Massachusetts Attorney General Andrea Joy Campbell

INTRODUCTION TO CHARITABLE COMPLIANCE



Dear New Charity or New Board Member,

Congratulations on your new role leading a public charity!

In Massachusetts, public charities serve a crucial role in our communities by meeting critical needs, supporting growth, and incubating innovation and entrepreneurship. By stepping into this new role, you join a dynamic non-profit sector that is more than 25,000 organizations strong across the Commonwealth. The Non-Profit Organizations/Public Charities Division at the Massachusetts Attorney General's Office looks forward to partnering with you in your journey to make your community – and the world – a better place.

The Non-Profit Organizations/Public Charities Division exists to ensure that all public charities are compliant with the law. For most charities, that means that your organization will be required to register and file annual reports with our office, the Massachusetts Attorney General's Office. ¹

We are here to help you meet these requirements so that it is easier for you to achieve your organization's mission. We have many tools, as well as a friendly and experienced staff, that are ready to provide ongoing support to you and your team. We hope that you will regularly use these resources. Please contact us with any questions and concerns – again, that is why we are here!

• If you are joining an established organization, you can check to see if they are up to date with their filings here:

https://masscharities.my.site.com/FilingSearch/s/

• If your organization is brand new, you can learn more about the steps to submit an initial registration here:

https://www.mass.gov/info-details/online-charity-filing-portal

 General resources on a range of related topics can always be found on our website:

https://www.mass.gov/orgs/the-attorney-generals-non-profit-organizationspublic-charities-division

Enclosed with this letter are a few starting materials and guidance documents for your reference as you begin your leadership journey. We encourage you to review the materials enclosed here and to contact our office when you have questions. In addition to our comprehensive website, you can also speak to a member of our Non-Profit Organizations/Public Charities Division staff by calling (617) 963-2101.

Congratulations, again!

Sincerely,

Jonathan C. Green Division Chief Non-Profit Organizations/Public Charities Division

Please note that some organizations may have obligations with a number of different reporting bodies, including, for example, the IRS and the Secretary of the Commonwealth.



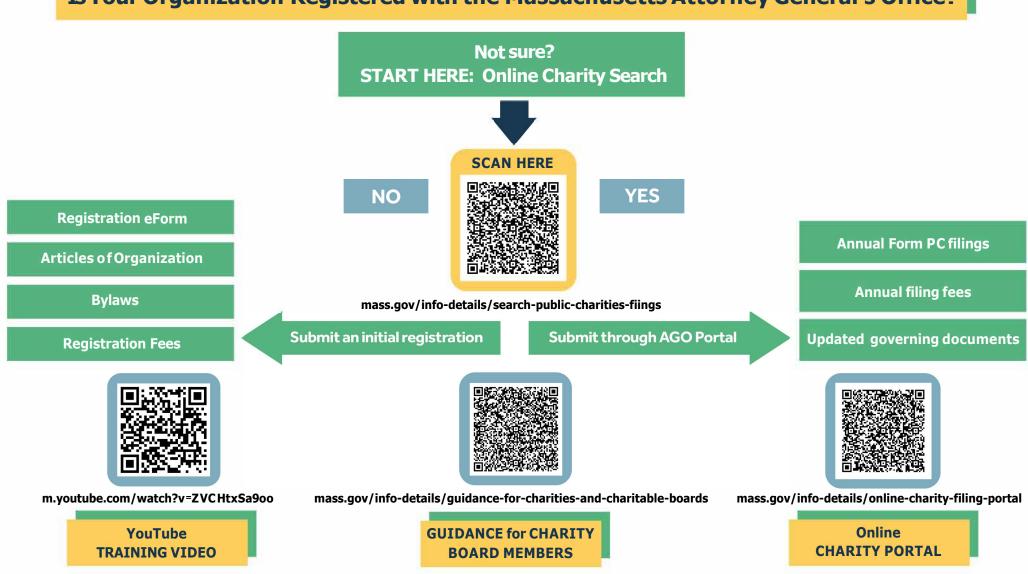
Massachusetts Attorney General's Office Public Charities Online Filing Portal Instructions

TABLE OF CONTENTS

Links to Access	2
How to Sign Up for the Portal	2
When to Submit an Initial Charity Registration	3
Submitting an Initial Charity Registration	3
Submitting an Annual Form PC Filing	3
Completing the Annual Form PC Filing in Multiple Sittings	9
How to Share a Draft of Form PC	11
How to Electronically Sign the Annual Form PC Filing/Schedule A2	12
How to Recall a Filing for Editing	13
How to Submit a Payment for a Charity's Registration/Annual Form PC Filing/Schedule A2	14
How to Submit Miscellaneous Charity-Related Documents	15

New Public Charities and Board Members: Getting Started and Staying in Compliance

Is Your Organization Registered with the Massachusetts Attorney General's Office?



Links to Access

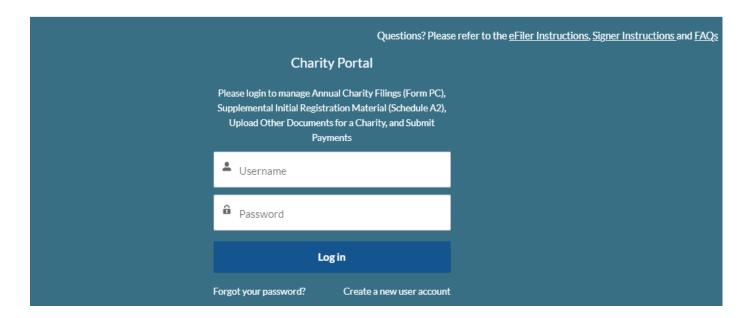
- Charity Initial Registration eForm
- Charity Portal (Annual Form PC Filing, Schedule A2, and Payment Access)

How to Sign Up for The Portal

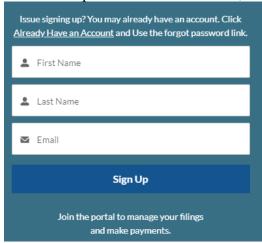
1. From the Portal website, click on the "Create a new user account" text.

Massachusetts Office of the Attorney General

Non Profit Organizations / Public Charities Division



2. Enter the requested fields: first name, last name, and email.



Note: If you are signing up via a link through email (i.e. if you have been assigned as a reviewer for a filing), you **must** use the same email address you received the link through to sign up. Failure to do so will result in not having access to review that filing.

- 3. Go to your email inbox and look for the email from Salesforce.
- 4. Click on the link provided in the email.
- 5. Change your password.

When to Submit an Initial Charity Registration

If the charity has never registered with the AGO (and does not have an Attorney General Account Number), gather the required information:

- 1. The Registration eForm requires basic information about the charity, such as address, contact information, type of organization (e.g., corporation, trust), and IRS tax exempt status.
- 2. In addition, you will also need electronic copies (pdf, doc, docx) of the following attachments:
 - a) Organization's charter, articles of organization, agreement of association, instrument of trust, or written statement of purpose, whichever is applicable.
 - b) List of the current officers/directors and their addresses.
 - c) Organization's By-laws.
 - d) IRS letter designating the organization's 501(c) status if the organization has received one.

Submitting an Initial Charity Registration

- 1. Use the link provided above to navigate to the Registration eForm. This initial Registration eForm is not accessible from the Portal.
 - Note: you will <u>not</u> have to sign into your Portal account to complete this step. Please provide accurate emails on the Registration, as these are the emails through which the AGO will contact the charity regarding the status of its registration.
- 2. Fill out the information in the Registration eForm. This is a short form and **must be done in one sitting**. Unlike the annual Form PC, you are not able to save & exit the Registration eForm.
- 3. Once submitted, wait! The AGO will review the registration and notify you regarding whether the registration has been accepted.
- 4. Once your organization has been registered, you will receive an email from the AGO notifying you of the next steps. You will be required to make the \$100 registration payment (excluding those with VCO status) after the AGO accepts the charity's registration and issues an Attorney General Account Number. You will also be informed of any filings that may be necessary (Form PC filing(s) or Schedule A-2) depending on when your organization formed/began operating in MA and whether your organization plans to solicit funds from the public.

Submitting an Annual Form PC Filing

What Must be Filed?

All public charities must include the following items for their filing to be complete. Your filing will be considered incomplete if any required attachments are missing.

Form PC Data

All required fields will be marked with a red asterisk. You cannot submit your filing without completing all required fields. If your organization solicits funds from the public and requires a Certificate for Solicitation, there must be TWO different signatories on your filing. See additional information on obtaining digital signatures on page 11.

Filing Fee

Payment will be made within the Portal, through our online payment processer nCourt. Fees are calculated automatically within the Portal, based on your Gross Support and Revenue (GSR). Please be sure to report your GSR correctly, based on the chart provided on page 7.

Gross Support and Revenue	Filing Fee
Less than \$100,000	\$35
\$100,001 to \$250,000	\$70
\$250,001 to \$500,000	\$125
\$500,001 to \$1 million	\$250
\$1,000,001 to \$10 million	\$500
\$10,000,001 to \$100 million	\$1,000
\$100 million+	\$2,000

Federal Form and/or Probate Account

If the charity has a Gross Support and Revenue of more than \$25,000, one of the following forms **must** be submitted:

- a) Federal Form 990, 990-EZ, or 990-PF (with all required IRS Schedules, **except Schedule B**)
- b) Probate Account
- c) Federal Form 1120 or Federal Form 1041

PLEASE NOTE:

- Federal Form 990-N (postcard) is not accepted at any time
- Inclusion of Schedule B with any IRS 990 filing will delay the processing of your filing
- Blank Federal Forms 990 may be obtained from the Internal Revenue Service at https://www.irs.gov/.

Financial Statements

You must submit the following additional type of financial statement based on your Gross Support and Revenue:

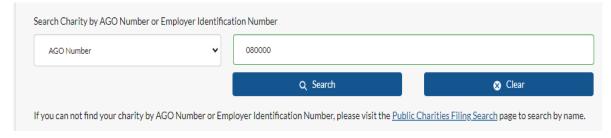
Gross Support and	Type of Financial Statement
Revenue	
\$0 to \$500,000	No additional financial statement is required
\$500,001 to \$1,000,000	CPA's Review Report

\$1,000,001 or more	Audited Financial Statements, prepared by an independent CPA in accordance with generally accepted accounting principles
	(GAAP), and the accompanying independent auditor's report

All financial statements must be final, not draft versions. The Division does not accept compilations.

The following organizations are exempt from the audit requirement by regulation (940 CMR 2.02):

- a) Private foundations that file a 990-PF with the IRS;
- b) Trusts filing probate accounts; and
- c) Trusts audited by certain state and federal agencies.
- 1. Navigate to the Portal website.
- 2. Sign in using your email and password. If you have not made an account yet, please refer to the 'How to Sign Up' section.
- 3. Click on the 'Manage Form PC' button.
- 4. Type in the Attorney General Account Number or Employer Identification Number into the search bar. Click the 'Search Charity' button to return the results.



5. Using the dropdown, select the correct charity. Click on 'Get Form-PC Filings' button.



6. Scroll down to the 'Create a new Form PC' section. Use the dropdown to select the fiscal year for which you wish to file. Be sure to select the END of your fiscal period from the drop-down. For example, a filing for the fiscal period of 7/1/2023 – 6/30/2024 would be the **2024** filing, not the 2023. Note: only the last six years are available for filing. For an organization to be considered "in compliance" with our office, we must have complete filings on record for the **four (4)** most recent fiscal

years.

Create a new Form PC - please select the FISCAL YEAR END from the drop down menu below

-- Select Your Fiscal Year End -
-- Select Your Fiscal Year End -
2024
2023
2022
2021
2020

Once you have selected a year, click 'Start.'



7. A new page will load, and you are able to fill out the Form PC.

The Form PC is broken down into different tabs to make navigating the filing easier. Required fields in each tab are marked with a red asterisk. See below for specific instructions for certain tabs. There are also instructions and additional information built into the Portal, to easily guide you as you complete your organization's filing.

Organization Information Tab:

2019

The "Final Report" check box on the **Organization Information tab** should be checked for PC filers that are permitted under law to stop filing after this report. Examples of PC filers for whom a "Final PC" may be appropriate without a judicial dissolution include: a trust with self-contained termination powers; a charity that has merged into another, separately reporting charity; unincorporated associations; or a non-charity or out-of-state charity that was, but is no longer, holding Massachusetts charitable funds. A charity incorporated in Massachusetts must obtain a judicial dissolution, not merely file a "final report." The Division has prepared a guide to dissolutions that is available on our website.

Solicitation Data Tab:

If your organization solicited contributions <u>during the fiscal year you're reporting on</u> and your org is not claiming the exemption from the solicitation certificate requirement* you must complete all questions related to the Schedule A-1.

If your organization will be soliciting contributions at any time during the fiscal year following the year reported on the Form PC and your org is not claiming the exemption from the solicitation certificate requitement* you must complete all questions related to the Schedule A-2. If your organization will be soliciting funds from the public, you must obtain a Certificate for Solicitation from our office.

*Exemptions are available for 1. Religious organizations or 2. an organization which: (a) does not raise more than \$5,000 during a calendar year OR does not receive contributions from more than ten persons during a calendar year; AND (b) carries out all of its activities, including fundraising, through unpaid volunteers. [The conditions at both (a) and (b) must be met for your organization to qualify for this exemption.]

Financial Data Tab:

The Summary of Financial Data must be completed in its entirety whether or not a similar question has been answered on an attached federal IRS form. You should use your completed IRS form to answer Question 5. Below we have broken down how to complete Question 5 based on the type of tax return you have attached.

Financial Data by IRS Form Your Organization Files				
Sub-Part		Form 990	Form 990-PF	Form 990-EZ
A	Contributions, gifts,	Part I, Line 8 -	Part I, Column	Part I, Line 1
	grants, and similar	Current year	(A), Line 1	
	amounts received			
В	Gross support and	Part VIII,	Part I, Column	Part I, Line 9
	revenue	Line 12-	(a), Line 12 less	less 5c
		Column A	Line 6a	
		less Line7D-		
		Column A		
C	Program services and	Part IX, Line	Part I, Column	Part III, Line
	similar amounts paid out	25 – Column B	(a), Line 25	32
D	Fundraising expenses	Part IX, Line	Enter amount	Enter amount
		25 – Column D	from your own	from your own
			records	records
E	Management and general	Part IX, Line	Not required	Enter amount
	expenses	25 – Column C		from your own
				records
F	Payments to affiliates	Part IX, Line	Not required	Enter amount
		21 – Column A		from your own
				records
G	Total expenses	Part IX, Line	Part I, Column	Part I, Line 17
		25 – Column A	(a), Line 26	
H	Net assets or fund	Part I, Line 22 -	Part III, Line 6	Part I, Line 21
	balances at the end of	End of Year		
	the year			

If your organization had paid employees, you must provide all additional information regardless of whether a question regarding compensation is answered on an attached IRS return.

Does	your organization h	ave paid employees? *	
Yes			▼
	List the total comp	pensation you provided to your	five highest paid employees:
	Name/Title	Hrs/Week	Salary and Other Income
	Benefit Plans	Other Compensation	

Under "Salary and Other Income," report salary, fees, bonuses, severance payments and all other items included as personal income for federal income tax purposes.

Under "Benefit Plans," report (to the extent not reported in other columns) all forms of deferred compensation (whether or not funded or subject to conditions, and whether or not the deferred compensation plan is a qualified plan under federal tax laws) and all payments by your organization to employee benefit plans and retirement plans.

Under "Other Compensation," report (to the extent not reported in other columns) all other taxable and non-taxable benefits.

Restricted Funds Tab:

As a general rule, donor restrictions may only be removed by court order and donated funds may not be loaned in violation of donor restrictions on the use of principal.

Related Parties Tab:

See the definitions linked within the Portal for definitions of "Related Party" "Termination of Employment or Change of Control Compensatory Arrangement" and "Indebtedness".

Report only if payments made or promised to any individual are in excess of four months' salary at time of termination, or \$100,000.00, whichever dollar amount is less.

Schedule VCO Tab:

Charitable organizations established to benefit veterans or the military, who intend to solicit in the Commonwealth, may apply to receive designation as a Veterans Charitable Organization (VCO). VCO status can be obtained by completing the Schedule VCO tab and will be valid for 3 years starting with the year of the Form PC being filed. VCO status exempts eligible organizations from the filing fee requirement of the Form PC, and the \$100 initial registration fee if the organization is registering for the first time. Pursuant to M.G.L. c. 68, s. 19A, any organization receiving VCO status may not utilize paid fundraisers (commercial co-venturers, or professional solicitors); doing so will result in the loss of VCO status.

Schedule RO Tab:

If your organization has a Related Organization as defined within the Portal, you must answer "Yes" and complete Schedule RO. Once completed, Schedule RO should provide a roadmap to the system of organizations which are related to your organization.

For each Related Organization you must identify its name, primary purpose or business activity, and restrictions on its assets as of its most recent FYE, broken down as follows:

	Category of Assets	Additional Description
A	Donor restricted funds (-) liabilities	n/a

В	3 rd party restricted funds (-) liabilities	Those funds which cannot be used other than for their intended purpose without incurring penalties or other adverse impact (for example, insurance reserves or funds restricted by covenants contained in financing instruments) and which were restricted by individuals or organizations unrelated to the reporting charity.
C	Unrestricted funds (-) liabilities	Unrestricted Funds includes funded depreciation.
D	Total net assets (A+B+C)	n/a

You must identify the amount of compensation paid to the chief executive (e.g., executive director) of your organization and the four other current or former directors, trustees, officers, or employees within your family of Related Organizations that receives the highest aggregate compensation within the system of Related Organizations identified in Schedule RO, Section 1. Include these persons even if their compensation is paid only by your organization and not by related organizations. Itemize each compensation source, regardless of number of sources. List only those individuals whose total annual compensation is \$30,000 or higher.

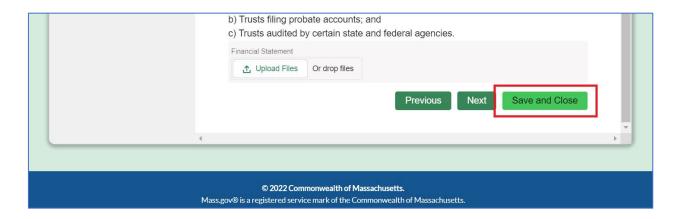
<u>Religious Related Organizations</u>: If the filing organization is related to a religious organization, the filer need not disclose the assets that the religious organization holds or the compensation that the religious organization pays, so long as the filer (1) states the name and primary purpose of the religious organization in the Schedule RO tab, Question 1 and (2) answers "yes" to Schedule RO, Question 3.

Non-Charitable Related Organizations: If the filing organization is a foundation created by a non-charitable Related Organization and the non-charitable Related Organization (a) is not required by law to register and file with the Division, (b) is not created, owned or controlled by any charitable organization, and (c) is not established to benefit or further the purposes of any charitable organization, the filer need not disclose the assets that the non-charitable Related Organization pays so long as the filer (1) states the name and primary purpose or business activity of the non-charitable Related Organization in Schedule RO, Question 1 and (2) answers "yes" to Schedule RO, Question 3.

Charities with a gross support and revenue of \$5,000 or less are not required to file a federal form with the Form PC. If your organization's revenue is under that threshold, the Division will ask that you nevertheless complete Question 5 using figures from your own records.

Completing the Annual Form PC Filing in Multiple Sittings

- 1. Complete the steps to create a Form PC.
- 2. Once some information has been filled out and you wish to close the Form, use the 'Save and Close' button located at the bottom of each page. The page will reload and you will be brought to the Portal home page.



- 3. When you are ready to complete more of the Form PC, return to the Portal page.
- 4. Click on 'Manage Form PC' button.
- 5. Type in either the Attorney General Account Number or Employer Identification Number of the charity you have started the Form PC for. Click 'Search Charity.'
- 6. Scroll down the page to the 'Your Active Filings' section. Your draft Form PC filings should be displayed with the Filing Year and a Filing Status of 'In-Progress.'

Note: only the user who is signed in & started this filing will be able to see this.

7. Click on the pencil icon labeled as "click to edit" - this will open up the Form PC. (To simply view the information you have input so far, select "click to view". From this page you can print to PDF if you wish to share a draft with others. See page 11 for more).



8. When you are ready to Submit the Form PC, you will be asked to provide Reviewer/Signatory information in the Reviewer's Data tab. You will be asked if you, the preparer/eFiler, are an Authorized Signatory. If you are, you'll be asked to input your name as confirmation of signature.



If you are not an Authorized Signatory, or in the event that you need a second Signatory, you will be asked to provide the name and email address of an Authorized Signatory. You cannot list yourself as an additional Signatory. <u>If your organization solicits funds from the public, you must have a total of two Authorized Signatories listed on the filing</u>. This means that if you, the eFiler, are not an Authorized Signatory, you will need to provide two other names/email addresses.

Please enter the name and email of an Authorized Signatory that is NOT YOU.
Name *
Email *

9. Go to the Form Submission tab, check the Box and enter your name as the Preparer of the Form PC then click 'Submit'.

✓	Ι,	Enter your full name	, declare that the inf	ormation
	furnished in this report, including all attachments, is true and correct to the best of my knowledge.			
				Submit

How to Share a Draft of Form PC

Note: Only the individual who created the Form PC record will be able to perform this task.

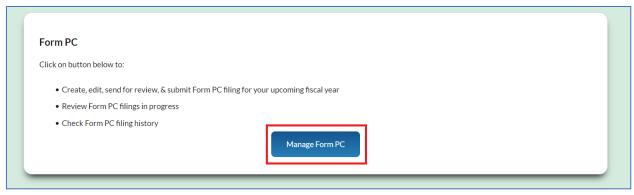
- 1. Log into the portal. Click on 'Manage Form PC' and enter the AG Number of the form that you wish to share the draft of.
- 2. Scroll to 'Your Active Filings' where you will see the in-progress filing.
- 3. Select on the "Click to view" option. This will open a new tab with a printable view of the Form PC.



- 4. In upper right corner of the PC data page, use the 'Print This Page' button to either save as a PDF and share electronically or to print the Form PC draft and share physically.
 - Close Window
 - Print This Page
 - Expand All | Collapse All

How to Electronically Sign the Annual Form PC Filing/Schedule A2

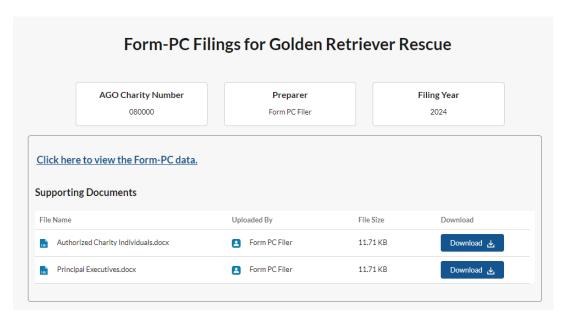
- 1. If the Annual Form PC Filing/Schedule A2 preparer is an Authorized Signatory for the charity, then the preparer can input their signature on the final tab "Form Submission."
- 2. If additional signatures are required, the preparer will enter names and email addresses in the Reviewer's Data tab.
- 3. If you are a Reviewer/Authorized Signatory (and non-preparer), you should navigate to your email inbox and search for the email titled 'Annual Filing/Schedule A2 Filing for [Charity Name] Is Waiting for Your Review.'
- 4. Click on the link provided to you in the email. This will bring you to the Portal.
- 5. If you do not have a Portal account, create one now. Refer to 'How to Sign Up' instructions. If you do have a Portal account, log in.
- 6. Click 'Manage Form PC' or 'Manage Schedule A2' button.



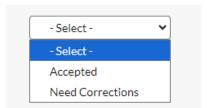
- 7. Type in either the Attorney General Account Number or Employer Identification Number of the charity for which you must review the filing. Click 'Search Charity.'
- 8. Scroll down to the 'Submitted Filings for Your Review and Signature' section.
- 9. Select the "Click to Review" button all the way to the right of the record



10. A new page will open where you can view the Form PC draft as well as the attachments included in the Form PC.



11. Review the data & documents and record your review decision of either 'Accepted' or 'Need Corrections.'



If the filing needs corrections, you must communicate with the eFiler offline what needs to be corrected, as they will not be automatically notified. If you select "Accepted" you will attest that the information is correct, and then hit the Submit button.



How to Recall a Filing for Editing

After submitting a filing for signature, an eFiler may find it necessary to edit some information on a filing. One common scenario may be that a Reviewer/Authorized Signatory's email address was entered incorrectly, or an organization wishes to name a different person as a Reviewer/Authorized Signatory. In the instance that an eFiler may need to edit a filing after it has already been submitted for signature, please follow these steps:

- 1. Log into the charity portal and click on the "Manage Annual Filing" section, then search for the organization by AG account number.
- 2. Scroll down to the filings in the Awaiting Signature section and locate the FY filing that you want to recall.
- 3. Select the "Click to recall" button all the way to the right of the record



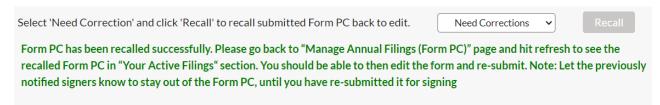
4. Select "Need Corrections" and then hit "Recall" in the dropdown at the bottom of the new screen

Select 'Need Correction' and click 'Recall' to recall submitted Form PC back to edit.

Need Corrections

Recall

5. Notify the reviewers that you (eFiler/preparer) are making edits, so they do not attempt to access the form until it is resubmitted to signers for review.



6. You'll be redirected to the "Manage Annual Filing" section of the Portal, where you can search by AG number and find this filing now listed as "In-Progress". You will be able to edit to update any information necessary before the filing is once again submitted for signature. Please note: if the filing has been accepted by all listed Signatories, the filing will no longer for available for recall.

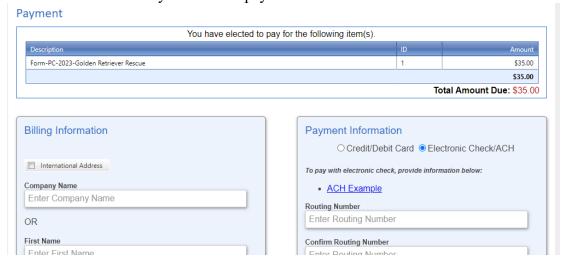
How to Submit a Payment for a Charity's Registration/Annual Form PC Filing/Schedule A2

Note: when completing a Form PC or Schedule A2, you must make a payment before the filing is officially submitted to the AGO for review and processing. You will receive an email notifying you that the filing has been approved by all signatories and is pending payment before official submission. For the registration, you are not required to make a payment until after the AGO's review.

- 1. Navigate to the Portal and sign in.
- 2. Scroll down to the 'Payments' section and click on 'Make Payments.'
- 3. Type in the AG Account Number for the charity for which you would like to make a payment.
- 4. If any payments are owed, they will be shown under 'List of Pending Payments.' This will include Form PC, Schedule A2, and Registration fees.



- 5. Select the "Click to pay" button, and you will be redirected to the payment processing site, nCourt.
- 6. We accept credit/debit card payments, as well as electronic check/ACH payment. You will pay a small convenience fee if you elect to pay by credit card. ACH transfer does not involve a fee. Fill out the Billing Information and Payment Information sections. Double check to ensure accuracy and submit payment.



7. You will receive an electronic receipt from payment processor nCourt to confirm that the payment was submitted. If this is a Form PC/Schedule A2 payment, you will also be notified via email by the AGO that the charity's filing was submitted successfully.

How to Submit Miscellaneous Charity-Related Documents

Note: The Initial Charity Registration Form and Annual PC Filing will require you to attach some documents within the forms. This additional Upload Documents feature applies to the instances where you need to submit a charity document to the AGO, but you are not submitting an Annual Filing at that time (e.g., updated by-laws, instrument of trust, articles of organization). You cannot use this feature to upload attachments for a specific Annual Filing.

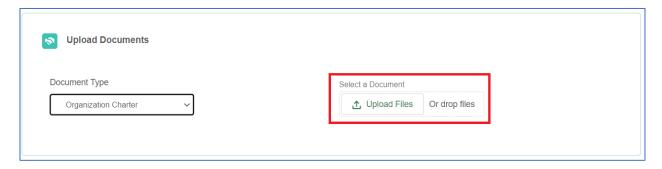
1. Navigate to the Portal and sign in. Scroll down to the Upload Documents section and click on 'Upload Documents.'



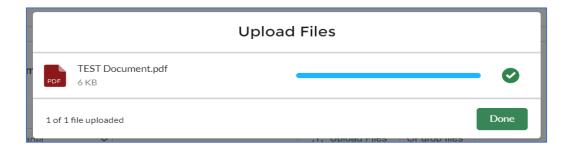
- 2. Enter the Attorney General Account Number you wish to upload documents for.
- 3. Select the document type from the dropdown. If none apply to the document, please select 'Other Optional Attachment.'



4. Use the 'Upload Files' button to select the document from your files that you are looking to upload.

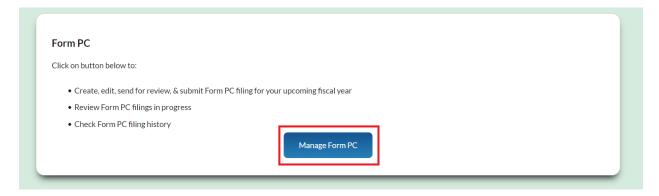


5. Once your file has uploaded, you will see this popup. Press 'Done' and your file will be successfully submitted, as noted by a message onscreen.



How to Electronically Sign the Annual Form PC Filing/Schedule A2

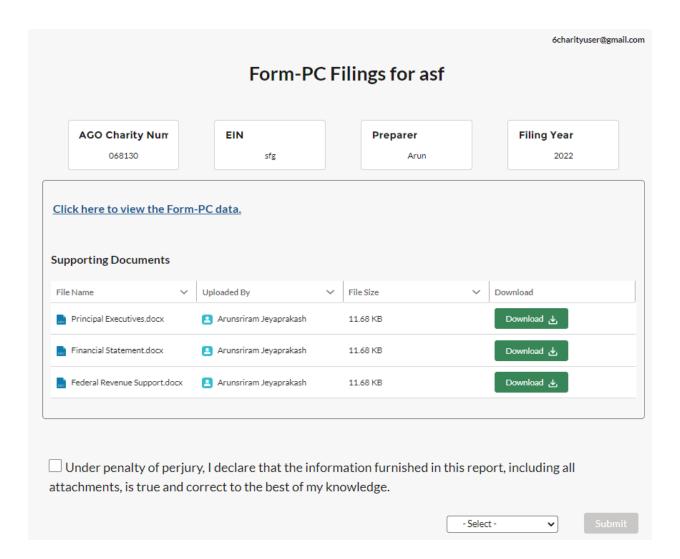
- 1. If the Annual Form PC Filing/Schedule A2 preparer is an Authorized Signatory for the charity, then the preparer can input their signature on the final tab "Form Submission."
- 2. If additional signatures are required, the preparer will enter names and email addresses in the Reviewer's Data tab.
- 3. If you are a Reviewer/Authorized Signatory (and non-preparer), you should navigate to your email inbox and search for the email titled 'Annual Filing/Schedule A2 Filing for [Charity Name] Is Waiting for Your Review.'
- 4. Click on the link provided to you in the email. This will bring you to the Portal.
- 5. If you do not have a Portal account, create one now. Refer to 'How to Sign Up' instructions. If you do have a Portal account, log in.
- 6. Click 'Manage Form PC' or 'Manage Schedule A2' button.



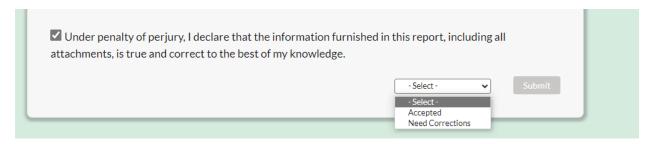
- 7. Type in either the Attorney General Account Number or Employer Identification Number of the charity for which you must review the filing. Click 'Search Charity.'
- 8. Scroll down to the 'Submitted Filings for Your Review and Signature' section.



- 9. Click on the arrow all the way to the right of the record you would like to open in the 'Click to review' column. Select 'View.
- 10. A new page will open where you can view the Form PC draft as well as the attachments included in the Form PC.



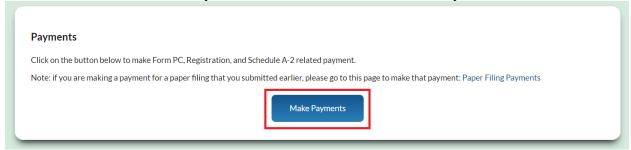
11. Review the data & documents and record your review decision of either 'Accepted' or 'Needs Corrections.' If it needs corrections, communicate with the eFiler offline what needs to be corrected, as they will not be notified at this time.



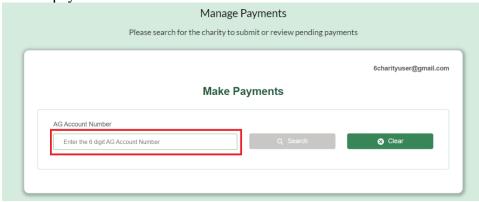
How to Submit a Payment for a Charity's Registration/Annual Form PC Filing/Schedule A2

Note: when completing a Form PC or Schedule A2, you must make a payment before the AGO can review the charity's filing. You will receive an email notifying you that the filing has been approved by all signatories and is pending payment before official submission. For the registration, you are not required to make a payment until after the AGO's review.

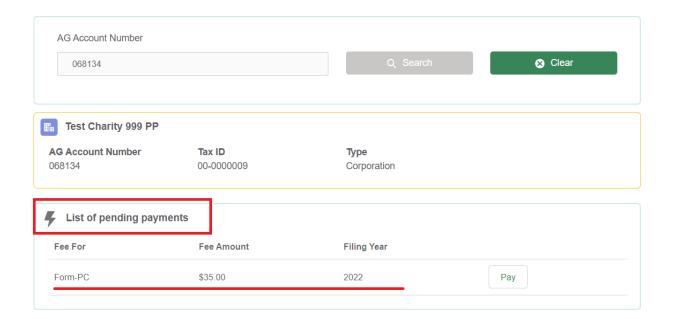
- 1. Navigate to the Portal and sign in.
- 2. Scroll to the 'Payments' section and click on 'Make Payments.'



3. Type in the AG Account Number for the charity for which you would like to make a payment.



4. If any payments are owed, they will be shown under 'List of Pending Payments.' This will include Form PC, Schedule A2, and Registration fees.



5. Click on the 'Pay' button, and you will be redirected to the payment processing site.



- 6. Fill out the billing and card information. Double check to ensure accuracy and click 'Submit Payment.'
- 7. You will receive an electronic receipt from payment processor nCourt to confirm that the payment was submitted. If this is a Form PC/Schedule A2 payment, you will also be notified by the AGO that the charity's filing was submitted successfully.

OFFICE OF THE ATTORNEY GENERAL

GUIDE FOR BOARD MEMBERS OF CHARITABLE ORGANIZATIONS

DECEMBER 2022

ATTORNEY GENERAL'S GUIDE FOR BOARD MEMBERS OF CHARITABLE ORGANIZATIONS

December 2022



Office of the Attorney General 1 Ashburton Place, Boston, MA 02108 www.mass.gov/ago

TABLE OF CONTENTS

INTR	ODUCTION 3
I.	BOARD MEMBERS HAVE RESPONSIBILITIES5
II.	EDUCATE YOURSELF
III.	YOU HAVE THE RIGHT TO INFORMATION
IV.	PAY CLOSE ATTENTION TO FINANCIAL MATTERS
v.	MAKE SURE YOUR BOARD IS VITAL AND DIVERSE11
VI.	CHOOSE AND EVALUATE YOUR ORGANIZATION'S LEADERSHIP CAREFULLY 13
VII.	GET INVOLVED IN SETTING EXECUTIVE COMPENSATION15
VIII.	BEWARE OF CONFLICTS OF INTEREST17
IX.	OTHER RESOURCES TO ASSIST YOU IN YOUR RESPONSIBILITIES20

INTRODUCTION

This guide is provided by the Attorney General's Office to help board members of charitable nonprofit organizations carry out their important responsibilities. As a board member you have both the privilege and the responsibility of participating in the governance of an organization that is operated not for the benefit of private individuals, but for the benefit of the public. As the agency of the Commonwealth charged with protecting the public's interest in your organization's activities, the Attorney General's Office deeply appreciates your willingness to serve as a board member and recognizes that your hard work and dedication perform an extremely important service for all citizens of the Commonwealth.

While portions of this guide may be helpful and applicable to all nonprofit organizations, it should be emphasized that it is specifically designed for board members and trustees of those nonprofit organizations (e.g., charitable nonprofit corporations, trusts, unincorporated associations, and LLCs) that are "public charities." What constitutes a public charity is not widely understood, and people are often surprised to learn that these organizations range in size, scope and complexity from our largest universities and health care systems to small, neighborhood-based social service organizations. As a general rule these otherwise diverse organizations are linked not just by nonprofit status, but also because they operate on an exclusively charitable basis and collect, hold and expend funds solely for the benefit of the public.

Examples of nonprofit organizations that **are** public charities include philanthropic organizations as well as most of our hospitals, colleges and universities, social service providers, cultural organizations, parent-teacher associations/organizations, and youth sports leagues. Examples of nonprofit organizations that **are not** public charities and are therefore not regulated by the Non-Profit Organizations/Public Charities Division of the Attorney General's Office, include chambers of commerce, labor unions, social clubs, civic associations and similar organizations that benefit only their members. If you have any doubt regarding your organization's status, you should consult legal counsel or contact the **Non-Profit Organizations/Public Charities Division** of the Attorney General's Office at (617) 963-2101.

Often we are asked what we believe are the most important things board members can do to best serve their organizations. Here are our recommendations in key areas of stewardship. While this guide is not intended to prescribe the exact manner in which a Massachusetts public charity board must function, and while we recognize that the size, form and structure of boards vary greatly, we believe that this guide will help all board members and trustees do their jobs well.

I. BOARD MEMBERS HAVE RESPONSIBILITIES

If you are a member of the board of directors of a charitable organization, you and your fellow board members are responsible for governing the organization.

The law imposes upon you two primary duties: the duty of care, and the duty of loyalty. The **duty of care** means that you must act with such care as an ordinarily prudent person would employ in your position. The **duty of loyalty** means that you must act in good faith and in a manner that you reasonably believe is in the best interest of the organization, in light of its purposes. Because a charitable organization exists to further a charitable mission, it is appropriate to view these fiduciary duties as **duties you owe to the charitable mission** of the organization at least as much as, and in some circumstances even more than, to the organization itself.

As discussed throughout this guide, it is your job to oversee the executive director (ED) or chief executive officer (CEO) and other senior leaders, and to see that the organization is faithfully carrying out its charitable purposes without extravagance or waste.

THIS MEANS:

- You should evaluate your existing commitments and obligations to ensure that you have adequate time and energy to dedicate to your role on the board.
- You should attend board meetings and meetings of committees on which you serve. You should make sure that you receive detailed information beforehand about matters that are going to be voted on at a meeting.
- You should carefully read all of the material that you receive and prepare yourself to ask questions.
- You should use your own judgment and not simply take the word of your CEO or fellow board members.

Your entire board should periodically complete a self-assessment about how well the board is performing its oversight and leadership functions. Among other criteria, a good self-assessment will take into consideration your organization's mission and industry, consider how well the organization is furthering its charitable purposes, and evaluate the organization's diversity, including, but not limited to diversity in leadership and representation from the community the organization serves. To get started, your board may consider using a self-assessment tool. For example, resources related to board self-assessments can be found at https://www.councilofnonprofits.org/tools-resources/self-assessments-nonprofit-boards.

IN SHORT:

You are responsible for helping ensure your organization is fulfilling its charitable purpose and you should be aware of and informed about every major action the charity takes.

II. EDUCATE YOURSELF

Board members of a charity should be knowledgeable about their role in the governing process, the mission of the organization, and the unique operational, legal, and financial issues facing the organization.

THIS MEANS:

- You should have a copy of, and be familiar with, the articles of organization of your organization and the bylaws of your board. Understand the organization's indemnification policy and any insurance policies that may apply.
- Board members should regularly attend training on fiduciary obligations, sub-sector specific trainings relevant to your organization (e.g., higher education, health care, animal welfare), and trainings on good governance practices, including diversity and equity issues, implicit or unconscious racial or ethnic biases, and other matters that impact effective board composition and functioning.
- Particular attention should be given to providing orientation to new board members.
- Programs and materials should draw on the expertise of specialists in the fields related to your board responsibilities.
- The organization should have a board manual which should include, among other things, governing documents, copies of the most recent regulatory filings (e.g., IRS Form 990 and audited financial statements), budget, and other orientation materials, including this guide.

IN SHORT:

As a board member, you must take the initiative to educate yourself on an ongoing basis about your role and responsibilities, and the board as a whole must take responsibility for its own training and orientation.

III. YOU HAVE THE RIGHT TO INFORMATION

In order to carry out your legal responsibilities as a board member, you must be able to make informed judgments about important matters affecting the organization. The law permits you to reasonably rely on information from the organization's staff, lawyer, auditor, outside advisors, and board committees in making those judgments. If you do not have adequate information, you have the right to get it.

THIS MEANS:

- You have the right to have reasonable access to management.
- You have the right to have reasonable access to internal information of the organization.
- You have the right to have reasonable access to the organization's principal advisors, such as its auditors or attorneys, for example.
- Senior management must be willing to facilitate board access to the books and records of the organization.
- Senior management must be willing to facilitate communications between the board and the principal advisors of the organization.
- The board has the right, if necessary, to engage the services of outside advisors at the organization's expense to assist it with a particular matter.

IN SHORT:

You have the right to obtain the information you need to carry out your responsibilities as a board member.

IV. PAY CLOSE ATTENTION TO FINANCIAL MATTERS

As a board member you have primary responsibility for making sure that the charity is financially accountable, that it is not allowing charitable assets to be used inappropriately or diverted to private interests, that it has mechanisms in place to keep it fiscally sound, and that it is properly using any restricted funds it may have.

THIS MEANS:

- The board should make sure that a realistic annual budget is developed.
- The budget should be developed early enough that the entire board can be involved in its review and approval before the beginning of the fiscal year.
- The board has an obligation to act as a responsible fiscal steward, regularly considering the organization's short- and long-term financial health and acting accordingly.
- The board should be sure that the charity has adequate internal accounting systems and controls. At a minimum, the board should discuss and approve all delegations of its signatory authority, put these delegations in writing, and review them annually. In addition, the board should consider requiring board action on large or especially significant contracts or grants, and on all transactions involving real estate, borrowing, or sale/disposal of large assets. Board members should expect management to produce timely and accurate income and expense statements, balance sheets, and budget status reports, and should expect to receive these in advance of board meetings. These reports ought to be easily understood by the majority of board members and board members should take an active role in reviewing and questioning the information in them.
- The board should require periodic confirmation from management that required filings with relevant government agencies, such as the Internal Revenue Service, the Secretary of the Commonwealth, and the Non-Profit Organizations/Public Charities Division of the Attorney General's Office, are up to date. The board should also ensure that employee

- withholdings, insurance premiums and wages are properly and timely administered.
- The board should consider the value of having independent audits and maintaining standing audit and finance committees. However, if these committees are established, the full board should still receive and act on the report of the independent auditor, receive periodic financial reports, and approve the budget.
- The board should make sure that fundraising is done honestly and with integrity. The board also should make sure that any contract with an outside professional fundraiser is fair and reasonable, and that the fundraiser's performance is monitored.
- The board should confirm that any restricted gift to the charity is separately accounted for, and that the funds are being used in accordance with the terms of the restriction. If the terms of any existing restriction on funds conflict with the organization's mission or public policy (e.g., restrictions that are discriminatory overtly or in operation), the board should direct management to seek modification of those terms, which may be available by judicial modification, by agreement of the donor, or in some cases, by administrative modification through the Attorney General's Office. The board should ensure that the organization has a system in place to prevent the acceptance of gifts with restrictions that conflict with the organization's values, public policy, or the public good (e.g., restrictions that could exacerbate racial and ethnic inequities).

IN SHORT:

The board should be informed about all aspects of the organization's finances and is ultimately responsible for the financial health and integrity of the organization.

V. MAKE SURE YOUR BOARD IS VITAL AND DIVERSE

A charity's board should be vigorous and responsive to the mission of the charity. You should make sure that your board's process for selecting new members assures diversity of viewpoints and representation, and allows for rotation of board members and officers (e.g., by including term limits for board members and officers). As a board member, you are responsible for ensuring that the public and charitable role of the organization will be carried out in a way that is effective in furthering the mission of the charity and that avoids or ameliorates apparent or actual inequities, including in access to the organization's services.

A nominating process that invites openness, variety, and change is important to achieving this goal. The board should develop an equitable and inclusive board recruitment practice that encourages a diverse pool of candidates.

THIS MEANS:

- Your nominating process should reach candidates whose commitment, skills, life experience, background, perspective, or other characteristics will serve the organization and its needs.
- The nominating process should actively seek out and recruit board members who reflect diverse racial and ethnic backgrounds, experiences, and skills. Importantly, representation on the board should include individuals connected to and reflective of the community that the organization is serving.
- The board should regularly review qualifications for new board members, including any financial contribution expectations to ensure that they do not deter consideration of a more diverse group of candidates.
- A larger candidate pool may result if you include non-board members as well as board members on your nominating committee.
- Term limits for board members are an effective way to ensure board vitality.

If your board does not have term limits, board members should be reviewed

periodically to confirm that they remain interested in and suitable for the board and that they are still able to commit the necessary time to their role on the board. Rotation off the board, assignments to off-board committees, and designation as emeritus members are other ways to achieve a vigorous board while retaining the value long-time board members can bring to the organization.

IN SHORT:

To avoid becoming labeled as a closed club for "insiders only," choose board members who have an interest in the organization's mission, represent diverse viewpoints and diverse racial and ethnic backgrounds, experiences, and skills.

VI. CHOOSE AND EVALUATE YOUR ORGANIZATION'S LEADERSHIP CAREFULLY

Hiring the organization's leadership, including its CEO or ED, is one of the most important tasks you have as a board member. It is the job of the board to engage in a selection process that will allow the board to find the right person to carry out the charity's purpose efficiently and effectively, and to do so through equitable recruitment, hiring, and compensation practices that encourage a diverse pool of applicants.

THIS MEANS:

- The board should form a search committee at the beginning of the hiring process for any leadership positions, including the CEO or ED position. If the board does not create a written job description for the position prior to hiring, it should at least develop a profile of the sort of leader it believes the organization's mission and current needs require.
- The board should regularly consider whether there is representation from diverse racial and ethnic backgrounds in its leadership, including representation from individuals connected to and reflective of the community that the organization is serving.
- A majority of the search committee members should be board members, but it may be beneficial to include staff members, a diversity officer, or others knowledgeable about the organization and its mission on the committee.
- If the size of the board permits, the entire board should interview the final candidates and participate in contacting their references.
- The entire board should make the final decision to hire the CEO or ED.
- After the CEO or ED is hired, the board should periodically review and assess their performance and commitment to the organization, keeping in mind that the board has the authority to discharge as well as hire senior leadership.

IN SHORT:

Board members should actively participate in hiring the organization's leadership and should do so through equitable recruitment, hiring, and compensation practices that encourage a diverse pool of applicants.

VII. GET INVOLVED IN SETTING EXECUTIVE COMPENSATION

The board is responsible for setting the compensation of the organization's CEO and, where appropriate, other senior managers. When setting executive compensation, you should be mindful that the public, which supports the charity and uses its services, is interested in knowing the amount. This information is provided to the public on the Attorney General's Office's Form PC and the Internal Revenue Service Form 990, both of which are posted on the Attorney General's Office's filing search page at https://www.mass.gov/service-details/search-public-charities-filings. In addition, Forms 990 are available on the Internal Revenue Service search page at https://apps.irs.gov/app/eos/ as well as third party sites like https://www.charitynavigator.org/

In addition, both the IRS and the Non-Profit Organizations/Public Charities Division from time to time scrutinize the reasonableness of a charity's executive compensation and the process used by the board to determine this compensation. Complaints of excessive compensation or private benefit, whether from regulators or from the public, can expose the organization and its board members to legal action and risk reputational harm.

THIS MEANS:

- Every board member should know what members of senior leadership are paid, including the value of any non-salary compensation, such as the use of an automobile, retirement funds, etc.
- Even if a compensation committee is used, the entire board remains responsible for compensation decisions and must be fully informed. In setting compensation, you should consider the performance of your CEO and senior managers and the compensation provided to other similarly situated executives in the field. If the board chooses to engage a compensation consultant to gather or review this information, it should not rely solely on the recommendations of the consultant. Board members are responsible for determining what level of compensation is

reasonable for their organization, taking into account other important factors such as the concerns of donors, the impact on the charity's mission and finances, and the organization's reputation. In evaluating the impact compensation may have on the organization's reputation, the board should take into consideration the perception of senior leadership's compensation as a whole, including any compensation that leaders receive from positions held because of, but outside of, their role at the charity (e.g., for-profit board membership compensation).

IN SHORT:

Your process for setting executive compensation, the amount of such compensation, and the terms of such compensation should all be well documented, approved by the full board, and be sensitive to public concerns and regulatory oversight.

VIII. BEWARE OF CONFLICTS OF INTEREST

As a member of the board, you may find yourself in situations in which your board service conflicts with another aspect of your personal or professional life. For example, you, a business you control or benefit from financially, a member of your family, or a close friend may be considering whether or not to engage in a transaction with the organization on whose board you are sitting. Further, you may serve on other boards and the work of those organizations may overlap or could appear to compete with one another. Although not an exhaustive list, situations such as these present a potential conflict between your own interests and your duty as a board member to be absolutely loyal to the organization and its mission. It also may look questionable to the public.

Because of these problems, a board member should be cautious about entering into a business relationship with the charity the board member is overseeing, and the charity's board should be very cautious about allowing the charity to enter into such a relationship. Such a transaction should not occur unless the board determines it is clearly in the best interest of the charity. Prior to the board vote, the board member should fully disclose their financial interest to the entire board, and the conflicted board member should not vote on any aspect of the arrangement or be present when the board is deliberating or voting on any aspect of the arrangement. Upon notice of the conflict, the entire board should consider whether the proposed transaction or relationship is clearly in the best interest of the charity, including consideration of the public perception of any such transaction and the impact that may have on the charity's reputation.

THIS MEANS:

- You should ensure that your board has a policy for dealing with conflicts of interest.
- The policy should include a procedure for the annual written disclosure by all board members, senior leaders and key decision makers in the organization of their business involvements with the charity and their other board memberships and business interests, both for-profit and charitable.

The information disclosed should be circulated to all board members and be updated throughout the year as necessary. The Attorney General's Non-Profit Organizations/Public Charities Division requires that the value and terms of these related party transactions be disclosed on the organization's annual Form PC filing.

- Your conflict-of-interest policy should address the issues raised if board members or other senior managers have or might acquire investments that may affect or be affected by the charity's investment or operational decisions. In addition, it should address other conflicts that can be reasonably foreseen, based on the organization's charitable activities. For example, a grant-making organization should consider how to address grant applications from an entity that has an employee or board member serving on the grant-making organization's board.
- In addition to the disclosure of financial interests and conflicts of
 interest, the policy should also include a procedure for the withdrawal
 from discussion and voting by the board member or senior leader with
 a conflict. This procedure should be followed whenever the charity
 enters into a business transaction with a board member or senior
 leader, or with an entity in which a board member or senior leader has
 an interest.
- It may be advisable to obtain an outside evaluation or appraisal of any major business transaction that is being proposed between the charity and a board member or leader or any entity in which a board member or leader has an interest. This evaluation is to assure that the proposal is feasible, the terms are favorable to the charity, and the potential pitfalls of such a transaction, including any potential harm to the charity's reputation, have been identified.
- The board should carefully consider the pros and cons of entering into relationships, such as management contracts, the creation of subsidiary entities (whether they are for-profits or nonprofits), and other transactions that involve inherent conflicts of interest because the board's duties of care and loyalty are being divided among several entities or delegated, even in part, to another entity.
- Because of the sensitivity of conflict-of-interest issues, you may want to require that transactions involving these issues receive a greaterthan-majority vote.

IN SHORT:

Any conflicted transaction should be scrutinized very closely by the board, both because of the dynamic it creates within the board and because of the predictable skepticism with which the public and regulators will view the transaction, no matter how scrupulously a careful policy is followed.

IX. OTHER RESOURCES TO ASSIST YOU IN YOUR RESPONSIBILITIES

The Attorney General's website provides access to a number of useful publications, advisories, guidance documents, and reports produced by the Non-Profit Organizations/Public Charities Division. These may be viewed online or downloaded from https://www.mass.gov/information-for-existing-charities. In addition, all forms and instructions issued by the Division are also available on the website at www.mass.gov/ago/charities.

For further education and information, consider the following resources:

- IRS Educational Resources and Guidance for Exempt Organizations: https://www.irs.gov/charities-non-profits/educational-resources-and-guidance-for-exempt-organizations
- Board Accountability and Best Practices: https://www.councilofnonprofits.org/tools-resourcestags/Accountability
- Board Governance and Planning: https://boardsource.org/
- Diversity, Equity, and Inclusion Guidance: https://www.councilofnonprofits.org/tools-resources-categories/diversity-equity-and-inclusion
- Association of Governing Boards of Universities and Colleges: https://agb.org/
- Lawyers Clearinghouse: https://www.lawyersclearinghouse.org/
- Massachusetts Nonprofit Network: http://massnonprofitnet.org/
- Nonprofit Profiles:
 - o https://guidestar.org/
 - o https://www.charitynavigator.org/



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