Focus on Foundations: Are You Following Your Own Rules?

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Every foundation has a "governing instrument." In the case of a foundation created as a trust, it's the trust document. In the case of a foundation created as a nonprofit corporation, it's the certificate of incorporation and the bylaws.

From time to time (at least once a year), you should blow the dust off of these documents and read them. You may find that you are not abiding by your own rules. Some of the more common problems are:

1. **Failure to have the correct number of trustees/directors.** Count the heads and check what your documents allow and provide. Do you have too few/too many trustees or directors? You should also review the chronology of trustees and directors. Have retiring directors or trustees properly resigned? Have they stayed on after the expiration of their terms? Have new directors and trustees been properly added?

2. **Having the proper number and types of officers.** If your foundation is a nonprofit corporation, it must have officers. Have you elected officers for all of the slots required in your documents? Are their titles consistent with the officers provided for in your bylaws? Have any continued on after their specified terms and without being reelected?

3. **Failure to meet at least annually.** If your foundation is a nonprofit corporation, the directors must have an annual meeting under the laws of New Jersey and most other states (or conduct their annual business by unanimously agreeing to certain actions). Trustees of foundation trusts are not required by state law to meet annually, but they should convene at least that often.

4. **Following the foundation’s stated purposes.** Many foundations are organized to fulfill specific charitable purposes.
Even foundations with broad charitable purposes may have (and, in fact, should have) adopted mission statements. Is the foundation operating in pursuit of those purposes, or has it detoured into other charitable endeavors?

If your foundation is a nonprofit corporation, another common problem is the failure to file your corporate annual report in your state of incorporation (and in any other state where you do business). The annual report forms can easily be waylaid in the mail. And if you fail to file these reports for several years (in New Jersey, it's two years), your corporate charter can be revoked. On your own initiative, each year you should confirm that your annual reports have been filed. If you maintain the discipline of holding at least annual meetings, this is one of the checklist items to review at that time.

Running a successful foundation requires some regular attention to the corporate housekeeping. For-profit corporations also need to attend to these issues, but a nonprofit organization is particularly vulnerable, since non-compliance with these formalities could jeopardize your tax-exempt status.

If you have not reviewed your "governing instruments" in some time, you may find that they no longer reflect your intentions. They can always be amended (consistent with state law and federal tax-exempt organization rules). You may find it more convenient to be more flexible in your documents (e.g., providing for a minimum number of directors/trustees, rather than specifying an absolute number). You may want to allow, but not mandate, certain corporate officers which state law does not specifically require (e.g., vice presidents). In short, it is possible that your governing instruments can be modified so that the risk of inadvertent non-compliance is reduced.

So, please take a look at your documents. Convene your directors or trustees at least annually. Arm yourself with a checklist of these issues so that you can review them at least annually. Keep your foundation's "house" clean.