

DUE DILIGENCE FOR
NON PROFITS:
LEGAL AND FINANCIAL
PERSPECTIVES

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LAYING THE FOUNDATION (pun intended)

OCGA Title 14 – Corporations, Partnerships and Associations

OCGA Title 14, Chapter 3 – Non Profit Corporations

1. File as a Non Profit Corporation with Secretary of State (SOS) (Annually in GA) with associated Filing Fees
2. Includes a Registered Office and Registered Agent
3. Articles of Incorporation (language required for 501c3 appl)
4. Bylaws (required provisions for 501c3 appl)
5. Initial and Annual Meeting Minutes
6. Obtain an EIN (employer identification number) and bank account
7. Annual Registration with GA SOS Charities Division
8. Gather a Board of Directors/Governors
9. Vote/Appoint Officers

LAYING THE FOUNDATION- continued

Articles of Incorporation – Outline of organization's basic structure and purpose; specific language is required by GA § 14-13-1002 and if filing for 501c status

1. . organized exclusively for charitable, religious, education and/or scientific purposes,

2. Personal liability of all directors of the Corporation to the Corporation for monetary damages for breach of duty of care or other duty as a director Is limited to the extent allowed by Code 14-3-202(b)(4)

LAYING THE FOUNDATION- - continued

Articles of Incorporation

3. No Distributions

4. No political campaigning or lobbying for or against a candidate for/in public office.

5. Upon Dissolution, assets shall be distributed to one or more exempt purposes within the meaning of section 501(c)(3) of the IRS codes

LAYING THE FOUNDATION - continued

Corporate Bylaws – required provisions

- A. Creation of Board of Directors/Governors (min and max #; authority; terms; term limits; qualifications)
- B. Creation of Officers (titles and authority)
- C. Voting authority Board/Officers
- D. Meetings and Notice
- E. Conflict of Interests (required for 501c3 appl)
- F. Indemnification/Insurance Provision

Why are Non Profits set up as Corporations?

1. Provides limited liability protection for directors, officers and volunteers
2. Shields directors' /officers' personal assets from organization debts and lawsuits
3. Allows the Organization to file for Tax Exempt Status (if their organizing documents include necessary language) allowing donors to claim deductions
4. Establishes an organizational framework that the IRS, grantmakers, donors and courts are familiar with and that are supported by statute and case law

Corporations are legal Fictions

“Fiction” because the law treats the corporation as a person for certain purposes like owning property, signing contracts, suing or being sued and continuing existence independently of the people who manage or create it.

Without this fiction, every contract, lawsuit, ownership interest or liability issue would have to be handled by Individuals. In a corporation where the shareholders or directors may change, listing an individual name for liability purposes would be very problematic.



1. Maintaining your records
2. Securing Donors
3. Filing for Tax Exempt Status with the IRS

	Public Charity	Private Foundation
Funding	Funding comes from at least 1/3 public and diverse sources	Endowment comes from one source (individual/family/business)
Activities	Direct programming/services	Usually grants to other non-profits; not direct aid
Governance	Diverse, independent Board	Often controlled by the donors
Tax Deductions	Higher limits	Lower limits
Requirements	Must pass the 'public support' test; File Form 990	5% annual payout; Form 990-PPF; stricter rules

3. Filing for Tax Exempt Status with the IRS



	1023 EZ form	1023 long form
Length of Form	3 pages	26+ pages (depending on answers)
Eligibility	Annual gross receipts under \$50,000 for past 3 years and/or projected 3 yrs AND Total asset of \$250,000 or less (there are other questions on the checklist)	All other applicants
Details required	Yes/No questions only; No budgets or projections; No attachments required	Full description of activities, finances, attach Articles of Incorporation and Bylaws, etc.
Processing time	45-90 days	3-12 months
Filing Fee	\$275	\$600

Why Financial Due Diligence Matters

- Trust drives funding decisions
- Financial health = organizational sustainability
- Transparency builds credibility

What Funders Are Really Asking

- Can we trust this organization with funds?
- Are resources used effectively?
- Is leadership financially responsible?

The IRS Form 990 – Your Public Report Card

- Required annual filing
- Publicly available
- Used by funders, watchdogs, donors

Types of 990 filings

- Form 990-N (Postcard): <\$50k in gross receipts
- Form 990-EZ: <\$200k in gross receipts and total assets <\$500k at year-end
- Form 990: >\$200k in gross receipts or total assets >\$500k at year-end

*Other circumstances may require an organization to file Form 990

Revenue Reporting

- Contributions vs earned income
- Grants, donations, program income
- Consistency and clarity

Unrelated Business Income (UBIT)

- Potential tax implication
- Income unrelated to mission
- Examples: Retail sales, service income, rental income

Functional Expenses

- Program Services
- Management & General
- Fundraising

Balance Sheet Insights

- Assets vs. Liabilities
- Liquidity
- Net Assets (restricted vs unrestricted)

Why the 990 Matters



- Public perception
- Grantmaker evaluation
- Watchdog ratings

What Happens if you Fail to File 990's?

If a nonprofit that is required to file a Form 990/990-EZ/990-PF or 990-N fails to file for **three consecutive tax years**, its **federal tax-exempt status is automatically revoked by law**

The revocation is effective as of the **original due date of the third missed return**

- Once revoked, the organization is treated as a **taxable corporation** for federal purposes, and **donations are no longer tax-deductible** for donors during the revocation period.

Reinstating if you Fail to File 990's 3yrs?

WHEN	FORM	ACTIVATION
If file for Reinstatement < 15m of (a) IRS revocation ltr or (b) date IRS posted org's name on auto revocation list	1023 EZ form with fee	Can get reinstated back to revocation date
If file for Reinstatement > 15m of (a) IRS revocation ltr or (b) date IRS posted org's name on auto revocation list	1023 Long form with fee	Usually only restores exemption prospectively (from date of new application) and non profit must provide "reasonable cause" explanation why it failed to file 990s and safeguards in place to prevent failure in the future

PROTECTING YOUR NON PROFIT CORP : CONTRACTS - AGREEMENTS

1. Employee Contracts
2. Independent Contractor Contracts
3. Vendor Agreements
4. Consulting Agreements
5. Employee Handbooks
6. Confidentiality Agreements
7. Licensing Agreements
8. Severance Agreements





Protects the Organization's property and proprietary information

Provides Directors, Officers, Managers and Employees with single set of documents to reference for Company policies and procedures

Protects Company from or puts Company in 'best' position in case of Breach of Contract or Infringement of intellectual property.



Record Keeping – The Foundation

- Accurate documentation
- Organized financial records
- Audit-ready mindset

Financial Reporting & Timing

- Monthly financial statements are ideal
- Board reporting
- Year-end reporting

Why Timing Matters

- Delayed reporting = delayed decisions
- Reduces transparency
- Increases risks

Internal Controls – What & Why

- Policies and procedures
- Safeguard assets
- Prevent errors and fraud



Key Internal Controls

- Segregation of duties
- Approval processes
- Cash handling procedures

PROTECTING YOUR INTELLECTUAL PROPERTY



TRADE SECRET defined as

all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing *if— (A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information*

Federal Defend Trade Secrets Act (DTSA)

CRITERIA TO ESTABLISH SOMETHING IS A TRADE SECRET:

1. **Secrecy** - Not generally known to and not readily ascertainable through proper means by others – i.e. not public knowledge or of general knowledge in the trade or business.
 - a. extent to which information is known outside of your business
 - b. extent to which information is known by employees and others involved in your business
 - c. the extent of measures taken by employer to guard the secrecy of the information
 - d. the ease or difficulty with which the information could be properly acquired or duplicated by others

2. **Commercial Value** –
 - a. actual loss caused by misappropriation and damages for unjust enrichment, OR
 - b. reasonable royalty for unauthorized disclosure

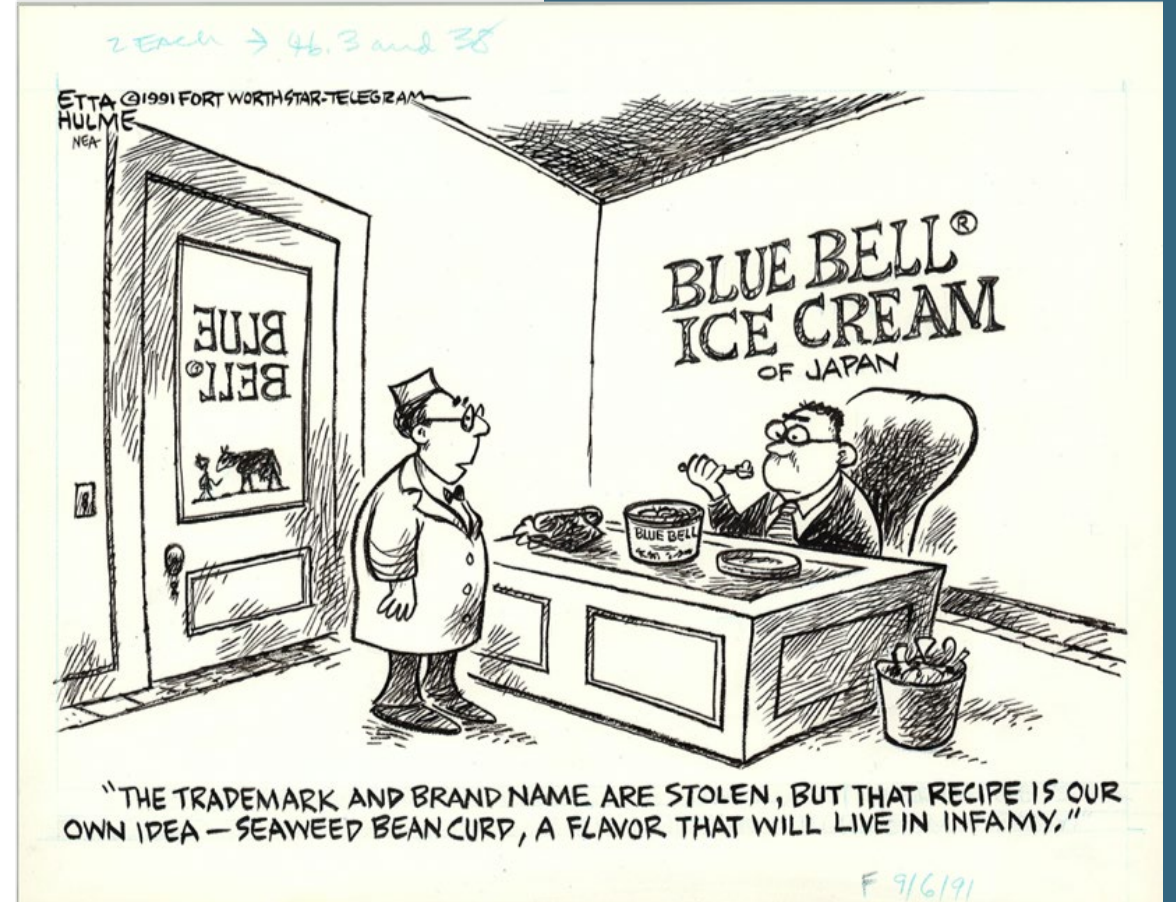
3. **Protective Measures** – sufficient to be considered “reasonable efforts to protect trade secrets”
 - a. Existence or absence of express agreements restricting disclosure
 - b. nature and extent of security precautions taken by possessor to prevent acquisition/disclosure
 - c. circumstances under which information was disclosed
 - d. degree to which information has been placed into public domain

TRADE SECRET – BEST PRACTICES

1. Non-Disclosure and Confidentiality Agreements
2. Marking documents as “Confidential” or “Trade Secret”
3. Restricting disclosure or access to personal on ‘need to know’ basis
4. Requiring/using Password protections for computer access
5. Keeping physical documents/materials in safe or locked cabinets
6. Include terms in employment agreements to return company information and company issued devices
7. Implement policies prohibiting transferring/storage of confidential information on personal electronic devices
8. Full Privacy Settings on any systems that use AI (for training or otherwise) or RBAC (Role Based Access Control)

Trademark

A trademark can be any word, phrase, symbol, design, or a combination of these things that identifies your goods or services. It's how customers recognize you in the marketplace and distinguish you from your competition.



COPYRIGHT

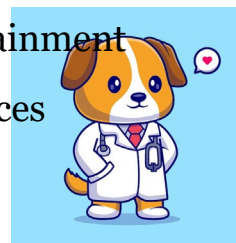
Copyright is a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression. Works are original when they are independently created by a human author and have minimal degree of creativity.

- Independent creation simply means - without copying.
- Creative means the work must have a “spark” or “modicum” of creativity”.
- A work is “fixed” when it is captured in a sufficiently permanent medium such that it can be perceived, reproduced or communicated for more than a short time.



45 *NICE* CATEGORIES OF GOODS & SERVICES

Class 1	Chemicals	Class 2	Paints & Varnishes	Class 3	Cleaning substances
Class 4	Industrial Oils	Class 5	Pharmaceuticals	Class 6	Common Metals
Class 7	Machines Scientific Devices	Class 8	Hand Tools	Class 9	Computers &
Class 10	Medical Supplies	Class 11	Appliances	Class 12	Vehicles
Class 13	Firearms	Class 14	Precious Metals	Class 15	Musical Instruments
Class 16	Paper Goods	Class 17	Rubber Products	Class 18	Leather Goods
Class 19	Building Materials	Class 20	Furniture	Class 21	Household Utensils
Class 22	Ropes & Textile Products	Class 23	Yarns & Threads	Class 24	Textiles
Class 25	Clothing	Class 26	Lace & Embroidery	Class 27	Carpets
Class 28	Games & Sporting Goods	Class 29	Meat, Fish, Poultry	Class 30	Coffee, Flour, Rice
Class 31	Grains, Agriculture	Class 32	Beer & Beverages	Class 33	Alcoholic Beverages
Class 34	Tobacco Products	Class 35	Advertising & Business Serv.	Class 36	Insurance & Finance Services
Class 37	Construction & Repair Serv.	Class 38	Telecommunications Services	Class 39	Shipping & Travel Services
Class 40	Material Treatment Services	Class 41	Education & Entertainment	Class 42	Science & Technology Serv.
Class 43	Food Services	Class 44	Medical & Vet Services	Class 45	Legal & Security Services



Common Misconceptions

1) Trademark = Copyright

Trademark protects use of company's names, brand identity, and slogans – these marks must have a direct connection to the goods/services being offered for sale to the public/consumer

Copyright protects rights of people who create original works of literary, dramatic, musical, artistic and other original works such as software code, organizational models, etc. Works are original when they are independently created by a human author and have minimal degree of creativity

Common Misconceptions

2) Having a trademark means you legally own a particular word or phrase and can prevent others from using it.

Trademark only prevents others from using the entire phrase for the “sale” of similar goods/services to the public.

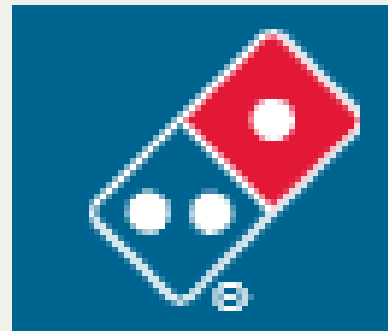
EX.1

Delta



EX.2

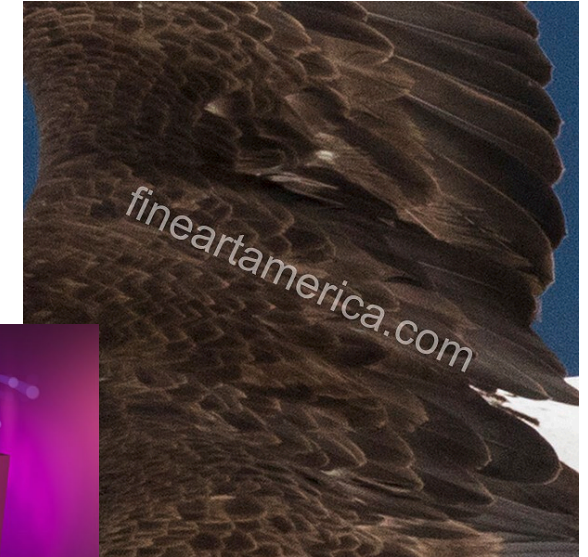
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COMMON MISCONCEPTIONS

“Royalty-Free” - free to use?

Images Available on the Internet Free to Use?
Look for Imbedded information or assume copyright unless site specifically allows ‘free use’.



Watermarking



Embedded Copyright and Ownership info



PROTECT YOUR TRADEMARK & COPYRIGHT



COMMON LAW TRADEMARK

is a trademark established solely through use in commerce in a specific geographic area – does not require any registration.

“copyrighted”

COMMON LAW COPYRIGHT

protects original works of authorship like books, stories, art, music, photography, etc – as long as they are fixed in a tangible medium



REGISTERED TRADEMARK

Or

TRADE DRESS



REGISTERED COPYRIGHT



Policing Your IP

You are responsible for policing your IP and responding to any potential infringement

1. Send Cease and Desist Demand
2. File Petition for Injunction and Damages

RECOMMENDATION: Research minimum once a quarter; phonetically

Damages will be dependent on whether you have registration, actual damages and whether infringement was 'wilfull'.



External Financial Oversight

Various levels of external oversight available

- Compilation
- Review
- Audit

Compilation vs Review vs Audit

- **Compilation: No assurance**
 - To obtain comfort that financial statements appear to be appropriate in form and there are no obvious material modifications needed.
- **Review: Limited assurance**
 - To obtain limited assurance that the financials are free from material misstatement.
 - Inquiries and analytical procedures performed.
 - CPA must be independent.
- **Audit: High assurance**
 - To obtain high assurance that and opinion issued by CPA.
 - Inquiries, analytical procedures, internal controls, risk of misstatement, fraud risk
 - CPA must be independent

Cash Flow Management

- Cash vs Accrual accounting
- Managing inflows and outflows
- Maintaining reserves

Financial Risk Areas

- Funding concentration
- Lack of reserves
- Poor budgeting

What Funders Want to See

- Clean, accurate financials
- Transparency
- Strong internal controls
- Forward planning



Q&A

