Table of Contents

CHAPTER 1

THE ORGANIZATIONAL FORM

by Melissa Auchard Scholz and Jessica Y. Harrison

I. Scope [§ 1.1]

II. Selecting the Organizational Form [§ 1.2]

- A. Background [§ 1.3]
- B. Factors to Consider [§ 1.4]
 - 1. In General [§ 1.5]
 - 2. Tax Status [§ 1.6]
 - 3. Liability [§ 1.7]
- C. Nonprofit Options: Specific Organizational Forms [§ 1.8]
 - 1. In General [§ 1.9]
 - 2. Unincorporated Association [§ 1.10]
 - a. Definition, Concepts, and Powers [§ 1.11]
 - b. Advantages and Disadvantages [§ 1.12]
 - 3. Nonstock Corporation [§ 1.13]
 - a. Definition, Concepts, and Powers [§ 1.14]
 - b. Advantages and Disadvantages [§ 1.15]
 - 4. Trusts [§ 1.16]
 - a. Definition, Concepts, and Powers [§ 1.17]
 - b. Advantages and Disadvantages [§ 1.18]

III. Creating the Unincorporated Association [§ 1.19]

- A. Overview of Structure [§ 1.20]
- B. Drafting Organizational Documents [§ 1.21]
 - 1. In General [§ 1.22]
 - 2. Provisions and Contents [§ 1.23]
 - a. In General [§ 1.24]
 - b. Name [§ 1.25]
 - c. Purpose [§ 1.26]
 - d. Membership [§ 1.27]
 - e. Officers [§ 1.28]
 - f. Committee Structure [§ 1.29]
 - g. Contractual Effect [§ 1.30]

- h. Dissolution [§ 1.31]
- i. Amendment [§ 1.32]
- C. Filing Bylaws or Other Organizing Documents [§ 1.33]
- D. Holding Initial Meeting [§ 1.34]

IV. Creating the Nonstock Corporation [§ 1.35]

- A. Overview of Structure [§ 1.36]
 - 1. Governing Documents [§ 1.37]
 - 2. Corporate Officials [§ 1.38]
 - a. Directors [§ 1.39]
 - b. Officers [§ 1.40]
 - 3. Other Participants [§ 1.41]
- B. Articles of Incorporation [§ 1.42]
 - 1. Drafting the Articles [§ 1.43]
 - a. In General [§ 1.44]
 - b. Required Content [§ 1.45]
 - (1) In General [§ 1.46]
 - (2) Statement of Incorporation [§ 1.47]
 - (3) Name [§ 1.48]
 - (4) Initial Principal Office; Initial Registered Office and Agent [§ 1.49]
 - (5) Incorporators' Names and Addresses [§ 1.50]
 - (6) Membership [§ 1.51]
 - (7) Distributions Under Wis. Stat. § 181.1302(3) and (4) [§ 1.52]
 - (8) Indemnification Issues [§ 1.53]
 - (9) IRS Requirements for Obtaining Tax-Exempt Status [§ 1.54]
 - c. Optional Content [§ 1.55]
 - 2. Filing the Articles [§ 1.56]
 - a. Signature [§ 1.57]
 - b. Place and Manner of Filing [§ 1.58]
 - c. Effective Date [§ 1.59]
- C. Filing Other Documents [§ 1.60]
- D. Bylaws [§ 1.61]
 - 1. Drafting Guidelines [§ 1.62]
 - a. In General [§ 1.63]
 - b. Provisions and Contents [§ 1.64]
 - (1) In General [§ 1.65]
 - (2) Membership [§ 1.66]
 - (3) Directors [§ 1.67]

- (4) Officers [§ 1.68]
- (5) Other Bylaw Provisions [§ 1.69]
- 2. Adopting Bylaws [§ 1.70]
- E. Holding Initial Meeting [§ 1.71]
 - 1. In General [§ 1.72]
 - 2. Issues on Agenda [§ 1.73]
 - a. In General [§ 1.74]
 - b. Election of Temporary Chair [§ 1.75]
 - c. Adoption of Bylaws [§ 1.76]
 - d. Election of Officers [§ 1.77]
 - e. Selection of Bank [§ 1.78]
 - f. Selection of Annual Accounting Period [§ 1.79]
 - g. Selection of Professional Advisers [§ 1.80]
 - h. Insurance [§ 1.81]
 - i. Membership Requirements and Dues [§ 1.82]
 - j. Filing for Exemption and Permits [§ 1.83]

V. Creating the Trust [§ 1.84]

- A. Overview of Structure [§ 1.85]
 - 1. Governing Documents [§ 1.86]
 - 2. Governing Officials: Trustees [§ 1.87]
 - 3. Other Participants [§ 1.88]
- B. Drafting Trust Document [§ 1.89]
 - 1. In General [§ 1.90]
 - 2. Provisions and Contents [§ 1.91]
 - a. In General [§ 1.92]
 - b. Identity of Grantor and Trustees [§ 1.93]
 - (1) In General [§ 1.94]
 - (2) Grantor [§ 1.95]
 - (3) Trustees [§ 1.96]
 - c. Trust Property [§ 1.97]
 - d. Purposes [§ 1.98]
 - e. Beneficiaries [§ 1.99]
 - f. Trustees' Powers [§ 1.100]
 - g. Appointment and Removal of Trustees [§ 1.101]
 - h. Indemnification of Trustees [§ 1.102]
 - i. Amendment [§ 1.103]
 - j. Dissolution [§ 1.104]
- C. Drafting Other Organizational Documents [§ 1.105]
- D. Holding Initial Meeting of Board of Trustees [§ 1.106]

VI. Operating the Organization [§ 1.107]

- A. Holding Meetings [§ 1.108]
 - 1. In General [§ 1.109]
 - 2. Notice and Objection to Lack of Notice [§ 1.110]
 - a. Member Meetings [§ 1.111]
 - b. Director Meetings [§ 1.112]
 - 3. Agenda [§ 1.113]
 - 4. Parliamentary Procedure [§ 1.114]
- B. Keeping Records [§ 1.115]
 - 1. In General [§ 1.116]
 - 2. Organizational Documents [§ 1.117]
 - 3. Minutes [§ 1.118]
 - 4. List of Policies [§ 1.119]
 - 5. Governmental Filings [§ 1.120]
 - 6. Correspondence [§ 1.121]
- C. Amending Organizational Documents [§ 1.122]
 - 1. Nonstock Corporate Documents [§ 1.123]
 - a. In General [§ 1.124]
 - b. Articles of Incorporation [§ 1.125]
 - c. Bylaws [§ 1.126]
 - 2. Unincorporated Association and Trust Documents [§ 1.127]
- D. Filing Nonstock Corporation's Annual Report [§ 1.128]

VII. Appendices [§ 1.129]

- A. Appendix 1A: Checklist: Some Considerations in Selecting Organizational Form [§ 1.130]
- B. Appendix 1B: Checklist: Procedures for Incorporation [§ 1.131]
- C. Appendix 1C: Sample Language Satisfying IRS Organizational and Operational Requirements [§ 1.132]
- D. Appendix 1D: Sample Bylaws for Nonstock Corporation [§ 1.133]
- E. Appendix 1E: Sample Initial Resolution of Directors [§ 1.134]

CHAPTER 2 TAX TREATMENT

by Emmaline Jurgena and Jason J. Kohout

I. Scope [§ 2.1]

II. The I.R.C. § 501(c)(3) Organization [§ 2.2]

- A. In General [§ 2.3]
- B. Benefits of Recognition of I.R.C. § 501(c)(3) Exemption [§ 2.4]
 - 1. In General [§ 2.5]
 - 2. Federal Benefits [§ 2.6]
 - a. Tax Exemption on Most Income and Receipts [§ 2.7]
 - b. Charitable Deduction for Contributions [§ 2.8]
 - c. Possible Special Mailing Rates [§ 2.9]
 - d. Right to Issue Tax-Exempt "501(c)(3) Bonds" [§ 2.10]
 - 3. State Benefits [§ 2.11]
 - a. In General [§ 2.12]
 - b. Income Tax Exemption [§ 2.13]
 - c. Sales Tax Exemption [§ 2.14]
 - d. Property Tax Exemption [§ 2.15]
 - (1) In General [§ 2.16]
 - (2) Educational Organizations [§ 2.17]
 - (3) Property Used in Unrelated Trade or Business; Leased Property [§ 2.18]
 - (4) Procedure [§ 2.19]
 - (5) Maintaining Exemption [§ 2.20]
- C. Obtaining I.R.C. § 501(c)(3) Exemption [§ 2.21]
 - 1. Requirements as to Purposes [§ 2.22]
 - a. In General [§ 2.23]
 - b. Organizational Test [§ 2.24]
 - c. Operational Test [§ 2.25]
 - d. Exempt Purposes [§ 2.26]
 - (1) In General [§ 2.27]
 - (2) Religious [§ 2.28]
 - (3) Charitable [§ 2.29]
 - (4) Educational [§ 2.30]
 - (5) Testing for Public Safety [§ 2.31]
 - (6) Scientific [§ 2.32]
 - (7) Literary [§ 2.33]

- (8) Amateur-Athletic Organizations [§ 2.34]
- (9) Prevention of Cruelty to Children or Animals [§ 2.35]
- e. Business Activities [§ 2.36]
- f. Insurance Activities [§ 2.37]
- 2. Application to IRS [§ 2.38]
 - a. Requirement to File [§ 2.39]
 - (1) In General [§ 2.40]
 - (2) Exceptions [§ 2.41]
 - b. Time of Filing [§ 2.42]
 - c. Application Procedure and Fee [§ 2.43]
- 3. Appeal of IRS Denial of Exemption or Failure to Rule [§ 2.44]
- 4. Intermediate Sanctions [§ 2.45]
 - a. In General [§ 2.46]
 - b. Excess-Benefit Transactions and Disqualified Persons [§ 2.47]
 - c. Tax on Excess Benefits [§ 2.48]
 - d. Presumption of Reasonable Compensation [§ 2.49]
- D. Maintaining I.R.C. § 501(c)(3) Exemption [§ 2.50]
 - 1. Activities [§ 2.51]
 - 2. Tax Filings [§ 2.52]
 - a. Federal [§ 2.53]
 - b. State [§ 2.54]
 - 3. Disclosure Requirements [§ 2.55]
 - a. Tax Returns and Other Exemption Information [§ 2.56]
 - (1) In General [§ 2.57]
 - (2) Rules Governing Requests for Inspection [§ 2.58]
 - (3) Exceptions and Limitations [§ 2.59]
 - (4) Penalties [§ 2.60]
 - b. Information or Services Available from the Federal Government [§ 2.61]
 - c. Deductibility of Contributions [§ 2.62]
- E. Effect of Private-Foundation Rules on Organization and Operations [§ 2.63]
 - 1. In General [§ 2.64]
 - 2. Classification of I.R.C. § 501(c)(3) Organization as Private Foundation or Public Charity [§ 2.65]
 - a. In General [§ 2.66]

- b. Demonstrating Public-Charity Status [§ 2.67]
 - (1) Definitive Versus Advance Ruling [§ 2.68]
 - (2) I.R.C. § 509(a)(1) Classification [§ 2.69]
 - (3) I.R.C. § 509(a)(2) Classification [§ 2.70]
 - (4) I.R.C. § 509(a)(3) Classification [§ 2.71]
 - (5) Donor Advised Funds [§ 2.72]
- c. Terminating Private-Foundation Status [§ 2.73]
- 3. Burdens of Private-Foundation Status [§ 2.74]
 - a. Excise Tax on Net Investment Income [§ 2.75]
 - b. Additional Reporting Requirements [§ 2.76]
 - c. Penalty Excise Taxes [§ 2.77]
 - (1) In General [§ 2.78]
 - (2) Self-Dealing [§ 2.79]
 - (3) Failure to Distribute Income [§ 2.80]
 - (4) Excess Business Holdings [§ 2.81]
 - (5) Investments Jeopardizing Charitable Purpose [§ 2.82]
 - (6) Taxable Expenditures [§ 2.83]
- F. Unrelated Business Taxable Income (UBTI) [§ 2.84]
 - 1. In General [§ 2.85]
 - 2. Definition of UBTI [§ 2.86]
 - a. Unrelated Business Taxable Income [§ 2.87]
 - b. Trade or Business [§ 2.88]
 - c. Regularly Carried On [§ 2.89]
 - d. Substantially Related [§ 2.90]
 - 3. Exemptions from UBTI [§ 2.91]
 - 4. Modifications [§ 2.92]
 - 5. UBTI Increased by Amount of Fringe Benefits [§ 2.93]
 - 6. Calculation of Unrelated Business Income Tax [§ 2.94]
 - 7. Debt-Financed Property [§ 2.95]
 - 8. Alternative Structures for Conducting Business Operations [§ 2.96]
 - 9. Joint-Venture Arrangements [§ 2.97]

III. New Excise Taxes [§ 2.98]

- A. Excise Tax on College and University Endowments [§ 2.99]
- B. Excise Tax on Certain "Excess" Compensation [§ 2.100]

IV. Organizations Exempt Under Other Provisions of I.R.C. § 501(c) [§ 2.101]

- A. Overview [§ 2.102]
- B. General Requirements and Issues [§ 2.103]
 - 1. Obtaining Exemption Under Other Provisions of I.R.C. § 501(c) [§ 2.104]
 - a. Requirement as to Purposes [§ 2.105]
 - (1) In General [§ 2.106]
 - (2) Exempt Purposes [§ 2.107]
 - b. Application to IRS [§ 2.108]
 - (1) Application Procedure and Fee [§ 2.109]
 - c. Appeal of Adverse Rulings and Determination Letters [§ 2.110]
 - 2. Maintaining Exemption Under Other Provisions of I.R.C. § 501(c) [§ 2.111]
 - 3. Unrelated Business Taxable Income (UBTI) [§ 2.112]
 - 4. Deductibility of Contributions and Dues [§ 2.113]
- Civic Leagues or Social Welfare Organizations and Local Associations of Employees [I.R.C. § 501(c)(4)]
 [§ 2.114]
 - 1. Exempt Purposes [§ 2.115]
 - 2. Exempt and Nonexempt Activities [§ 2.116]
 - a. Lobbying and Political Activities [§ 2.117]
 - b. Social Activities [§ 2.118]
 - c. Business Activities [§ 2.119]
 - d. Other Recognized Exempt Activities of I.R.C. § 501(c)(4) Entities [§ 2.120]
 - 3. Common Issues and Concerns [§ 2.121]
 - a. I.R.C. § 501(c)(3) vs. I.R.C. § 501(c)(4) Exemption [§ 2.122]
 - b. Services to the Community [§ 2.123]
 - c. Homeowners' Associations [§ 2.124]
 - d. Qualified Trade-Show Activities [§ 2.125]
- D. Business Leagues and Trade and Professional Associations [I.R.C. § 501(c)(6)] [§ 2.126]
 - 1. Exempt Purposes [§ 2.127]
 - 2. Exempt and Nonexempt Activities [§ 2.128]
 - 3. Common Issues and Concerns [§ 2.129]
 - a. Line of Business [§ 2.130]
 - b. Performance of Particular Services [§ 2.131]
 - c. Qualified Trade-Show Activities [§ 2.132]

- E. Title-Holding Corporations [I.R.C. § 501(c)(2) and I.R.C. § 501(c)(25)] [§ 2.133]
 - 1. Exempt Purpose [§ 2.134]
 - 2. Exempt and Nonexempt Activities [§ 2.135]
 - 3. Common Issues and Concerns [§ 2.136]
 - a. Unrelated Business Income [§ 2.137]
 - b. Distribution of Income [§ 2.138]
- F. Social Clubs [I.R.C. § 501(c)(7)] [§ 2.139]
 - 1. Exempt Purpose [§ 2.140]
 - 2. Exempt and Nonexempt Activities [§ 2.141]
 - 3. Common Issues and Concerns [§ 2.142]
 - a. Discrimination [§ 2.143]
 - b. Public's Use of Facilities [§ 2.144]
 - c. Classes of Membership [§ 2.145]
 - d. Gross Receipts [§ 2.146]
 - e. Gambling and Sale of Liquor [§ 2.147]
 - f. Unrelated Business Income [§ 2.148]
- G. Labor Organizations and Agricultural and Horticultural Organizations [I.R.C. § 501(c)(5)] [§ 2.149]
 - 1. Exempt Purposes [§ 2.150]
 - 2. Exempt and Nonexempt Activities [§ 2.151]
 - 3. Common Issues and Concerns [§ 2.152]
 - a. Dues as Unrelated Business Income [§ 2.153]
 - b. Principal Purpose [§ 2.154]
 - c. Services to Members [§ 2.155]
- H. Fraternal Beneficiary Societies and Domestic Fraternal Societies [I.R.C. § 501(c)(8) and I.R.C. § 501(c)(10)] [§ 2.156]
 - 1. Exempt Purposes [§ 2.157]
 - 2. Exempt and Nonexempt Activities [§ 2.158]
 - 3. Common Issues and Concerns [§ 2.159]
 - a. Operating Under a Lodge System [§ 2.160]
 - b. Requirements of Benefits for Members or Their Dependents [§ 2.161]
- I. Voluntary Employees' Beneficiary Association [I.R.C. § 501(c)(9)] [§ 2.162]
- J. Cemetery Companies [I.R.C. § 501(c)(13)] [§ 2.163]

CHAPTER 3

THE ROLES OF DIRECTORS AND OFFICERS

by Thomas L. Frenn

I. Scope [§ 3.1]

II. Composition of the Board [§ 3.2]

- A. Size [§ 3.3]
- B. Term [§ 3.4]
- C. Manner of Selection and Removal or Resignation [§ 3.5]
- D. Areas of Expertise [§ 3.6]
- E. Qualifications and Attributes [§ 3.7]
 - 1. Statutory Requirements [§ 3.8]
 - 2. Other General Attributes [§ 3.9]

III. Board's Responsibilities [§ 3.10]

- A. In General [§ 3.11]
 - 1. To Bear Legal Authority and Accountability [§ 3.12]
 - 2. To Serve as Trustee [§ 3.13]
 - 3. To Serve as Adviser and Benefactor [§ 3.14]
 - 4. To Establish Goals and Policies and Monitor Their Accomplishment [§ 3.15]
 - 5. To Ensure the Organization's Continuity [§ 3.16]
- B. Specific Areas [§ 3.17]
 - 1. Program and Policies [§ 3.18]
 - a. In General [§ 3.19]
 - b. Mission Statement [§ 3.20]
 - c. Strategic Goals [§ 3.21]
 - d. Operational Goals and Objectives [§ 3.22]
 - 2. Operations [§ 3.23]
 - 3. Budgeting and Finance [§ 3.24]
 - 4. Constituency Relations [§ 3.25]
 - 5. Personnel [§ 3.26]
 - 6. Performance Evaluation [§ 3.27]
 - 7. Funding [§ 3.28]
 - 8. Compliance with Laws and Regulations [§ 3.29]
 - a. In General [§ 3.30]
 - b. Public and IRS Scrutiny [§ 3.31]
 - 9. Amendment of Organizational Documents [§ 3.32]
 - 10. Disclosure of Information [§ 3.33]

- 11. Reliance on Auditors and Other Professionals by a Nonprofit Board [§ 3.34]
- C. Compensation of Directors [§ 3.35]

IV. Board's Delegation of Responsibilities to Officers, Committees, and Staff [§ 3.36]

- A. Purposes of Delegation [§ 3.37]
 - 1. In General [§ 3.38]
 - 2. To Divide Work [§ 3.39]
 - 3. To Expedite Board Meetings [§ 3.40]
 - 4. To Take Advantage of Special Talents and Knowledge [§ 3.41]
 - 5. To Expand Volunteer Participation [§ 3.42]
- B. Officers [§ 3.43]
 - 1. Selection [§ 3.44]
 - 2. Responsibilities [§ 3.45]
 - a. In General [§ 3.46]
 - b. President [§ 3.47]
 - c. Vice President(s) [§ 3.48]
 - d. Secretary [§ 3.49]
 - e. Treasurer [§ 3.50]
- C. Committees [§ 3.51]
 - 1. Types of Committees [§ 3.52]
 - a. In General [§ 3.53]
 - b. Executive Committee [§ 3.54]
 - (1) Composition [§ 3.55]
 - (2) Activities [§ 3.56]
 - c. Other Standing Committees [§ 3.57]
 - (1) In General [§ 3.58]
 - (2) Audit [§ 3.59]
 - (3) Investment [§ 3.60]
 - (4) Fund Development [§ 3.61]
 - (5) Program Related [§ 3.62]
 - (6) Personnel [§ 3.63]
 - (7) Nominating [§ 3.64]
 - d. Ad Hoc Committees [§ 3.65]
 - 2. Committees' Performance of Delegated

Responsibilities [§ 3.66]

- a. In General [§ 3.67]
- b. Key Elements [§ 3.68]
 - (1) Job Description or Commission [§ 3.69]
 - (2) Staff Support [§ 3.70]

- (3) Chair [§ 3.71]
- (4) Committee Members [§ 3.72]
- (5) Sarbanes-Oxley Act and Nonprofits [§ 3.73]
- D. Executive Director [§ 3.74]
- E. Other Staff [§ 3.75]

V. Board Meetings and Actions [§ 3.76]

- A. Meetings [§ 3.77]
 - 1. Frequency and Length [§ 3.78]
 - 2. Notice [§ 3.79]
 - 3. Advance Information or Agenda [§ 3.80]
 - 4. Attendance [§ 3.81]
 - 5. Procedure at Meetings [§ 3.82]
 - a. Content of Discussion [§ 3.83]
 - b. Rules of Procedure [§ 3.84]
 - 6. Minutes [§ 3.85]
- B. Actions [§ 3.86]
 - 1. In General [§ 3.87]
 - 2. By Vote at a Meeting [§ 3.88]
 - 3. By Written Consent [§ 3.89]
 - 4. By Delegation to Committee [§ 3.90]
 - 5. By E-Voting [§ 3.91]

VI. Directors' Duty of Loyalty; Conflicts of Interest [§ 3.92]

- A. Restrictions [§ 3.93]
 - 1. In General [§ 3.94]
 - 2. Trust Standard [§ 3.95]
 - 3. Corporate Indemnification [§ 3.96]
 - 4. Other Professional Standards [§ 3.97]
 - 5. I.R.C. Provisions [§ 3.98]
- B. Appropriate Handling of Conflicts [§ 3.99]
 - 1. In General [§ 3.100]
 - 2. Disclosure [§ 3.101]
 - 3. Disinterested Decision-Makers [§ 3.102]
 - 4. Fairness [§ 3.103]

VII. Appendices [§ 3.104]

- A. Appendix 3A: Sample Bylaw Provisions [§ 3.105]
- B. Appendix 3B: Sources of Additional Information [§ 3.106]

CHAPTER 4

LIABILITY ISSUES AND INSURANCE NEEDS

by Paul J. Polaski and Sandy Swartzberg

I. Scope [§ 4.1]

II. The Nonstock Corporation and Liability [§ 4.2]

- A. Liability in General [§ 4.3]
- B. Liability of Members [§ 4.4]
 - 1. In General [§ 4.5]
 - 2. Piercing the Nonstock Corporate Veil [§ 4.6]
 - a. Disregard of the Corporation's Separate Legal Existence [§ 4.7]
 - (1) In General [§ 4.8]
 - (2) The *Ruppa* Decision [§ 4.9]
 - b. Preservation of the Limited Liability of Members [§ 4.10]
- C. Liability of Officers and Directors [§ 4.11]
 - 1. Common-Law Bases for Liability [§ 4.12]
 - 2. Liability Under the Wisconsin Statutes [§ 4.13]
 - a. In General [§ 4.14]
 - b. Limited Liability [§ 4.15]
 - (1) In General [§ 4.16]
 - (2) Self-Dealing [§ 4.17]
 - (3) Criminal Conduct [§ 4.18]
 - (4) Willful Misconduct [§ 4.19]
 - (5) Exceptions to Limited Liability [§ 4.20]
 - (6) Preservation of Limited Liability by Reliance on Other Sources of Information [§ 4.21]
 - c. Director Liability for Unlawful Distributions [§ 4.22]
 - d. Areas of Remaining Liability [§ 4.23]
 - 3. Indemnification and Expense Allowance of Officers and Directors [§ 4.24]
 - a. In General [§ 4.25]
 - b. Mandatory Indemnification [§ 4.26]
 - (1) In General [§ 4.27]
 - (2) Indemnification for Successful Defense of Proceeding [§ 4.28]
 - (3) Indemnification in Situations Other Than Successful Defense of Proceeding [§ 4.29]

- c. Allowance of Expenses [§ 4.30]
- d. Alteration of Rights to Indemnification and Allowance of Expenses [§ 4.31]
 - (1) Expansion of Rights to Indemnification and Allowance of Expenses [§ 4.32]
 - (2) Limitation of Rights to Indemnification [§ 4.33]
- D. Liability of Employees and Volunteers [§ 4.34]
 - 1. In General [§ 4.35]
 - 2. Statutory Limitation of Liability of Volunteers [§ 4.36]
 - a. In General [§ 4.37]
 - b. Exceptions to Limitation of Liability [§ 4.38]
- E. Practice: What Nonstock Corporations Can Do About Liability [§ 4.39]
 - 1. In General [§ 4.40]
 - 2. Practical Measures to Reduce Liability Exposure [§ 4.41]
 - a. Steps for the Corporation [§ 4.42]
 - b. Steps for Individual Directors [§ 4.43]

III. The Unincorporated Association and Liability [§ 4.44]

- A. In General [§ 4.45]
- B. Definition of an Unincorporated Association [§ 4.46]
- C. Suits Against Unincorporated Associations [§ 4.47]
- D. Liability of Members of Unincorporated Associations [§ 4.48]
 - 1. Definition of Member [§ 4.49]
 - 2. Types of Liability [§ 4.50]
 - a. For Contractual Obligations [§ 4.51]
 - b. For Torts [§ 4.52]
 - c. For Crimes [§ 4.53]
 - d. For Serving Liquor [§ 4.54]
 - 3. Piercing the "Corporate" Veil [§ 4.55]
- E. Protecting the Members, Officers, and Directors of an Unincorporated Association from Personal Liability [§ 4.56]

IV. Volunteers and Liability [§ 4.57]

- A. In General [§ 4.58]
- B. Wisconsin Statutory Protections [§ 4.59]

- C. Federal Volunteer Protection Act [§ 4.60]
 - 1. In General [§ 4.61]
 - 2. Organizations Covered [§ 4.62]
 - 3. Definition of Volunteer [§ 4.63]
 - 4. Scope of Immunity [§ 4.64]
 - 5. Exceptions to Liability Protections [§ 4.65]
 - 6. Limitations on Punitive Damages [§ 4.66]
 - 7. Limitations of Liability for Noneconomic Loss [§ 4.67]

V. Insurance Needs [§ 4.68]

- A. In General [§ 4.69]
- B. Liability Insurance [§ 4.70]
 - In General [§ 4.71]
 - 2. Types of Coverage [§ 4.72]
 - a. General Liability [§ 4.73]
 - b. Contractual Liability [§ 4.74]
 - c. Personal-Injury and Advertising-Offense Liability [§ 4.75]
 - d. Professional Liability [§ 4.76]
 - e. Umbrella and Excess Liability [§ 4.77]
 - f. Damage to Leased or Rented Premises [§ 4.78]
 - g. Products Liability/Completed Operations [§ 4.79]
 - h. Host Liquor Liability [§ 4.80]
 - i. Special Events [§ 4.81]
 - 3. Liability Insurance for Officers and Directors, Employees, and Agents [§ 4.82]
 - 4. Independent Contractors [§ 4.83]
- C. Additional Insurance Needs [§ 4.84]
 - 1. Worker's Compensation [§ 4.85]
 - 2. Automobile [§ 4.86]
 - 3. Property [§ 4.87]
 - 4. Crime [§ 4.88]
 - 5. Supplementary Coverage [§ 4.89]
- D. When Loss Occurs [§ 4.90]

VI. Appendices [§ 4.91]

- A. Appendix 4A: Sample Illustration of Corporate Signature on Written Contract [§ 4.92]
- B. Appendix 4B: Checklist: Insurance Exposure and Coverage Considerations [§ 4.93]

CHAPTER 5 EMPLOYMENT LAW CONSIDERATIONS

by Jane D. Clark and Daniel D. Barker

I. Scope [§ 5.1]

II. Fair-Employment Laws [§ 5.2]

- A. In General [§ 5.3]
- B. Protected Categories and Prohibited Conduct [§ 5.4]
 - 1. In General [§ 5.5]
 - a. Under State Law [§ 5.6]
 - (1) Employer Defined [§ 5.7]
 - (2) Employee Defined [§ 5.8]
 - (3) Methods of Discrimination Prohibited [§ 5.9]
 - (4) Employer Retaliation Prohibited [§ 5.10]
 - (5) Prohibition on Genetic Testing [§ 5.11]
 - (6) WFEA Violation When Protected Status Is a Factor [§ 5.12]
 - b. Under Federal Law [§ 5.13]
 - (1) Title VII of the Civil Rights Act of 1964 [§ 5.14]
 - (2) National Labor Relations Act Section 7 [§ 5.15]
 - (3) Age Discrimination in Employment Act [§ 5.16]
 - (4) Americans with Disabilities Act [§ 5.17]
 - (5) ADA Amendments Act of 2008 [§ 5.18]
 - (6) Employees Protected Under Antidiscrimination Laws [§ 5.19]
 - (7) Recovery Available in Discrimination Cases [§ 5.20]
 - c. Under Local Law [§ 5.21]
 - 2. Specific Types of Discrimination [§ 5.22]
 - a. Disability [§ 5.23]
 - (1) What Constitutes a Disability [§ 5.24]
 - (2) Causal Link Requirement Between Disability and Adverse Action [§ 5.25]
 - (3) Requirements upon Employer [§ 5.26]
 - (4) Termination of Employment [§ 5.27]
 - b. Religion [§ 5.28]
 - c. Marital Status [§ 5.29]

- d. Age [§ 5.30]
- e. Sex [§ 5.31]
 - (1) In General [§ 5.32]
 - (2) Bona Fide Occupational Qualification (BFOQ) Defense [§ 5.33]
 - (3) Pregnancy [§ 5.34]
 - (4) Sexual Harassment [§ 5.35]
 - (5) Hostile Work Environment [§ 5.36]
- f. Sexual Orientation [§ 5.37]
- g. Gender Identity [§ 5.38]
- h. Arrest and Conviction Record [§ 5.39]
 - (1) In General [§ 5.40]
 - (2) Substantial Relationship Test [§ 5.41]
- i. Use or Nonuse of Lawful Product [§ 5.42]
- j. Nonattendance at or Nonparticipation in Religious or Political Meetings or Communications [§ 5.43]
- C. Enforcement [§ 5.44]
 - 1. Multiple Forums [§ 5.45]
 - 2. Remedies [§ 5.46]
- D. Notices [§ 5.47]
- E. Record Keeping [§ 5.48]

III. Affirmative-Action Programs [§ 5.49]

- A. When Required; When Permitted [§ 5.50]
 - 1. Federal, State, or Local Contracts [§ 5.51]
 - 2. Voluntary Programs [§ 5.52]
- B. Components of an Affirmative-Action Program [§ 5.53]

IV. Employment-at-Will Rule [§ 5.54]

- A. General Rule [§ 5.55]
- B. Exceptions [§ 5.56]
 - State and Federal Statutory Restrictions on Right to Discharge [§ 5.57]
 - 2. Wrongful Discharge: Public Policy Exception [§ 5.58]
 - 3. Employee Handbooks as Contracts of Employment [§ 5.59]

V. Wage and Hour Laws [§ 5.60]

- A. Fair Labor Standards Act [§ 5.61]
 - 1. Coverage [§ 5.62]
 - a. Enterprise Coverage [§ 5.63]
 - b. Individual Coverage [§ 5.64]
 - 2. Defining Minimum Wage, Overtime, and Hours Worked [§ 5.65]
 - a. Hours Worked Defined [§ 5.66]
 - b. Overtime Defined [§ 5.67]
 - c. Regular Wage Rate Defined [§ 5.68]
 - 3. Exemptions [§ 5.69]
 - a. "White-Collar" [§ 5.70]
 - (1) In General [§ 5.71]
 - (2) Standard Duties Test [§ 5.72]
 - (3) Highly Compensated Employees Exemption [§ 5.73]
 - b. Special Exemptions [§ 5.74]
 - c. State Law Governing Overtime [§ 5.75]
- B. State Wage-Payment Law [§ 5.76]
 - 1. Coverage; Scope [§ 5.77]
 - 2. Defining Wages [§ 5.78]
 - 3. Determination of Wages [§ 5.79]
 - 4. Salaried Employees Not Exempt from Overtime Rules [§ 5.80]
 - 5. Enforcement Mechanism [§ 5.81]
 - a. Choice of Forum [§ 5.82]
 - b. Liens Against Employer's Property [§ 5.83]
 - c. DWD Authority in Wage-Claim Actions [§ 5.84]
 - d. Penalties and Other Remedies Available [§ 5.85]
- C. Record Keeping [§ 5.86]

VI. Personnel Administration [§ 5.87]

- A. Personnel Records [§ 5.88]
- B. Family and Medical Leave Law [§ 5.89]
 - 1. Covered Employers [§ 5.90]
 - 2. Eligible Employees [§ 5.91]
 - 3. Leave Amount and Type of Leave [§ 5.92]
 - 4. Serious Health Condition Defined [§ 5.93]
 - 5. Employee's Notice of Leave [§ 5.94]
 - 6. Medical Certification [§ 5.95]

- 7. Use of Accrued Paid Leave During FMLA Leave [§ 5.96]
- 8. Health Insurance Continuity During Leave [§ 5.97]
- 9. Reinstatement to Position [§ 5.98]
- 10. Employer Posting Requirements [§ 5.99]
- 11. Anti-Discrimination and Retaliation [§ 5.100]
- C. Veterans Reemployment Rights or USERRA [§ 5.101]
- D. Polygraph Exams [§ 5.102]
- E. Medical Exams [§ 5.103]
 - 1. In General [§ 5.104]
 - 2. Health Information Protected [§ 5.105]
 - a. Generally [§ 5.106]
 - b. Genetic Information [§ 5.107]
- F. Drug Testing [§ 5.108]
- G. U.S. Citizenship and Immigration Services Requirements: I-9 Form [§ 5.109]
- H. Deductions for Theft and Loss [§ 5.110]
- I. Withholding [§ 5.111]
- J. Employment Applications [§ 5.112]
- K. Grooming and Dress Requirements [§ 5.113]
- L. Employees Carrying Concealed Weapons [§ 5.114]
- M. Break Times for Nursing Parents [§ 5.115]
- N. Social Media Policies [§ 5.116]
- O. Particular Personnel Actions [§ 5.117]
 - 1. In General [§ 5.118]
 - 2. Discipline and Discharge [§ 5.119]
 - 3. Layoff and Recall [§ 5.120]
 - 4. Evaluation [§ 5.121]
 - 5. Transfer and Promotion [§ 5.122]
 - 6. Employment of Minors [§ 5.123]

VII. Unemployment Insurance [§ 5.124]

- A. In General [§ 5.125]
- B. Coverage [§ 5.126]
 - 1. Definition of Employer [§ 5.127]
 - 2. Definition of Employee [§ 5.128]
 - 3. Special Excluded Employments [§ 5.129]
- C. Individual Employee Eligibility [§ 5.130]
 - 1. Minimum Eligibility Requirements [§ 5.131]
 - 2. Disqualifying Events [§ 5.132]
 - a. Substantial Fault [§ 5.133]
 - b. Misconduct [§ 5.134]

- c. Absenteeism or Tardiness [§ 5.135]
- d. Voluntarily Quitting [§ 5.136]
- e. Employer Responsibilities If Asserting Claim of Disqualification [§ 5.137]
- D. Employer's Funding of Account [§ 5.138]

VIII. Worker's Compensation [§ 5.139]

- A. In General [§ 5.140]
- B. Coverage [§ 5.141]
 - 1. Definition of Employer [§ 5.142]
 - 2. Definition of Employee [§ 5.143]
- C. Special Situations [§ 5.144]
 - 1. Duty to Report Accident or Claim [§ 5.145]
 - 2. Refusals to Rehire [§ 5.146]
 - 3. Safety Violations [§ 5.147]

IX. Collective Bargaining and Unions: A Brief, Final Word [§ 5.148]

X. Appendices [§ 5.149]

- A. Appendix 5A: Employee Protections Listed by Topic, with Supporting Wisconsin Statutes [§ 5.150]
- B. Appendix 5B: Federal Statutes Regulating the Discharge of Employees [§ 5.151]
- C. Appendix 5C: Respectful Workplace/Anti-harassment and Anti-Discrimination Policy [§ 5.152]
- D. Appendix 5D: General Guide to Record-Keeping Requirements in Private-Sector Employment Matters [§ 5.153]
- E. Appendix 5E: Sample Employee-Handbook
 Disclaimers to Avoid Creating Employment Contracts
 [§ 5.154]
- F. Appendix 5F: Interactive Dialogue Questionnaire [§ 5.155]
- G. Appendix 5G: Checklist: Criteria for Determining Supervisory Status [§ 5.156]
- H. Appendix 5H: Checklist: Dos and Don'ts for Employer in Unionization Campaign [§ 5.157]

CHAPTER 6 EMPLOYEE BENEFITS

by Brian L. Anderson

I. Scope [§ 6.1]

II. Employee Benefits in General [§ 6.2]

- A. Pervasive Influence of Federal Law [§ 6.3]
- B. Changing Nature of Employee-Benefit Rules [§ 6.4]

III. Differences Between Nonprofit and For-Profit Organizations [§ 6.5]

- A. Ability to Distribute Income [§ 6.6]
- B. Tax Focus in Establishing Employee Benefits [§ 6.7]
- C. Availability of Employee-Benefit Plans [§ 6.8]
 - 1. Plans Not Available to Tax-Exempt Organizations: Capital Compensation Plans [§ 6.9]
 - 2. Plans Available Only to Certain Tax-Exempt Organizations [§ 6.10]
 - a. I.R.C. § 403(b) Tax-Sheltered Annuities [§ 6.11]
 - b. I.R.C. § 457 Plans [§ 6.12]

IV. Employer-Sponsored Employee-Benefit Plans [§ 6.13]

- A. Qualified Retirement Plans [§ 6.14]
 - 1. Types [§ 6.15]
 - a. In General [§ 6.16]
 - b. Defined-Benefit Plans [§ 6.17]
 - c. Defined-Contribution Plans [§ 6.18]
 - d. Hybrid Plans [§ 6.19]
 - e. I.R.C. § 401(k) Plans [§ 6.20]
 - 2. Nondiscrimination, Participation, Coverage, Vesting, Funding, and Other Rules [§ 6.21]
 - 3. Distribution and Loan Rules [§ 6.22]
 - 4. Reporting and Disclosure Rules [§ 6.23]
- B. Simplified Employee Pensions [§ 6.24]
- C. SIMPLE Retirement Plans [§ 6.25]
- D. I.R.C. § 403(b) Tax-Sheltered Annuities [§ 6.26]
 - 1. In General [§ 6.27]
 - 2. Nondiscrimination Rules [§ 6.28]
 - 3. Rules Limiting Contributions [§ 6.29]
 - 4. Distribution Rules [§ 6.30]

- 5. Loan Rules [§ 6.31]
- 6. Choice Between I.R.C. § 403(b) Tax-Sheltered Annuities and I.R.C. § 401(k) Plans [§ 6.32]
- E. Nonqualified Deferred-Compensation Plans [§ 6.33]
 - 1. In General [§ 6.34]
 - 2. Requirements for Tax-Exempt Organizations: I.R.C. § 457 [§ 6.35]
 - 3. Avoidance of I.R.C. § 457 Limitations: I.R.C. § 83 Plans and I.R.C. § 457(f)(1) Plans [§ 6.36]
- F. Welfare Benefit Plans [§ 6.37]
 - 1. In General [§ 6.38]
 - 2. Health Plans [§ 6.39]
 - a. In General [§ 6.40]
 - b. Federal Health-Care Reform [§ 6.41]
 - c. Portability [§ 6.42]
 - d. Privacy [§ 6.43]
 - e. Health Savings Accounts [§ 6.44]
 - f. Individual Coverage Health Reimbursement Arrangements [§ 6.45]
 - 3. Dependent-Care Assistance Plans [§ 6.46]
 - 4. Adoption-Assistance Plans [§ 6.47]
 - 5. Cafeteria Plans [§ 6.48]
- G. Fringe Benefits [§ 6.49]

V. Aggregation Rules [§ 6.50]

VI. Considerations in Establishing Employee-Benefit Plans [§ 6.51]

VII. Appendices [§ 6.52]

- A. Appendix 6A: Outline of Basic Types of Employee Benefits [§ 6.53]
- B. Appendix 6B: Additional Resources on Employee Benefits for Nonprofit Organizations [§ 6.54]

CHAPTER 7 REGULATION OF FUND-RAISING

by Daniel S. Welytok

I. Scope [§ 7.1]

II. State Charitable-Solicitation Laws [§ 7.2]

- A. Entities Covered [§ 7.3]
 - 1. In General [§ 7.4]
 - 2. Charitable Organization That Solicits [§ 7.5]
 - a. Definition of Charitable Organization [§ 7.6]
 - b. Activities Constituting Solicitation [§ 7.7]
 - (1) In General [§ 7.8]
 - (2) Representation That Proceeds Will Be Used for Charitable Purpose or to Benefit Charitable Organization [§ 7.9]
 - c. Nonprofit Organizations That Solicit [§ 7.10]
 - d. Exemptions [§ 7.11]
 - 3. Professional Fund-Raisers and Fund-Raising Counsel [§ 7.12]
 - a. In General [§ 7.13]
 - b. Exemptions [§ 7.14]
- B. Requirements for a Charitable Organization [§ 7.15]
 - 1. Registration [§ 7.16]
 - a. In General [§ 7.17]
 - b. Required Form [§ 7.18]
 - (1) Registration Form [§ 7.19]
 - (2) Completing Form [§ 7.20]
 - (3) Filing Form [§ 7.21]
 - c. Effective Date, Renewal, and Revocation of Registration [§ 7.22]
 - 2. Annual Report [§ 7.23]
 - a. In General [§ 7.24]
 - b. Accounting [§ 7.25]
 - (1) Contributions over \$500,000 (as adjusted) [§ 7.26]
 - (2) Waiver [§ 7.27]
 - 3. Prohibited Acts [§ 7.28]
- C. Requirements for Professional Fund-Raisers and Fund-Raising Counsel [§ 7.29]
 - 1. Registration [§ 7.30]
 - a. In General [§ 7.31]

- b. Required Registration and Notice Forms [§ 7.32]
- c. Effective Date and Renewal of Registration [§ 7.33]
- 2. Bonding [§ 7.34]
- 3. Filing of Contracts [§ 7.35]
- 4. Financial Reports and Deposits of Contributions [§ 7.36]
- 5. Solicitation Representations [§ 7.37]
 - a. Disclosure Requirements [§ 7.38]
 - b. Misrepresentations [§ 7.39]
 - c. Charitable Sales Promotions [§ 7.40]
- D. Penalties for Violating Requirements [§ 7.41]
- E. Freedom of Speech and State Regulation of Charitable Solicitation [§ 7.42]
 - 1. U.S. Supreme Court Case Law [§ 7.43]
 - a. In General [§ 7.44]
 - b. Restrictions on Fund-Raising Costs [§ 7.45]
 - c. Disclosure Requirements [§ 7.46]
 - d. Licensing and Registration Requirements [§ 7.47]
 - e. Lower Court Free Speech Rulings [§ 7.48]
 - 2. Effect on Wisconsin Law [§ 7.49]

III. Wisconsin Regulations Affecting Sales Involving Charitable Solicitations [§ 7.50]

- A. In General [§ 7.51]
- B. False Advertising [§ 7.52]
 - 1. In General: Nonprofit Organizations and Their Fund-Raisers [§ 7.53]
 - 2. Misrepresentations by Professional Fund-Raisers [§ 7.54]
- C. Direct Marketing [§ 7.55]
- D. Coupon-Book Sales [§ 7.56]
- E. Penalties for Violations [§ 7.57]

IV. State Bingo and Raffle Regulation [§ 7.58]

- A. In General [§ 7.59]
- B. Bingo [§ 7.60]
- C. Raffles [§ 7.61]

V. Federal Regulations Affecting Fund-Raising [§ 7.62]

- A. Federal Postal Regulations [§ 7.63]
 - 1. In General [§ 7.64]
 - 2. Postal Regulations on Solicitation [§ 7.65]
 - 3. Mail Permits for Nonprofits [§ 7.66]
- B. IRS Regulations [§ 7.67]
 - 1. Disclosure of Nondeductibility or Deductible Portion of Contributions [§ 7.68]
 - 2. Requests for Payment for Information Available from Federal Agency [§ 7.69]
 - 3. Exemption Application and Tax Returns [§ 7.70]

VI. Guidelines for Fund-Raising by Nonprofit Organizations [§ 7.71]

- A. Pitfalls [§ 7.72]
- B. Dealing with Professional Fund-Raisers [§ 7.73]
 - 1. General Guidelines [§ 7.74]
 - 2. Common Problems [§ 7.75]

CHAPTER 8 REGULATORY CONTROL OF LOBBYING AND POLITICAL ACTIVITIES

by Adie J. Olson

I. Scope [§ 8.1]

II. Federal Restrictions on Lobbying by Organizations Exempt from Federal Taxation [§ 8.2]

- A. The I.R.C. § 501(c)(3) Organization [§ 8.3]
 - 1. I.R.C. § 501(c)(3) Restrictions on Lobbying [§ 8.4]
 - 2. Organizations Governed by the Substantial-Part Standard [§ 8.5]
 - a. In General [§ 8.6]
 - b. Loss of Tax-Exempt Status for "Substantial" Lobbying [§ 8.7]
 - (1) In General [§ 8.8]
 - (2) Activities Considered Lobbying [§ 8.9]
 - (3) Determining Substantial Level of Lobbying Activity [§ 8.10]

- c. Excise Tax for I.R.C. § 501(c)(3) Public Charities That Lose Tax-Exempt Status [§ 8.11]
- d. Excise Tax on All Lobbying Expenditures by I.R.C. § 501(c)(3) Private Foundations [§ 8.12]
 - (1) In General [§ 8.13]
 - (2) Termination Assessment [§ 8.14]
- 3. Organizations Electing I.R.C. § 501(h) [§ 8.15]
 - a. In General [§ 8.16]
 - b. Permitted Amounts of Lobbying Expenditures [§ 8.17]
 - c. Excise Tax on Excess Lobbying Expenditures [§ 8.18]
 - d. Loss of Tax-Exempt Status for Normally Exceeding Ceiling on Expenditures [§ 8.19]
- B. Other I.R.C. § 501(c) Organizations [§ 8.20]
 - Civic Leagues or Social Welfare Organizations; Local Associations of Employees [I.R.C. § 501(c)(4)] [§ 8.21]
 - 2. Labor Organizations and Agricultural and Horticultural Organizations [I.R.C. § 501(c)(5)] [§ 8.22]
 - 3. Business Leagues and Trade or Professional Associations [I.R.C. § 501(c)(6)] [§ 8.23]
 - 4. Other Organizations [§ 8.24]
 - 5. Proxy Tax on I.R.C. § 501(c)(4), (c)(5), and (c)(6) Organizations that Make Expenditures for Lobbying [§ 8.25]

III. Federal Restrictions on Political Campaign Activities by Organizations Exempt from Federal Taxation [§ 8.26]

- A. The I.R.C. § 501(c)(3) Organization [§ 8.27]
 - 1. I.R.C. § 501(c)(3) Absolute Prohibition on Political Campaign Activities [§ 8.28]
 - 2. Political Campaign Activities [§ 8.29]
 - 3. Loss of Tax-Exempt Status for Engaging in Political Campaign Activities [§ 8.30]
 - 4. Excise Tax on Political Expenditures [§ 8.31]
 - a. In General [§ 8.32]
 - b. Organization Controlled by a Candidate [§ 8.33]

- c. Private Foundations [§ 8.34]
 - (1) In General [§ 8.35]
 - (2) Termination Assessment [§ 8.36]
- 5. Additional Sanctions for Flagrant and Willful Political Expenditures [§ 8.37]
 - a. Determination and Assessment of Tax [§ 8.38]
 - b. Injunction [§ 8.39]
- B. Other I.R.C. § 501(c) Organizations [§ 8.40]
 - 1. Civic Leagues or Social Welfare Organizations [I.R.C. § 501(c)(4)] [§ 8.41]
 - 2. Labor Organizations and Agricultural and Horticultural Organizations [I.R.C. § 501(c)(5)] and Business Leagues and Trade or Professional Associations [I.R.C. § 501(c)(6)] [§ 8.42]
 - 3. Other Organizations [§ 8.43]
 - 4. Proxy Tax on I.R.C. § 501(c)(4), (c)(5), and (c)(6) Organizations that Make Expenditures for Political Campaign Activities [§ 8.44]

IV. Other Federal Rules Affecting Lobbying Activities [§ 8.45]

- A. The Lobbying Disclosure Act [§ 8.46]
- B. Restrictions on Lobbying and Political Activities by Grant Recipients [§ 8.47]
 - 1. In General [§ 8.48]
 - 2. Grants from the Department of Health and Human Services [§ 8.49]
 - a. Restrictions on Lobbying by Grantees [§ 8.50]
 - b. Restrictions on Political Activities by Grantees [§ 8.51]
 - 3. Legal Services Corporations and Restrictions on Lobbying [§ 8.52]

V. State Regulation of Lobbying by Nonprofit Organizations [§ 8.53]

- A. In General: Definitions and Coverage [§ 8.54]
- B. Requirements [§ 8.55]
 - 1. Registration and Reporting [§ 8.56]
 - a. Licensing and Registration Requirements [§ 8.57]
 - b. Reporting Requirements [§ 8.58]

- c. Exemptions from Registration and Reporting Requirements [§ 8.59]
- 2. Prohibited Practices [§ 8.60]
- 3. Regulation of Campaign Contributions by Lobbyists [§ 8.61]
- C. Enforcement and Penalties [§ 8.62]

VI. State Regulation of Political Contributions by Nonprofit Organizations [§ 8.63]

- A. In General: Definitions and Coverage [§ 8.64]
 - 1. Relevant Statutes and Resources [§ 8.65]
 - 2. Restrictions on Political Contributions by Corporations or Associations [§ 8.66]
- B. Requirements [§ 8.67]
 - 1. Registration and Reporting [§ 8.68]
 - a. Registration Requirement [§ 8.69]
 - b. Reporting Requirement [§ 8.70]
 - c. Exemptions from Registration and Reporting Requirements [§ 8.71]
 - 2. Limitations on Campaign Contributions by Committees [§ 8.72]
 - 3. Identification of Donor [§ 8.73]
- C. Enforcement and Penalties [§ 8.74]

CHAPTER 9 MERGER, CONVERSION, SALE OF ASSETS, AND DISSOLUTION

by Thomas L. Frenn

- I. Scope [§ 9.1]
- II. Factors to Consider Before Engaging in Transactions [§ 9.2]
 - A. In General [§ 9.3]
 - B. Special Concerns for Nonprofits in Current Economy [§ 9.4]
- III. Merger [§ 9.5]
 - A. Defined [§ 9.6]
 - B. Wisconsin Nonstock Corporations [§ 9.7]
 - 1. Procedures to Effect Merger [§ 9.8]

- a. Preliminary Considerations [§ 9.9]
- b. Initiating the Transaction [§ 9.10]
 - (1) Who May Merge [§ 9.11]
 - (2) Verifying Candidate's Suitability and Outlining General Terms [§ 9.12]
- c. Developing the Plan of Merger [§ 9.13]
- d. Approving the Plan of Merger [§ 9.14]
 - (1) In General [§ 9.15]
 - (2) Nonstock Corporations Without Members or Voting Members [§ 9.16]
 - (3) Nonstock Corporations with Voting Members [§ 9.17]
- e. Developing Articles of Merger [§ 9.18]
- 2. Effective Date of Merger [§ 9.19]
- 3. Notification to the IRS [§ 9.20]
- 4. Consequences of Merger [§ 9.21]
- C. Wisconsin Nonstock and Foreign Business Entities [§ 9.22]
 - 1. Procedures to Effect Merger [§ 9.23]
 - 2. Consequences of Merger [§ 9.24]
 - 3. Loss of Tax-Exempt Status [§ 9.25]

IV. Conversion [§ 9.26]

- A. Conversion to Stock Corporation, Limited Partnership, or LLC [§ 9.27]
 - 1. History [§ 9.28]
 - 2. Conversion in General [§ 9.29]
 - 3. Plan of Conversion [§ 9.30]
- B. "Conversion" to Nonstock Corporation by Transfer of Stock or Assets [§ 9.31]
 - 1. In General [§ 9.32]
 - 2. Transfer of Shares: Tax Consequences [§ 9.33]
 - 3. Transfer of Assets: Tax Consequences [§ 9.34]
- C. Conversion from Cooperative to Nonstock Corporation [§ 9.35]
 - 1. Procedures to Effect Conversion [§ 9.36]
 - 2. Effective Date of Conversion [§ 9.37]

V. Sale, Lease, or Exchange of Assets [§ 9.38]

- A. In General: Definition [§ 9.39]
- B. Procedures to Effect Sale, Lease, or Exchange of Assets [§ 9.40]

- 1. Preliminary Considerations [§ 9.41]
 - a. In General [§ 9.42]
 - b. Tax Consequences for Tax-Exempt Nonstock Corporations [§ 9.43]
- 2. Preparing Letter of Intent [§ 9.44]
- 3. Preparing Asset-Purchase Agreement [§ 9.45]
- 4. Approving Asset-Purchase Agreement [§ 9.46]
 - a. Sale, Lease, or Exchange of Assets Without Member Approval [§ 9.47]
 - b. Sale, Lease, or Exchange of Assets Requiring Member Approval [§ 9.48]
 - (1) Nonstock Corporations Without Members or Voting Members [§ 9.49]
 - (2) Nonstock Corporations with Voting Members [§ 9.50]
- 5. Preparing Additional Documents and Transferring Funds [§ 9.51]

VI. Dissolution, Liquidation, and Distribution of Assets [§ 9.52]

- A. In General [§ 9.53]
- B. Procedures to Effect Dissolution and Liquidation [§ 9.54]
 - 1. Voluntary Dissolution and Distribution of Assets [§ 9.55]
 - a. Preliminary Considerations: Charitable-Trust Law [§ 9.56]
 - b. Approval of Dissolution [§ 9.57]
 - (1) Nonstock Corporations Without Members or Voting Members [§ 9.58]
 - (2) Nonstock Corporations with Voting Members [§ 9.59]
 - c. Distribution of Assets [§ 9.60]
 - (1) In General [§ 9.61]
 - (2) Claims and Remedies [§ 9.62]
 - d. Articles of Dissolution [§ 9.63]
 - e. Revocation of Voluntary Dissolution Proceedings [§ 9.64]
 - 2. Involuntary Dissolution and Liquidation [§ 9.65]
 - a. Administrative Dissolution [§ 9.66]
 - b. Judicial Dissolution [§ 9.67]
 - (1) Who May Petition [§ 9.68]

- (2) Decree of Dissolution [§ 9.69]
- (3) Process of Liquidation [§ 9.70]
- C. A Special Case—Liquidation of a For-Profit Subsidiary [§ 9.71]

VII. Appendices [§ 9.72]

- A. Appendix 9A: Master Checklist: Merger and Acquisition by and Between Nonprofits (Especially Wisconsin Nonstock Nonprofit Corporations) [§ 9.73]
- B. Appendix 9B: Sample Directors' Resolution Approving Merger (Corporation Without Members or Voting Members) [§ 9.74]
- C. Appendix 9C: Sample Directors' Resolution Approving Merger and Calling for Special Meeting of Members [§ 9.75]
- D. Appendix 9D: Sample Members' Resolution Adopting Plan of Merger [§ 9.76]
- E. Appendix 9E: Sample Articles of Merger [§ 9.77]
- F. Appendix 9F: Sample Asset-Purchase Agreement [§ 9.78]
- G. Appendix 9G: Sample Directors' Resolution Authorizing Sale of Assets (Corporation Without Members or Voting Members) [§ 9.79]
- H. Appendix 9H: Sample Directors' Resolution Approving Sale of Assets and Calling for Special Meeting of Members [§ 9.80]
- I. Appendix 9I: Sample Members' Resolution Adopting Asset-Purchase Agreement [§ 9.81]
- J. Appendix 9J: Sample Directors' Resolution Adopting Plan of Dissolution (Corporation Without Members or Voting Members) [§ 9.82]
- K. Appendix 9K: Sample Directors' Resolution Adopting Plan of Dissolution and Calling for Meeting of Members [§ 9.83]
- L. Appendix 9L: Sample Members' Resolution Adopting Plan of Dissolution [§ 9.84]
- M. Appendix 9M: IRS Publication 4779, Facts about Terminating or Merging Your Exempt Organizations (May 2009) [§ 9.85]

INDEX