

“A (non-profit) business is a business, no matter how small (its budget) *

Working with **Non-Profits**

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(* With a title tip o' the hat to Dr. Seuss' Horton Hears A Who!)

Mitt Romney on Tuesday, August 11, 2011 ~

“Corporations are people, my friend.”

{Actually, he's right.....}

Entity selection

Decision key-points:

(1) Risk considerations

(2) Tax considerations

(3) Disclosure/privacy considerations

BIG suggestion: Partner with a (pro bono) CPA!

Florida Statutes

Chapter 617 – Corporations Not For Profit:

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0600-0699/0617/0617ContentsIndex.html&StatuteYear=2011&Title=%2D%3E2011%2D%3EChapter%20617

Entity operations

Articles of Incorporation: www.sunbiz.org

plus Bylaws plus Business Plan, Operations Manual,
Personnel Manual, plus plus plus...

Internal Revenue Service: www.irs.gov

Form SS-4 - **easy**

<http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>

Form 1023 - **hard**:

<http://www.irs.gov/charities/article/0,,id=96109,00.html>

Florida Department of Revenue:

<http://dor.myflorida.com/>

Florida Department of Agriculture and Consumer

Services: <http://www.800helpfla.com/soc.html>

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Entity compliance

Florida Uniform Business Report:

<https://efile.sunbiz.org/ubr001.html>

DUE NOT LATER THAN MAY 1

or \$400 NON-WAIVABLE fee

and administrative dissolution if still not done by
September 16

Florida Department of Business and Professional
Regulation:

<http://www.myfloridalicense.com/dbpr/>

Internal Revenue Service: <http://www.irs.gov/>

Florida Department of Revenue:

<http://dor.myflorida.com/>

BIG suggestion: Partner with a (pro bono) CPA!

Contracts –vendors, leases, and grants

The 4 (½) basic elements of a contract

Agreement: offer; acceptance

Consideration

Capacity

Legality

½ = Interpretation (“Plain Meaning” rule, intentions)

What can/not be the subject-matter of a contract?

Illegal subject-matters: usury; required licensure

Subject-matters contrary to public policy: contracts

in restraint of trade; unconscionability

(procedural; substantive); exculpatory clauses

Where are contracts performed and interpreted?

Look in the contract

Uniform Commercial Code

When are contracts performed?

Executed v. executory

Conditions: precedent; subsequent; concurrent

Hold on...keep going!

More Contracts –vendors, leases, and grants

Pace of activities: reasonable

Uniform Commercial Code

“Time is of the essence” clauses

How do we have a contract? Contract “sufficiency”

“Statute of Frauds”

Involving sale of land or interests in land

Cannot be performed within one year

UCC Article 2: sale of goods over \$500 (\$5,000)

Collateral promises

“Integration” (“Merger”) clause

What is the “form” of a contract (plus leases, grants)?

Context-specific

Mandatory v. prohibited v. negotiable

Elements: representations; warranties; covenants

Components of a contract

Mandatory provisions: by statute

Party-negotiated provisions

“Boilerplate” provisions

Incorporated by reference provisions

There's more? Yes, there is.

Even more Contracts –vendors, leases, and grants

How are contracts terminated (*aka* discharged)?

Performance: complete; substantial; performance to satisfaction of another

Breach

Operation of law: material alteration of contract; statute of limitations; bankruptcy; impossibility; commercial impracticability

Failure of a condition

Mutual agreement: mutual rescission; novation; accord and satisfaction; “payment in full” check; release; waiver

What are the remedies available when a contract is breached?

Mitigation of damages

Law – damages: compensatory/economic; consequential; punitive; nominal; liquidated

Equity (fairness) – remedies: rescission (unilateral) and restitution; specific performance; reformation; injunction; quasi-contract

Contractual limitations of remedies: exculpatory and limitation-of-liability clauses; election of remedies

Personnel – professional, volunteers, and interns

Agency - employment relationship (at-will, contracts)

Federal Fair Labor Standards Act

Collective bargaining

Employment discrimination - protected class

Equal Employment Opportunity Commission

Title VII of the Civil Rights Act of 1964 (as amended):

intentional & unintentional discrimination

Age Discrimination in Employment Act

Americans with Disability Act

Equal Pay Act

Section 1981 of Civil Rights Act of 1866

And....state law, **TOO!**

Workplace safety

Occupational Safety and Health Act

And....state law, **TOO!**

But wait, there's more...

More Personnel – professional, volunteers, and interns

Income security

Social Security Act: “FICA”; Medicare

Federal Unemployment Tax Act

Health insurance: COBRA; Patient Protection and
Affordable Care Act

Retirement accounts: Employee Retirement Income
Security Act

Family and medical leave: Family and Medical Leave
Act

Workers’ compensation

Recruitment, retention, and termination

Risk management

Planning = PROACTIVE (and reactive) risk management

Assessment: core business, “SWOT” analysis

Planning

Implementation

Evaluation

Audit: informal; formal; hybrid

Documentation and reporting

Insurance policy: sources, elements of coverage (types, limits, other parties, duration)

Lifecycle of a policy: application, underwriting
(application, predictable risk, premium)

Lifecycle after a loss: claims management, adjustment,
claim paid/rejected

Contractual: indemnification, hold harmless, defense,
operational allocations

Ethics – **NEVER** an afterthought

Board level: alter ego, conflicts of interest, usurpation

Lawyer-level: board member/lawyer

Attorney-client privilege

Disqualification

E&O and D&O

The Florida Bar Ethics Hotline: **(800) 235-8619**

Ethics opinions page:

<http://www.floridabar.org/tfb/TFBETOpin.nsf/EthicsIndex?OpenForm>

Note: See the resources pages at the bottom on that page

The “One Campaign”

“One Client One Attorney One Promise”

<http://onepromiseflorida.org/>

Note: Turn on your computer’s volume

A meaningful role for transactional lawyers, too:

<http://www.trls.org/>

(352) 372-0519 or (800) 372-0936

*{OK, enough already...this is just an hour-long program,
not a hotel conference...can we go now?}*

Thank you, and have a *very* productive day!

For additional information please contact:

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