

940 CMR 2.00: REGULATIONS OF THE DIRECTOR OF PUBLIC CHARITIES

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2.01: Definitions

Director means the Director of the Division of Public Charities as defined by M.G.L. c. 12, § 8C.

Division means the Division of Public Charities as defined by M.G. L. c. 12, § 8C.

Public Charity means any organization that is charitable as determined by Massachusetts law including statutory and case law irrespective of its categorization under federal definitions.

Property is held "for any religious purpose" as used in M.G.L. c. 12, § 8F if it is used to maintain any religious society or church, its buildings, grounds and cemeteries, its services, its religious instruction, its clergy and its general religious activity.

2.02: Filing of Reports

- (1) Reports shall be filed with respect to all public charities within the Commonwealth except:
 - (a) A public charity that is exempt from filing a return pursuant to Treasury Regulation § 1.6033-2(g)(1)(i) or (ii) or (iv) or (vii).
 - (b) Any public charity that is not exempt from filing under 940 CMR 2.02(1)(a), but holds property "for any religious purpose" as defined in 940 CMR 2.01, and believes that it would involve a hardship to separate such property from property held for nonreligious purposes for the purposes of filing reports under M.G.L. c. 12, § 8F, or any public charity which is in doubt as to whether property is held "for any religious purpose" as so defined, may make written application to the Director for exemption from filing, and the Director shall have full discretion to grant or deny such exemption either in full or in part.
 - (c) A public charity which pays its total net income to a department or agency of the Commonwealth, City, Town, or other subdivision of the Commonwealth and which submits a financial report to such agency.
 - (d) A public charity, all of the trustees of which are duly elected or appointed by a municipal or state department or agency, and the accounts of which are subject to audit by the auditors of the Commonwealth.Any public charity exempt from filing reports pursuant to 940 CMR 2.02(1)(a) through (d) shall not be required to register under M.G.L. c. 12, § 8E.

- (2) All public charities which received more than \$100,000 in gross support and revenue during the fiscal year shall submit audited financial statements except as follows:
 - (a) A Private Foundation as defined by Internal Revenue Code Section 509(a) which files a complete and accurate copy of Federal Forms 990 PF and 990 AR with its annual report;
 - (b) A trust which is required to account to the Probate Court on a periodic basis and which files its annual probate account in the form prescribed by M.G.L. c. 206, § 2 with its annual report; and
 - (c) A trust or other fund which prepares an annual probate account in the form prescribed by M.G.L. c. 206, § 2, the trustee of which is subject to audit by the Comptroller of the Currency, Federal Deposit Insurance Corporation, or Commonwealth of Massachusetts Commissioner of Banks and the funds of which are audited by the independent certified public accountants of the institution holding the funds.

- (3) For purposes of the audit requirement of M.G.L. c. 12, § 8F "gross support and revenue" will not include:
 - (a) the value of donated land to a land conservation trust;

2.02: continued

(b) the value of an unusual, large, nonrecurring, donation of tangible personal or real property to any public charity provided that such property is used in conducting the organization's charitable programs.

2.03: Books and Records

(1) Every public charity required to file written annual reports with the Division pursuant to M.G.L. c. 12 § 8F shall keep such permanent books of account or records including records of inventories, as are sufficient to substantiate each item of the financial and nonfinancial information required in the annual report.

(2) The permanent books of account and records shall be kept accurately, but no particular form is required for keeping the records.

(3) The permanent books and records shall support each individual transaction for the recording of the items of gross support, revenue, and expenses.

(4) The permanent books of account and records shall provide a functional breakdown of expenses such that fund raising expenses can be distinguished from all other expenses.

(5) The permanent books of account shall disclose the sources of revenue and expenses related to special events and show specifically the items of revenue and expenses from the special events.

(6) A demand under M.G.L. c. 12, § 8L shall be made at least three business days prior to the required production of records unless the Director reasonably believes that the safekeeping of such records is threatened.

(7) Records required by a demand under M.G.L. c. 12, § 8L shall be made available at the usual place of business of the public charity during normal business hours.

REGULATORY AUTHORITY

940 CMR 2.00: M.G.L. c. 12, §§ 8F, 8J and 8L.