



The National Economic Development & Law Center

2201 Broadway, Suite 815, Oakland, CA 94612

Phone: (510) 251-2600 x 109 Fax: (510) 251-0600 caftel@nedlc.org www.nedlc.org

Legal Review of a Nonprofit Corporation and Its Subsidiaries and Affiliates

by Brad Caftel

To investigate corporate and tax-exemption compliance, financial condition, corporate governance, personnel issues, project and property status, and past or potential future claims or lawsuits.

A. Documents to review:

1. Articles of Incorporation, and any amendments
2. Bylaws, and any amendments
3. Annual filing with California Secretary of State for past three years
4. Filing of form CT-2 or RRF-1 with California Attorney General for past three years
5. Federal tax exemption application
6. Federal tax exemption determination letter
7. Federal tax return filings for past three years
8. California tax exemption application
9. California tax exemption determination letter
10. California tax return filings for past three years
11. Current bank account statements
12. Financial audits for past three years
13. Most recent financial statements
14. Insurance policies: general liability, director and officer, bonding, property ownership, other

15. Board and committee minutes for all meetings in past three years
16. All operating policies adopted by the board of directors
17. Personnel policies and records of all employees
18. Personnel-related filings for past three years: federal and state income tax withholding and transmittal; FICA withholding and transmittal with employer portion; W-2s and 1099s; California SDI withholding and transmittal
19. Unemployment insurance and workers compensation payments and policies
20. Health insurance and other employee benefits policies and programs
21. Annual reports for past three years
22. Business license and other government permits and licenses
23. Copyright, trademark, and other intellectual property rights filings
24. Grant and loan agreements and reports to funders, lenders or government agencies
25. Contracts, agreements, joint ventures/memorandums of understanding, etc.
26. Leases either as lessor or lessee
27. Title report on owned property
28. Inspection reports or other information on owned property
29. California property tax (welfare) exemption filings since acquired property
30. Options and other agreements regarding properties

B. Ascertain the following:

1. The corporation is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California.
2. The corporation is an organization described in Sections 501(c)(3) and 509(a)(1) and 170(b)(1)(A)(vi) of the federal Internal Revenue Code ("Code"), is exempt from federal income tax under Section 501(a) of the Code, and the Internal Revenue Service has so determined, in writing, which it has not revoked or modified.

3. The corporation is an organization described in Section 23701d of the California Revenue and Taxation Code ("R&T Code") and is exempt from California income tax, and the California Franchise Tax Board has so determined, in writing, which it has not revoked or modified.
4. The corporation has not engaged in any transaction or activity that could cause its exemption under Section 501(a) of the Code or Section 23701d of the R&T Code to be revoked for any year, and has complied with all statutory requirements necessary to retain its tax-exempt status including, without limitation, the filing of all returns and reports.
5. The transactions of the corporation have been duly authorized by all requisite corporate action.
6. There is no action, suit, proceeding, or claim of any kind pending or threatened before any court, arbitration panel, or governmental or administrative body or agency, by or against the corporation, except as previously disclosed in writing.
7. The corporation is not in default with respect to any judgment, writ, injunction, or decree of any court, arbitration panel, or any governmental or administrative body or agency.
8. The corporation is in compliance with the terms, covenants, and conditions of all agreements or instruments by which it is bound or to which any portion of its property is subject.
9. The corporation has obtained all necessary licenses, approvals, and authorizations from all appropriate governmental agencies, and is in compliance with all government laws, rules, and regulations.
10. The financial statements of the corporation fairly present the financial position of the corporation as of the dates of such statements, in accordance with generally accepted accounting principles consistently applied; and since their date, there has been no material adverse change in the financial condition, operations, properties or prospects of the corporation.
11. The corporation does not have outstanding any indebtedness for borrowed money or other liabilities or trust obligations except as set forth in its financial statements or as previously disclosed in writing.
12. The corporation has timely filed all federal, state, and local income, payroll, withholding, personal property, real estate or other tax returns which are required to be filed by it, and has paid all taxes, interest, and penalties payable by it. There are no proposed assessments of tax, interest, or penalty against the corporation. No tax returns of the corporation are currently being audited by any taxing authority, and the corporation has not received any notice of any such audit.