

*Welcome to the Foundation Center's Webinar*

## Can My Business Be a Nonprofit?

We will begin shortly.



## The Foundation Center

### **Our Mission:**

To strengthen the social sector by advancing knowledge about philanthropy in the U.S. and around the world.



# GrantSpace

[GrantSpace](#) offers information and resources for nonprofits worldwide in need of know-how for securing funding and operating effective organizations.

## Social Enterprise

Print

**WATCH** MORE ▾



**LISTEN** MORE ▾

-  [Philanthropy Chat: Janelle Kerlin Discusses Social Enterprise: A Global Comparison](#)  
00:11:20
-  [Philanthropy Chat: Humera Fatihuddin and Eben Bayer Discuss Social Enterprise](#)  
00:11:11
-  [Philanthropy Chat: Beverly Schwartz Discusses Social Enterprise](#)



# Today's speaker

## Erin Bradrick

Senior Counsel at  
[NEO Law Group](#)

Contributor to the  
[Nonprofit Law Blog](#)



## Can My Business Be a Nonprofit?

The Foundation Center  
February 26, 2014

Presented by: Erin Bradrick

Copyright © 2014 NEO Law Group. All rights reserved

### Terminology

#### “Nonprofit”

- State corporate law
- No owners/no distribution to owners

#### “Tax-Exempt”

- Federal & state tax law
- Exempt from corporate income tax on certain income

## Starting a Venture



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Initial Considerations

- **Do you have a viable idea?**
  - **Duplication vs. differentiation**
  - **Funding sources**
  - **Sustainability**
  
- **Do you have the capacity?**
  - **Money**
  - **Staff/Management**



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Next Considerations: Nonprofit vs. For-Profit

- **Mission: Exclusively charitable purpose?**

- **Yes** – FP or NP/501(c)(3)

- **No** – FP

- **Activities: Primarily *related*?**

- **Yes** – FP or NP/501(c)(3)

- **No** – FP



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Next Considerations: Nonprofits

- **No Private Benefit**

- Must serve public, rather than private, interest

- **No Private Inurement**

- No earnings may inure to the benefit of any individual
  - Penalty = loss of exempt status



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Next Considerations: Nonprofits

- **Related business?**

- **Yes** – Is it a prudent investment or thoughtful and defensible risk-taking?

- **No** – Is it a prudent investment?

- » **Substantial?**

- » **Yes** – Subsidiary

- » **No** – Internal or Subsidiary



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Internal Program vs. Subsidiary

- Different organizational purpose
- Risk management
- Geographic considerations
- Employee considerations
- Protection of Parent's tax-exemption
- Access to equity capital
- Operational flexibility



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Alternatives to Forming a Nonprofit

- Work with an existing nonprofit
- A donor-advised fund
- Giving circles
- Fiscal sponsorship



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Choice of Taxable Entity



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Corporate and Hybrid Forms

- Business Corporation
- Limited Liability Company
- For-Profit Hybrids
  - L<sup>3</sup>C
  - Benefit corporation
  - Flexible purpose corporation
  - Social purpose corporation
  - Certified B corporation



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Ex. Business Donating Profits to Charity

I want to start a business selling widgets and donate 50-100% of the profits to charity. Can I form it as a nonprofit?

- Mission
- Primary Activities

What if, for every widget sold, I donate one to a developing country?



neo

Copyright © 2014 NEO Law Group. All rights reserved.



## Ex. Business Providing Services to Disadvantaged Group

I have a business that sells XYZ services and I want to spend half of my time providing XYZ services to a disadvantaged class of individuals. Can I form a nonprofit?

- Are activities charitable?
- How are activities carried out?
- Private benefit concerns



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Ex. Business Employing Disadvantaged Group

I want to start a business that employs veterans or members of another disadvantaged group. Can I start a nonprofit?

- Mission
- Primary activities



neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Ex. Fiscal Sponsorship of Activity With Commercial Potential

I'm making a film, art, educational software, invention, etc. and want it to serve the public, but it also has some commercial potential. Can I qualify for fiscal sponsorship?

- Many factors to consider & will depend on each individual project
- Model C Fiscal Sponsorship

neo



Copyright © 2014 NEO Law Group. All rights reserved.

## Concluding Notes

- Form follows function
  - Make decision with due care
- Hybrids: pioneer/goodwill vs. untested form
  - Make decision in the organization's best interests
  - Local tax benefits
  - Local contracting benefits

neo

Copyright © 2014 NEO Law Group. All rights reserved.

## Disclaimer

*The information contained in this presentation has been prepared by NEO Law Group and is not intended to constitute legal advice. NEO Law Group has used reasonable efforts in collecting, preparing, and providing this information, but does not guarantee its accuracy, completeness, adequacy, or currency. The publication and distribution of this presentation are not intended to create, and receipt does not constitute, an attorney-client relationship.*

201 Spear Street, Suite 1100  
San Francisco, CA 94105  
415.977.0558  
www.NEOLawGroup.com  
www.NonprofitLawBlog.com

erin@neolawgroup.com  
twitter.com/erinbradrick

gene@neolawgroup.com  
twitter.com/gtak



Copyright © 2014 NEO Law Group. All rights reserved.

## Upcoming webinars

### Lean for Social Good 101

Thursday, March 6, 2014

2-3pm ET | FREE

With Leah Neaderthal,

Co-Founder of Lean Impact



[Click here to see more upcoming webinars...](#)



**THANK YOU for joining us!**

Please give us your feedback.

[Click here to do our 6-question survey](#)

**Thank you!**

