Introduction

This book was prepared to assist attorneys who represent nonprofit organizations. This book is not intended to provide an extensive review or analysis of nonprofit issues, but is instead for the attorney who does not regularly practice in the area of nonprofit law and seeks a general understanding of issues common to nonprofits. Because this book is intended to provide an overview of the law with regard to particular issues, it provides limited statutory and regulatory citations. The reference materials listed in Appendix C provide more detailed analysis and citations.

As discussed throughout this book, many of the legal requirements imposed on nonprofits are based on state nonprofit corporation law. Each state’s nonprofit corporation act is unique, so it is important that the attorney become familiar with the attorney’s state nonprofit corporation act. The Nonprofit Organizations Committee of the ABA Business Law Section has developed model nonprofit corporation acts over the years that have been the basis for many state nonprofit corporation acts. The Revised Model Nonprofit Corporation Act of 1988, which was adopted by many states, was replaced by the Model Nonprofit Corporation Act, Third Edition, in 2008 (MNCA). The MNCA reflects the latest trends in nonprofit corporation laws and is therefore referenced throughout this book.

This book is organized in a manner similar to the webinar series upon which it is based.

Chapter 1 reviews some basic questions an attorney should ask a client when advising on nonprofit issues, whether the attorney is asked to help form a new nonprofit corporation or advise on some other nonprofit matter.

Chapter 2 addresses issues relating to formation and describes important documents that are part of the formation process, including articles of incorporation and bylaws.
Chapter 3 focuses on taxation issues with a focus on the types of federal tax exemptions that are available under the Internal Revenue Code, the classifications of nonprofits with tax-exempt status under section 501(c)(3), and the application process for federal tax-exempt status. Chapter 3 also summarizes the requirements associated with the information reporting filings (Form 990) required of tax-exempt entities. Finally, the chapter provides a summary overview of some other tax issues that can arise for tax-exempt entities including private inurement and benefit, unrelated business income tax, the prohibition on nonprofits with tax-exempt status under section 501(c)(3) with regard to political campaigns and limits imposed on these types of entities with regard to legislative lobbying.

Chapter 4 addresses governance matters and describes the individuals involved in the governance of a nonprofit corporation as well as the fiduciary duties imposed on the board of directors. This chapter summarizes some of the protections available to directors in the form of state and federal liability shields, indemnification, and directors and officers’ liability coverage. Chapter 4 also reviews the impact of the Form 990 on governance as well describes board policies that help an organization ensure good governance. The chapter addresses the issues that arise when an attorney for the nonprofit also serves as a member of the board of directors of the nonprofit. Finally, Chapter 4 discusses keys to effective board service as well as describes steps to be taken for corporate housekeeping.

Chapter 5 focuses on other matters that often arise in representation of a nonprofit and includes discussion on subsidiaries of nonprofits, the merger, sale of assets and other entity combinations involving nonprofits, and dissolution of nonprofits.

The appendices include a checklist for articles of incorporation and bylaws, a list of tax exemptions under the Internal Revenue Code, as well as resource materials that can provide more detailed information on the subject matter provided in this book.