

Nonprofit leaders must take any employee and volunteer complaints seriously, investigate the situation, and fix any problems or justify why corrections are not necessary.



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NOT-FOR-PROFIT



NFP No. 08-07

SOX PROVISIONS FOR NOT-FOR-PROFITS

Best Practices For Not-For-Profit Board Governance

While nearly all of the provisions of the Sarbanes-Oxley Act apply only to publicly traded corporations, the passage of the bill served as a wake-up call to the entire nonprofit community. Several state legislatures have already passed or are considering legislation containing elements of the Sarbanes-Oxley Act to be applied to nonprofit organizations. In many instances, nonprofit organizations have adopted policies and altered governance practices in response to the Act.

With two notable exceptions, the Sarbanes-Oxley Act affects only American publicly traded companies and regulates what boards must do to ensure auditors' independence from their clients. Below is a description of the provisions that apply to not for profits and brief recommendations.

WHISTLE-BLOWER PROTECTION

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act provides protections for whistle-blowers and imposes criminal penalties for actions taken in retaliation against those who risk their careers by reporting suspected illegal activities in the organization. It is illegal for any entity — for-profit and nonprofit alike — to punish the whistle-blower in any manner.

RECOMMENDATIONS

Nonprofits must develop, adopt, and disclose a formal process to deal with complaints and prevent retaliation. Nonprofit leaders must take any employee and volunteer complaints seriously, investigate the situation, and fix any problems or

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The Sarbanes-Oxley Act addresses destruction of litigation-related documents. The law makes it a crime to alter, cover up, falsify, or destroy any document (or persuade someone else to do so) to prevent its use in an official proceeding (e.g., federal investigation or bankruptcy proceedings).



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justify why corrections are not necessary.

DOCUMENT DESTRUCTION

SUMMARY OF SARBANES-OXLEY PROVISION

The Sarbanes-Oxley Act addresses destruction of litigation-related documents. The law makes it a crime to alter, cover up, falsify, or destroy any document (or persuade someone else to do so) to prevent its use in an official proceeding (e.g., federal investigation or bankruptcy proceedings). The Act turns intentional document destruction into a process that must be monitored, justified, and carefully administered.

RECOMMENDATIONS

A nonprofit organization should have a written, mandatory document retention and periodic destruction policy. Such a policy also helps limit accidental or innocent destruction. The document retention policy should include guidelines for handling electronic files and voicemail. Electronic documents and voicemail messages have the same status as paper files in litigation-related cases. The policy should also cover back-up procedures, archiving of documents, and regular check-ups of the reliability of the system. If an official investigation is underway or even suspected, nonprofit management must stop any document purging in order to avoid criminal obstruction charges, parties and employees should be alerted to instances where there is or may be a conflict of interest. The IRS requires that such a policy be adopted before an application is filed for tax-exempt status. The policy should be written, formally adopted by the board of directors and/or trustees, and formally acknowledged by all personnel concerned on an annual basis. Protecting the organization's interests will more likely occur when the policy is referred to, on a regular basis, when contemplating transactions and arrangements.

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The contributing public has a right to rely on the ethical behavior of those accepting responsibility for the activities of the organization in carrying out its exempt purpose.



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By adhering to a written conflict of interest policy, the organization should avoid or mitigate the pitfalls of unwittingly conferring financial benefits to interested parties at the expense of the organization. The contributing public has a right to rely on the ethical behavior of those accepting responsibility for the activities of the organization in carrying out its exempt purpose. A conflict of interest policy helps to ensure all arrangements between interested parties are at arms-length and fair. It is a good practice for board members, officers and management, to acknowledge the written conflict of interest policy, as confirmation of having read the declaration.

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