

Family Foundation Management

Sarah Duniway
Ruth Brackney
Catie Bitzan Amundsen

May 24, 2022

© 2022 Lathrop GPM. All rights reserved. Dissemination and duplication are prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.





Agenda

- Legal Fundamentals
- Private Foundation Rules
- Governance Structures and Best Practices
- Practical Matters

Foundation Legal Fundamentals

- Legal form
 - Nonprofit corporation vs. Charitable trust
 - State law concept
 - Attorney General supervision
- 501(c)(3) tax-exempt organization
 - Operated primarily in furtherance of mission
 - Operated for benefit of public – private benefit only incidental
- Private foundation classification
 - IRS classification
 - Special operating rules and restrictions

Private Foundations vs. Public Charities

501(c)(3) Organizations

Public charities

Supported by
donations
170(b)(1)(A)(vi)

Supported by
fees
509(a)(2)

Churches,
hospitals,
schools
509(a)(1)

Supporting
Organizations
509(a)(3)
[3 Types]

Private
Foundations

Private
Operating
Foundations

State and Federal Registration and Reporting

- Secretary of State / Department of State
 - If a nonprofit corporation
- Attorney General Registration
 - Solicitation
 - Trust funds
 - Registration + annual renewal with copy of IRS Form 990-PF
 - Some states have de minimis exceptions (under \$X assets, fewer than Y donors, etc.)
- IRS Filings
 - Form 1023 Application for Exemption
 - Form 990-PF

Key Private Foundation Rules

- Self-dealing prohibition
 - Prohibits most financial transactions between private family foundations and their disqualified persons
 - Disqualified Persons = all board members, officers, substantial contributors, their families and businesses, and all government officials
- Acts of self-dealing:
 - Sale, exchange or lease of property
 - Loans or other extensions of credit
 - Furnishing goods, services or facilities
 - Payment of compensation
 - Use of tickets at galas, fundraising events
 - Satisfaction of personal pledges
 - Almost any other use of Foundation assets by DP
- Some key exceptions, including reasonable compensation for personal services necessary to accomplish the foundation's tax-exempt purposes

Key Private Foundation Rules

- Minimum distribution requirement
 - 5% of average value of assets in previous year for grants, program-related investments, administrative expenses, own programming
- Qualifying distributions and expenditure responsibility
 - Grants to public charities, private foundations, non-501(c)(3) organizations, individuals, and foreign organizations are all treated differently
 - Expenditure responsibility
 - Special rules on grants to individuals

Key Private Foundation Rules (cont.)

- Lobbying and political activity prohibition
 - “Lobbying” includes:
 - Influencing specific legislation
 - Direct – contact legislators, staff
 - Grassroots – urge public to contact legislators, staff
 - What activities are permitted
 - No intervening in campaigns
- Excess business holding limitation
 - Foundation generally can’t own more than 20% of any business enterprise
 - 20% cap is reduced further by all ownership interests of disqualified persons and their family members
- No jeopardizing investments
 - Exception for PRIs

Governance Structures and Best Practices

- Governance structures
 - Role of Members
 - Role of the Board of Directors / Trustees
 - Officers
- Governance structure may be customized and change over time, and from one generation to the next
 - Family grantmaking branches
 - Membership and Board structures
 - Advisory boards
 - Division of the foundation among family branches
 - Dissolution or termination into a DAF

Governance Structures and Best Practices

- Follow corporate formalities!
 - Hold regular meetings
 - Keep minutes and clear records of Board actions
- Establish clear grantmaking process and authority
 - OK to delegate grantmaking authority to officer(s) or committee
 - Donor can't unilaterally make grants as the donor
- Draw clear lines between the foundation and family (or family business)
 - Foundation itself should enter into its own pledges and sponsorships
 - Family members clear when they are acting in official foundation capacity
 - This clarity can help avoid self-dealing issues
 - Consider self-dealing tools and checklists for easy reference

Practical Matters

- Contracts and correspondence
 - In foundation's name
 - Signed by an officer of the foundation
- Accounting
 - Separate books and records of the foundation
 - Consider state audit requirements and best practices
- Substantiation of charitable contributions
 - See IRS Publication 1771
- Grant letters
 - Key terms - grant period, amount, installments, purposes, reporting requirements
 - More detailed if grant requires expenditure responsibility

Speakers



Sarah Duniway
Partner - Minneapolis
Health & Nonprofit Organizations
612.632.3055
sarah.duniway@lathrogpm.com



Ruth Brackney
Partner – Overland Park
Trusts, Estates & Legacy Planning
913.451.5104
ruth.brackney@lathrogpm.com



Catie Bitzan Amundsen
Partner – Minneapolis
Health & Nonprofit Organizations
612.632.3277
catherine.bitzanamundsen@lathrogpm.com