



**Complying With the New IRS Corporate Governance Guidelines for 501(c)(3)  
Organizations: Keeping Corporate Minutes**

In response to recent scandals involving not-for-profit organizations, the Internal Revenue Service (IRS) has redesigned the Form 990, which is the tax return that must be filed each year by any not-for-profit organization with at least \$250,000 in assets or at least \$100,000 in gross revenues. Although the revisions have been focused in large part on financial disclosure, the IRS also has added a number of items intended to provide information relating to the not-for-profit organization's management and controls, on the theory that good corporate governance leads to tax compliance. In the background paper that accompanied the draft of the redesigned Form 990, the IRS stated:

Good governance and accountability practices provide safeguards that the organization's assets will be used consistently with its exempt purposes, a critical tax compliance consideration. . . . In our view and experience, a well managed organization is likely to be a tax compliant organization.

Accordingly, Part III of the draft form requires each not-for-profit organization

to provide certain information about its governance practices. Item 6 of the draft Part III requires the not-for-profit organization to disclose whether it "contemporaneously document[s] the meetings of the governing body and related committees through the preparation of minutes or other similar documents."

The IRS has indicated that if a not-for-profit organization is unable to answer affirmatively to questions such as Item 6, its management controls may be suspect, and it will be more likely to be audited. Because the redesigned Form 990 is intended to apply to tax years beginning on or after January 1, 2008, it is important for each not-for-profit organization to review its recordkeeping practices early in the coming year so that it will be able to answer affirmatively with respect to Item 6 when it files its Form 990 for the tax year 2008.

Even if Item 6 is modified in the final version of Form 990, an organization that follows best practices now with respect to the keeping of minutes will ensure that it has documentation of corporate actions that support its other responses in Part III, as discussed below.

This legal alert discusses the IRS requirements for contemporaneous documentation and provides additional guidance for keeping accurate and timely minutes of board and committee meetings.

### **IRS Definition of “Contemporaneous Documentation”**

The instructions to the draft Form 990 indicate that minutes or other documentation of board or committee actions will be considered contemporaneous if they are prepared before the *later* of the next meeting of the body or 60 days after the action is taken. Indeed, it is always in the interest of accuracy to prepare minutes as soon as possible after any meeting, while the minutes taker’s memory is fresh.

### **Purpose of Minutes**

Most actions relating to the operation of a not-for-profit organization are taken by its board of directors, which bears the primary responsibility for protecting the organization’s assets and carrying out its mission. If so provided in the articles of incorporation or bylaws, the board may form committees, such as finance or audit committees, and may authorize them to carry out certain functions of the board. Delegation to a committee does not, however, relieve the board members of their responsibility to the organization.

The board acts by voting at its regular or specially called meetings. Unless otherwise provided in the articles of

incorporation or bylaws, a majority of the board members constitutes a quorum for transacting business, and actions are taken by vote of a majority of those present at a meeting where a quorum is present. The articles of incorporation or bylaws may permit meetings to be held via telephone conference or other electronic means. Each director has one vote, and voting by proxy is not permitted. The articles of incorporation or bylaws will specify how much advance notice of meetings must be given to board members and the means by which notice must be given.

The minutes of board and committee meetings document the actions taken and provide an official record that the formal requirements for action (notice, quorum, etc.) have been satisfied. In general, the minutes will include:

- the name of the organization;
- the date, time and place of the meeting;
- members present and absent (including which ones qualify as independent directors);
- who called the meeting to order and who kept the minutes;
- all motions made and the results of all voting; and
- when the meeting ended.

They will be prepared by the secretary or other authorized member and presented for approval at the next meeting.

### **Matters To Be Covered in Minutes**

Aside from the factual matters specified above, the actual substantive content of the minutes require judgment, because meetings may be lengthy and include discussions of many issues. In general, it often is not desirable to create a detailed record of all discussions, but rather to include only information sufficient to show that the members acted reasonably in coming to decisions. As mentioned above, minutes of board meetings also will provide evidence of compliance with other good governance practices covered by Part III of the redesigned Form 990, which include:

- Actions that trigger the board's conflict of interest policy;
- Approval of related party transactions between the organization and its officers and directors;
- Issues involving the organization's whistleblower policy and records retention policy;
- Application of the IRS safe harbor rules to the establishment of the salaries of the CEO and CFO; and
- Board review of the organization's annual financial audit and Form 990.

Because these practices are covered in Part III of Form 990, minutes should cover any related discussions or actions by the members in order to provide documentation for the organization's responses. The D.C. Bar Pro Bono Program will provide further alerts describing the reporting requirements on these matters.

A sample form of board of directors meeting minutes is included in the appendix to this alert.

### **Additional Resources**

You may find the following information helpful in reviewing your organization's recordkeeping policies:

- Redesigned Form 990, Schedules and Instructions  
[www.irs.gov/charities](http://www.irs.gov/charities)
- IRS Publication 4221, Compliance Guide for 501(c)(3) Public Charities  
<http://www.irs.gov/pub/irs-pdf/p4221.pdf>
- Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations (October 2007)  
[http://www.nonprofitpanel.org/se/freg/Principles\\_Guide.pdf](http://www.nonprofitpanel.org/se/freg/Principles_Guide.pdf)

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**SAMPLE BOARD MINUTES FOR 501(c)(3) ORGANIZATIONS**

**NAME OF ORGANIZATION**

**Board Meeting Minutes**

**[Month] [Day] [Year]**

**[Time][Location]**

**Board Members:**

Present: [List names]

Absent: [List names]

Quorum present? Yes/No

Others present: [List names and titles]

**Notice of meeting:**

Sent on: [Date]

Notice waived by: [List names]

**Proceedings:**

Meeting called to order at [time] by [Chair].

Minutes of previous meeting were reviewed. A motion to approve the minutes was made and seconded. Motion passed

Executive Director's Report. [ ]

The Chair then recognized [Name] to give the report of the [Finance] Committee. [Finance Committee minutes are attached, including latest financial report of the not-for-profit organization.] [Name] reported that the [Finance] Committee recommended that [ ]. [Name] reviewed the recommendation for the Board. After a brief discussion of the issues, a motion to [ ] was made and seconded. Motion passed.

Old Business:

New Business:

Meeting adjourned at [time].

Respectfully submitted,

[Name]

[Recording Secretary]