



Lions Legal Considerations 2017

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LIONS CLUBS LEGAL SUMMARY

#1 All Lions Clubs are chartered by and under the jurisdiction of the International Association of Lions Clubs. Club officers and directors should perform their fiduciary duties (page 2) and understand the requirements of their governing documents (page 3).

#2 It is strongly recommended that each Lions Club incorporate itself as a not-for-profit corporation and stay current with its statements of continued existence with the Secretary of State (page 4). This important step helps protect club member's personal and real property from liability claims.

#3 Individual Lions Clubs are federally tax-exempt under section 501 c 4 of the Internal Revenue Code (page 5). An informational return should be filed annually with the IRS (page 6) to avoid revocation of the club's tax exempt status.

#4 All Lions Clubs should also be registered with the Ohio Attorney General's office. The Attorney General is entrusted with the protection of all Ohio citizens and thus oversees the operations of all non-profit organizations in Ohio (page 7).

#5 Club officers and directors should be knowledgeable concerning the Ohio sales tax regulations and how they apply to one's Lions Club (page 8).

#6 Other items that club officers and directors should be knowledgeable with include the rules in Ohio for gaming activities, bingo and raffles (page 9), the club's liability insurance (page 10), and as well, the matters of Lions trademark protection, copyright laws and privacy policies (page 11).

Copyrighted by:
Lion Steve Kaplan
2915 Bridle Path Way
Troy, OH 45373
(937) 335-7345
skpk1984@aol.com

Fiduciary Duties

The term **Fiduciary Duties** refers to a trustee's responsibility to handle the financial and management decisions of the organization. Trustee is the legal term, in Lions Clubs we call these individuals officers and directors. Serving as a Board Member is not an honorary title. There are specific legal duties owed to the organization. There also can be severe consequences for breaches of fiduciary duty. Board Members can be held individually responsible to their organization for not living up to fiduciary standards.

The Ohio Attorney Generals Office publishes a "Guide for Charity Board Members" on these standards. It outlines a trustee's specific legal duties owed to the organization:

- ❑ **The Duty of Care**
 - Understand the organization's mission, constitution and by-laws.
 - Attend meetings, read minutes, reports and other material.
- ❑ **The Duty of Loyalty**
 - Ensure that the interest of the organization is always first.
 - Avoid transactions involving potential conflicts of interest.
- ❑ **The Duty to Manage Accounts**
 - Keep accurate records of income, expenditures and transactions.
 - Develop annual budgets that provide clear direction for spending.
 - Establish appropriate internal accounting system.
 - Prudently invest assets.
- ❑ **The Duty of Compliance**
 - Follow provisions of the organization's governing documents.
 - Comply with Federal and State reporting requirements which may include filings with the Ohio Attorney General, the Ohio Secretary of State, Ohio Sales Tax Department and the Internal Revenue Service.

Due Diligence is the conduct that a reasonable person will exercise to look out for the well-being of the organization. In many instances this refers to the research and analysis of an organization done in preparation of a donation or other business transaction.

Board members need to ensure that donations and distributions are appropriate. You may request a full disclosure of public documents from the proposed recipient or check them out using: IRS.gov, GuideStar.org, CharityNavigator.org, Attorney General, Better Business Bureau, etc.

Steps to Limit Exposure include: Require dual signatures, reconcile bank statements, limit use of cash, establish check-handling procedures, establish expense reimbursement policies, match physical and recorded inventories, set and follow budgets, encourage rotation of duties or term limits, monitor grant requirements, change passwords, combinations, locks, consider insurance coverage, and recruit new audit committee members.

Financial Policies in the Constitution and By-Laws

Written into Lions Clubs International's constitution and by-laws are requirements for the proper financial policies of all Lions Clubs. These governing policies must be followed as these documents are the basis for Lions Clubs International's application and agreement with the Internal Revenue Service for tax-exempt status. The following statement is the primary rule for all Lions Clubs financial policies:

Under no circumstances may the net income of club projects or activities raised from the public be used in any manner whatsoever for administrative expenditures.

In order to accomplish this policy, Lions Clubs must establish and maintain at least two separate funds. The first shall be an administrative fund and the second will be an activities or project fund.

- 1) The **Administrative Fund** will be used for the internal running of the club. The income of this fund will be from member's dues, tail-twisting fines, and other money raised directly from the club members. The expenses of this fund will be for per-capita tax, printing, postage and other costs relating to running club meetings.
- 2) The **Activities Fund** will be used to fulfill the exempt purposes and goals of the club. The income of this fund will be from public fund raising projects. The expenses will be the direct costs of the fund-raising projects, as well as the donations and charitable activities of the club.

It is not permissible to pay a percentage of activity funds to the administrative fund to cover administrative overhead, even if it is publicly stated. Interest from activity money must stay in the activity fund and can not be used for administrative purposes.

Good Accounting Practices:

- All monies from whatever source must be deposited, as received, in a board-approved bank.
- Payment or disbursements for any purpose should not be made from cash received by the club, but by check drawn on one of the club's bank accounts.
- All disbursements are done only on the authority of the board of directors.
- Receipts should be itemized.
- Financial reports, bank statements, and copies of governmental filings should be retained.
- The treasurer should be bonded.
- Audits should be performed at least annually.

Additional Financial Policies:

- The club may not create any indebtedness beyond the current fiscal year.
- Monitor carryover of funds. An organization can accumulate and pass funds from one fiscal year to another. Although carrying substantial amounts threatens the loss of ones exempt status. The purpose of the organization is to expend the funds for social or charitable purposes, not to accumulate funds.

Incorporation

It is strongly recommended that all Lions Clubs incorporate. Doing so helps protect individual club member in lawsuits against the club. Liability would be limited to the capital or assets of the club. Checking to ensure your club's incorporation status is intact is the single most important item a board can do to protect its members.

Incorporating as a non-profit corporation is handled by the Ohio Secretary of State. There is a \$99.00 fee to file the Initial Articles of Incorporation. Renewal cost \$25.00 every five years. Once incorporated, the Secretary of State issues a **Statement of Continued Existence** every five years to the Statutory Agent (any Lion so named in the Initial Articles of Incorporation). This update of records is required by the Secretary of State to maintain the incorporation status of the organization. There is a \$25.00 fee to file this form once every five years. Failure to file such a statement will result in the cancellation of the articles of incorporation. You may contact the Secretary of State to make sure your club's corporation status is still active. There is a search engine on their website under the "Businesses" and "Search Filings" tabs. There is also a special form called the **Statutory Agent Update** to change the appointment of the statutory agent or to change the mailing address of the current agent. There is a \$25.00 fee to file this form.

To incorporate for the first time, there are 5 simple steps to take:

1. **Vote.** Club's Board of Directors votes to incorporate as a non-profit.
2. **Obtain the required form** from the Secretary of States' website: www.sos.state.oh.us. Look under the "Businesses" and "Forms & Fees" tabs. The form is Form 532B or the "Initial Articles of Incorporation. Nonprofit, Domestic Corporation." Note that except for the signatures and any attachments, you can fill out the entire form on line and then print it out. There is no way to file the form electronically. You must mail it in.
3. **Fill the form out.** Skip the Effective Date. The corporation will begin when the form is filed. The purpose of the corporation may be expressed using the following: "The Lions Club of _____ is chartered by and under the supervision of The International Association of Lions Clubs of Oak Brook, Illinois, and is governed by the Constitution and Bylaws of said Association. The Purposes of this Lions Club are fraternal and charitable in nature. We perform community service, without personal financial reward and take an active interest in the civic, cultural, social and welfare of the community."
4. **Send a copy** to the Legal Department of Lions Club International by fax (630) 571-8890 or email (legal@lionsclubs.org) and wait for approval.
5. **Submit the form.** After receiving your approval from Lions Clubs International, mail your form along with a \$99 check to the Secretary of State address on the form.

Tax-Exempt Status

All clubs chartered under Lions Clubs International are exempt from federal taxes under the Internal Revenue Code section 501 c 4. **A copy of the “IRS Determination Letter” is available on the Ohio Lions website.** This section of the IRS code deals with “civic leagues and social welfare organizations.” Lions Clubs International has not been granted status under section 501 c 3, which is for “charitable organizations.” Therefore, for all federal purposes, Lions Clubs are not considered charities and **donations to Lions Clubs or projects are not deductible as charitable contributions.**

It is proper to refer to a Lions Club as a “Tax-Exempt” or as a “Not for Profit” organization. However, it would be improper to refer to a Lions Club as a “Charity.”

Be careful not to mislead the public by printing the word “Donation” on admission or raffle tickets. The IRS views this as a violation of your disclosure regulations, when no deductibility is actually warranted.

The IRS requires disclosure of the non-deductibility of contributions in fundraising solicitations. (Solicitation here means asking for donations as well as selling products.) The IRS makes no distinction between solicitations made directly by the Lions Club and those done on behalf of the Lions Club by a third party.

This disclosure is handled differently between large and small Lions Clubs:

- ❖ Lions Clubs with \$100,000 or more in annual gross receipts (an organization’s gross receipts are the total amount it received from all sources during its annual accounting period, without subtracting any costs or expenses) must include an express statement that contributions or gifts to it are not deductible as charitable contributions. There are different rules and very specific statements to be used for printed, telephone and television solicitations. The Legal Division at Lions Clubs International can provide the exact wording required.
- ❖ Lions Clubs with less than \$100,000 in annual gross receipts are excluded from this requirement. However, when asked, Lions Clubs must always disclose that a contribution to the club is not tax deductible to the donor as a charitable contribution.

Jeopardizing Exempt Status

- **Private Benefit or Inurement** which is engaging in any activity which permits the organization’s income or assets to unduly benefit a person who has some close relationship to the organization.
- **Employment Issues** including compensating “volunteers” with gift cards or waving of membership dues. Reimburse members only with proper receipts.
- **Political Campaign Activity.** Candidates and issues should not be endorsed. Non-partisan “get the vote out” initiatives are acceptable.
- **Non-Compliance with filing requirements.**

Internal Revenue Service

All Lions Clubs are exempt from federal income tax under IRS Code Section 501 c 4. However, **the IRS requires that an informational return be filed annually for all clubs.** This filing can be Form 990-N (e-Postcard), Form 990-EZ, or Form 990 depending on the gross revenue the club had during its fiscal year. The club's **gross revenue** is the total amount it received from all sources, without subtracting any costs or expenses. You may file the return as soon as the fiscal year ends. It must be filed within 4 ½ months. For clubs using the standard fiscal year, you must file after June 30th but before November 15th.

Club's Annual Gross Revenue	IRS Form Required	Filing Method
Less than \$50,000	Form 990-N (e-Postcard)	Electronic only
\$50,000 to \$200,000	Form 990-EZ	Electronic or Paper
More than \$200,000	Form 990	Electronic or Paper

For clubs above the \$50,000 annual gross revenue, they must obtain, fill out and submit the appropriate form in either paper or electronic means. All forms and instructions are available from www.IRS.gov

Most Lions Clubs have a gross annual revenue below the \$50,000 threshold and therefore can file the much easier Form 990-N. Filing a Form 990-N (e-Postcard) must be done electronically. There are no paper forms. It is an internet based process with no software to purchase. Therefore, it can be filed from any computer connected to the internet including public libraries. There is no financial information transmitted on the 990-N other than a statement that the gross revenue is under \$50,000.

To file the 990-N electronically

1. Go to the website, www.irs.gov
2. From the tabs at the top, click on "Filing"
3. From the tabs on the left side, click on "Charities and Non-Profits"
4. Click on "e-file for charities and non-profits"
5. Click on "e-Postcard, Form 990-N" and follow the instructions.

Penalty

The IRS is required to revoke the tax-exempt status of any organization that fails to meet their filing requirement for three consecutive years. All fund-raising activities would become income-taxable events.

More Information

If you are in need of a tax form or instructional booklet, you can obtain them from the IRS website of www.irs.gov Additionally Lions Clubs International's website www.lionsclubs.org also provides instructions and examples for filing 990 returns.

Attorney General Registration

Every Lions Club in Ohio must register itself with the Ohio Attorney General. This is now mandatory of all clubs regardless of their gross revenue. Once registration is complete, the Attorney General's office will notify each club when it needs to file any additional reports. Annual reports are based on each club's estimated gross income. This filing is mandated under sections 109 and 1716 of the Ohio Revised Code. The initial registration should be filed before engaging in any sale or donation request during the fiscal year. If annual reports are needed, they will be due on the same day as the IRS deadline of November 15th for clubs using the standard fiscal year. All federal extensions are granted.

Complete the Filing

This filing must be completed on-line. To do so, visit the Ohio Attorney General's website: www.OhioAttorneyGeneral.gov/CharitableRegistration and select "File Online." There is a "Charitable Registration User Guide" and a "List of Questions Asked" available to review before beginning. Each person who uses the online system or wants to receive automated reminders and confirmation emails must create an account. It is recommended that at least 3 people from each club have accounts to ensure multiple representatives receive important notifications.

Information Needed

The system poses questions to the organization representative and, based on the responses, determines what information is needed to ensure proper compliance. Much of the information will be financial in nature. You will also need to know the club's EIN (Employer Identification Number). If the organization has never registered before, additional documents such as: articles of incorporation, bylaws, IRS exemption letter (which is available on the Ohio Lions website) will need to be uploaded or mailed to the Attorney General's office.

Determining the Fee

The system will indicate the amount owed, if any, based on the information provided. Most organizations do not owe fees after filing because the fee schedule is based on a sliding scale. If fees are owed, the organization can pay online with a credit card or e-check transaction and receive a receipt.

More Information

For more information, contact the Attorney General's office listed below. In addition to the two sources mentioned above, an excellent publication on their website is the "Non-Profit Handbook" which explains the basics of non-profit organizations.

Ohio Attorney General
30 E. Broad St. 14th Floor
Columbus, OH 43215
(800) 282-0515
www.OhioAttorneyGeneral.gov

Ohio Sales Tax

The State of Ohio has many laws concerning sales tax and various non-profit organizations. All 501 c 4 organizations, such as Lions Clubs must:

1. Pay sales tax on taxable items purchased for their own use.
2. Collect and submit sales tax from the public when selling taxable items as a fund-raising project.

To be compliant with the laws of Ohio, all 501 c 4 - Lions Clubs, involved with fund raising projects that sells **tangible taxable items** such as roses, light bulbs, brooms, soft drinks, etc, must do the following:

- **Obtain a vendor’s license.** A regular vendor’s license is obtained from the local county auditor’s office or from the Ohio Department of Taxation website. Go to www.Tax.Ohio.gov and look under the “Business” tab. There is a one-time \$25 application fee. Annual renewals are no longer required.
- **Collect sales tax.** Vendors must charge and collect the sales tax rate in effect in the county where the sale is made.
- **Keep proper records.** Vendors are required to keep complete records of sales and tax charges. All records must be maintained for 4 years and are open to inspection by agents of the Tax Commissioner.
- **File returns and submit tax.** Vendors will be notified of their filing schedule (monthly or semiannually) based upon their anticipated tax liability. You must file your return over the internet through the **Ohio Business Gateway**. Returns must be filed even when no tax is due. Payments can be made using a credit card or an electronic debit from a bank account. Always obtain a confirmation number and keep a copy of the return with your club files. Penalties for not paying the collected tax, or for not filing a return are at the discretion of the Tax Commissioner.

Food is sometimes a bit tricky to consider. Food that is consumed off the premises where sold is exempt (non-taxable). Carbonation is no longer a consideration. Added sweetener is now the standard. Below is a summary chart. For more information, call Taxpayer Services at 1-888-405-4039.

Food (non-taxable if consumed off premises)	Non-Food (always taxable)
Bottled Water	Sweetened (Flavored) Water
Coffee and Tea (unsweetened)	Coffee and Tea (sweetened)
Fruit Juices (more than 50% juice)	Fruit Juices (less than 50% juice)
Milk and Ice Cream	Sports/Energy Drinks (example-Gatorade)
Popsicles and Snow-Cones	Lemonade
Candy, Chewing Gum, Breath Mints	Soda Pop

Gaming, Bingo and Raffles

All gaming activities including bingo and raffles are covered by Section 2915 of the Ohio Revised Code. The Ohio Attorney General's Charitable Law Section regulates these activities. Any Lions Club in existence for more than 2 years may qualify for:

- **Game of chance** is defined as a player giving anything of value in hopes of gain, the outcome of which is determined largely by chance, but does not include bingo. Games of chance include cards games conducted at "Texas Hold'em" tournaments and "Las Vegas Nights." Regulations include:
 - 501 c 3 and c 4 organizations may conduct games of chance
 - Games of chance may not include craps or roulette for money
 - Must be held at "festivals" which include 2 or more non-gaming activities
 - Cannot be held for more than 5 days per calendar year
 - If the organization is 501 c 4, then 100% of the profit must go to 501 c 3
- **Instant bingo** is gaming that uses tickets or cards with perforated break-open tabs or ones that contain one or more seals that, when removed or opened, reveal pre-designated winning numbers, letters or symbols. Regulations include:
 - 501 c 3 and c 4 organizations may conduct instant bingo
 - Instant bingo licenses must be obtained from the Attorney General. Annual fees for instant bingo begin at \$500 and range upwards to \$5000 plus a percentage of the gross profit
 - No person shall receive any form of compensation
 - If the organization is 501 c 4, then 100% of the profit must go to 501 c 3
- **Bingo** is a game of cards or sheets divided into spaces designated by letters or numbers, with an operator selecting these designations by chance, and a winner who announces covering a predetermined pattern of these spaces. Regulations:
 - 501 c 3 and 501 c 4 organizations can conduct bingo
 - Bingo licenses must be obtained from the Attorney General. Annual fees for bingo begin at \$250 and range upwards to \$5000 plus % of gross profit
 - No person shall receive any form of compensation
 - If the organization is 501 c 4, then 100% of the profit must go to 501 c 3
- **Raffles** are a form of bingo in which the one or more prizes are won by one or more persons who have purchased a ticket. The winners are determined by drawing the ticket or detachable section from a receptacle holding all tickets or detachable sections sold. Regulations include:
 - 501 c 3 and 501 c 4 organizations may conduct raffles to raise money for their organizations and do **not** need a license to conduct bingo
 - A 501 c 4 organization must distribute at least 50% of the net profit to a 501 c 3 charity

Note: IRS requires specific record keeping on gaming. Completion of Form W-2G, submission of Form 1096, and withholding of income is required on certain gaming winnings (including raffles) equal to or greater than \$600. See IRS publication 3079.

Liability Insurance

Lions Clubs International provides a \$1,000,000 general liability policy for all individual Lions Clubs. This is a liability policy and will not pay for injuries to third parties without showing negligence on the part of the named insured. The policies provisions apply to those insured including:

- Lions Clubs
- Individual Lion Club Members
- Non-Lion Volunteer Workers

If a Lions Club needs proof of insurance, a **Certificate of Insurance**, can be customized and printed from the Lions Club International website. This feature is under “Member Center” then click “Resources” then click “Insurance” and finally “Certificates of Insurance.”

Keep in mind a couple of facts when considering this insurance:

- This is a legal liability policy only, and does not provide “accident” insurance, which will pay for injuries regardless of fault.
- There is no coverage for damage to property owned or used by the Lions.
- If you undertake a joint project with another organization, the cosponsor is not protected by this policy & should have adequate insurance of its own.

Lions Clubs International through their website provides an informational booklet explaining coverage and exclusions. Limitations on the policy include:

- Medical payments to persons injured in athletic events
- Liability arising out of the sale or distribution of alcoholic beverages
- Liability arising out of operation of an automobile

In addition to the automatic coverage mentioned above, Lions Clubs International offers **Supplemental Insurance** coverage (see their website for details) for the following:

- ❖ Director and Officer
- ❖ Crime / Fidelity (Bond) coverage
- ❖ Additional Liability
- ❖ Accident Insurance

It is recommended that all Lions Clubs designate a safety officer to review each club activity from a safety standpoint and identify potential hazards. A self-inspection checklist is available from Lions Clubs International. All steps should be taken to reduce liability. Non-recommended activities include firework displays or sales, dunk tanks, tractor or truck pulls, snowmobile, go-kart, skateboard and other races

All claims, or occurrences which might lead to claims, should be reported promptly to the Lions Clubs International Legal Department at (630) 571-5466 ext 3847. When a claim situation arises please do not admit liability, do not suggest that compensation will be offered and do not enter into negotiations with a claimant.

Trademark Protection

As a matter of legal protection to Lions Clubs International and its member clubs, the association's name and emblem (and variations thereof) are registered trademarks. To protect these trademarks, the Association has established the following rules of policy:

- No item bearing the association's trademarks may be sold or distributed without express written permission of the association. Interested persons are directed to contact the association's general council or the Club Supplies and Distribution Division for information about securing a license.
- No Lions club may use the association emblem on any item sold for fundraising purposes. A special "Lions Club Fund Raising Activity Seal" has been created for this purpose.

Special Policy Rules for Lions Clubs:

- Lions clubs have permission and license to use the association's name, emblem and other trademarks printed on stationery, post cards, bulletins, and other printed material reasonably necessary to its operation.
- Permission is not granted for the club to print the association's trademarks on items that are available through the Club Supplies and Distribution Division.
- Lions clubs may use the name of their club along with the Lions emblem on their respective web pages. Only emblems downloaded from the official format emblems provided on the association's web site may be reproduced on web sites and other areas on the Internet.

Copyright

Copyright protects the expression of original works of authorship from copying. Copyrights exist when the works are fixed in a tangible medium of expression whether or not notice is given. Copyright protection lasts for the life of the author plus seventy years. Copyright holder has the exclusive right to:

- * Reproduce the work
- * Prepare derivative works
- * Distribute copies of the work
- * Perform or display the work

Privacy Policy

Lions Clubs International recognizes the importance of protecting the private information of its members, donors, recipients of humanitarian assistance and other individuals obtained in the course of conducting activities.

The following practices are performed at the International level and are recommended for club, district and foundations:

- Personal information is protected by using password-protected areas.
- Payment information is encrypted and only a limited part of credit numbers is revealed when confirming an order.
- The official directory is not available on the Internet without a password.
- A club locator with club officer contact is available without a password, but it is designed so that it cannot be used as a commercial mailing list.