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### **Organizational Horrors (and How to Avoid Them)**

As the Halloween season casts its enchanting spell, we set forth on a chilling journey through the twisted maze of organizational pitfalls: brace yourself to uncover the frightening truths that could be lurking in the shadows. Last year, Lawyers Alliance brought you contract horror stories.<sup>1</sup> As everyone knows, the sequel is always better than the original. In this edition, we will guide you through the skeletons in your organizational closet, secrets that your Board of Directors may not even realize exist. While we hope these spectral stories offer insight into avoiding potential legal exposure, remember that such fables are no replacement for the expertise of real-life Ghostbusters, or in this case, lawyers briefed on your organization's specific circumstances. Should your organization uncover any skeletons, do not hesitate to run screaming...oh wait, no, just call us and we'll arrange a séance to banish those demons!

#### **The Ghost of Paperwork Past Due**

- 1. Forgetting to submit your Form 990... three years in a row.** Most tax-exempt organizations must file a [Form 990 \(or 990-EZ/N\)](#) with the IRS every year. If an organization fails to do so three years in a row, its tax-exempt status is automatically revoked. And, if that's not scary enough, take a look at the ghoulish [reinstatement process](#).
- 2. Failing to [register with the Charities Bureau](#) and submit your CHAR 500.** For most nonprofit organizations soliciting charitable funds in New York State, you must file the [CHAR 500](#) form annually with the Charities Bureau. All you need to file along with the form is your Form 990, employer identification number (EIN), certificate of incorporation, your bylaws, and an eye of newt (oops! Wrong recipe! Skip the eye of newt unless this is a conjuring). It only takes a few minutes to submit and avoid being lowered into a cauldron of boiling...oh sorry, I got carried away again...there's no cauldron of boiling anything, just late filing fees that may be imposed!
- 3. Filing as a Private Foundation when you meant to be a Public Charity (Form 1023).** Accidental labeling as a Private Foundation instead of a Public Charity when you fill out the Form 1023 (Part VII on the Form 1023; Part IV on the Form 1023-EZ) can have haunting and lasting consequences. Most clients never intend to become a foundation (which has more legal restrictions than a public charity<sup>2</sup>), yet misclassification may accidentally conjure this entity causing recurring nightmares for you, and your lawyers.

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<sup>1</sup> Lawyers Alliance for New York, [Contract Horror Stories Legal Alert](#).

<sup>2</sup> Council on Foundations, [Foundation Basics](#).

## The Ghost of Uncompleted Homework

4. **Posting or using materials (such as photos, videos, or reprints) without proper permission from the copyright owner or ensuring the material is not copyrighted by another party** can summon the dreaded terror of copyright infringement. Beware of law firms on the prowl, actively seeking out copyright violators.<sup>3</sup>
5. **Not operating in accordance with your bylaws** may unleash a chorus of corporate chaos. Any corporate decisions made in violation of your bylaws can come back to haunt your nonprofit and be challenged in court by fellow board members or the New York Attorney General.<sup>4</sup>
6. **Giving a grant without [double checking](#) the recipient organization is really a 501(c)(3)** can cast a sinister cloud over your own nonprofit organization's tax-exempt status. As a public charity, you can only donate funds for a purpose within your own charitable purposes. Beware, for the path of good intentions can lead to your organization's own undoing.

## The Ghost of Assumptions

7. **Thinking you don't need workers' compensation insurance (or unemployment insurance).** Almost all nonprofits are required to carry this insurance for employees. Failing to do so can awaken the wrath of the New York State Department of Labor, demanding fines that escalate with each passing day.
8. **Paying "stipends" (that are really just payments below minimum wage)** can awaken the spirits of wage and hour violations. You may find yourself paying restitution to those who were underpaid, accompanied by the spooky specter of potential fines.<sup>5</sup>
9. **Thinking you don't have to pay overtime is a perilous gamble.** Similar to wage and hour violations, potential restitution and fines make this another ghostly threat that can haunt your organization's finances.<sup>6</sup>
10. **Assuming the government will reimburse you in a timely manner.** This misplaced trust can lead to the most nightmarish of consequences: organizational planning problems. Picture the grim tale of cash flow problems and a bone-chilling cash crunch.

Remember, these tales of woe serve as cautionary tales. It's essential to seek professional guidance to navigate these treacherous waters and avoid the alarming consequences that may arise from these missteps. To request a séance...oh! There I go again! I mean, to request information call our Resource Call line: (212) 219-1800 ext. 224.

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<sup>3</sup> Lawyers Alliance for New York, [Copyright or Image Violation Notices Legal Alert](#).

<sup>4</sup> N-PCL § 720. Actions against directors, officers and key persons.

<sup>5</sup> Lawyers Alliance for New York, [Running an Internship Program During the COVID-19 Crisis](#).

<sup>6</sup> Lawyers Alliance for New York, [New Overtime Rules Legal Alert](#).

***This alert is meant to provide general information only, not legal advice. It is no substitute for working with an attorney familiar with all of the relevant facts. If you have any questions about this alert, please contact Rafi Stern at [rstern@lawyersalliance.org](mailto:rstern@lawyersalliance.org) or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information. To become a client, visit [www.lawyersalliance.org/becoming-a-client](http://www.lawyersalliance.org/becoming-a-client).***

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Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, strengthen urban health, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.