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EXEMPT

THE FINANCIAL MAGAZINE FOR NONPROFIT EXECUTIVES

in this issue

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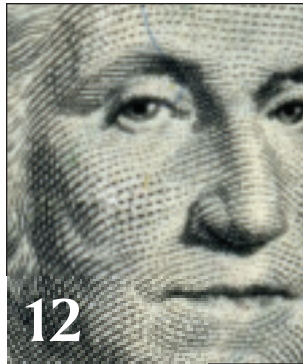
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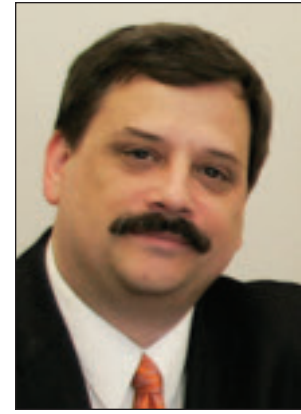
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FROM THE EDITOR



PAUL CLOLERY, EDITOR-IN-CHIEF

Does This Currency Have Currency?

Those on both ends of the deal set the value when barter was a primary currency. A roof might be worth two chords of firewood, or the eggs of three chickens for a week might be swapped for use of a plow for a few days.

Human beings have always been able to fix a value on something that is tangible. That's the trouble with Bitcoin, our cover story. An exchange values Bitcoin for redemption into dollars. Exchanges set the value for most currencies but you can put a dollar in your pocket. Bitcoin can also be digital only and that means they can literally be deleted. And, there are have a few scandals involving the would-be currency.

Nonprofits are starting to take Bitcoin for donations and are immediately swapping it for American dollars. Having dollars in-hand is great. But what if it's determined Bitcoins are apparitions? Do charities have to give the money back and to whom would the money go?

We explore all of these issues in the cover story. It's a brave new world and technology rules it. Gene Takagi of the Nonprofit Law Blog writes about the 10 issues to address in your nonprofit's social media policy. It's the Wild West West out on the World Wide Web.

One thing that's been around for a while, unlike the latest app, is the split interest trust. These trusts give the donor and nonprofit some flexibility. We take a look at those arrangements. We also look at insurance and management this issue.

For fun and education, we ask 10 questions of Bob Mims, CFO of Wetlands America Trust and Controller/Director of Investments for Ducks Unlimited. There are also some safe-for-work online games.

Enjoy this issue. As always, send idea and comments to ednchief@nptimes.com



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Ten Questions FOR THE CFO

Bob Mims, CFO of Wetlands America Trust and Controller/Director of Investments for Ducks Unlimited

1

When Did You Know You Were Good With Numbers? I knew I was good with numbers in third grade and then I learned how to use a calculator, which simplified things. My high school basketball coach strongly suggested that it was unlikely I would make an NBA team, which of course, I already knew because I had computed my statistical probability with a regression analysis.

2

What Are You Reading Now? *Unexpected Answers to Life's Biggest Questions* by Tim Keller. Brilliant author.

3

What Are the Three Most Important Skills For Today's CFO?

1. Ability to understand and facilitate strategic planning and business modeling.
2. Ability to communicate effectively the complexities of nonprofit accounting to make economic sense to a mostly "for-profit" board audience.
3. A heart for the nonprofit

mission, and as important, for the people and volunteers committed to it.

4

What's The Worst Piece of Professional Advice You've Ever Received? It was from some prior managers in public accounting to work more hours "simply for the sake of working more hours" and require my subordinates to do the same.

5

What Keeps You Up At Night? Usually it is the "economy," while we try to strengthen our balance sheet and grow our mission delivery. Otherwise, it is some TV show like *Walking Dead* or *Mad Men*.

6

How's Staffing? Is There A Plan To Hire? We've enjoyed a decade of consistency and productivity in the accounting department at DU. We have had no turnover, except for promotions for the past seven years and have no plans to currently hire.

7

Do You Ever Dream About Work? Are They Pleasant Or Nightmares? I dream of a bigger endowment and have nightmares of large accumulated deficits.

8

When Was The Last Time You Worked An 8-Hour Day? I have a policy of only working half days. With the other 12 hours in the day, I sometimes lie awake at night listening to my wife snore (but seriously ... don't tell her I said that).

9

What's Your Favorite Guilty Pleasure? Golf, swimming, basketball, Ole Miss Rebel sports, and "The Carnivore" at Soulshine Pizza in Oxford, Miss. ... and naming too many guilty pleasures.

10

Are you Bullish or Bearish On The Sector's Finances For the Next 12 Months? I am bullish on the nonprofit sector's finances assuming that the nonprofits have set disciplined budgets. I predict philanthropy to be flat for the sector except for those engaged in active campaign strategies that measure both income and plan expenses. **E**





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COVER STORY



CONTROVERSIAL CURRENCY BEING CONVERTED TO CASH

Nonprofits accepting Bitcoin donations and looking for more

BY ZACH HALPER

The University of Puget Sound in Tacoma, Wash., often receives donations from alumni so it wasn't a surprise to Sherry Mondou, the university's vice president of finance and administration, when 2007 graduate Nicolas Cary expressed interest in donating to the school.

The revelation was the form in which he wanted to give. Cary's \$10,000 donation was to be made in Bitcoins, specifically 14.5 Bitcoins.

Bitcoins are a virtual currency launched in 2009 that is quickly gaining popularity and controversy. Cary is chief executive officer of the Bitcoin firm Blockchain, which is one of the many so-called "wallets" that act as banks where users can store their Bitcoins.

The school's leaders were already hesitant to accept foreign donations, let alone virtual ones. Mondou had some reservations. "We were proud and grateful that this young, successful alumnus wanted to give back to Puget Sound and we were intrigued by Bitcoin as a new paradigm," said Mondou. "At the same time, we needed a better understanding and risk assessment of

Bitcoin and needed to determine how such a gift transaction could take place."

Part of the concern had to do with the negative press the currency has been getting in recent months. Mt. Gox, a Bitcoin exchange that was based in Tokyo, Japan, announced in February that 850,000 Bitcoins valued at \$450 million at the time had gone missing and trading was suspended. Although 200,000 of those Bitcoins have since been found, the remaining 650,000 were still missing at presstime and there has yet to be a concrete explanation of how they disappeared.

At the time trading was suspended, the currency was valued at \$565 per Bitcoin, less than half its value in November.

"Unfortunately there were some bad business practices there," said Stephanie Wargo, vice president of marketing at BitPay, a payment processor for Bitcoins. "With an emerging technology not everyone is going to be successful." Wargo also made a point that the price of Bitcoins has "rebounded nicely" since the Mt. Gox crash. Mondou, too, said that the value of their donation increased since it was originally made.

The Mt. Gox incident was soon followed by

the death of a 28-year-old American woman living in Singapore who ran the First Meta Bitcoin exchange. Police ruled that the death was "unnatural" and was thought to be a suicide, though the reason for that remains unclear. More negative press followed when an article in *Newsweek* purported to identify the creator of Bitcoin. The problem is that person -- Dorian Nakamoto -- strongly denies the claim. He told media outlets he had never heard of the currency and claimed he was subject to harassment because of the article.

Despite this volatility, Mondou said the school felt comfortable dealing with Bitcoins, mostly because they would not have to keep the currency on hand. Instead, they could immediately convert it into cash. There was one problem, however. Having never accepted a donation of virtual currency, they had to find an exchange agent. Cary recommended the school use BitPay, a Bitcoin payment processor.

"Using [BitPay] made the gift transaction simple to process and eliminated the exchange rate risk," Mondou said. "The Bitcoin gift was immediately exchanged for

Continued on page 10



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COVER STORY

Continued from page 8

U.S. dollars and funds were transferred to our bank account the next business day.”

The university has received three more Bitcoin donations, though Mondou declined to identify the donors. Combined with the initial gift, the school has received \$12,570 in Bitcoins. Mondou said she anticipates receiving more Bitcoin donations and that the university will continue to examine other forms of digital currency.

“Because digital currency is in its infancy and is evolving, our assessment will be ongoing,” she said.

Cary said that he decided to make the donation as a “thank you” to the university. “I always wanted to give back to them [University of Puget Sound] when I was in a position to do it,” he said. “I was the grateful recipient of a lot of student aid.”

Cary added that due to Bitcoins, he has been able to pay off 100 percent of his student loans nearly a decade earlier than he would have been otherwise able. This is partly because, in his words, he is “dedicating [his] life to Bitcoins.” He first learned of the digital currency in 2011 from a friend and after doing research, he quickly learned of what he considers its benefits. One of the perceived benefits is the small transaction fee when compared to credit cards. Some Bitcoin processors, such as BitPay, will charge no transaction fee so long as the nonprofit provides the proper documentation.

BitPay Vice President of Marketing Stephanie Wargo said that they chose to have no transaction fees for nonprofits as a way to encourage organizations to get involved. “That’s one of the things we like to do to support nonprofits and to allow the Bitcoin community to work with their favorite nonprofit,” she said.

“The Bitcoin community is also incredibly giving,” added Cary. “With Bitcoin, anyone can instantly share their address and take donations from anyone, anywhere on planet Earth.”

The process for accepting Bitcoin donations with BitPay -- or any other Bitcoin processor -- is similar to any other payment processing company. Set up a donation widget on your website to add Bitcoins as a donation method. After you receive the donation, you can either choose to keep the Bitcoins or have BitPay process them into

cash, which typically takes one business day.

“We act like any other payment processor. In this case, we only facilitate Bitcoin payments,” Wargo said.

For Bitcoin processors that don’t waive transaction fees, the price is still low when compared to credit card or PayPal transactions. For example, BitDazzle, which creates



With bitcoin, anyone can instantly share their address and take donations from anyone, anywhere on planet earth. --Nicolas Cary

online stores for organizations to sell products for purchase with Bitcoins, charges a 1 percent transaction fee. PayPal charges 2.2 percent plus 30 cents per domestic transaction for nonprofits. The average fee for credit card transactions is between 1.95 and 2 percent.

“This is a worldwide payment method,” said Hieu Bui, CEO of BitDazzle. “You’re opening yourself to a world you didn’t have access to before.”

Mondou said that the university’s experience with BitPay was very good, and she said that the fact the transaction fee was waived helped make easier the acceptance and selection decisions. “Using a payment processor like BitPay simplifies the process for the nonprofit and donor alike,” she said.

Although dollars are the only accepted form of legal tender in the United States, Bitcoins are able to be legally traded and exchanged. Adam Levine, editor-in-chief of LetstalkBitcoins.com explained: “Legal tender laws require you to accept dollars, they do not restrict you from accepting anything else. If I want to pay you in seashells, and you like the idea nothing stops us although it must be reported as a barter trade.”

Jason Shim, digital media manager at Pathways to Education in Canada, which accepts Bitcoin donations, likened it to gold. “You could post on an online forum and look for people who are buying/selling or you could find an online exchange, in which you can buy and sell for fiat currency and have it deposited directly into your bank account,” he said. “If you are a merchant, you could use something in which they would accept the Bitcoin, sell it, and convert it into cash, which is then deposited into your bank account.”

When a donor makes a gift to an organization, they count on a receipt that they can use for tax purposes. One of the concerns some organizations have is how they can guarantee this for a virtual currency. That’s why Pathways to Education took it upon themselves to become the first national organization in Canada to issue tax receipts for Bitcoin donations.

Shim said they started looking into Bitcoins as a donation method in March 2013 and fully launched their initiative in November. “Our main concern was how to handle tax receipting but the rest of it was pretty straightforward,” he explained. What Shim found out was that as long as they can establish fair market value they can issue a receipt for the donation.

In a release from April 2013, the Canadian Revenue Agency (CRA) announced its own position on Bitcoins, stating that any transactions involving the currency would be treated as barter transactions and that Bitcoin-related gains could be treated as income or capital depending on the circumstances.

Receipts are also given to donors through BitPay, said Wargo, and other Bitcoin accepting organizations are starting to follow the same path. This is all in an effort to bring more legitimacy to a currency that, while not officially recognized as legal tender by the Internal Revenue Service (IRS), is still subject

to taxation, according to a recent notice published by the agency. Bitcoins are treated as “property” under U.S. tax laws and thus would be subject to capital gains taxes.

“A payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property,” the IRS stated.

Bitcoins held for more than a year would be taxed at a maximum of 23.8 percent under capital gains and, according to Levine; normal capital gains rates are applied based on your tax bracket. This might not be a worry for nonprofits, however, as they are under no obligation to hold the Bitcoins and many choose not to, because of their perceived volatility.

Pathways to Education in Toronto, Ontario, Canada has received \$2,200 in Bitcoin donations, with the majority of that activity happening during the online day of giving called #GivingTuesday.

The Lois Merrill Foundation (LMF) in Encinitas, Calif., is another organization that is beginning to accept Bitcoin donations and, like Pathways to Education, immediately sell off their Bitcoins.

The organization partnered with BitDazzle to create an online store where they sell their products for Bitcoins. According to Bui, it took only “a matter of days” to get their store up and running. “The idea that we could get something up and running on their behalf, it was a really attractive thing for us to do,” he said.

As they only just recently had the site set up, LMF Founder Angela Merrill said the group has not received any “significant” contributions as of yet, but they are very optimistic about the future.

“We feel that there’s a lot of potential with Bitcoins, and we wanted to be an early adopter of it,” she said.

LMF, like many organizations investigating Bitcoins, paid close attention to the Mt. Gox incident and did have some concerns about the currency’s volatility. They were ultimately swayed by the fact that they would never have to hold on to the Bitcoins.

“Once they learn they don’t have to ever touch a Bitcoin if they don’t want to, that gets them over the hurdle pretty quickly,” said BitPay’s Wargo. She added that the current cash value of Bitcoins is locked in for 15 minutes on their site.

“We felt we could convert [to cash] fast enough where it wouldn’t be an issue for us,” said Merrill, explaining how they got over the volatility issue.

“Bitcoin can be volatile but we mitigate that by not holding any Bitcoins. We immediately sell them off,” said Shim. The volatility is only an issue if you are speculating or investing in them, he said. “Look beyond the news and do research into it. There’s a rich story behind it beyond all the sensationalism,” said Shim.



If I want to pay you in seashells, and you like the idea nothing stops us although it must be reported as a barter trade. --Adam Levine

Mondou of the University of Puget Sound echoed that point, saying that she thinks the popularity of Bitcoins is just starting to grow. “I can imagine that donors holding and transacting in Bitcoin will want to make their donations in that form due to the convenience and low transaction cost,” she said.

Bui said that there really is no downside for a nonprofit to accept Bitcoin donations since they will never have to handle a Bitcoin. And, if the price continues to grow, an organization can choose to hold onto them and sell them for the increased value. “It’s like a mini investment,” he explained.

If you do plan to hold onto Bitcoins instead of selling them immediately, Cary recommended following security best practices and to keep an eye on the value of the currency to figure out the best time to sell.

“It’s true that Bitcoin is prone to fast value changes. I would never advise anyone to invest more money into something than they are comfortable losing,” he said. “That being said, in the entire history, over the long run, there has only been about an 11-week period [the Mt. Gox incident] where you would have lost value.” **E**



FUNDRAISING

Split Interest Trusts

Helping donors fund dreams has several options

BY STUART KAHAN

The Sunrise Day Camp is dedicated to children with cancer and their siblings, who all attend for free. The organization, which is part of the \$12-million Friedberg JCC in Oceanside, Long Island, N.Y., operates two camps in New York and one in Israel, and is preparing to expand. Donations are running high and many contributors are now recognizing the value of split-interest trust agreements rather than outright gifts.

One such donor had stock assets she acquired for \$20,000. They are now worth \$100,000. If she sold them, she would be hit with a 15 percent capital gains tax on the \$80,000 gain, or \$12,000. The Sunrise Day Camp would receive the full \$100,000 tax-free to reinvest if she established a charitable remainder trust. The donor would pick-up an annuity of anywhere from 5 percent to 50 percent of the fair market value of the trust property, plus participation in the portfolio's performance.

And, Sunrise would have full use of the funds, according to Beth Fetner, vice president of agency development.

Split-interest agreements are basically financial contributions that donors offer to nonprofits by either contributing certain financial assets directly or placing them in trust that the organization can then use with discretion. These agreements come in various forms, from revocable to irrevocable agreements to lead and remainder interest arrangements.

All split-interest trusts must annually file Form 5227, Split-Interest Trust Information Return, with the Internal Revenue Service (IRS) to report financial activity, including asset holdings, income, and distributions, and to determine if they should be treated as a private foundation. The IRS reported receiving 113,688 Form 5227 filings for 2012, a 3.4-percent decline from Filing Year 2011. The IRS noted that charitable remainder unitrusts continued to be the most common split-interest trusts, accounting for 80 percent of returns filed that year.

For the most part, nonprofits have two general paths to take under lead or remainder interest trusts. Both use shares and cash contributions that donors leave in control of the nonprofits, either through the nonprofits' role as trustee or through the holding of a fund as an extension of the organization's general assets.

The primary difference between the two is that the lead trust system involves the

what was left to Penn State, and taken a charitable deduction on his income tax.

Instead, the university's vice president of gift planning showed him how, by establishing a tax-exempt charitable remainder trust (CRT), he could donate his full portfolio value tax-free, plus receive a lifetime annuity and a charitable deduction upon creation of the trust.

CRTs come in two flavors. The author opted for a charitable remainder unitrust (CRUT), which tied his annuity to a percentage of the fair market value of the donated assets, rather than a charitable remainder annuity trust (CRAT), which would have set his lifetime payments at a fixed percentage of the donated assets. Through his CRUT, the donor's stock was liquidated by the university, then immediately reinvested into a diversified portfolio.

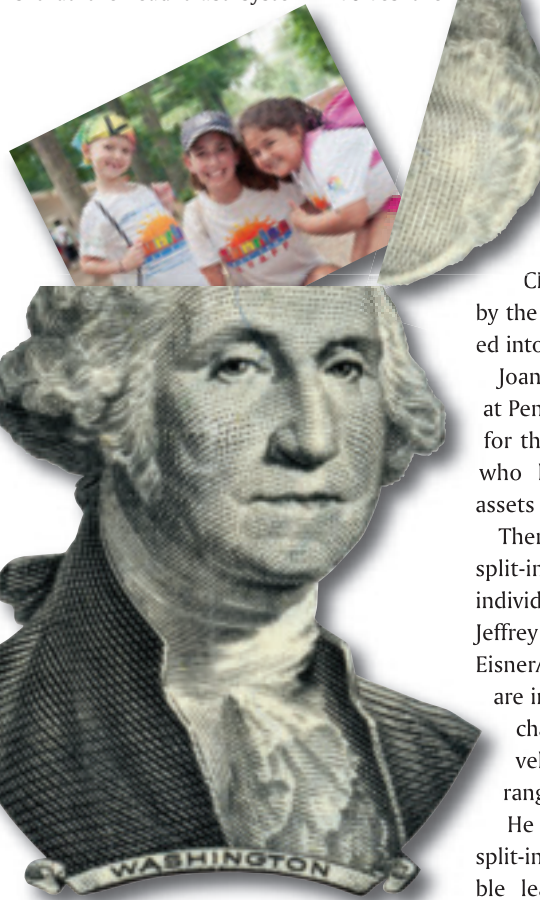
Joanne Cahill, director of leadership gifts at Penn State, said that "CRTs are a win-win for the charity and donor, especially those who have highly appreciated long-term assets to spare."

There has been an increase in the use of split-interest trusts by charitably-minded individuals in recent years, according to Jeffrey Jacobs, Dean of Tax Training for EisnerAmper LLP in New York City. "Donors are increasingly considering, and utilizing, charitable lead annuity trusts. These vehicles can be funded with a wide range of assets," he said.

He added that the recent popularity of split-interest trusts in general, and charitable lead annuity trusts in particular, "is fueled by the tax laws, as well as the historically low interest rates."

Three primary trusts used by donors are the Charitable Lead Trust (CLT), the Charitable Remainder Trust (CRT) and Charitable Gift Annuities (CGA).

With a CLT, the nonprofit receives periodic payments during the term of the agreement, and at the termination the remaining assets revert to the donor's designated heirs. The CRT is where the trust makes



organization receiving financial payments while the remainder trust system involves the organization making payments back to either the donor or the donor's beneficiary.

In another example, an author who had graduated from The Pennsylvania State University and had fond memories of his years there watched his stocks appreciate nicely. He could have cashed them in, paid the 15 percent federal tax on the capital gains, donated

periodic payments to the donor or the donor's beneficiary during the term of the agreement and at its termination the remaining assets revert to the nonprofit.

In the CGA, the donor contributes assets (typically cash or shares of stock) to the nonprofit in exchange for a promise by the nonprofit to pay a fixed amount for a specified period of time to the donor or individuals or entities designated by the donor. The assets received are held as general assets of the nonprofit and the annuity liability is a general obligation of the nonprofit. These are similar to the CRTs except that no trust exists.

THE PROS AND CONS

There are advantages and disadvantages for the nonprofit. Split-interest trusts in general, and charitable lead annuity trusts in particular, can provide an immediate and ongoing annual benefit to the charity. To the donor, a split-interest trust allows individuals to pass along a lifetime of accumulated wealth to their beneficiaries in a tax-efficient manner, while assuring their favorite charities of their continued support.

The potential disadvantage to the charity is the trust might not be able to make its annual distributions if the assets in a charitable lead annuity trust fluctuate in value.



Beth Fetner

Another variable in the agreement is whether the donated assets go directly to the charity to hold during the term, or to a third-party trustee. All of these factors have an effect on how the accounting transactions are recorded.

WATCH THOSE BOOKS

The accounting for split interest agreements can be tricky because there are differ-

ences depending on the type of agreement. Jacobs explained that nonprofit managers might not always be recording the split interest agreements, might not be recording them correctly, or might not realize that they are a party to a split interest agreement. As a result, a nonprofit's accountants might be understating assets, liabilities, revenue, and net assets.

Financial managers then must make sure the organization has the resources to monitor it properly. The administration of the gift should demonstrate fairness to both the nonprofit and the donor.

According to David Livingston, author of *Smart and Caring: A Donor's Guide to Major Gifting*, nonprofit managers should be asking themselves certain questions. For example, do they want to be in the business of supplying financial services to their donors? Is it compatible with the mission and does the organization have the staff and skills to administer it? Moreover, would a bequest program meet their deferred giving program needs? **E**

Stuart Kahan is a freelance writer in Long Beach, N.Y., and is the former executive editor at SourceMedia in New York City.

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INSURANCE

3 Myths About Captives

On or off-shore, protecting organizational assets yourself

BY MELANIE LOCKWOOD HERMAN

During the hard market phase of the property and casualty insurance market cycle -- when coverage is more restrictive and expensive -- many nonprofit leaders admit feeling pretty helpless. You might say that one feels “captive” by an industry that is hard to avoid.

If you rent space your landlord requires the purchase of general liability insurance. If you provide services to a vulnerable clientele, your funding source insists that you carry sexual abuse coverage. And if you're recruiting savvy leaders to serve on the board, your new recruits are bound to ask if you have directors and officers liability coverage.

There are various ways to overcome feelings of helplessness and captivity when it comes to insuring the organization's exposures. One increasingly viable option for nonprofits is to consider a “captive.” In the context of nonprofit organizations, the term “captive” refers to an insurance entity owned by the nonprofit and created specifically to insure the organization's exposures.

Captives are essentially a form of self-insurance and they are set up for myriad reasons. And although most of the 5,000 captives in existence today were established by for-profits, there are many captives serving the insurance needs of nonprofits and associations. The two most common motivations for establishing a captive are to:

- Reduce the cost of insurance by eliminating insurer profits from the cost structure; and,
- Ensure the availability of tailored coverage when comparable coverage is unavailable from commercial markets or unreasonably priced.

There are a number of myths about captives that might cause some nonprofit leaders to discount the potential value and ben-

efits of a captive. Here are three of the most common myths.

1. Captives are pretty similar and generally only an option for large, Fortune 500 companies.

Captive structures and owners vary more than you might think. The three most common structures involving nonprofit organization owners are “pure” captives, group/association captives, and risk retention groups

erage wants and needs.

Some, but not all, risk retention groups are licensed as captives. These entities are generally formed to provide liability coverage for entities with shared risk and coverage concerns.

The perception that captives are only an option for very large organizations is mostly false. It's generally true that start-up costs, legal/regulatory complexity, and ongoing management costs put the feasibility of a pure captive out of reach for small and mid-sized nonprofits. There are other options. For example, it is possible to “rent” space in an existing captive. A nonprofit that isn't able to fund a captive can pay a fee to rent a license and capital from a “rent-a-captive” owner.

2. There are very few options when it comes to domiciling a captive.

While the state of Vermont and off-shore domiciles such as the Cayman Islands and Bermuda have become synonymous with the world of captives, any nonprofit considering the creation of a captive should at a minimum consider the lesser known domiciles. For example:

- Anguilla is the fastest growing offshore domicile, although Bermuda remains the largest. Source: *Captive Insurance Times*;
- U.S. domiciles continue to grow in size and appeal. According to the South Carolina Captive Insurance Association, there have been more than 230 captives licensed in the state since 2000. (Source: www.sccia.org);
- Other states with a growing number of captives include Hawaii (184 captives in 2013), Arizona (106 captives in 2013), Montana (65 captives in 2013) and the District of Columbia (139 as of 2010). According to Shanique Hall's article *Recent Developments in the Captive Insurance Industry*, more than half of U.S. states allow captive insurance licensing.

Although startup and capitalization costs might be less in an off-shore domicile, convening a captive board in an exotic, off-



In the context of nonprofit organizations, the term “captive” refers to an insurance entity owned by the nonprofit and created specifically to insure the organization's exposures.

(RRGs). Pure captives are wholly-owned insurance entities created to insure a single organization or the organization and its affiliates or subsidiaries. This type of captive is also sometimes referred to as a single-parent captive.

Group or association captives are formed to insure the members of a group or association. Association captives are generally effective when members of a group have similar exposures and therefore similar cov-

shore location can cause financial and image problems for a nonprofit. Travel costs for a board traveling from various cities in the U.S. to an off-shore meeting site could double or triple the cost of a similar meeting held in a U.S. domicile. Compliance with the domicile's captive law is likely to require that all board meetings are held in the domicile or at least outside the U.S.

Second, holding board meetings in a domicile such as Barbados can create a perception problem for a nonprofit or association based in the U.S. True operating costs and the risk of reputation damage should always be factored in when considering domicile options for a nonprofit captive.

3. Captives only make sense as insurance vehicles for liability exposures.

According to the National Association of Insurance Commissioners, "practically every risk underwritten by a commercial insurer can be provided by a captive." A recent report in Crain's Benefits Outlook notes that Alcoa Inc., Archer Daniels Midland Co., Coca-Cola Co., Microsoft Corp. and Google have

all started using captives to fund a variety of benefit plans for employees, such as accidental death and dismemberment, life insurance and long-term disability coverage. And since the passage of the Patient Protection and Affordable Care Act (PPACA), health insurance captives have been promoted as a way for mid-sized entities to gain control over the cost of health benefits for employees. A health insurance captive can be established to serve several nonprofits, operating as a group or association captive created to provide liability coverage.

There are potential, serious drawbacks to health captives along with the benefits. According to Randy Hart from CBIZ Benefits & Insurance, one of the downsides is the potential for the cost to be greater than a traditional health insurance plan due to large, required fronting fees. A potentially greater drawback of a health insurance captive is an increased exposure to risk caused by lack of diversification and the relatively small size of the insured pool or participants. Simply put, where health insurance is

concerned, there is safety in numbers.

While captives are likely to remain out of reach for many nonprofits, they continue to be an option worth considering for organizations seeking to exercise control of their insurance destiny. Of course along with the reward of control comes moderate to substantial risk.

Although the appeal of the traditional, commercial marketplace is hard to resist during soft market conditions, nonprofits today have the benefit of additional options that might better suit a particular nonprofit's risk tolerance, financial capacity and desire to control how its insures the various exposures that arise from operations. **E**

Melanie Lockwood Herman is executive director of the Nonprofit Risk Management Center in Leesburg, Va. She welcomes your questions, comments and feedback about the subject of this article at Melanie@nonprofitrisk.org

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LEGAL



10 Issues To Address In Your Nonprofit's Social Media Policy

BY GEORGE TAKAGI

The Internet remains the Wild Wild West of information. And even though it all seems available for the taking, you can run into a huge legal issue if you are not careful regarding grabbing and using the data. It can also cost you if people pirate information from your site or if an employee does something on social media that makes you look bad.

Here are 10 issues that you need to be thinking about when it comes to your social media policies.

1. Copyright and trademark infringement. Your organization could get sued for copyright infringement due to an article, photo, music, or video it posted on one of its sites without the permission of the copyright holder. Tip: Understand the fair use doctrine. Trap: Expecting attribution to offer protection against charges of infringement.

2. Fundraising and foreign state registration requirements. Your organization might need to register in any state in which it is engaged in charitable solicitations (36 states and the District of Columbia require registration). Tip: Check out The Unified Registration Statement (<http://www.multistatefiling.org>). Trap: Disregarding registration laws and their application to funds raised through the Internet or social media (see the Charleston Principles).

3. Events and foreign state qualifications to do business. Your organization might need to file with the secretary of state or other state business agency in each state in which it is doing business (see, for example, the California Secretary of State's explanation of the requirements under California law – <http://www.sos.ca.gov/busi->

[ness/be/faqs.htm#form-question7](http://www.sos.ca.gov/busi-ness/be/faqs.htm#form-question7)). Tip: Think about whether you are responsible for an event organized through your social media channels and whether it triggers the need to qualify to do business in a foreign state. Trap: Organizing an event then claiming it's not your responsibility.

4. Volunteers (and agents of the nonprofit) or independent supporters. Your organization could be responsible for the actions of its volunteers and agents, particularly if it didn't screen, train, or adequately supervise them. Tip: Recognize that the more you control individuals, the more likely they are your agents and the more likely you may be liable for any of their negligent actions. Trap: Directing individuals or committees to act in the nonprofit's name and not providing any rules or limits to their authority.

5. Supervision of agents of the nonprofit (authorized communications, confidentiality and privacy issues, harassment/discrimination, defamation, bullying). Your organization should make sure that its employees, volunteers and others do not use the organization's social media sites to misrepresent what it does, divulge confidential or private information, violate laws designed to protect employees, or defame others. Tip: Provide written rules and guidelines to make clear what is and is not acceptable in an agent's use of social media. Trap: Relying on an agent's common sense to avoid violating any laws.

6. Advocacy and rules regarding lobbying and political activities (for agents of the nonprofit and users of the nonprofit's social media and communication platforms). Your organization

may be able to best advance its mission by dedicating resources to advocacy and, to the extent permissible, lobbying and political activities. Tip: If your organization is a public charity, check out the resources offered by the Alliance for Justice/Bolder Advocacy (<http://www.afj.org/our-work/issues/bolder-advocacy>) – you might be able to do much more in this area than you think. Trap: “liking” political candidates or publishing unsolicited comments with political messages on a moderated site, either of which may jeopardize a charitable organization’s 501(c)(3) status for violating the prohibition against electioneering.

7. Collaborations with other organizations and partnership/joint venture issues. Your organization should take steps to ensure that it understands its legal commitments and potential exposures to liability when entering into any collaboration, whether formal or informal. Tip: Make sure you recognize whether you want your obligations to your collaborative partner(s) to be enforceable. Trap: Unintentionally creating a legal partnership in which each partner may be completely liable for harm created by the other partner.

8. Ownership of social media accounts. Your organization should understand whether or not it owns or has controlling rights over social media accounts it has instructed employees or volunteers to manage. Tip: Where appropriate, state in a writing acknowledged by your employees that your organization owns or has the controlling rights over specified social media accounts. Trap: Claiming own-

ership of a social media account in which the individual was given no rules or terms of use to freely publish anything of personal interest, which could result in the organization being deemed responsible for harm caused by something published.

9. Employee use of social media and protected activities. Your organization’s employees have rights to engage in certain activities that are protected under law. It takes more than common sense to know these rights as an employer. Tip: Understand that complaints about management and the board on social media sites may be protected from retaliation – see *The NLRB and Social Media Policies* (<http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media>). Trap: Adopting overbroad policies that restrain employees from exercising their rights to engage in concerted activities for mutual aid or protection.

10. Violations of policies. Your organization’s policies should include rules (not just guidelines), and these rules should be fairly and reasonably enforced. Tip: Develop internal and external response strategies for violations of policies. Trap: Failing to emphasize the importance of your social media policies and train your staff and volunteers accordingly. **E**

Gene Takagi is a nonprofit lawyer featured on Law.com; contributing publisher of the Nonprofit Law Blog and speaker, lecturer, and writer. His email is gene@neolawgroup.com

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MANAGEMENT



One Year Later

Assessing the results of your strategic plan

BY DENNIS C. MILLER

The strategic planning process can be one of the most exciting times for any nonprofit. New vision statements are created and the entire organization might feel a sense of new energy and excitement about the future direction of the organization.

Leadership and staff are mobilized to achieve all of the key goals and actions identified in the report. The board has a great sense of relief that all major strategic issues have been addressed and a plan of action has been developed for implementation. Everyone seems to have enjoyed their involvement in the process, and they are motivated to become more engaged to move the mission forward.

However, after a few months of high energy the results and successes that everyone hoped for are not always achieved. The excitement often diminishes and everyday organizational life and the day-to-day challenges are front and center. Despite the deep commitment to your mission and the determination to succeed, many organizations' managers fail to achieve the goals identified in the strategic plan. Estimates indicate that nearly 60 percent of nonprofits' management and staff have difficulty executing the strategies previously agreed upon. Significant investments in time and resources have gone into developing the

strategic plan. However, far too often the report ends up sitting on some executive's shelf collecting dust.

Developing the most creative and visionary strategic plan is useless unless it is fully executed and becomes reality. The reasons for poor execution are many, but some of the major reasons are:

- Resistance to managing change;
- Poor implementation training of those responsible for execution;
- Self-interest versus organizational interest;
- Maintaining existing functioning silos and political in-fighting;
- The lack of clear communication and not fully monitoring progress; and,
- Disconnect between planning objectives and operational realities.

You can ensure a high rate of return on the investment you made in developing your strategic plan by conducting a comprehensive strategic plan implementation assessment. Here are five questions to ask:

- What goals have been achieved to date?
- What obstacles might exist preventing further goal achievement?
- Where has performance expectation lagged behind?
- What needs to happen to move you forward?
- Who is resisting change?

It is ideal to have such an assessment performed after the first year anniversary of your plan's completion. This will give you ample

time to demonstrate movement towards achievement of your vision and strategic goals. Either your strategic planning consultant or another "fresh pair of eyes" can be engaged to perform the assessment.

We have all heard the expression "talk is cheap and actions speak louder than words." Well, the same could be said about the progress of your strategic plan implementation. A comprehensive strategic plan implementation assessment should review the demonstrated progress towards all strategic goals identified in the plan, including the following:

- Measurable results towards vision achievement;
- Documented records of financial improvements;
- More donors and philanthropic dollars;
- Expanded and enhanced programs and services;
- Indication of any development of any strategic affiliations and collaborations;
- Clearly visible results of higher performing leadership teams;
- Improvement in building your brand identity;
- Evidence of a more engaged and motivated board; and,
- Improved board governance and committee structure.

The key steps in the assessment process are: Review all relevant information, e.g., board minutes, financial statements, annual



reports, etc. that can show documented improvements for each goal identified in the strategic plan; Schedule confidential face-to-face interviews with key board members and senior management to obtain their feedback of what's been achieved and why other goals have not been met; Summarize key findings from a review of the information above and confidential interviews for all of the above plan components; Discuss with the chief executive officer and/or board chair the results of your findings and make recommendations for achieving desired strategic goals. Include in your report what achievements you noted and what specific changes need to be implemented either in personal or operational systems; Offer to conduct educational workshops for board, management and staff for developing their knowledge of best practices; Present the comprehensive strategic plan assessment report to the entire senior management team and board; offer to provide leadership performance coaching to either the CEO, senior management or board chair if necessary to achieve the desired goals; and, provide inspiration, encouragement and the necessary tools to move forward.

Conducting a comprehensive strategic plan implementation assessment can be one of the best investments for any nonprofit board to make. Identifying obstacles or resistance to change and providing a specific plan of action to overcome is a requirement for today's leadership. Rewarding and recognizing those employees or departments that have successfully executed the strategies in the plan helps create a culture of success.

Transitioning your organization from a culture of planning to one for managing results and outcomes is both challenging and rewarding. When the modifications to your strategic plan are implemented, your organization will regain the energy, motivation and commitment to achieve the vision. **E**

Dennis C. Miller is a Denville, N.J.-based strategic advisor who works with leaders of nonprofit organizations across the country regarding a more motivated and cohesive board, inspirational leadership and a more engaged strategic vision with greater levels of achievements and measurable results. His email is dennis@dennismiller.com and his website is www.dennismiller.com

EXEMPT EXECUTIVE POSITIONS

Senior Consultant Omatic Software

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Position Summary

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- Perform engagements on time and within budget
- Participate in user forums and blog posts
- Conduct webinars or speaking engagements as needed
- Blow clients' minds

Required Experience & Skills

- Expert-level Raiser's Edge experience
- Nonprofit industry experience
- Technically savvy
- Excellent written and verbal communication skills
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- Attention to detail with a strong ability to organize, manage, and execute projects as assigned
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You've got nothing better to do, right? Here are three socially-responsible web diversions for you to waste a little time on.

WolfQuest

Put yourself in the paws of a wolf by playing "WolfQuest," a 3D wildlife simulator developed by the Minnesota Zoo and eduweb. Based on real topographic maps of Yellowstone Park and realistic graphics, players join a wolf pack made up of friends in the multiplayer version or seek to perfect their hunting skills and build their own pack in the single player version. Players find they must balance individual and pack needs in order to increase their collective ability to hunt, defend territory, avoid danger, and protect their young.

www.gamesforchange.org/play/wolfquest



The Migrant Trail

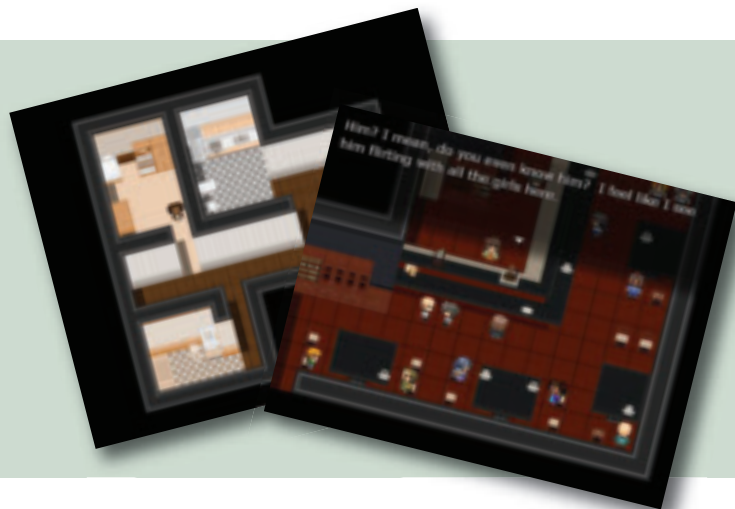
Immigration continues to be a hot-button topic in today's politics, but how much do you actually know about it? "The Migrant Trail," developed by Gigantic Mechanic, tries to shed more light on this sensitive topic by offering players the chance to play as either a border patrol agent or an immigrant from south of the border, with each side offering a unique style of gameplay. Players who chose to play as a migrant will find it very similar to the classic "Oregon Trail" games, as you will be tasked with purchasing enough supplies to complete the journey while avoiding agents. If you choose to play as one of these agents, on the other hand, you will be tasked with patrolling the border and capturing the illegals. When switching from migrant to border patrol, the focus on providing aid combined with an understanding of how brutal conditions are for migrant groups produces empathy and drives the player toward success from a humanitarian perspective.

www.gamesforchange.org/play/the-migrant-trail

Mainichi

"Mainichi" is an adventure game that puts players in the shoes of a mixed transgender-woman, offering a glimpse of the struggles that such a person will encounter in society. The game starts out with the character meeting a friend for coffee. Once the player returns home, they wake again the next morning to the same scenario, which subtly changes based on how they decide to get ready for the day. "Mainichi," which comes from the Japanese word meaning "everyday," was developed by Mattie Brice, who is transgender.

www.gamesforchange.org/play/mainichi



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EXEMPT CALENDAR



JUNE

12-13 The American Institute of Certified Public Accountants (AICPA) will hold its annual Not-for-Profit Industry Conference at the Marriott Wardman Park in Washington, D.C.
 Info: www.cpa2biz.com

13-15 Americans for the Arts will hold its annual conference in Nashville, Tenn.
 Info: <http://convention.artsusa.org>

16-18 National Conference on Volunteering and Service, convened by the Points of Light Institute, will be held in Atlanta, Ga.
 Info: <http://www.volunteeringandservice.org>

24-27 Philanthropic Service for Institutions (PSI) will hold its annual Conference on Philanthropy in Baltimore, Md.
 Info: www.psiconference.org

27 Fundraising Day in New York, sponsored by the Association of Fundraising Professionals Greater New York Chapter, will be held at the Marriott Marquis in New York City.
 Info: www.nycafp.org

JULY

9-11 The Bridge to Integrated Marketing & Fundraising Conference will be held at The Gaylord National Resort and Convention Center, Oxon Hill, Md.
 Info: www.bridgeconf.org

21-23 American Marketing Association will hold its Nonprofit Marketing conference at the Renaissance Arlington Capital View Hotel, Arlington, Va.
 Info: www.marketingpower.com

30-Aug. 2 The Association of Prospect Researchers for Advancement will hold its annual international conference at The Cosmopolitan Las Vegas, Las Vegas, Nev.
 Info: <http://www.aprahome.org>

AUGUST

4-5 The Direct Marketing Association Nonprofit Federation will hold its annual New York City conference at the Grand Hyatt New York in Manhattan.
 Info: www.nonprofitfederation.org

SEPTEMBER

3-6 NTEN (Nonprofit Technology Enterprise Network) will hold its first Leading Change Summit at the Hilton San Francisco Union Square.
 Info: <http://mylcs.nten.org/14lcs/home/>

9-10 The Association of Fundraising Professionals and the Stanford Social Innovation Review will hold the 9th

Nonprofit Management Institute at Stanford University in Stanford, Calif.
 Info: www.afpnet.org

17-19 The Alliance for Nonprofit Management will hold its national conference, Capacity Building for Collective Action, in Austin, Texas.
 Info: <http://theallianceconference.org>

OCTOBER

5-8 The National Catholic Development Conference (NCDC) will hold its annual conference at the Marriott Chicago Downtown in Chicago, Ill.
 Info: www.ncdc.org

6 The National Association of Attorneys General and National Association of State Charity Officials conference will be held at the Regency Washington Capitol Hill, Washington, D.C.
 Info: www.nasconet.org

6-8 Blackbaud will hold bbcon2014, its annual conference for nonprofits, at the Gaylord Opryland Resort and Convention Center in Nashville, Tenn.
 Info: <http://bbconference.com/>

14-17 The International Fundraising Congress will hold its annual event at The NH Leeuwenhorst Hotel in Noordwijkerhout, The Netherlands.
 Info: www.resource-alliance.org

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