Glossaries of Terms

These glossaries were written specifically for the nonprofit law context, and are intended for use by readers of *Good Counsel: Meeting the Legal Needs of Nonprofits,* by Lesley Rosenthal (Hoboken, NJ: John Wiley & Sons, 2012). The glossaries are for general informational and educational purposes only and do not constitute legal advice.

Glossary of Corporate and Tax Terms from Chapter 2

bylaws Rules or provisions adopted by an organization for its governance. Bylaws are subordinate to the organization's charter or articles of incorporation and subject to state law.

commercial co-venture/cause-related marketing A business undertaking between a nonprofit and a for-profit in which a portion of the proceeds from the for-profit entity's sale of goods or services is shared with the nonprofit, increasing sales and public goodwill for the for-profit. Under federal law such arrangements must further a charitable purpose and only incidentally benefit the for-profit partner. Such arrangements are regulated under many states' laws to prevent exploitation of the nonprofit and deception or confusion of the public.

conflict of interest policy Rules that define a real or seeming incompatibility between a director's, officer's or key employee's private interest and his or her fiduciary duties to the organization with respect to a particular transaction. The rules set forth a procedure for members of the governing board to analyze the proposed transaction for its propriety.

corporation A legal entity having the authority under law to act as a person, distinct from its owners, directors, officers or employees, existing indefinitely apart from them. See also **limited liability.**

determination letter A letter issued by the IRS recognizing a nonprofit organization as tax-exempt.

excess benefit transaction A transaction in which an economic benefit is provided by a tax-exempt organization directly or indirectly to any insider (or relative of an insider), if the value of the benefit exceeds the value of the performance of services or other consideration received in exchange.

independent director A member of a nonprofit organization's governing board who is free from financial or familial relationship with the organization and all another insiders of the organization.

intermediate sanctions Penalties meted out by the IRS to organizations engaging in excess benefit transactions with insiders. A step short of the loss of tax exemption.

joint venture An arrangement under which an organization undertakes a business enterprise, investment or other activity with another entity, sharing risks, profits and losses. Joint ventures between a tax-exempt nonprofit and a for-profit business must further a charitable purpose and only incidentally benefit the for-profit partner. The nonprofit must control the exempt elements of the relationship.

liability Financial responsibility to another.

limited liability A corporate law doctrine under which the corporation rather than its principals is answerable for its debts from its own available assets.

litigation hold A notice issued by an organization's legal counsel in anticipation of a lawsuit, ordering employees to preserve documents and other materials relevant to that lawsuit.

private inurement The use by an organization insider of the tax-exempt organization's earnings or assets for personal gain, other than reasonable and adequate compensation. Private inurement is forbidden under federal tax law.

tax exempt By law not subject to income taxes and certain other taxes.

ultra vires Activities that are beyond the scope of power granted.

whistleblower policy for accounting matters A written set of rules and procedures for individuals within an organization to report accounting irregularities, free from retaliation by the organization.

Glossary of Governance Terms from Chapter 3

ad hoc committee A committee established by the board for a particular purpose or limited time. Examples include capital campaign committees, executive search committees, and strategic planning committees. Contrasted with standing committees such as **audit committee** or **governance/nominating committee**, whose existence is ongoing and may be provided for in the bylaws.

audit committee A committee appointed by the board of an organization to oversee the financial reporting process, select an independent auditor, and receive the audited financial statements. Also ultimately responsible for overseeing systems of internal financial control and compliance with applicable laws and the organization's own policies (including those regarding conflicts of interest). Oversees management procedures to monitor and control major exposures to financial risk.

fiduciary duties The duties of utmost care, loyalty, and obedience owed by all directors, officers and key employees to an organization. Governed by state law.

governance/nominating committee A board committee responsible for reviewing the performance of directors and the board as a whole, as well as identifying, recruiting, and recommending suitable candidates for board membership.

minutes The official record of what occurred at a meeting.

oversight function The board's primary role and legal obligation to an organization under most states' laws, to review management's implementation of the organization's mission. Oversight also involves supervision of internal systems and control of the organization. The board's oversight function is distinguished from management's day-to-day operation of the organization.

rebuttable presumption of reasonable compensation An inference drawn by the IRS that an organization's executive compensation arrangements are reasonable and do not violate the federal prohibition against excess benefit transactions, if the organization follows certain steps in setting executive compensation.

Glossary of Contract Law Terms from Chapter 4

agent A person authorized to act on behalf of an organization when dealing with third parties. Compare with **principal**.

amendment A modification of the terms of a contract. The amendment should be in writing and signed by the parties with the same degree of formality as the original contract, with the intent to be bound by the changed terms.

apparent authority A contract law doctrine that gives a party the right to assume that the person speaking (or signing) for the other party is empowered to do so, if such assumption appears reasonable under the circumstances.

breach Occurs when a party violates the terms of the contract.

certificate of insurance Proof that a party to a contract has procured the types and amounts of insurance required by a contract.

consideration The valuables exchanged by the parties to a contract.

contract The binding exchange of mutual promises. Each party agrees to provide a specific thing or things of value to the other. See also **consideration**.

force majeure A clause in a contract explaining what happens if a major disruption—for example earthquake, fire, flood, widespread power outage, terrorist attack, or strike—were to prevent the contract activities from proceeding.

full performance When consideration has been exchanged and all parties' obligations under a contract have been completely fulfilled.

incorporation by reference A contract provision that makes attachments a part of the binding promises exchanged by the parties. If the parties intend that the matters in the attached documents (for example, **riders**, **exhibits**, **schedules**, or **appendices**) are an enforceable part of the agreement, then the main body of the agreement should refer to those attachments by name and state that they are "incorporated by reference."

indemnification A promise by a party to a contract to cover another party to the contract for loss or harm it may experience due to the acts or omissions of the first party, regardless of the presence or availability of insurance. It often serves as a back up to the **insurance provisions**, in case the insuring party fails to procure the insurance, or fails to procure enough insurance to cover the harm.

injunction A court order preventing the party who breached the contract from doing whatever it was that is causing them to breach. Injunctive relief is only available in cases of **irreparable harm**, where **money damages** would not suffice to make the non-breaching party whole.

insurance provisions Provisions of a contract that spell out which party or parties are required to procure amounts and types of insurance to cover harms that may occur in the course of fulfilling the contract, such as a worker injury, injury to a member of the public, or damage to premises or property.

integration clause A provision in an agreement stating that the agreement contains the entire understanding of the parties; no extraneous material, such as prior or subsequent statements, correspondence or other exchanges between the parties are part of the agreement.

irreparable harm Injury caused by one party (by breaching the contract) that cannot be redressed by money alone. See **injunctive relief**.

measure of damages The monetary amount of damages caused by the party breaching the contract.

notice Formal, written notification by one party to another of an important contract matter, such as a breach or the intent to renew or terminate.

offer and acceptance An **offer** is a contract proposal by one party, and **acceptance** is agreement by the other party to the terms of the contract. Both are required to create a binding obligation.

opportunity to cure A stated time within which a breaching party must correct the breach or else the contract will terminate.

parties The two (or more) entities participating in a contractual relationship. Parties to a contract may be natural persons, corporate persons, or other types of entities.

precedent Past agreements or terms used as a template for a future relationship with the same party or a similar arrangement with someone else. Precedents should be suitably revised to reflect the new parties, dates, and other terms.

principal A person or organization on whose behalf an agent acts.

representations and warranties A party's affirmation of underlying facts that can be relied upon by the other party to a contract.

riders, exhibits, schedules or appendices Documents that may be attached to a contract, setting forth additional details. If the matters set forth in this document are intended to be made a part of the contractual obligations, they should be **incorporated by reference** in the main body of the agreement.

risk allocation Provisions of contracts delineating which party bears the burden for various mishaps.

survival clause A provision of a contract that spells out any continuing obligations the parties may have to one another even after the contract is completed or terminated. Examples of matters often included in survival clauses are the duty to keep the terms of the arrangement confidential, the duty not to disclose sensitive information about the organization, and the obligation to continue a policy of insurance in effect.

term The length of time that the contract is in effect.

termination When a party ends the contract before all consideration has been exchanged and all parties' obligations under a contract have been completely fulfilled. Compare **full performance**.

termination for cause When a party ends the contract for a valid reason before full performance has occurred, for example, because the other party has **breached**.

termination for convenience A provision appearing in some contracts allowing one or more parties to end the contract even before all contemplated actions and obligations are performed (or before the term has expired), even if there has been no breach, as long as the terminating party provides notice and pays for the work done to date. Compare **termination for cause**.

writing The written documentation of parties' agreement.

Glossary of Intellectual Property Law Terms from Chapter 4

click-through license A form embedded in computer software which requires the person installing the software to affirmatively click an accept button indicating that the user accepts the terms of the license in order to complete the installation and use the software.

copyright The exclusive ownership right belonging to the author or creator of an original work that has been fixed in a tangible medium of expression.

derivative work A work based on one or more pre-existing works.

license An agreement between the copyright owner and another, granting permission for the other to use the copyrighted work. See **licensor** and **licensee**.

license fee The fee that a copyright owner charges the licensee to use his or her work. The fee may be an up-front payment, a percentage of sales, or a combination of both.

licensee The person using the work of a copyright owner under a license.

licensor The copyright owner who permits the use of its work by another under a license.

patent The exclusive right of an inventor to his or her invention.

public domain Works that are not owned by anyone and that can be freely used, posted, and repurposed without the creator's permission.

registration of copyrighted work Placing on record with the U.S. Copyright Office a verifiable account of the date and content of an original work of authorship.

rights of publicity The right to control the use of one's own picture, name and likeness, and to prevent others from using it to their commercial benefit without obtaining consent.

sublicense The further license of a protected work by a **licensee** to a third party, known as a sublicensee.

trade secret A formula, process, device or other business information that is not readily known or reasonably ascertainable and that provides a business advantage to the owner over its competitors.

trademark A word, name or symbol that designates the source of a good or service.

work-made-for-hire Work produced by an employee either by written agreement or within the scope of employment, the copyright to which is owned by the employer.

Glossary of Fundraising Terms from Chapter 5

acknowledgment A method by which an organization thanks its corporate sponsors. An organization may include the name, logo, established slogans, and description of products or services of a corporate sponsor and even its location, telephone number, web site address and visual description or display of the sponsor's products or services without tax consequence, but should avoid including an endorsement, such as a message to patronize the sponsor or a qualitative description comparing the sponsor's goods to its competitors' goods. Compare to **advertising**.

advertising An endorsement by a nonprofit of a corporate sponsor, such as encouragement to purchase sponsor's products or favorable comparison of its goods or services. If a nonprofit crosses the line between **acknowledging** its sponsors and advertising or endorsing them, the nonprofit may have to pay unrelated business income taxes (UBIT) on the sponsorship revenue it receives.

annual operating fundraising The money raised each year to carry out the organization's ordinary operations.

bequest A gift made through a will.

charitable gift annuity A contract under which a charity receives a gift from a donor for investment purposes, and the charity agrees in turn to pay a fixed amount of money to one or two individuals, for their lifetimes. Afterward, the charity is entitled to keep the remaining principal amount plus any additional income or growth. State laws regulate gift annuities.

coalition of organizations A group of charitable organizations that jointly raises funds and distributes them to member organizations.

contributed income Income received through charitable donations. Contrast with **earned income**.

***cy pres* doctrine** A legal doctrine whereby charities receive leftover funds from a class action lawsuit or regulatory action, after all of the known plaintiffs or victims have been identified and made whole. The charities receiving the *cy pres* funds should advance work in the public interest that is related in some way to the subject matter of the law suit.

earned income Income received by a nonprofit in exchange for services rendered.

endowment funds Money raised and kept by an organization as a nest egg and typically not spent down. Income and growth from the endowment funds can be re-invested in the organization or spent as part of annual operating expenditures.

fiscal sponsor A tax-exempt organization that accepts donations on behalf of a sponsored nonprofit organization having a similar mission but lacking recognition of tax-exempt status. The fiscal sponsor then re-grants the contributed funds to the sponsored organization, minus an administrative fee.

gift acceptance policy A policy approved by an organization's governing board for handling proposed contributions of gifts other than liquid assets (cash or marketable securities).

government grants Funds provided to nonprofit organizations by governmental entities for programs and services that benefit specific causes, the community or the public at large.

in-kind support Gifts of goods or services.

irrevocable gift A legally enforceable gift where the donor can no longer change his or her mind and require its return.

joint fundraising campaign Two or more like-minded organizations working together to raise contributions, which they then share or put toward their work together on a joint project.

legacy or planned giving Bestowing charitable gifts, often of appreciated personal property or money, usually by will but also sometimes by trust.

liquids Cash or cash equivalents (such as marketable securities).

membership fees or dues Periodic payments made by members of an organization in exchange for the benefits of membership; because there is an expectation of substantial return benefit, fees or dues payments are generally not tax-deductible.

planned giving A method of supporting charities that uses estate and tax planning techniques to maximize the value of the gift to the charity and/or minimize taxes for the donor.

privileges acceptance form A document provided by an organization to a corporate donor, estimating the market value of privileges or other benefits provided to the donor so that the value can be deducted from the amount of the gift for tax purposes.

quid pro quo contributions Donations to an organization from which the donor receives a service or good in return. The value of the return benefit must be subtracted to correctly calculate the deductible portion of the payment.

receipt A written acknowledgment of a charitable gift.

restricted gift A gift made to an organization for a specific purpose.

spending rate, or draw The amount of interest income or growth from endowment funds that the organization is permitted to use for operating expenses. Generally expressed as a percentage of endowment balances, often between 4 and 7 percent. The amount is subject to board policy and further regulated under state laws about management of institutional funds.

Glossary of Financial Terms from Chapter 6

accrual basis accounting An accounting method that records entries of debits and credits at the time the revenue or liability arises, rather than when the income is received or an expense is paid. Compare with **cash basis accounting**.

cash basis accounting An accounting method that recognizes cash as income and cash paid out as expense only at the time of receipt or payment.

cash flow The money that moves into and out of the organization's accounts, including amounts arising from ordinary operating activities as well as drawn from reserves or endowment.

dashboard A short summary of key financial matters.

deductible The amount of money toward an insurable loss that an organization must pay before its insurance carrier begins to pay.

defined benefit pension plan A traditional type of pension plan where the employer sets aside, manages, and invests money in one aggregated account on behalf of its employees and former employees, who are then paid a predetermined amount (benefits) beginning when they retire.

defined contribution pension plan A retirement plan in which a certain amount of salary is set aside each year, often in pre-tax dollars, and invested in accordance with the employee's directives. There are restrictions as to when and how the employee may withdraw these funds, and there is no guaranteed return on the investment.

detective controls Measures aimed at detecting fraud or accounting irregularities that have already occurred. Compare with **preventive controls**.

excessive reserves A situation in which the organization's reserves are greater than the organization will likely need.

fiduciary A person or entity that holds a trust relationship to another.

growth investments Investments whose returns are generated primarily by appreciation of capital (price increases) rather than from dividends and interest. Compare **income investments.**

income investments Investments whose returns are generated primarily from interest or dividend payments rather than by increase in share price.

insolvent A situation in which liabilities exceed assets.

internal controls Processes designed to provide reasonable assurance regarding the accuracy of financial reporting and compliance with applicable laws and regulations.

management letter A document prepared by the independent auditor at the conclusion of the annual audit, containing the auditor's professional opinion of the accuracy of the organization's financial statements. May also identify policies or procedures that the organization can improve, particularly internal controls.

notes accompanying financial statements Narrative information appended to certain figures in an organization's financial statements, supplementing the reader's understanding of the organization's financial health. May include information on debt, contingent liabilities, or contextual information (for example, indicating a pending lawsuit with significant potential impact on the organization's financial condition in a future year).

pension A form of compensation paid into a trust and invested for the employee's benefit by the employer; the worker may begin to receive payments from the pension trust upon his or her retirement.

permanently restricted assets Assets with donor-imposed restrictions requiring that the assets be maintained permanently, but permitting the nonprofit entity to use or spend the income or appreciation derived from the assets.

preventive controls Measures taken to deter or avoid unwanted events such as embezzlement or fraud.

pro forma financial statement A financial statement prepared as of a future date that takes into account projected income, expenses and transactions such as investing in property or incurring debt, or prepared as of a past date but which reflects transactions which may have occurred after the end of the relevant reporting period.

profit Surplus of revenue over expenses. In the nonprofit context, such surplus is not distributed to owners or shareholders, but instead reinvested into the organization to fulfill its charitable or public purpose.

quasi-endowment or board-restricted funds Assets that have not been restricted by donors but on which the nonprofit's board has imposed restrictions limiting use or expenditure.

reserve A fund in which money not needed for current operations is stored in anticipation of a future expense.

self-insurance An organization's plan to cover its own losses without resort to an insurance carrier. A self-insured organization should establish reserves to cover potential losses. Such reserves may be funded or unfunded, based on the likelihood and magnitude of any demands on these reserves and on the organization's overall liquidity.

temporarily restricted assets Assets with donor-imposed restrictions that either expire by the passage of time or due to certain predetermined events or actions.

unrestricted assets Assets without permanent or temporary restrictions.

variances Differences or disparities between two financial documents, such as the differences between an annual operating budget and actual revenues and expenses to date.

vesting period The period of time an employee must work for an organization before he or she is entitled to participate in its pension plan.

Glossary of Human Resources Law Terms from Chapter 7

at-will employee An employee who can be terminated or quit at any time, for any or no reason and without advance notice. Terms of at-will employment are often spelled out in an offer letter but not in an **employment agreement**, which by contrast establishes a particular duration for the employment relationship.

employee handbook A manual containing guidelines and rules for employee conduct, as well as a statement of the organization's personnel policies and practices. Sometimes called a personnel manual; needs not be a physical book or manual; may be in electronic form and/or published through a company intranet.

employee An individual who performs services for an employer in exchange for financial compensation. Generally paid under federal form W-2. Compare with volunteer or **independent contractor.**

employment agreement A contract between an employee and employer in which the terms of the employee/employer relationship are outlined.

Fair Labor Standards Act of 1938 Federal law that sets standards for minimum wage, overtime pay, and child labor.

Form I-9 (Employment Eligibility Verification) A U.S. Citizenship and Immigration Services (USCIS) form that employers must collect from their employees, verifying the employee's eligibility to work legally in the United States.

founder's syndrome A situation that occurs when the founder of a growing organization maintains a high degree of control over the organization's affairs, upending the ordinary reporting relationship between chief executive and board and supplanting the board's oversight role to the point where it becomes harmful to the organization.

independent contractor An individual who performs services for an organization in exchange for compensation or other benefits, where the organization does not control or direct the manner and means by which the work is performed. Sometimes called consultants or freelancers. Ordinarily paid under IRS Form 1099. Compare with **employee**.

National Labor Relations Act of 1935 A federal law that provides rights and protections to workers, employers, and labor organizations.

progressive discipline A process for addressing employee performance or behavioral issues under which the penalties gradually increase (often beginning with an informal oral warning and ending in the employee's termination, with several intermediate steps).

respondeat superior A legal doctrine whereby the employer is held liable for the tortious (negligent, harm-causing) actions of his or her employee when the employee causes harm while acting within the scope of his or her employment. (*Latin*: "Let the master answer.")

Glossary of Trademark Terms from Chapter 8

collective mark A trademark owned by a collective group or organization that is used by its member organizations to indicate the source of goods or services.

domain name The address of a web site on the Internet.

infringement The use of another's intellectual property without authorization or legal justification.

trademark license An agreement between a trademark owner and another, granting permission for the other party to use the trademark.

trademark registration The process of registering a trademark with the United States Patent and Trademark Office; while not necessary to secure trademark rights, it gives the registrant nationwide priority as to the trademark.

take-down notice A notice sent by a copyright holder or its agent to the operator of a web site (online service provider), informing the provider that material appearing on the web site infringes the copyrights of another. Creating a routine for receiving such notices in accordance with the requirements of the federal Digital Millennium Copyright Act of 1998 (DMCA) and promptly blocking access to (or removing) allegedly infringing material creates a safe harbor against copyright liability for the online service provider.

trade dress The visual appearance of a product that is used to designate the source of the product, such as the color scheme on the packaging.

trade name A word, symbol, or other mark that identifies the organization that produces goods or services to which a trademark pertains.

trademark A word, drawing, or other indicator that identifies the source of the good or service to which it is attached.

Glossary of Copyright Terms from Chapter 8 (See also Chapter 4 Glossary)

actual damages An amount awarded to a complaining party that repays proven losses.

attorney's fees The charge to a client for services performed for the client; these may be awarded as part of damages in a successful suit.

copyright The exclusive ownership right of an author or creator of an original work of authorship fixed in a tangible medium of expression.

fair use defense The permissible use of copyrighted materials for criticism, comment, news reporting, teaching, scholarship, or research. It is a defense to alleged copyright infringement.

guild or union rights Rights attaching to works created by members of a guild or trade union, the use of which the guild or union must approve and potentially collect a payment on behalf of members.

media errors and omissions insurance Insurance coverage providing defense and indemnification in the event the covered party is alleged to have infringed on rights-protected material of another.

orphan work A copyrighted work whose owner cannot be located (because the owner does not know if its ownership rights, has died and left no heirs, or, in the case of a company, has dissolved without a successor).

rights of publicity The right to control commercial uses of a person's identity or likeness.

statutory damages Damages provided by statute, as distinguished from damages provided under the common law.

sweepstakes Promotional games of chance offering a prize to the winner.

skill contests Promotional games, puzzles, competitions, or other contests in which the award of a prize depends predominantly on the skill of the contestant.

Glossary of Operations, Facilities Management, and Security Terms from Chapter 9

assignment The transfer of a tenant's entire lease to someone else.

fit-out of premises The tenant's customization of rented facilities, including installation of light fixtures and plumbing.

gross lease A lease in which property taxes, insurance and maintenance costs are included in the tenant's payment of rent to the landlord. Compare with **net lease**.

incorporate by reference The inclusion of a second document by mentioning that document in another document. In the context of lease agreements, the terms of a prime lease can be incorporated by reference into a sublease, and in that instance the benefits and obligations of the prime lease apply to the relationship between the prime landlord and the subtenant.

lease abstract A summary of the key lease provisions, dates, and deadlines.

net lease A lease in which the tenant is required to pay some or all of the costs relating to the property that are normally the responsibility of the property owner, such as property taxes, property insurance, and maintenance costs. See also **triple net lease**.

operating expenses The costs associated with operating and maintaining premises.

pass-through expenses Operating costs that a landlord passes along to its tenant.

prime landlord The owner of premises who leases it to a tenant, who in turn subleases it to a subtenant.

prime lease The lease agreement between the owner and the tenant that rents it directly from the owner.

prime tenant A tenant who contracts directly with a property owner to lease premises, and who then subleases the premises to another. The prime tenant is also known as the sub-landlord.

sublease A tenant's transfer of part of its lease (part of the premises or part of the term of the lease, or both) to a subtenant.

submeter A system that allows the landlord to quantify the amount of utilities used by a particular tenant and bill the tenant for utilities based upon the tenant's actual use.

tail-end liability An organization's obligation to continue to make payments under a lease through the end of the lease term, even if the organization dissolves or no longer needs the leased premises.

term sheet A summary of the key business points of a rental relationship, which eventually will be included in the binding, formal lease agreement.

triple net lease A lease in which the tenant pays the real estate taxes, property insurance, and maintenance costs.

use clause Describes ways in which the tenant can and cannot use the premises.

Glossary of Political Terms from Chapter 10

advocacy The act of pleading for or actively supporting a cause or proposal.

candidate An individual seeking nomination, election, or appointment to an office.

lobby To talk with or curry favor with a legislator for the purpose of influencing the legislator's vote on a particular matter.

public policy Principles and standards regarded by the legislature as being of fundamental concern to the whole of society.