

PRESENTED AT

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Texas Legislative and Public Policy Update

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87th Texas Legislature, 2021 Regular Session

TEXAS LEGISLATIVE AND POLICY ISSUES FOR NONPROFITS

June 2021 end-of-session; updated January 2022 for The University of Texas
School of Law Nonprofit Organizations Institute

Compiled by Richard W. Meyer, Attorney at Law

Variety of issues unfold during 2021 Texas Legislative Session:

The 2021 legislative session featured scores of bills reflecting issues and policies that leaders in the Texas nonprofit sector should consider. There were few bills that appeared contra to the interests of nonprofit organization operations and governance or that imposed new regulations on nonprofits. Despite COVID restrictions when the session began plus the February ice storm, legislators warmed up things later in the session and left several contested subjects for three called special sessions later in 2021: redistricting, criminal bail reform, voting procedures and state border policy. Among the unpassed bills listed below are seeds of opportunity for subsequent sessions. There were 6,927 total bills and resolutions filed in the regular session in the House and Senate, and 1073 passed or were adopted in some form.

Bills that passed are underscored and marked as **PASSED**. The last pending action for non-passed bills is indicated in *italics* following each bill. Access the text of any proposed **House bill (HB)** or **Senate bill (SB)** at <https://capitol.texas.gov> . Use other tracking and analysis tools available on this very useful legislative website. Follow committee actions and track the progress of any bill of interest.* The legislature also authorized scores of interim studies to prepare for the 2023 session, which are listed at *Interim Studies Established by the 87th Texas Legislature* , and sure to keep committee, member and agency staffs busy during 2022.

Note on appropriations: This summary and later updates do not contain tracking or notations regarding legislative appropriations or riders for any of the issues or bills referenced. The general appropriations bills in the House and Senate along with special riders, as passed, can be monitored through the Legislative Budget Board, www.lbb.state.tx.us or the Senate Finance Committee website.

Overview of legislative and policy issues and opportunities for nonprofit entities:

1. Legislative activity affecting nonprofit governance and state oversight of charities remains an *ad hoc* process (Chapter 22, Tex.Bus.Org.Code) (page 2).
2. Revenue-generating opportunities for nonprofits appear in unusual places (page 4).
3. State government continues to look to nonprofits to address big challenges (page 5).

4. Strengthening Texas charitable immunity laws and liability limitations is ongoing (page 6).
5. Tax exemptions granted to nonprofits must be justified and protected (page 7).
6. Faith-based and social service organizations are often in the spotlight (page 8).
7. Changing societal values challenge cultural and historical organizations to lead (page 9).
8. Dogs that didn't bark in the 2021 legislative session (page 10).

End-of-session review of adopted and proposed legislation:

1. Legislative activity affecting nonprofit governance and state oversight of charities remains an ad hoc process (Chapter 22, Tex.Bus.Org.Code):

HB 3100: Governance provisions of the Texas Nonprofit Corporation Law are found primarily in Chapter 22, Tex.Bus.Org.Code, and any amendments to it are worth watching along with other regulatory changes that affect the governance of Texas nonprofits. This bill, however, would have amended the state's procurement statutes in Chapter 2252, Tex.Gov.Code, and covered a contract between any state or local agency and any §501(c)(3) organization. It provided as follows: *A government entity may not enter into a contract with a nonprofit corporation unless the contract contains a written verification from the organization that the organization will not use more than 20 percent of the money provided under the contract for an administrative purpose, including for payment of the organization's employee or officer salaries.*

Status: No House committee hearing

HB 3503: A "clean-up" bill that updates statutory references to the Texas Nonprofit Corporation Law and charitable trusts in Chapter 112, Tex.Prop.Code, among other provisions.

Status: Passed House; Senate took no floor action on last day of session

HB 1875: This proposal was to establish a new statewide trial-level "business court" and a "business court of appeals" that would have jurisdiction over corporate authority, governance, transactional and investment disputes in excess of \$10 million and include nonprofit corporations in the bill's provisions. To accommodate non-business disputes, a board member or a member of a nonprofit entity is given standing under the proposal.

Set for House vote; no floor action taken

SB 1678 (=HB 4275): Would ban the disclosure of a §501(c) nonprofit's donors or supporters as a condition of a contracting, grant making or other relationship with a state or local government entity. Donor information would also be exempt from disclosure under the Public Information Act, Chapter 552, Tex.Gov.Code. There are exceptions for litigation and enforcement situations.

Passed Senate by a 30/0 vote; no House committee action

SB 2118: The bill would add a new Subchapter U to Chapter 21, Tex.Bus.Org.Code, and references the non-discrimination provisions of federal civil rights statutes. It then provides that no director, officer or official of a corporation “...*may establish or enforce any quota or set-aside in the selection of board members that depends in any way upon an individual’s race, sex, religion, sexual orientation or sexual practices, or gender identity of gender-nonconforming behavior.*” An additional proposal was that corporations would be banned from imposing similar provisions on their vendors or contractors.

No Senate committee action

HB 1575 (=SB 712): A person identified as “an officer, employee, or paid consultant of a Texas trade association” would be restricted from service on a related state agency policymaking body under proposed conflict of interest restrictions in the bill. This restriction would be added to Texas Sunset Advisory Commission review guidelines in Chapter 325, Tex.Gov. Code, that customarily become part of the enabling legislation template for Texas state agencies. Status as a registered lobbyist in a field related to an agency’s operations would also disqualify that person from service on a board or policymaking body.

HB 1575 passed House; no Senate committee action

SB 1879: Spending by political subdivisions (cities, counties, ISDs, special districts) on advocacy or legislative lobbying activities would be strictly limited and disclosed in public reports to the Texas Ethics Commission. One of the reporting requirements would be to disclose the amount of public money spent for membership fees or dues of any nonprofit state association or organization that directly or indirectly seeks to influence the outcome of state legislation. Memberships in these statewide associations held by public officials and agencies is quite common. The term “indirectly influencing legislation” was the issue with the bill.

Passed Senate; no House committee action

Property owner association (POA) and condominium association bills are worth watching because these nonprofits exist in a parallel legal universe with other nonprofit entities and are extensively regulated under Chapters 82, 202, 204, 207, 209 and 215, Tex.Prop.Code. Their operations affect a huge percentage of the state’s residential properties, directly affect the personal lives of residents, and often fulfill quasi-governmental functions in their communities. Specific governance provisions are frequently addressed by the legislature in response to local issues that are incorporated into statewide legislation:

SB 1588 (PASSED): A something-for-everyone bill amending various chapters of Tex.Prop.Code, including governance and rulemaking restrictions on POA and COA boards.

Passed, eff. 9-1-2021

Pending bills to amend Chapter 82 regulations include **HB 3502, SB 318** and **SB 1939**.

Other bills to amend POA governance provisions include **HB 1467, 1970, 2447, 2912, 3367** and **3857**; also related, **SB 749, 1588, 1939** and **1951**.

2. Revenue-generating opportunities for nonprofits appear in unusual places:

In an unpredictable economic environment, it's wise for nonprofit organizations to look for new revenue sources, contracting opportunities, grant or funding programs, donor contributions and fiscal relationships in unusual places. In recent years the legislature has authorized various programs and relationships that can direct revenues to charitable organizations. Some examples in this session:

HB 3012/HJR 143 (PASSED): Participation by charities in high-dollar raffles at public sports events was approved by the legislature in prior years and approved by the voters as constitutional amendments. HB 3012 adds professional rodeo events and their designated charities as eligible to conduct a high-dollar raffle, as was previously authorized for professional football, basketball, baseball, soccer and auto racing events.

Passed; approved by the voters November 4, 2021

HB 2168 (PASSED): Removes certain restrictions on sports event-related raffles and methods of payment for raffle tickets; repeals §§2004.002(1-a) and 2004.009(a), Tex.Occup.Code.

Passed, eff. 9-1-2021

HB 2757 (PASSED): Increases the maximum value of a charitable raffle prize from \$50,000 to \$75,000 under §2002.056(b)-(c), Tex.Occup.Code.

Passed, eff. 9-1-2021

HB 669: This bill is a minor revision to language in Art. 42A.304(f), Tex.Code Crim.Proc., that authorizes a court-approved cash contribution to a designated local charity in lieu of a community service probation sentence or fine. The list of eligible recipient charities is always open to be expanded by such legislation. Also, **HB 3766.**

No House committee action

HB 3959 (PASSED): The original version of this bill tracked other legislative dedications of certain state sales tax revenues to fund a cause (agricultural youth programs) related to the item or service taxed. As originally proposed, the HB 3959 estimated tax revenue diverted from the state's treasury to this proposed fund was \$3 million per year. However, as passed, the bill would authorize the governor to establish a fund from donations, grants and public appropriated funds to support financial assistance to local agricultural youth auctions of livestock show animals.

Passed, eff. 9-1-2021

HB1863 (PASSED): New Make-a-Wish license plates are authorized, with the fees generated to be distributed to a charity or foundation that supports critically-ill children.

Passed, eff. 9-1-2021

HB 1756: A county could appropriate money from its general funds to a historical foundation or nonprofit organization to purchase, construct, restore or maintain historic landmarks, buildings and furnishings of significance to the county.

Passed House; no Senate action

HB 4305 (=SB 2133): These “local” bills are reminders that nonprofit organizations of many types are eligible to share the local government portion of the state’s hotel occupancy tax (HOT) to advance their programs that qualify under Chapters 156 and 351, Tex.Tax Code. HB 4305 was directed at financing special tourism initiatives related to spacecraft launches at the South Texas coastal spaceport; the bill passed both houses but did not receive final action in the last hours of the session.

Also, **HB 2155, 3091, 3234, 3345, 3682, 4027 and 4305;** and **SB 1469 and 1565.**

3. State government continues to look to nonprofits to address big challenges:

The February ice storm and the vulnerability of the Texas electrical power grid were another reminder of the important role charities, nongovernmental organizations and faith-based groups play in disaster response and relief. Opportunities for formalizing the role of nonprofit and faith-based organizations in disaster response activities were authorized in the 2019 session. See **HB 3616, HB 2305** and **HB 1294**. A task force managed by the Texas Division of Emergency Management (TDEM) conducted interim work in anticipation of additional legislation in 2021. Members are representatives of faith-based organizations with the duty to develop a plan to improve data collection regarding faith-based disaster response activities, develop best practices for communicating and collaborating in disaster scenarios, and identify inefficiencies and opportunities to address gaps in the state’s disaster response capacity. See §418.251, Tex.Gov.Code.

This legislative activity in earlier sessions did not fully contemplate new disaster experiences facing public agencies: (1) A unique **coronavirus pandemic** challenge. Early in 2020 it became clear that community-based nonprofits or statewide organizations were a quick and efficient resource for putting federal pass-through coronavirus response monies into the hands of the persons or organizations that could address immediate emergencies or needs. Since then, state agencies, cities and counties continue to channel large sums of relief funds to and through local nonprofits, charities and faith-based organizations. Given the scale and massive funding of coronavirus relief programs, most nonprofits would be wise to re-examine their mission statements, business plans and budgets to accommodate a new “line of business”, perhaps called public disaster response and relief. (2) **Cybersecurity of public and social service agencies** in a public safety scenario or a direct attack by outsiders on state data and cloud systems. Data breaches or loss of data must be a concern of every organization. (3) **Durability of public and social service agency data capabilities** in a natural disaster environment. Large statewide nonprofits or alliances of social service or faith-based agencies already have a broad footprint on the ground to facilitate government relief programs or funding. Opportunities to partner with state and local governments should not be overlooked. Related bills are:

HB 1510 (PASSED): The bill creates a “special purpose public corporation...that is a nonprofit corporation and instrumentality of the state for the essential public purpose of providing at lower-cost, supplemental financing mechanism ...to attract low-cost capital to finance system restoration costs”. The Texas Electric Utility System Restoration Corporation may issue bonds and other debt instruments that are not a debt or pledge of the faith and credit of the state; “has a legal existence as a public corporate body and instrumentality of the state separate and distinct

from the state”, and; is self-funded and receives no legislative appropriations. It is to be organized under Chapter 22, Tex.Bus.Org.Code, and there are detailed governance provisions in the bill.

Passed, eff. 9-1-2021 (House vote, 145/0; Senate vote 31/0)

SB 475 (PASSED): A bill addressing the cybersecurity of the state’s data and cloud computing systems includes a provision creating the Texas Volunteer Incident Response Team. The skills of approved individuals or groups could be deployed in disaster scenarios to respond to cybersecurity events that affect multiple public entities. Their status is strictly as a volunteer although compensation for actual expenses is authorized.

Passed, eff. 9-1-2021 (Senate vote, 31/0; House vote 147/0)

HB 3492: Suspends or credits certain state fees for businesses and nonprofit organizations during a declared disaster. Also, **HB 3501, HB 1367**

Left pending in committee

HB 3460: The State Comptroller could contract with “qualifying nonprofits” to administer a state winter storm disaster relief fund to benefit needy eligible residents.

Left pending in committee

HB 1487: The bill would shield certain religious activities from state or local restrictions in a disaster declaration environment and declare a religious organization an “essential business”. Early in the 2020 COVID emergency response period, a number of the governor’s orders contained exemptions for “essential businesses” and were unclear as to the applicability to nonprofit enterprises and charities conducting important response and relief operations.

Left pending in committee

4. Strengthening Texas charitable immunity laws and liability limitations is ongoing:

The legislature has consistently strengthened legal immunities or limitations on the liability of volunteers, volunteer organizations, first responders and various licensed professionals that are found in Chapters 75A, 76, 79, 84, 91 and 94, Tex.Civ.Prac. & Rem.Code, Title 4, and other statutes:

SB 6 (PASSED): Limits the liability of volunteer health care providers during a declared state of disaster or emergency declaration period. The bill would add a new code Chapter 148 addressing liability of various parties during a pandemic emergency and provide some general legal immunity against medical products liability claims related to such situations.

Passed, eff. 6-14-2021

HB 2850 (PASSED): Licensed veterinarians and their assistants performing volunteer professional services would be included in the liability limitations of Chapter 91, Tex.Civ. Prac. & Rem.Code, when serving without compensation and in an emergency or declared disaster environment.

Passed, eff. 9-1-2021

SB 1857: Provides for a temporary license for out-of-state health care practitioners for charitable volunteer activities.

No committee action

5. Tax exemptions granted to nonprofits must be justified and preserved:

There is a very real but unspoken “cost” to the state’s taxpayers of numerous tax exemptions granted under current law. The total value of longstanding exemptions granted to nonprofit entities of all varieties from the state’s property taxes, business revenue taxes, sales and other fees continues to increase. To state budget analysts, legislators and critics, these uncollected taxes are a cost to state government in that they represent revenues that could be collected if taxing schemes were applied without exemptions or waivers for some. What is the current “cost”? The State Comptroller’s most recent report, entitled *Tax Exemptions and Tax Incidence* (November 2020), reported to legislators that approximately \$58.6 billion in potential state tax revenue is bypassed due to previously enacted exemptions, credits, exclusions, deductions, waivers and preferences granted to commercial businesses, nonprofit organizations and quasi-governmental entities. This detailed list of tax breaks has been called a shopping list for state budget writers in search of additional funds. Legislators taking the long view of the state’s fiscal health have filed the following bills to examine and evaluate tax exemptions and the policies behind them—all of which should be of concern to the nonprofit sector as a visible beneficiary of these policies.

Periodic tax review bills pending in this session:

HB 1335: The bill would establish a select commission that would develop a periodic review of all state and local tax exemptions and preferences and recommend changes.

No committee action

HB 3328: The State Comptroller and Legislative Budget Board would establish a review schedule of all state and local tax exemptions and preferences and periodically recommend changes to the legislature.

No committee action

HB 3799 (PASSED): The bill expands the definition of a “county fair” for the purpose of exempting collection of sales taxes at such events; the bill adds arts and crafts events and “a state fair” to the organizational events where sales taxes are not collected.

Passed, eff. 9-1-2021

State property tax exemptions granted to §501(c) entities to and other organizations:

In this legislative session, as before, there are scores of bills to modify the state tax exemptions granted to nonprofits, particularly with respect to real property taxes and the numerous exemptions enacted over the years under §11.18, Tex. Tax Code. These bills are often “local” bills addressed to a particular situation or place and can be reviewed at www.capitol.texas.gov. A number of bills focused on tax incentives for affordable housing projects, but there was no significant committee activity on this subject. Simply search under “Tax Code 11.18” for the 87th legislative session.

HB 1197 (PASSED): Expands to ten years the period of time a property may be exempt from property taxes if contiguous to the primary property where religious services are conducted.

Passed, eff. 1-1-2022

HB 115 (PASSED): A local bill to ensure that property tax exemption would be granted for properties owned by certain charitable organizations and used to provide shelter for homeless persons.

Passed, eff. 9-1-2021

HB 649/SB 613: Tax exemption would be granted for property owned by a charitable organization to rent property at below-market rates to low-income individuals.

SB 330: Property tax exemption would be available for venues owned by charitable organizations that provide services to persons with substance use disorders.

6. Faith-based and social service organizations are often in the spotlight:

Faith-based and social service organizations along with larger state-contracted nonprofit entities fulfill much-needed services in local communities and often perform functions formerly provided by state agencies. The operations, programs and employment policies, and public funding of these groups often draw them into the public forum. Operations of churches and religious groups got particular attention during the coronavirus period.

HB 1239 (PASSED): No public official in Texas could issue a disaster declaration or order that closes or has the effect of closing a place of worship. The bill is yet another addition to the "Texas RFRA", the Religious Freedom Restoration Act in Chapter 110, Tex.Civ.Prac.& Rem.Code. There were numerous bills in this session on this subject, and the RFRA is a common place to attach this type of legislation.

Passed, eff. 6-16-2021

HB 2405 (=SB 46): A municipal zoning or land use policy could not prohibit a religious organization from using its facilities for housing homeless individuals.

Passed House; no Senate committee action

HB 3596 (=SB 1681): A religious organization could assert an actual or threatened violation of religious rights under the Texas Constitution as a claim or defense in a judicial or administrative proceeding without exhausting available administrative remedies.

No committee action

HB 4054: The state would provide financial assistance for healthy food stores in recognized food desert areas.

No committee action

HB 209/SB 358: Franchise tax credits would be granted to entities operating a healthy food store in a food desert.

No committee action

Numerous bills to increase the state's minimum wage are a reflection of similar initiatives pending in the 107th U.S. Congress: **HB 60, 224, 731, 1827, 1917, 4484** and **SB 389**.

Left pending or not heard by committee

Other bills would clarify payment of a **living wage or federal prevailing wage** as a condition of a contracting or grantee relationship with a state or local government agency.

SB 518: The proposal would clarify computation methods for prevailing wage rates used by local public entities on improvement projects.

Passed both houses but died in the last hours due to procedural rules

HB 863: The bill would enhance enforcement of current prevailing wage rules.

Not heard by committee

HB 3767 (PASSED): In this bill, which creates a tri-agency task force to examine the state's long-term educational and workforce initiatives and strategies, there is a directive to establish a "**self-sufficient**" wage for each county in the state as a goal for persons transitioning or entering the workforce. The term "living wage" was removed from the original version of the bill.

Passed, eff. 9-1-2021

7. Changing societal values challenge cultural and historical organizations to lead:

The abrupt or unauthorized removal of historic monuments, markers and statues and the changing of street, building, bridge and other place names by local governments generate strong feelings from those who swiftly amplify these controversies. There have been numerous highly-publicized incidents nationwide and in Texas. These included the multi-year dispute over reconfiguring the historic Alamo plaza in San Antonio and proposed move of the Alamo Cenotaph, as well as reconsidering certain monuments standing for decades on the Capitol grounds in Austin. Determining the exact ownership rights or decision-making authority over a certain physical monument is not always an easy process after the passage of decades. Often these historic objects were placed on public or private property with express donor restrictions or reverts, or by the formal declarations or ordinances of government entities. The placement of certain art objects owned or in the custody of public cultural institutions has been questioned. As legislators seek to address these situations, some proposals would diminish the authority of local elected or appointed officials to decide these issues without a formal process with a deliberative time frame:

HB 3584 (PASSED): Historic markers or medallions placed by state agencies may not be altered or removed without permission. Most common are the markers placed by the Texas Historical Commission and its predecessor agencies under §442.806, Tex.Gov.Code.

Passed, eff. 9-1-2021

SB 1416: An advisory committee administered by the Texas Historical Commission would review the appropriateness of retaining, altering or removing public monuments and memorials

on the State Capitol grounds and limit the authority of a single official to do so. Only the governing board of a higher education institution could alter or remove a monument or memorial on its properties. Municipal and county governments would have similar restrictions.

No Senate committee action

HB 2713: Restrictions on removing or altering monuments or memorials on state properties would also cover changes to a bridge name, park name, area name or street name that honors an event or person of historic significance. Cities, counties and institutions of higher education would have similar restrictions.

Passed House committee; no House floor action

HB 446: An act of vandalism in which the property damaged or destroyed is a “public monument” is elevated to a third-degree felony under §28.03(b), Tex. Penal Code.

Left pending in committee

8. *Dogs that didn't bark in the 2021 session:*

The following “evergreen” issues have exhausted legislators and interest groups in the past and are likely to return:

Public Information Act (“open records”) disclosure legislation that directly affects nonprofit organizations was included in **SB 943**, which passed in the 2019 session. Similar issues affecting nonprofits did not surface in 2021.

Bills to regulate “dark money” and **activist §501(c)(4) advocacy organizations** by compelling disclosure of their contributions, funding, advocacy expenditures or membership and contributor lists, or with legislative proposals to characterize them as a political committee (PAC) because of certain activities or expenditures.

“PILOT” legislation to expand or limit the trend by local government authorities to apply various assessments, user fees, public service fees, or property-related assessments on nonprofit or charitable organizations traditionally exempted from such costs.

Legislation to revise bingo operations by nonprofits or to permit or limit innovative contests or **gambling-type fundraising events** that stretch the limits of current regulations.

Proposals to address and clarify the legal and employment status and rights of **unpaid interns** working in nonprofits, schools, training programs and businesses.

Other bills that kept things interesting:

HCR 61 (PASSED): The resolution declares *Chorioactis geaster* the official state mushroom of Texas. Known as the Texas star or the “devil’s cigar”, it is found only in Texas and Japan. Encountering other mushrooms bearing different scientific names can lead to serious medical or legal consequences for the uninformed.

SCR 7 (PASSED): Without much controversy in the House or Senate, the Bowie knife is designated as the official knife of Texas.

SCR 28: Some legislators apparently choked on this proposal, which was to settle on a definition of the term “native Texan”, because some say it is currently vague or often a status casually claimed by well-intentioned but ineligible newcomers.

Left pending in committee, to be debated another day

Above list does **not include bills introduced relating to the following:*

Nonprofit hospitals, health care or nursing institutions and plans; credit unions; electric or agricultural cooperatives; private and charter schools and colleges; economic or community development corporations; cemetery associations; public housing entities.

***Many bills have an identical “companion” bill in the other house, bearing a different bill number. Access bills, background information, and current status at Texas Legislature Online, www.capitol.texas.gov.*

Lessons learned:

Monitoring the Texas Legislature for many years yields a perspective about the legislative process and government regulation of nonprofit organizations, state associations and foundations. Some observations:

Many legislative and regulatory proposals have unintended consequences for nonprofit organizations. Legislators and their staffs are generally uninformed about the real operations of nonprofits and how they are different from businesses or government agencies.

Most “reform” proposals mean more reporting, compliance and governance time and administrative expense for nonprofits, which are judged harshly if administrative/operations expenses consume too large a percentage of their total budget.

There are always a variety of revenue-enhancing opportunities for nonprofit enterprises with expertise and resources to contract with state and local agencies, to qualify for substantial grants, to access federal funding administered by state agencies, or to partner with public entities to perform services, but one must know where to look for them.

Volunteer board members and other good people must not be discouraged by lengthy, confusing or threatening governmental regulations that make service risky and enhance their personal legal liability. Criminal penalties attached to reform legislation can frighten informed and qualified leaders who otherwise might have served on a board.

One size does *not* fit all. Many “reform” proposals are intended to cure mis-steps and excesses of large nonprofits or national associations. Sadly, reforms often land hard on good people doing good work in local communities across America.

The evolving social enterprise movement is composed of innovators and risk-takers who are investing in new ideas, new markets and new forms of nonprofit operations based on a business model and revenue-based sustainability. These leaders should be given breathing room by government regulators.

Complex governmental regulations will discourage start-ups and the efforts of good people with good ideas who seek to advance our society and their communities. Every beneficial and acclaimed cause, movement, charitable institution or nonprofit organization probably started with one person, with one idea, in one community. It then grew and grew with hard work and now serves the common good. **Government policies that affect the nonprofit sector and voluntary associations should preserve an environment that encourages good works by ordinary people in their communities.**

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39TH ANNUAL
**NONPROFIT ORGANIZATIONS
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January 12, 2022

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WEDNESDAY AFTERNOON, JAN. 12, 2022

12:30 p.m. Registration Opens Includes light refreshments.

1:20 p.m. Welcoming Remarks

CONCURRENT SESSIONS

Please select one 1:30 p.m., one 2:45 p.m., one 4:00 p.m., and one 5:15 p.m. session on registration form.

FUNDAMENTALS PRESENTATIONS (Main Ballroom)

Presiding Officer:

Hillary Evans, Philanthropy Southwest, Dallas, TX

FINANCIAL & GOVERNANCE LITERACY WORKSHOPS (Small-Group Breakouts)

These workshops provides opportunities during the day for instruction and discussion in a small-group format. NOTE: These two sessions are repeated four times throughout the day. Select only one session time for each workshop on the order form.

**1:30 p.m. Organized Exclusively for Charitable Purposes:
1.00 hr Nonprofit Formation and Formalities from an
Accounting and Legal Point of View**

This session focuses on start-up considerations, federal and state laws; choice of entity; articles of incorporation and bylaws; and applying for tax exemption. Provide insight on how different legal structures will impact financial statements and metrics.

Christina N. Cahill, Polsinelli PC, New York, NY
Neely D. Duncan, BKD, LLP, Dallas, TX

Financial Literacy for Nonprofits

Understanding financial statements is the key to understanding the financial health of your organization. Review the basic financial statements and common disclosures, and examine NFP financials to learn how to leverage the new formats for basic analysis.

Jillian Bergman, Armanino, LLP, Austin, TX
Ruth Snell, Armanino, LLP, Austin, TX

Governance Literacy for Nonprofits

Governance at nonprofit organizations is often not a priority until something goes wrong. Gain practical tips to help board and staff members avoid problems, and review governance topics including fiduciary duties, governing documents, policies, procedures, and the roles of the board, officers, committees, and staff members.

Gian F. Brosco, Esq., Nevada Community
Foundation, Las Vegas, NV

2:30 p.m. Break

**2:45 p.m. Operated Exclusively for Charitable Purposes: Compliance
1.00 hr and Operational Considerations and Structuring**

This session focuses on the operating and compliance aspects of maintaining 501(c)(3) status, with a focus on permissible and impermissible activities.

Darren B. Moore, Bourland, Wall & Wenzel, P.C., Fort Worth, TX
Lauren Simpson, Morgan, Lewis & Bockius LLP, New York, NY

Financial Literacy for Nonprofits

This session is identical to the previous session at 1:30 p.m. Select only one on the order form. Space is limited.

Jillian Bergman, Armanino, LLP, Austin, TX
Ruth Snell, Armanino, LLP, Austin, TX

Governance Literacy for Nonprofits

This session is identical to the previous session at 1:30 p.m. Select only one on the order form. Space is limited.

Gian F. Brosco, Esq., Nevada Community
Foundation, Las Vegas, NV

3:45 p.m. Break

**4:00 p.m. Reporting Obligations for Section 501(c)(3) Organizations
1.00 hr**

Explore compliance requirements for charitable organizations with IRC section 501(c)(3) status. Provide a framework for the reporting obligations at the federal and state levels. The federal reporting discussion will concentrate on the key reporting items of the Form 990 and when other forms may be required. Discuss the high-level requirements for state registrations for nonprofits, charitable trusts and charitable solicitations.

Jennifer Becker Harris, Clark Nuber PS, Bellevue, WA
Hamish W. Nieh, Fizer Beck, Houston, TX

Financial Literacy for Nonprofits

This session is identical to the previous session at 1:30 p.m. Select only one on the order form. Space is limited.

Michaela J. Cromar, CliftonLarsonAllen LLP,
Fort Worth, TX
Mimi Holt, Blazek & Vetterling, Houston, TX

Governance Literacy for Nonprofits

This session is identical to the previous session at 1:30 p.m. Select only one on the order form. Space is limited.

Harrison M. Smith, Schmoyer Reinhard LLP,
Fort Worth, TX
Chelsey E. Ziegler, John D. and Catherine T.
MacArthur Foundation, Chicago, IL

5:00 p.m. Break

5:15 p.m. IRS and AG Oversight

1.00 hr This session focuses on federal and state oversight and regulation of tax-exempts, regulatory powers and authority, and enforcement issues.

Tama Brooks Klosek, Klosek & Associates PLLC, Houston, TX
Susan K. Staricka, Staricka Law, PLLC, Austin, TX

Financial Literacy for Nonprofits

This session is identical to the previous session at 1:30 p.m. Select only one on the order form. Space is limited.

Michaela J. Cromar, CliftonLarsonAllen LLP,
Fort Worth, TX
Mimi Holt, Blazek & Vetterling, Houston, TX

Governance Literacy for Nonprofits

This session is identical to the previous session at 1:30 p.m. Select only one on the order form. Space is limited.

Harrison M. Smith, Schmoyer Reinhard LLP,
Fort Worth, TX
Chelsey E. Ziegler, John D. and Catherine T.
MacArthur Foundation, Chicago, IL

6:15 p.m. Adjourn to Reception

NETWORKING RECEPTION

6:15 p.m. – 7:15 p.m.

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THURSDAY MORNING, JAN. 13, 2022

Presiding Officer:

Tony Fundaro, Philanthropy Southwest,
Dallas, TX

7:30 a.m. Registration Opens

Includes continental breakfast.

8:15 a.m. Welcoming Remarks

8:30 a.m. 1.00 hr

A View of the Sector

Kick off the conference with a rollercoaster ride through the good, the bad, and the ugly of recent legislative, regulatory, and judicial developments affecting exempt organizations. Presenters share their observations of recent notable trends in the sector, including disclosure of donors to state regulators, new investment vehicles, donor advised funds, tax reform, and much more. Come prepared for heart-stopping thrills!

Rosemary E. Fei, Adler & Colvin, San Francisco, CA
Alexander L. Reid, BakerHostetler, Washington, DC

9:30 a.m. 1.00 hr

The Nonprofit Sector in the Age of COVID-19: Challenges, Opportunities and Responses

Review some of the strategies that nonprofit organizations have used to mitigate the disruption in their governance, finances, programs and operations during the pandemic. Topics will include: (i) revisiting mission statements and charitable purposes; (ii) revisiting age-old tensions between current payout and "rainy day" endowment funds; and (iii) managing attrition, recruitment/retention, and remote workforce issues. We will also suggest a possible silver lining of 2020—grant-makers' use of increasingly creative, efficient and flexible approaches to ensure mission-critical support to those in need (PRIs, individual grants, disaster relief grants, etc.).

Diara M. Holmes, Loeb & Loeb, Washington, DC
Michelle Michalowski, PwC, Washington, DC
Andrew Schulz, New Venture Fund, Washington, DC

10:30 a.m. Break

CONCURRENT TRACKS

TRACK A: IN TIMES OF CRISIS: GOVERNANCE AND INVESTING

Presiding Officer:

Kay Walther, Blazek & Vetterling,
Houston, TX

10:50 a.m. .75 hr

Governance in a Time of Crisis

This panel will cover both proactive steps to prepare an organization for crisis and practical guidance for navigating through a crisis. Topics will include fiduciary issues, the tools available to allow board members and officers to exercise their fiduciary duties, the role of the board and management during a crisis, and challenging decisions involving funding and endowment management.

Katherine Karl, The Humane Society of the United States, Washington, DC
Justin Zaremby, Patterson Belknap Webb & Tyler LLP, New York, NY

11:35 a.m. 5-Minute Break

11:40 a.m. .75 hr

Investing in a Time of Crisis

Turmoil in the Capital Markets caused by economic dislocations like the Covid Pandemic can create stress on the investment portfolios of Nonprofit organizations, but can also create opportunities if cool heads can prevail.

Kathleen (Katie) Gerber, Holland & Knight LLP, Dallas, TX
Norman E. Nabhan, Graystone Consulting, Houston, TX

12:25 p.m. Break for Lunch

Included in registration.

TRACK B: COVID-19 EMPLOYMENT ISSUES / ACTIVITIES AND EVENTS

Presiding Officer:

Nicola Fuentes Toubia, Fuentes Toubia,
PLLC, Houston, TX

10:50 a.m. .75 hr

Employment Issues and the Pandemic

Discuss employment law and tax considerations for remote workforces; plus, a brief overview of other important considerations for employers during the pandemic.

Kaiser H. Chowdhry, Morgan, Lewis & Bockius LLP, Washington, DC
Kenneth Hausser, Ernst & Young LLP, Iselin, NJ

11:35 a.m. 5-Minute Break

11:40 a.m. .75 hr

Business as Usual?: The Legal Challenges with In-Person Activities and Events

As force majeure meeting, conference, and event terminations have become virtually impossible anymore, and as nonprofits move ahead with their 2022 events with an expectation of significantly reduced attendance and with COVID still very much a factor, explore how to mitigate your organization's contractual and liability risks in connection with your in-person and hybrid events. From attrition penalties to vaccine mandates (and exceptions) to COVID protocols to contracting for your and your clients' future meetings and conferences, this session will offer real-time, practical advice and guidance, best practices, and suggestions for dealing with the daunting challenges inherent in your 2022 events.

Lawrence Mendenhall, American Academy of Ophthalmology and AAO Foundation, San Francisco, CA
Jeffrey S. Tenenbaum, Esq., Tenenbaum Law Group PLLC, Washington, DC

12:25 p.m. Break for Lunch

Included in registration.

MASTER CLASS: DISASTER RELIEF ORGANIZATIONS (Limited Capacity)

10:50 a.m. 1.50 hr

MASTER CLASS: Disaster Relief Funds: An Overview of Potential Structures, Related Tax Issues, and Practical Considerations

An in-depth review of the structures available to house a charitable disaster relief fund, including a 501(c)(3) organization, a fund at a larger charity (such as a community foundation), and other outsourced options. Discuss legal structure and impact, tax implications, and practical considerations, with a particular focus on employer-related funds. Staff from the Greater Houston Community Foundation will share their expertise in administering employer-related funds, and also share insights from their role with city-wide relief in recent years.

Stephanie Blair, Greater Houston Community Foundation, Houston, TX
Danika Hudik Mendrygal, Mendrygal Law, PLLC, Dallas, TX
Nadia Valliani, Greater Houston Community Foundation, Houston, TX

12:25 p.m. Break for Lunch

Included in registration.

THURSDAY AFTERNOON**Presiding Officer:**

Megan E. Bell, Morgan, Lewis & Bockius
LLP, New York, NY

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12:55 p.m. .75 hr

Keynote Luncheon Presentation:**A Conversation with Brittany K. Barnett**

Hear attorney, author, and entrepreneur, Brittany K. Barnett, discuss her experience and advice for others as a founder of two nonprofit organizations, as *pro bono* counsel representing clients incarcerated in federal prison, and as founder of social enterprises devoted to providing supports and resources to formerly incarcerated individuals.

Brittany K. Barnett, Buried Alive Project and Girls
Embracing Mothers, Inc., Dallas, TX

Moderator

Elizabeth Henneke, Lone Star Justice Alliance, Austin, TX

1:40 p.m. Break

1:55 p.m. 1.00 hr

GC Roundtable: Diversity, Equity and Inclusion

Panelists will discuss how they navigate the many legal issues that arise in the pursuit of diversity, equity and inclusion both in the US and overseas.

Moderator:

Megan E. Bell, Morgan, Lewis & Bockius LLP,
New York, NY

Panelists:

Ricardo A. Castro, International Rescue Committee,
New York, NY
Nishka Chandrasoma, Ford Foundation, New York, NY
Christie Yang, Walton Family Foundation,
Washington, DC

2:55 p.m. Break

CONCURRENT TRACKS
**TRACK C: DEI AND CHARITABILITY /
ESG INVESTING**
Presiding Officer:

Megan E. Bell, Morgan, Lewis & Bockius
LLP, New York, NY

3:15 p.m. .75 hr

Charitability and Section 1981

Understand the legal guardrails for grants and PRIs that, in an effort to advance diversity and inclusion, prioritize or limit eligibility on the basis of race or other protected characteristics. Discuss pros and cons of race-exclusive grantmaking and PRIs and ways to mitigate the risks under anti-discrimination laws.

Emily Cuneo DeSmedt, Morgan, Lewis & Bockius LLP,
Princeton, NJ

Joshua J. Mintz, John D. and Catherine T. MacArthur
Foundation, Chicago, IL

4:00 p.m. 5-Minute Break

4:05 p.m. .75 hr

ESG Investing

Environmental, social and governance (ESG) and impact investing continues to grow from a field of interest to a robust investment discipline. This discussion will demystify the broad ESG investing landscape and provide insights on effective and actionable ways to incorporate ESG and impact investing into nonprofit portfolios, including both legal and investment perspectives.

Nancy E. McGlamery, Adler & Colvin,
San Francisco, CA

Abigail Pohlman, Goldman Sachs, New York, NY

4:50 p.m. Break

**TRACK D: ACTIVISM AND
ENGAGEMENT / EMPLOYERS AND DEI**
Presiding Officer:

Karey Dubiel Dye, Goldman Sachs
Philanthropy Fund, Houston, TX

3:15 p.m. .75 hr

Activism and Engagement

Private foundations can and do play a significant role in funding strong advocacy and the development of more equitable communities. Discussions will cover an overview of laws that impact foundation support of advocacy; the use of general operating, special purpose and expenditure responsibility grantmaking to help all types of organizations pursue civic engagement; the ways foundations can support community engagement beyond funding; and specific initiatives where foundations are engaging in advocacy and evaluating their own grantmaking practices in an effort to build communities that support all people.

Jen Powis, Alliance for Justice, Houston, TX

Tim Racer, Ewing Marion Kauffman Foundation,
Kansas City, MO

4:00 p.m. 5-Minute Break

4:05 p.m. .75 hr

**Data and Measurement: The Secret to
Intentional and Impactful DEI Initiatives**

Data-based DEI approach is key for long-term, systemic transformation. Explore best practices on how to move the needle in DEI and discuss actionable interventions, measurement, benchmarking, and more. Learn how nonprofit leaders must intentionally leverage all three parts of diversity, equity, and inclusion in order to bring about lasting change.

Starlett (Star) Carter, Kanarys, Inc., Dallas, TX

4:50 p.m. Break

**MASTER CLASS: ANATOMY OF A
GRANT AGREEMENT (Limited Capacity)**

3:15 p.m. 1.50 hrs

**MASTER CLASS: Anatomy of Grant
Agreement**

Review the key components of a grant agreement, including provisions unique to private foundations, considerations for advocacy organizations, and how to structure grants to fiscal sponsors, non-charitable organizations, and individuals. Expect practical advice from the perspective of both the grantor and the grantee, a lively discussion, and sample language.

Vanessa Goodwin, Arnold Ventures LLC, Houston, TX
Kristy Bernard Tsadick, The William and Flora Hewlett
Foundation, Menlo Park, CA

4:50 p.m. Break

5:00 p.m. 1.00 hr ethics

**Professional Opinions and Tax-Exempt
Organizations**

There are different types and reasons for opinions: comfort (e.g., it's exempt from UBIT, it's a program-related investment), contractual condition (e.g., required for a bond offering), escape hatch (e.g., right to terminate joint venture if counsel opines that tax-exempt status is at risk), proper tax reporting (e.g., 990 and 1023EZ), and, the one our clients are often most concerned with, penalty protection (e.g., reliance on a reasoned written legal opinion of counsel – IRC 4941, 4944, 4945, 4958). Address the legal, ethical, comical and practical considerations involved in assessing the need for an opinion, how to arrive at any given "comfort level," and how much (or little) it takes for a written legal opinion to be "reasoned."

Ofar Lion, Seyfarth Shaw LLP, Los Angeles, CA
LaVerne Woods, Davis Wright Tremaine LLP,
Seattle, WA

6:00 p.m. Adjourn to Reception

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6:00 p.m. – 7:00 p.m.

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FRIDAY MORNING, JAN. 14, 2022

Presiding Officer:

Joyce Hellums, Ernst & Young LLP,
Austin, TX

8:30 a.m. Conference Room Opens

9:00 a.m.

**BRUCE R. HOPKINS
REMEMBRANCE AND DEDICATION**

We dedicate this year's conference to Bruce R. Hopkins, whose involvement and commitment to this program was instrumental in its success for many years.

9:10 a.m. .75 hr

Texas Legislative and Public Policy Update

Challenges and disasters of all sorts kept the leadership of the 2021 Texas Legislature chasing solutions for a rapidly-changing state. Nonprofit entities increasingly partner with governments in policy and program development. Two veteran observers review legislative, regulatory and policy trends that made news.

Richard W. Meyer, Attorney at Law, Austin, TX
Ross Ramsey, The Texas Tribune, Austin, TX

9:55 a.m. 1.00 hr

Commercial/Market Based Approaches to Impact Intervention

Impact and profit are not mutually exclusive; indeed, the lines between investment and impact continue to blur. Investments can have impact-like results, and grants can have investment-like results. Discuss the variety of commercial, market-based options exempt organizations (and their funders) should have in mind as they pursue their missions.

Samuel Greenberg, Ernst & Young LLP,
Los Angeles, CA
Ruth M. Madrigal, KPMG LLP, Washington, DC
John Tyler, Ewing Marion Kauffman Foundation,
Kansas City, MO

10:55 a.m. Break

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We are here to support our community while we navigate the coronavirus pandemic together. Information and updates regarding our in-person conferences and live webcasts will be posted at www.utcle.org.

In addition, we continue to offer multiple educational opportunities online—both live and on-demand—by bringing practitioners together virtually. We are fortunate to serve so many of you who strive for excellence in the practice of law.

CONCURRENT TRACKS

**TRACK E: LIFECYCLE OF PRIVATE
FOUNDATION ENGAGEMENT**

Presiding Officer:

Lucille DiDomenico, DiDomenico Group,
Dallas, TX

11:15 a.m. .75 hr

**Lifecycle of Private Foundation Engagement
and Compliance Concerns: PART 1**

A practical guide to navigating the Chapter 42 excise tax regime from a legal and accounting perspective. Comprehensively review the rules applicable to private foundations and common traps for the unwary. Discuss issues to consider and share with persons considering creation of a new foundation. Gain insight to ensure compliance in the areas of complex grant-making, direct programmatic activities and investing. Understand the reporting and excise tax implications of violations.

Joel Beck-Coon, Humanity United, San Francisco, CA
Jody Blazek, Blazek & Vetterling, Houston, TX
Emiliano Martinez, Chan Zuckerberg Initiative,
Redwood City, CA
Maura L. Whelan, Simpson Thacher & Bartlett LLP,
New York, NY

12:00 p.m. 5-Minute Break

12:05 p.m. .75 hr

**Lifecycle of Private Foundation Engagement
and Compliance Concerns: PART 2**

12:50 p.m. Break for Lunch
Included in registration.

**TRACK F: LIFECYCLE OF PUBLIC
CHARITY ENGAGEMENT**

Presiding Officer:

Joyce Hellums, Ernst & Young LLP,
Austin, TX

11:15 a.m. .75 hr

Lifecycle of Public Charity Engagement: PART 1

Gain insight into the spectrum of public charity representation, from structuring a new public charity through terminating its existence. Explore strategies for addressing common tax and legal issues faced by public charities throughout their life cycles, including meeting the public support test, managing and minimizing unrelated business income tax, avoiding intermediate sanctions and prohibited private benefit and inurement, facing Form 990 reporting challenges, and structuring transactions with taxable organizations and insiders.

Stephen M. Clarke, Ernst & Young LLP, Washington, DC
Elinor Ramey, Steptoe & Johnson LLP, Washington, DC
Chelsea R. Rubin, Morgan, Lewis & Bockius LLP,
Washington, DC
Bridget M. Weiss, Arnold & Porter Kaye Scholer LLP,
Washington, DC

12:00 p.m. 5-Minute Break

12:05 p.m. .75 hr

**Lifecycle of Public Charity Engagement:
PART 2**

12:50 p.m. Break for Lunch
Included in registration.

**MASTER CLASS: ALTERNATIVE
STRUCTURES (Limited Capacity)**

11:15 a.m. 1.50 hrs

**MASTER CLASS: The Tapestry of
Strategically (and Legally) Using Commercial
Enterprises to Achieve Charitable Ends**

Opportunities for exempt organizations to work with and through market-oriented enterprises and interventions to pursue their charitable purposes are increasing. Doing so involves a variety of factors and attention to the pros and cons of different approaches. Strategically balancing charity, private benefit, tax considerations, structures and forms, licensing, data, decision-making, assessments, and more are among the inter-related threads that run through these approaches. Instead of hanging loosely, these threads together create a tapestry of strategic decisions and opportunities. This master class focuses on how these considerations fit together.

Laura E. Butzel, Patterson Belknap Webb & Tyler LLP,
New York, NY
Tomer Inbar, Morgan, Lewis & Bockius LLP,
New York, NY

12:50 p.m. Break for Lunch
Included in registration.

FRIDAY AFTERNOON

Presiding Officer:

Mia Hsu Burton, Michael & Susan Dell
Foundation, Austin, TX

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1:20 p.m. .75 hr

Ask the Experts

Gain insight on key issues and common challenges facing public charities and private foundations and share your own questions with conference faculty and fellow colleagues in this interactive session.

Hillary Bounds, Gates Ventures, Seattle, WA
John Sare, Patterson Belknap Webb & Tyler LLP, New
York, NY
Nicola Fuentes Toubia, Fuentes Toubia, PLLC,
Houston, TX

2:05 p.m. Break

CONCURRENT TRACKS

TRACK G: DAFS / ADVANCED ISSUES IN FUNDRAISING

Presiding Officer:

Mia Hsu Burton, Michael & Susan Dell Foundation, Austin, TX

2:25 p.m. .75 hr

Donor Advised Funds: Past, Present and Future

This session will provide an overview of donor advised funds (DAFs) and their uses, both common and creative; recent litigation on the relationship between donors and DAFs; and proposed legislation and IRS guidance that could affect DAFs in the future.

Dahlia B. Doumar, Patterson Belknap Webb & Tyler LLP, New York, NY
Justin J. Lowe, Ernst & Young LLP, Washington, DC

3:10 p.m. 5-Minute Break

3:15 p.m. .75 hr

Advanced Issues in Fundraising

With the effects of the novel coronavirus, nonprofits were forced to adapt and invent novel methods of fundraising. Evaluate the practical and technical implications of the changes and trends affecting the fundraising landscape.

Meghan R. Biss, Caplin & Drysdale, Chartered, Washington, DC
Jonathan S. Blum, Polsinelli PC, Dallas, TX

4:00 p.m. Adjourn

TRACK H: NON-CHARITABLE ENTITIES / AFFORDABLE HOUSING CASE STUDY

Presiding Officer:

Andrea L. March, Texas Rio Grande Legal Aid, Austin, TX

2:25 p.m. .75 hr

Utility of Non-Charitable Entities

Sometimes, changing the world requires philanthropist to use more entities than just public charities and private foundations. Explore the use 501(c)(4) organizations and other tax-exempt, non-charitable entities, as well as LLCs, taxable nonprofits, and foreign affiliates. Understanding the pros and cons of these various entities, along with the impact they will have on a related entity's external financial reporting, and a potential donor's tax.

James P. Joseph, Arnold & Porter Kaye Scholer LLP, Washington, DC
Kay Walther, Blazek & Vetterling, Houston, TX

3:10 p.m. 5-Minute Break

3:15 p.m. .75 hr

Case Study on Charitability, Structure and Compliance: Affordable Housing

Few charitable activities can be as complex and challenging as affordable housing. Charities that develop and maintain affordable housing (and their funders) must contend with the limitations of traditional definitions of charity in a modern context, as well as the private benefit and other tax implications that flow from complex financing, such as tax credits, capital stacks, and joint ventures. All of this makes for a great study on how charities can innovate to meet crucial needs in a changing world while staying true to 501(c)(3) status, regardless of the issues area.

Edward T. Chaney, Schell Bray PLLC, Chapel Hill, NC
Walter Moreau, Foundation Communities, Austin, TX

4:00 p.m. Adjourn

MASTER CLASS: DATA PROTECTION AND CYBERSECURITY (Limited Capacity)

2:25 p.m. 1.50 hrs

MASTER CLASS: Data Protection and Cybersecurity

Learn about the latest cybersecurity threats and trends impacting nonprofits, and actions that can be taken today in furtherance of compliance and in support of the overall data privacy and security mission.

Shawn E. Tuma, Spencer Fane, Plano, TX

4:00 p.m. Adjourn

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