

# DUVAL & STACHENFELD LLP

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### New York Attorney General's Settlement With Morris Foundation

New York Attorney General Andrew Cuomo announced a \$1.9 million settlement to resolve claims of excess compensation against two board members and an officer of the William T. Morris Foundation, a Delaware corporation doing business in New York. The AG alleged that compensation and other benefits paid by the Foundation were excessive. Under the settlement, restitution is being paid to the Foundation and the board of directors will be reconstituted.

### IRS Guidelines On Reporting Nonprofit Compensation

The IRS has posted informal guidelines on its website to assist charities in reporting compensation related information on their Form 990s. The Form 990 had been modified in 2006 to require greater details about compensation paid to charities officials and about the relationships among them. Confusion about the new requirements has led both to the posting of the guidelines and to some modifications in the form. In addition, the IRS might be modifying the Form 990 starting in 2008 to require more details on governance and management. See *The Chronicle of Philanthropy* ("Chronicle"), 6/14/07, p. 35.

### IRS Investigation Of Political Activity

The IRS "has started investigations into more than 350 nonprofit organizations for engaging in possible illegal political activities during the 2006 election cycle." Those organizations include religious congregations that might have "previously used their pulpits to endorse or oppose political candidates." The IRS investigations, which are a follow-up to numerous investigations of political activity during the 2004 election cycle, might face legal challenges on constitutional grounds. See *Chronicle*, 6/14/07, p. 48.

### Impasse In Albany Affects Financing For New York Nonprofits

The New York Times reported that "[a] political impasse in Albany has cut off a critical source of financing for nonprofit organizations in New York City, ranging from operators of small homes for the developmentally disabled to the builder of large parking garages for the new Yankee Stadium in the Bronx." The Times reports that, since July 1, a dispute in the legislature concerning the power of development agencies to borrow money on behalf of nonprofits has resulted in the suspension of such borrowing authority, a "lapse [which] is crimping the expansion plans of schools, hospitals and social-service providers, causing them to postpone projects or borrow at significantly higher interest rates." *NYT*, 7/14/07, p. B1.

### Self Regulation For Charities

In our two previous editions of *The Plain & Simple*, we summarized the first 17 of the 29 principles of self-regulation contained in the draft report of Independent Sector's Advisory Committee on Self

Regulation (which were in the areas of “Facilitating Legal Compliance” and “Effective Legal Compliance”). The remaining 12 principles in the Advisory Committee’s revised draft with respect to the boards of charitable organizations are as follows:

#### Strong Financial Oversight

18. The board should institute policies and procedures to ensure that the organization manages and invests its funds prudently. The full board should review and approve the annual budget and monitor actual performance.
19. The organization must keep complete, current, and accurate financial records. The board should have a qualified, independent financial expert audit or review its statements.
20. The organization should not provide loans to directors, officers, or trustees.
21. The organization should spend a significant percentage of its annual budget on programs in pursuance of its mission.
22. The organization should implement policies that provide clear guidance on its rules for paying or reimbursing expenses by anyone conducting business or traveling on its behalf. The expenses of spouses, dependents, or others should not be reimbursed (unless they are also conducting business).

#### Responsible Fundraising

23. Solicitation materials and other communications with donors and the public must clearly identify the organization and be accurate and truthful.
24. Contributions must be used for the purposes described in the relevant solicitation materials, in the way specifically requested by the donor, or in a manner that reflects the donor’s intent.
25. The organization must provide donors with proper acknowledgments in accord with IRS requirements.
26. The organization should implement clear policies to determine whether accepting a gift would compromise its ethics, financial circumstances, or program focus.
27. The organization should provide appropriate training and supervision of the people soliciting funds on its behalf, both to ensure compliance with applicable laws and to avoid coercive or intimidating tactics.
28. Internal and external fundraisers should not be compensated based on a commission or percentage of the amount raised.
29. The privacy of individual donors should be protected, and lists with their names should not be sold or made available unless donors are provided with an opportunity at least once a year to opt out of the use of their names.

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