

BASICS OF REPRESENTING NONPROFIT CORPORATIONS  
2015  
SESSION 1  
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1. Common misperceptions about nonprofit law.
  - a. It's *simple*.
  - b. It's not for profit.
  - c. It's a job for *volunteer, attorney-directors*.
  - d. It's no *harm*, no *foul*.
  - e. With all these exemptions, we'll have more *time to do good!*
    - i. *Tax* exempt does not mean *paperwork* exempt.
    - ii. Just like the for-profit world, *execution* trumps *ideas*.
2. Terms
  - a. Nonprofit: *a company where profits are not distributed to those who control it.*
  - b. Missouri Nonprofit Corporation: **a Missouri corporation formed under Chapter 355, RSMo. (52 / 94/ 08).**
  - c. Not-for-profit: *A kind of activity, not a kind of organization.*
  - d. Benevolent or Pro Forma Corporation: **a Missouri corporation formed under Chapter 352, RSMo.**
  - e. Tax-exempt: A tax status; a *nonprofit* is not necessarily *tax-exempt*.
  - f. Charity: a subset of tax-exempt organizations.
3. Legal oversight and liability has *drastically* increased.
  - a. Charitable *immunity* = Gone.  
*Abernathy v. Sisters of St. Mary's, 446 S.W.2d 599 (Mo. 1969); Mo. Ann. Stat. § 354.125 (Noel v. Menninger Foundation, 267 P.2d 934, 943(Kan. 1954).*
  - b. Religious *deference* =Gone.  
*Presbytery of Elijah Parish Lovejoy v. Jaeggi, 682 S.W.2d 465 (1984).*
  - c. Free pass for people with a good heart = *if it ever existed, gone.*  
*Intermediate Sanctions.*
  - d. But, for *volunteers*:
    - i. *VPA 1997 (42U.S.C. 14501-05)*
    - ii. *MVPA - RSMo .§537.118.1*
4. Missouri's two kinds of nonprofit corporations, Chapter 352 and Chapter 355.
  - a. The wrong reason to choose: *attorney time at startup.*

b. Newer is not always better.

c. Chapter 352:

Requirements

Formation and dissolution are a return to older common law.

Three to form = Roman. “tres faciunt collegium”

Court oversight = English (King’s Visitation power limited to King’s Bench).

Articles of Agreement = English concept of *charter*.

Sovereign’s consent = English/Roman (SOS).

Encompasses all kinds of governing structures.

Churches.

Historical Colleges (Overseers / Trustees) (bicameral) “Board.”

No registered agent, no annual report.

May be some limits on property ownership not devoted exclusively to charity. (*see Unity*, below).

d. Chapter 355

RMNCA

Requires a **board**.

Using the SOS’s form might be **malpractice**.

There are no **owners** -- no, really: **NO OWNERS**.

*Farrow v. St. Francis Med. Ctr.*, 407 S.W.3d 579 (Mo. Aug. 27, 2013) (en banc)

Some of the laws aren’t even printed! **RSMo. 355.176.4**

e. Or is it *three kinds*? **RSMo. 347.187**; <http://www.irs.gov/pub/irs-tege/eotopich00.pdf> *Unity School of Christianity v. Commissioner*, 4 B.T.A. 61 (1926); questionable state issues.

5. New 1023-EZ

\$50K, \$250K, NO LLCs – see worksheet.

6. Multiple regulators of non-profits.

a. **Attorney General**.

b. **IRS**.

c. **Fiduciary and Contractual Duties**.

*Filled* versions of this outline at: [www.whiteheadlawllc.com/mobaracle2015](http://www.whiteheadlawllc.com/mobaracle2015)

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