



FLORIDA PUBLIC CHARITY

LEGAL COMPLIANCE CHECKLIST

MISSION

The Florida Nonprofit Alliance informs, promotes, and strengthens the nonprofit sector in order to create more vibrant communities across the state.

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This legal compliance checklist was created by the Florida Nonprofit Alliance. It outlines laws applicable to Florida nonprofits regarding their governance, advocacy, human resources, and fundraising. This checklist is not intended to give legal advice and before relying on any of the contents herein the nonprofit should consult with an attorney. The checklist is intended as a compliance tool for Florida nonprofits classified as public charities under Internal Revenue Code Section 501(c)(3). In order to be classified as a public charity under IRC Section 501(c)(3), a nonprofit generally must be a church, hospital, qualified medical research organization affiliated with hospitals, schools, colleges and universities or must meet one of the public support tests provided for under the IRC. Florida nonprofits that are not classified as public charities under IRC Section 501(c)(3) may be subject to different rules and regulations and should not rely on this checklist as a compliance tool.

What is the public support test for a public charity?

A new section 501(c)(3) organization will be classified as a public charity, and not a private foundation, during its first five years if it can show when it applies for tax-exempt status that it can reasonably expect to be publicly supported. The IRS will then monitor a new organization’s public charity status after the first five years of existence based on the public support information reported annually by the organization on Schedule A of Form 990 based on a five-year computation period that includes the current year and the four prior years. Beginning with the organization’s sixth year and for all succeeding years, if an organization meets the public support test on Schedule A, the organization qualifies as a public charity for its current year and the next tax year. If a publicly supported charity fails the public support test for two consecutive years, it will be reclassified as a private foundation and will be subject to different rules and regulations.

There are two public support tests for public charities: One for organizations described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code, and one for organizations described in section 509(a)(2). Both tests measure public support over a five-year period.

Generally, the 509(a)(1) test requires that the organization receive at least one-third of its support from contributions from the general public, or meet the 10 percent [facts and circumstances test](#).

Generally, the 509(a)(2) test requires that the organization receive more than one-third of its support from contributions from the general public and/or from gross receipts from activities related to its tax-exempt purposes. Under the 509(a)(2) test, an organization can receive no more than one-third of its support from gross investment income and unrelated business taxable income.

| Have you | Who has to do it | How and when to do it |
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| <p>Filed Articles of Incorporation and held initial board meeting to adopt Bylaws and related governance policies?</p> | <ul style="list-style-type: none"> All FL public charities must file Articles of Incorporation with the FL Department of State. | <ul style="list-style-type: none"> File with the Florida Department of State Division of Corporations https://dos.myflorida.com/sunbiz/start-business/efile/fl-nonprofit-corporation/ Adopt bylaws and related governance policies at your initial board meeting. Florida public charities are required to have a minimum of three board members. Florida nonprofit corporations statute can viewed here. http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0600-0699/0617/0617.html |

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| Filed Annual Report? | <ul style="list-style-type: none"> All FL public charities must file an annual report with the FL Department of State. | <ul style="list-style-type: none"> Each year following the year in which a FL public charity was formed the public charity must file an annual report with the FL Department of State by May 1. |
| Filed IRS Form 1023 to apply for federal corporate tax exemption and made it available to the public? | <ul style="list-style-type: none"> All public charities with gross receipts of \$5,000 or more that would like to receive tax-deductible grants or contributions. Generally, organizations with annual gross receipts of \$50,000 or less and total assets of \$250,000 or less may file the online Form 1023-EZ. | <ul style="list-style-type: none"> File within 27 months of incorporation for retroactive recognition of tax exemption to date of incorporation. As of January 31, 2020, the IRS requires that Form 1023 be completed and submitted online through Pay.gov. Applicants are required to have a Pay.gov account and payment of the user fee must be made electronically. Make your form available for review by anyone who requests it. |
| Filed Form 990, 990-EZ, or 990-N (e-Postcard) and made your forms for the past three years publicly available? | <ul style="list-style-type: none"> Public charities with \$50,000 or less in annual gross receipts may use the online Form 990-N (e-Postcard). Public charities who are not required to file Form 1023 because they have gross receipts under \$5,000 will still need to fill Form 990-N. Public charities with annual gross receipts of more than \$50,000 or with an average of more than \$50,000 over the past three years must file Form 990 or Form 990-EZ. Public charities with annual gross receipts under \$200,000 and total assets under \$500,000 may file Form 990-EZ. All supporting or controlling organizations must file Form 990 or 990-EZ. For fiscal years beginning on or after July 2, 2019 most public charities are required to file Form 990 or 990-EZ electronically. Public charities that fail to file their Form 990, 990-EZ or 990-N for three consecutive years will automatically lose their tax-exempt status. However, the IRS is required to provide notice of the possibility of this revocation to organizations that have failed to file for two consecutive years. Churches, their integrated auxiliaries, and conventions or associations do not have to file. | <ul style="list-style-type: none"> The form is due each year by the 15th day of the 5th month following the end of your fiscal year (e.g. May 15 of your fiscal year ends Dec. 31 or Nov. 15 if your fiscal year ends June 30). For information on which form to file, see https://www.irs.gov/charities-non-profits/form-990-series-which-forms-do-exempt-organizations-file-filing-phase-in You must make your applicable Form 990s available for review by anyone who requests them. You must provide immediately for in-person requests or within 30 days in the case of written requests. You may charge a reasonable copying fee plus actual postage, if any. The IRS customer service line for tax exempt entities is 877-829-5500 (Note that the line is currently unavailable due to COVID-19). Also, you should consult with your CPA for more details on Form 990 |
| Adopted and adhere to policies to policies of interest, gift acceptance, Form 990 review, whistleblower protection and document retention and destruction? | <ul style="list-style-type: none"> Most public charities On Part VI of Form 990, public charities may be required to indicate whether they have each of these policies in place. On Part VI of Form 990, public charities are also asked whether its officers, directors, trustees, and key employees are required to disclose annually interests that could give rise to conflicts. | <ul style="list-style-type: none"> See FNA Document Retention Policy Page: https://flnonprofits.org/page/RecordRetention See National Council of Nonprofits Sample whistleblower policy: https://www.councilofnonprofits.org/sites/default/files/Sample%20WhistleblowerPolicy%202.2010.pdf See National Council of Nonprofit's Sample conflict of interest policy: https://www.councilofnonprofits.org/tools-resources/conflicts-of-interest See National Council of Nonprofit's Sample gift acceptance policy: https://www.councilofnonprofits.org/tools-resources/gift-acceptance-policies |

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| <p>Used comparability data to determine executive compensation?</p> | <ul style="list-style-type: none"> Public charities with paid employees Form 990 requires public charities to indicate whether they used comparability data to determine salaries and benefits. | <ul style="list-style-type: none"> See FNA's compensation survey as a guide: https://flnonprofits.org/page/CompensationSurvey |
| <p>Reported and paid tax on Unrelated Business Income (UBIT) and made your Form 990-T for the past three years publicly available?</p> | <ul style="list-style-type: none"> Any public charity with unrelated business income of \$1,000 or more. For more information, see IRS Publication 598, Tax on Unrelated Business Income of Exempt Organization. www.irs.gov/pub/irs-pdf/p598.pdf A public charity that has unrelated trade or business income for federal tax purposes is subject to Florida corporate income tax. | <ul style="list-style-type: none"> File IRS Form 990-T (www.irs.gov/forms-pubs/about-form-990-t) each year by the 15th day of the 5th month after your fiscal year ends (e.g. May 15 of your fiscal year ends Dec. 31 or Nov. 15 if your fiscal year ends June 30). A public charity is required to file a Florida Corporate Income/Franchise Tax Return (Form F-1120) only when the public charity has "unrelated business income or is filing Form 990-T with the IRS. floridarevenue.com/taxes/businesses/Pages/nonprofit.aspx |
| <p>Are you nonpartisan?</p> | <ul style="list-style-type: none"> All 501(c)(3) public charities are prohibited from supporting or opposing candidates for office or political parties. | <ul style="list-style-type: none"> Ensure that your board members and staff understand that they shall not suggest or imply that they are acting on behalf of the public charity when engaging in any personal political activities. |
| <p>Elect 501(h) status to establish clear lobbying limits?</p> | <ul style="list-style-type: none"> A public charity that will engage in lobbying can choose to elect 501(h) status. Under Section 501(h), public charities may use up to 20% of the first \$500,000 of its exempt purpose expenditures for direct lobbying. Public charities that do not take the 501(h) election must be prepared to demonstrate that lobbying is an "insubstantial" part of its activities. | <ul style="list-style-type: none"> Complete IRS Form 5768 to elect 501(h) status for the current year and subsequent years. Once elected, the election will remain in place until revoked. www.irs.gov/pub/irs-pdf/f5768.pdf For additional information, see www.councilofnonprofits.org/taking-the-501h-election For additional information, join FNA's advocacy 101 training. Visit https://flnonprofits.org/events/event_list.asp? |
| <p>Provided donors with letters of acknowledgement for "quid pro quo" gifts of \$75 or more and all gifts of \$250 or more?</p> | <ul style="list-style-type: none"> Every public charity that provides goods or services to donors in exchange for contributions above \$75, must disclose the value of the goods and services received by the donor, and only the amount contributed in excess of this value is tax-deductible to the donor. | <ul style="list-style-type: none"> See IRS Publication 1771 (www.irs.gov/pub/irs-pdf/p1771.pdf) for gift acknowledgement guidelines. Donors are responsible for obtaining written gift acknowledgement for contributions of \$250 or more, but it is considered a best practice for public charities to send timely gift acknowledgements to donors for all contributions. See National Council of Nonprofit's Sample gift acknowledgement policy: https://www.councilofnonprofits.org/tools-resources/saying-thank-you-to-donors |
| <p>Applied for the Florida charitable solicitation license, renewed it each year, and included the required disclosure statement on your fundraising materials?</p> | <ul style="list-style-type: none"> Prior to soliciting contributions Florida requires that the public charity register with the Florida Department of Agriculture and Consumer Services (FDACS). Charitable organizations and fundraisers that solicit contributions are prohibited from commingling charitable contributions with noncharitable funds. This means that contributions should be kept in a separate account from funds that are not used for a charitable purpose. Additionally, charitable organizations and fundraisers are required to keep documents to show how contributions are used. | <ul style="list-style-type: none"> You may register online using a link provided on the FDACS website https://www.fdacs.gov/Business-Services/Solicitation-of-Contributions You may also find a copy of the registration application here https://forms.freshfromflorida.com/10100.pdf This registration is annual and must be renewed yearly. If your public charity receives more than \$1,000,000 in contributions in a given year, your financials must be audited by a CPA. |

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| <p>Checked into the compliance for fundraising solicitation for state from which you receive donations?</p> | <ul style="list-style-type: none"> • 41 states require solicitation and public charities must register in states from which they receive donations | <ul style="list-style-type: none"> • Visit the National Association of State Charity Officials website for more information: https://www.nasconet.org/resources/state-government/ • If you will solicit contributions in other states, you will need to check the requirements for those states. For additional information, see www.councilofnonprofits.org/tools-resources/charitable-solicitation-registration |
| <p>Confirmed that any contract fundraisers or fundraising consultants are licensed?</p> | <ul style="list-style-type: none"> • Any public charity that will use a contractor to solicit contributions or advise or assist in fundraising activities. | <ul style="list-style-type: none"> • Florida requires that all “professional fundraising consultants” and “professional solicitors” be registered prior to engaging in fundraising activities for a public charity. • A “professional fundraising consultant” is a person who is retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, carry on, advise, consult, or prepare material for a solicitation of contributions in this state but who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions and who does not at any time have custody or control of contributions. |
| <p>Applied for exemption from Florida sales and use tax?</p> | <ul style="list-style-type: none"> • Florida law grants certain public charities specific exemptions from Florida sales and use tax. In order to receive this exemption your public charity must obtain a Florida Consumer’s Certificate of Exemption for the Florida Department of Revenue. • Renewal Process: At the end of the five-year period, the Department will use available information to determine whether your nonprofit organization or governmental entity is actively engaged in an exempt endeavor. When the Department is able to determine that your nonprofit organization or governmental entity continues to be actively engaged in an exempt endeavor using available information, a new Consumer’s Certificate of Exemption will be issued. When the Department is unable to make a determination based on the available information, a letter requesting the documentation listed in “How to Establish Qualification” for the appropriate exemption category will be mailed to you. If you fail to respond to the written requests, your certificate will expire and will not be renewed. | <ul style="list-style-type: none"> • Submit a completed Application for a Consumer’s Certificate of Exemption Form DR-5 with the FL Department of Revenue. For more information, see https://floridarevenue.com/taxes/businesses/Pages/nonprofit_sales_tax.aspx |
| <p>Correctly classify all employees and independent contractors?</p> | <ul style="list-style-type: none"> • Any public charity which has paid employees, consultants, or contractors. The U.S. Department of Labor, IRS, and FL Department of Revenue may impose penalties if a public charity improperly classifies someone as an independent contractor when they are an employee. | <ul style="list-style-type: none"> • The IRS provides specific criteria for classifying employees and contractors. See IRS Publication 1779 www.irs.gov/pub/irs-pdf/p1779.pdf • The U.S. Department of Labor has also established a fact sheet detailing which factors employers should consider when classifying workers as employees or independent contractors. www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs13.pdf |

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| <p>Correctly classify all employees as either exempt or non-exempt from the Fair Labor Standards Act (FLSA) and paid overtime where appropriate?</p> | <ul style="list-style-type: none"> Any public charity with paid employees. | <ul style="list-style-type: none"> Employees are exempt from the overtime pay requirements of FLSA if they meet all the following: (1) paid at least the minimum salary level; (2) paid on a salary basis; and (3) exercise job duties that are classified as exempt. The minimum salary threshold is \$35,568 per year (\$684 per week). Highly compensated employees with salaries of \$107,432 or more are also exempt from overtime pay requirements if they regularly perform some of the job duties of executive, administrative, or professional employees. An employee's status may change at any time during the year. Non-exempt staff must receive 1.5 times their usual hourly rate for any time they work in excess of 40 hours in a week. For more information see the U.S. Department of Labor Fact sheet: www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a_overview.pdf |
| <p>Followed all state and federal employment laws including: filing I-9, W-2, and W-4 forms; withholding tax; employment tax?</p> | <ul style="list-style-type: none"> Any public charity with paid employees. The public charity must pay Social Security and Medicare taxes for all employees. | <ul style="list-style-type: none"> For information on withholding and federal employment taxes, see www.irs.gov/charities-non-profits/employment-taxes-for-exempt-organizations For information on Form I-9, see www.uscis.gov/i-9 |
| <p>Determined if you are liable for FL reemployment tax?</p> | <ul style="list-style-type: none"> A public charity is liable for reemployment tax if it employs four or more workers for any portion of a day in 20 different calendar weeks during the current or preceding calendar year. Churches and schools are exempt from this reemployment tax liability. | <ul style="list-style-type: none"> A Florida Business Tax Application (DR-1) must be completed to provide necessary information to determine if the public charity is liable for reemployment tax. (floridarevenue.com/taxes/registration) For more information, see (https://floridarevenue.com/taxes/taxesfees/Pages/reemployment.aspx) |
| <p>Obtained workers' compensation insurance?</p> | <ul style="list-style-type: none"> Public charities with four or more employees are required to provide workers compensation insurance for their employees. | <ul style="list-style-type: none"> Contact the Florida Division of Workers' Compensation at (850) 413-1609. https://www.myfloridacfo.com/division/wc/employer/coverage.htm |
| <p>Properly compensated your paid interns?</p> | <ul style="list-style-type: none"> Public charities may use volunteer interns provided, that they are unpaid, not provided a stipend and would not be considered an employee under the FLSA. If a public charity chooses to pay its interns, these interns may be classified as employees subject to the minimum wage and overtime pay requirements under the FLSA. If a public charity pays an intern stipend below the Florida minimum wage of \$8.56 per hour, it must ensure that the internship would not be considered employment. | <ul style="list-style-type: none"> The U.S. Department of Labor provided a fact sheet for determining if interns would be considered employees under the FLSA. www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs71.pdf See the National Council of Nonprofits' resource on nonprofit interns at www.councilofnonprofits.org/tools-resources/interns-employee-or-volunteer |

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| <p>Created a plan document for your employee retirement plan and electronically filed a Form 5500?</p> | <ul style="list-style-type: none"> Public charities which establish a 403(b) plan or any other retirement plan subject to the Employment Retirement Income Security Act (ERISA). | <ul style="list-style-type: none"> If your public charity establishes a 403(b) or 401(k) plan, then you must have a written plan document. It is advisable to work with the third-party administrator to establish and administer your plan. You must file Form 5500 electronically. The due date for Form 5500 is seven months after the plan-year for your plan ends. Individuals at your public charity that will be responsible for signing your Form 5500 need to register on the Department of Labor's EFAST2 website. https://www.efast.dol.gov/welcome.html |
| <p>Provided health insurance for your employees?</p> | <ul style="list-style-type: none"> A public charity which has 50 or more full-time employees, including full-time equivalents, on average for the prior year is considered a large employer under the Affordable Care Act and is required to offer health insurance coverage to its employees. Public charities that are not considered large employers have the option to offer health coverage for their employees. | <ul style="list-style-type: none"> Public charities that are considered large employers and therefore required to offer health insurance to its employees, must file Form 1095-C and 1094-C with the IRS. For additional information, see www.irs.gov/affordable-care-act/employers/affordable-care-act-tax-provisions-for-large-employers Public charities that are not classified as large employers under the Affordable Care Act have the option of offering health coverage to their employees. For additional information on healthcare options for small public charities, see www.healthcare.gov/small-businesses/ |
| <p>Adhered to state laws for drawing by chance?</p> | <ul style="list-style-type: none"> Any public charity that offers a raffle or drawing by chance as a fundraising event. | <ul style="list-style-type: none"> The public charity must make sure that all brochures, advertisements, notices, tickets, or entry blanks used in connection with a drawing by chance conspicuously discloses: 1) the rules governing the conduct and operation of the drawing; 2) the full name of the organization and its principal place of business; 3) the source of the funds used to award cash prizes or purchase prizes; 4) the date, hour, and place where the winner will be chosen and the prizes will be awarded, unless the brochures, advertisements etc. are not offered to the public more than 3 days prior to the drawing; and 5) that no purchase or contribution is necessary. If you are offering a raffle or drawing by chance you may not engage in any of the following: 1) design, engage in, promote, or conduct any drawing in which the winner is predetermined by means of matching, instant win, or preselected sweepstakes or otherwise or in which the selection of the winners is in any way rigged; 2) require an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing or of being selected to win a prize. However, this paragraph does not prohibit an organization from suggesting a minimum donation or from including a statement of such suggested minimum donation on any printed material used in connection with the fundraising event or drawing; 3) condition the drawing on a minimum number of tickets having been disbursed to contributors or on a minimum amount of contributions having been received; 4) arbitrarily remove, disqualify, disallow, or reject any entry or to discriminate in any manner between entrants who gave contributions to the organization and those who did not give such contributions; |

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| | | <p>5) fail to promptly notify, at the address set forth on the entry blank, any person whose entry is selected to win of the fact that he or she won; 6) fail to award all prizes offered; 7) print, publish, or circulate literature or advertising material used in connection with the drawing which is false, deceptive, or misleading; 8) cancel a drawing; or 9) condition the acquisition or giveaway of any prize upon the receipt of voluntary donations or contributions.</p> |
| <p>Followed the federal grant and contract rules under the OMB Uniform Guidance?</p> | <ul style="list-style-type: none"> Public charities with federal grants or contracts, or state or local grants or contracts which include federal funds, with effective dates on or after December 26, 2014. | <ul style="list-style-type: none"> Public charities that do not have a federally approved indirect cost rate may elect to be paid a de minimis rate of 10% of modified total direct costs. Pass through entities, such as state and local governments are required to recognize this 10% de minimis rate. The OMB Uniform Guidance treats additional costs, including some program administration costs, as direct costs. The single audit threshold is \$750,000. The OMB Uniform Guidance requires the use of consistent, documented procurement processes for purchases made with federal funds. For more information, see www.councilofnonprofits.org/omb-uniform-guidance |
| <p>Complied with Uniform Prudent Management of Institutional Funds Act (UPMIFA) to invest and spend from endowed and other restricted funds?</p> | <ul style="list-style-type: none"> All public charities which hold funds with donor-imposed restrictions. These rules do not apply to funds set aside for specific purposes by the public charity's board. It is possible for restrictions that apply to funds created more than 10 years ago which have total assets less than \$100,000 to be released. | <ul style="list-style-type: none"> A policy must be adopted which requires the board to analyze the statutory prudent investing factors when investing and spending from endowed and other restricted funds. Keep any gift agreements creating endowed and other restricted funds with your permanent records. |
| <p>Confirmed that individuals who will lobby on your behalf are registered as a lobbyist with the state?</p> | <ul style="list-style-type: none"> A person paid to lobby for a public charity must register as a lobbyist. If a public charity has a staff member whose job is to lobby, then that person must register as a lobbyist, but there will not be reporting of the organizations activities because the organization is not a lobbying firm. | <ul style="list-style-type: none"> All lobbyists must register with the Lobbyist Registration Office in the Division of Information Services of the Office of Legislative Services. For additional information, see www.floridalobbyist.gov/ |
| <p>Filed for a fictitious name?</p> | <ul style="list-style-type: none"> If you will be conducting business under a name that is different from your public charity's legal name, Florida requires you to register this fictitious name with the Florida Department of State prior to conducting business under such fictitious name. | <ul style="list-style-type: none"> For more information on registering a fictitious name, see dos.myflorida.com/sunbiz/start-business/efile/fl-fictitious-name-registration/ |