reports on your contact or treatment be forwarded to us.

All contact and sessions are strictly confidential. Should visits exceed four (4) times per month consecutively in a three (3) month period, the counselor may refer you to a private therapist or counselor, which would be covered under your group benefits.

We cannot stress enough, that if you feel the need for counseling, we strongly encourage that you seek assistance

NAMI
Problem Resolution

NAMI is committed to providing the best possible working conditions for its employees. Part of this commitment is encouraging an open and frank atmosphere in which any problem, complaint, suggestion, or question receives a timely response from NAMI supervisors and management.
NAMI strives to ensure fair and honest treatment of all employees. Supervisors, managers, and employees are expected to treat each other with mutual respect. Employees are encouraged to offer positive and constructive criticism.
If employees disagree with established rules of conduct, policies, or practices, they can express their concern through the problem resolution procedure. No employee will be penalized, formally or informally, for voicing a complaint with NAMI in a reasonable, business-like manner, or for using the problem resolution procedure.
If a situation occurs when employees believe that a condition of employment or a decision affecting them is unjust or inequitable, they are encouraged to make use of the following steps. The employee may discontinue the procedure at any step.
1. Employee presents problem, in writing, to immediate supervisor within 14 calendar days after incident occurs. If the employee?s supervisor is unavailable or the employee believes it would be inappropriate to contact that person, the employee may present the problem, in writing, to the Administrative Services Manager.
2. Supervisor responds to problem as expeditiously as possible, after consulting with appropriate management, if necessary. Supervisor documents discussion. Normally this will be within 5 days. If it will be longer the supervisor will notify the employee of the status of the response.
3. If the employee wishes to appeal the supervisor's decision, the employee may appeal, in writing, to the Cooperative Director. Such appeal must be filed within 5 calendar days of the supervisor's decision.
4. The Cooperative Director reviews and considers problem. The Cooperative Director informs employee of decision as expeditiously as possible, normally within 10 calendar days, and forwards copy of written response to the employee's personnel file. The Cooperative Director has full authority to make any adjustment deemed appropriate to resolve the problem.
5. Except as provided below, the decision of the Cooperative Director will be final and binding.
If the grievance involves termination of employment and the employee does not agree with the action of the Cooperative Director, the employee must request arbitration of the grievance if he/she wishes to pursue the claim. However, this arbitration procedure applies only to situations where the employee is claiming that the reason for termination is unlawful, such as discrimination, retaliation or other claims based on statutory rights. Breach of contract actions will not be allowed to go to arbitration. In all other situations, the decision of the Cooperative Director will be final and binding.
A request for arbitration must be made, in writing, within 5 days after the Cooperative Director has reported its action to the employee.
The arbitration proceeding will be conducted under the Employment Dispute Resolution Rules of the American Arbitration Association. The arbitrator shall be

selected from the AAA list and must be a licensed Michigan attorney. The arbitrator shall have the authority to grant discovery as he/she deems appropriate to the matter in dispute, issue subpoenas and may award any relief he/she determines appropriate in accordance with the remedies available under the statute involved, including attorneys fees, if allowed. The employee may have legal representation at the hearing.

The decision or award of the Arbitrator made under these rules is exclusive, final, and binding on both parties. The award may only be challenged for corruption, fraud, or evident prejudice or misconduct of the arbitrator, or if the arbitrator exceeded his authority granted under this policy. The award may be enforced in any court of competent jurisdiction.

Employees who choose to use the arbitration process to resolve a problem will be expected to share the cost of the arbitration proceeding with NAMI , limited to $250 of filing fees and expenses.

Acceptance of this arbitration provision is a condition of continued employment. Any employee who continues to report for work after its adoption is considered to have consented to this provision. This policy will not be changed with regard to any employee who has a grievance pending over an unlawful termination.