

והייתם נקיים מה' ומישראל

Be Pure Before God and Israel
Principles of Ethics, Governance, and Accountability for Jewish
Philanthropies in the United States

Featuring:

Tzedakah, Inc.'s
Standards of Practice for Jewish Philanthropies
in the United States

and

The Orthodox Caucus's
Tzedakah and Tzedek:
Halachic & Ethical Financial Requirements
Pertaining to Charitable Organizations

Tzedakah, Inc.

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To the many *gabbaei tzedakah* -- tzedakah officials --

who help make the mitzvah

more beautiful and more effective.

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About Us

Tzedakah, Inc.

Tzedakah, Inc. is a nonprofit organization whose mission is to increase the spiritual and economic effectiveness of tzedakah among American Jews. The organization supports and maintains an Internet Web site devoted to its objectives, www.just-tzedakah.org. The web site includes information about tzedakah drawn from traditional Jewish sources. It also contains Tzedakah Reports, profiles of Jewish nonprofit organizations. The site supports on-line credit card contributions to scores of Jewish philanthropies.

The Orthodox Caucus

The Orthodox Caucus is an organization devoted to addressing a number of issues in the Jewish community. Among its projects are dissemination of a prenuptial agreement to prevent *iggun* (spouses being trapped in marriages without recourse to a *get*, or religious divorce), a community-based educational Torah Ethics project, the advancement of women's concerns within the framework of halachah, rabbinic leadership training, etc. For more information on the Caucus, which is based in Cedarhurst NY, visit its website at www.orthodoxcaucus.org, or call (516) 569-5977.

Preface

This work seeks to provide certain guidelines relating to ethics, governance, and accountability for Jewish philanthropies that operate in the United States. In that regard it is unique. Much has been written about the obligations of tzedakah officials to be ethical, competent, and open. And the same is true for philanthropies in the United States. The current publication combines the two traditions, thereby providing guidance for Jewish organizations in the United States that desire to conform to both. Our task was made easier because the two traditions have so much in common.

Tzedakah, Inc. has come to know dedicated people who labor in the Jewish nonprofit world. So many of them devote their careers to serving others, often at compensation levels below those that could be earned in the for-profit sector. In some cases, individuals manage substantial organizations on a purely volunteer basis. Jewish tradition acknowledges those who work in tzedakot by granting them rich spiritual rewards, "one who can cause others to give has a greater reward than the giver." (Shulchan Aruch 249:5) American law recognizes philanthropy in more material ways, largely by providing them with substantial tax advantages.

Both American and Jewish law view philanthropic organizations as public intermediaries. They are intermediaries in the sense that they stand between the well off and the needy, taking resources from one and transferring those resources to the benefit of the other. Because philanthropies act as agents of donors and beneficiaries, both traditions encourage, and even require, them to be ethical, effective, and accountable.

American law requires most nonprofits to file annual information returns in exchange for the tax advantages they enjoy. Jewish sources often urge tzedakah officials to "be pure before God and Israel" (Numbers 32:22). Why so? Because tzedakah administrators have the twin obligations of *being* pure, and *appearing* to be pure. Pure before God means ethical, honest, and effective behavior *in fact*, for who can deceive the all-knowing Ruler of the Universe? Purity before Israel means ethical, honest, and effective behavior *in appearance*. Tzedakah administrators must conduct their activities so that they remain above even the suspicion of wrongdoing.

This project comes to completion during the season when we read the last sections of the Book of Sh'mot (Exodus) in the synagogue. This is fitting, as this part of the Torah deals with the construction of the Tabernacle, and includes Moshe's collection and management of funds raised for that purpose. The Tabernacle serves as the quintessential Jewish model for nonprofit management, and Moshe as the tzedakah administrator par excellence. He sets the example for honorable, efficient, and open tzedakot.

Adar 5762, February 2002

Acknowledgments

Tzedakah, Inc. is grateful to the Almighty for allowing the successful completion of the present work, and for sending so many who labor in tzedakot, to facilitate this beautiful mitzvah for the rest of us.

“Standards of Practice for Jewish Philanthropies in the United States” was drafted by a distinguished group of individuals, with extensive training and experience in the worlds of halachah, accounting, consumer affairs, American law, and philanthropy. We list with pride the following, all of whom served with great distinction and seriousness of purpose on the drafting committee (affiliations are given for identification purposes only):

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In addition, we express our thanks to the Jewish National Fund for inviting Ira Kaminow of Tzedakah, Inc. to join a senior management meeting, where the standards were discussed at length, from the perspective of a major Jewish nonprofit. Mr. Mitchel Rosenzweig, Chief Financial Officer of the JNF, read an early draft and made a number of helpful comments.

The Orthodox Caucus graciously allowed us to include its “Tzedakah and Tzedek: Halachic & Ethical Financial Requirements Pertaining to Charitable Organizations .” This excellent summary of the *halachot* relevant to charity administrators, *gabaei tzedakah*, was prepared with great devotion and skill by Rabbi Daniel Feldman under the direction of the Caucus’s Ethical and Religious Guidelines for Orthodoxy (ERGO) task force. In this regard, both Tzedakah, Inc. and the Orthodox Caucus owe a special thanks to Rabbi Yosef Blau. Rabbi Blau was consulted by both organizations early in their respective efforts. He informed each of the other’s plans, thereby heading off possible duplication of effort. The Caucus’s work focuses on a halachic overview while Tzedakah, Inc.’s project has a more practical focus, combining American law and Jewish sources. The two efforts beautifully complement each other.

With regard to the “Standards of Practice for Jewish Philanthropies in the United States,” Tzedakah, Inc. acknowledges inspiration from philanthropic standards developed by other organizations. These include the Charities Review Council of Minnesota, the Evangelical Council for Financial Accountability, the Maryland Association of Nonprofit Organizations, and the Philanthropic Advisory Service of the Council of Better Business Bureaus.

Finally, and with particular gratitude, we thank Rabbi Yitzchok Breitowitz who has provided his halachic advice and counsel from the very earliest days of Tzedakah, Inc., even before the organization’s activities began. He responded to many halachic questions relating to the present project at length and with great care, despite enormous demands on his time from many quarters.

Standards of Practice for Jewish Philanthropies in the United States

Key Points

Below is a brief summary of the key points covered in Tzedakah, Inc.'s "Standards of Practice for Jewish Philanthropies in the United States." The full document appears on the following pages.

1. Governance

The governing board should be an active, informed, and independent body that provides ongoing oversight and direction intended to promote the organization's best interest. Membership on the governing board should be taken as a serious responsibility and not viewed merely as an honorary position.

2. Compliance with all laws

The organization should be aware of, and comply with, all federal, state, and local laws governing its operations.

3. Reporting and disclosure

The organization should operate in an open fashion. It should make available to the public specified financial reports prepared in full compliance with relevant accounting standards, a narrative description of its activities, and other relevant information.

4. Stewardship of resources

The organizational resources should be devoted to optimally achieving its mission. An appropriate balance should be struck among expenditures on program, fundraising, and administration. Assets should be adequate, but not excessive. Appropriate controls should be imposed to protect organizational resources.

5. Fundraising practices

Solicitation materials should fairly describe the purposes to which funds will be put. Donors and those being solicited should be treated with respect and consideration.

6. Human resources

The organization should establish and follow written policies that treat employees, volunteers, and beneficiaries fairly and respectfully. Human resource policies should clearly specify the mutual obligations and rights that exist between the individual and the organization, and should include an adequate grievance procedure.

Standards of Practice for Jewish Philanthropies in the United States

Tzedakah, Inc.

The nonprofit sector is an indispensable part of the Jewish community. The sector is a partnership among beneficiaries, donors, professionals, and volunteers. These Standards of Practice are designed, in the spirit of Jewish tradition, to help facilitate the fair, effective, and open operation of the institutions within which this holy partnership does its good works. The standards were designed for Jewish philanthropies soliciting funds from the public. Other organizations may find some or all of the Standards helpful.

1. Governance

The governing board directs the operations of the organization and oversees the stewardship of resources entrusted to it. Board members should take this responsibility as a sacred trust. Each member should feel obligated to safeguard and advance the philanthropic mission of the organization to serve its public. Board membership should under no circumstances be viewed lightly or merely as a position of honor.

It is especially important that board members exercise their responsibility to insure that the organization is effectively and ethically managed. Jewish law explicitly forbids donors to contribute to incompetent and untrustworthy charity administrators. It is impossible for donors to investigate even one nonprofit organization thoroughly. Therefore, donors and beneficiaries alike rely on the board and the senior management it appoints, to assure efficient and ethical operations.

1.1 Board composition and meetings

1.1.1 Composition. The governing board should be composed of at least five members. At least 70% of board members should be unrelated by blood or marriage to any other board member and have no business dealings with the organization. No more than one member of the board should be a paid employee of the organization, and that person should not serve as chairman or treasurer.

1.1.2 Terms of office. The bylaws should set specific terms for board membership and tenure in official positions, with due regard to the dual objectives of continuity and rotation of organizational leadership.

1.1.3 Board orientation. Prior to participation on the governing board, each new or perspective board member should receive a written or oral orientation covering the organization's mission, policies, bylaws and practices, minutes from recent board meetings, responsibilities of board membership, and such

other information as may be necessary for his or her effective participation on the board.

- 1.1.4 *Conflict of interest.* Each board member should discharge his or her responsibilities to the board solely to advance the organization's mission and without regard to personal gain or loss to the board member or others, unless such action would violate higher ethical, moral, or religious principles. Jewish tradition strongly discourages even the appearance of conflict of interest among tzedakah officials. Therefore, each organization should adopt a written conflict of interest policy covering the activities of board members, staff, and volunteers. The policy should make clear the conditions under which conflicts of interest and potential conflicts should be disclosed and to whom. The policy should include clear guidelines to be followed by those charged with review of conflict of interest concerns. Conflict of interest concerns should be reviewed only by disinterested parties. Those coming under the conflict of interest policy should sign a conflict of interest statement annually. Such statement should be a declaration by the individual indicating any conflicts and potential conflicts of interest.
- 1.1.5 *Meetings.* The board should meet at least three times a year with a majority present. Written minutes of each board meeting should be taken and retained indefinitely as part of the organization's official records. Minutes should include the exact wording of all motions made and action items, as well as the results of each vote.
- 1.1.6 *Board committees.* The Bylaws should require board committees (e.g., audit, compensation and nominating committees) as deemed appropriate to carry out the board's responsibilities. Where the board delegates decision making authority to board committees, those committees should consist of at least three board members, not including any paid staff member. A majority of committee members should be present at each committee meeting. Written minutes of each committee meeting should be taken and retained indefinitely. Minutes should include, at a minimum, the exact wording of all motions and action items voted upon by the committee, as well as the results of each vote. Minutes of committee meetings should be available to all board members. Committees should report at full board meetings, substantive decisions that are made.
- 1.1.7 *The level of board member activity.* The list of membership on the governing board is a representation to donors and others that each member actively provides direction and oversight to the organization. Individuals outside the organization should be able to rely on the accuracy of such representation. Therefore, the organization should adopt standards for the level of service required for board membership. As a minimum, each member of the governing board should be required to participate in at least 50% of all board meetings, so that his or her advice, counsel, and oversight can help guide the organization. The manner of participation at board meetings, whether in person, by teleconferencing, or other means, should be consistent with applicable state law.

1.2 Board responsibilities for broad policy

1.2.1 *Mission statement and bylaws.* The board should review the organization's mission statement and bylaws as often as appropriate, at least once every two to three years. Where so empowered by the bylaws, the board should adopt any appropriate changes. Where approval of another body (for example, the organization's membership) is necessary, the board should present and explain any recommendations for change.

1.2.2 *Policies.* The board should approve and regularly review (usually annually, but no less frequently than in alternate years) policies regarding (i) financial control, protection of assets, and management of risk, (ii) human resources, and (iii) ethical standards.

1.2.3 *Implementation.* The board should oversee the implementation of its policies by management.

1.2.4 Budgeting and planning

1.2.4.1 The board should establish broad financial and program goals against which to measure management's performance. Progress toward meeting financial and program goals should be evaluated at least semi-annually.

1.2.4.2 Board members should be familiar with financial and program operations and assure, to the best of their ability, that resources are being allocated as effectively as possible to advance the organization's mission.

1.2.4.3 The board should determine the scope and frequency of financial reports. Each board member should receive a complete set of financial statements annually and such internal financial statements and reports on operations and organizational performance as are prepared by management.

2. Compliance with all laws

It is a universally accepted precept of Jewish Law that all individuals and institutions fully comply with the law of the land. In order to satisfy that requirement, organizations have an obligation to make themselves aware of, and comply with, the relevant law of all government agencies under whose jurisdiction they operate. In particular, philanthropies have a specific obligation to comply with reporting requirements of federal and state governments. Where organizations apply for, or are awarded, government funds, applications should be completely honest and accurate, and government funds should be handled and accounted for in the manner intended by law, with appropriate documentation and procedures.

3. Reporting and disclosure

According to Jewish law and tradition, donors are entitled, and even encouraged, to learn how the funds they donate are spent. Donors want to

know how funds they contribute are being used so they can make informed giving decisions. Organizations are urged to cooperate with this worthy purpose by making the following available upon written request, or to otherwise make them widely available by posting them on the Internet. Fundraising solicitations should indicate that the documents and information listed below are available, and explain how they may be obtained.

3.1 Mission statement

3.2 Financial statements

3.2.1 Financial statements should be prepared for distribution to the public at least annually and in a timely fashion. Financial statements prepared for distribution to the public, and accounting submissions to government agencies, should be prepared by a Certified Public Accountant (CPA) familiar with accounting practices relating to nonprofit organizations. (Organizations with under \$100,000 in revenue need not use a CPA, but should nevertheless prepare all financial statements in strict accordance with generally accepted accounting standards and governmental accounting standards, as appropriate.) Financial Statements should conform to generally accepted accounting principles (GAAP), with due regard for all applicable standards promulgated by the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA). Submissions to government agencies should comply with relevant government accounting standards. The board, or a committee thereof, should review the financial statements and be satisfied that the statements accurately reflect the financial operations and condition of the organization. The board should approve such financial statements by majority vote.

3.2.2 Annual financial statements of organizations with revenues in excess of \$250,000 should be audited by a CPA familiar with accounting practices relating to nonprofit organizations. The board, or the audit committee, should meet with the auditor to review the year-end financial statements and assure themselves that they understand the results of the audit, including any exceptions and unusual items, and that the audited financial statements fairly reflect the operations and financial conditions of the organization. A portion of the meeting with the auditor should be conducted without management present. Once the audit process has been completed, the board should vote to accept the audit, either directly, or by voting to accept the report of the audit committee.

3.3 Narrative description of activities

3.3.1 The organization should prepare at least annually a narrative description of the activities and accomplishments achieved for each major program area. The description should include appropriate performance measures, and cover the fiscal year. The narrative description and financial statements should be comparable in format and coverage. That is to say, programs should have the

- same names and definitions in both documents, and the time period covered should be the same in both documents.
- 3.3.2 The extent of the description should be proportionate to the size of the organization, and need not be unduly burdensome. For smaller organizations with one or two distinct program areas, a page or two can be enough. Larger, more complex organizations should prepare more extensive documents.
- 3.3.3 The board, or a committee thereof, should review the narrative description and assure that it accurately reflects the organization's activities.
- 3.4 Government information forms
- 3.4.1 The organization should comply with federal law requiring that copies of form 990 (the annual information form) for the most recent three years and form 1023 (application for nonprofit status under the IRS code) be mailed promptly in response to written requests, or post such forms on the Internet. The same policy should be followed with regard to state information forms that are open to public inspection.
- 3.4.2 Religious organizations including synagogues, federations of synagogues, religious schools, and their affiliates are legally exempt from filing informational forms 990. Such organizations should complete and file 990 forms voluntarily and make them available upon request or post them on the Internet, if the organization regularly solicits funds from individuals not directly involved with their activities and leadership.
- 3.5 Endorsements
- 3.5.1 Endorsements (haskamot) from prominent and distinguished individuals or organizations are important for evaluating the worthiness of Jewish organizations. Organizations should publicize such endorsements only when written letters of approbation that clearly endorse the organization have been received. Endorsements that have been given for a specific period of time or for a specific situation or need should be clearly publicized as such.
- 3.5.2 Copies of letters of approbation, including English translation where appropriate, should be made available upon written request. The date the letter was written should be clearly stated.
- 3.6 *Fundraising efficiency ratio.* The fundraising efficiency ratio is the ratio of fundraising costs to revenues raised through fundraising activities. Revenues raised through fundraising activities include such revenues as donations and grants, for which no services are provided to the donor. Other revenues such as investment income and program fees should be excluded. Fundraising costs should be calculated in accordance with generally accepted accounting practices, with particular attention to the American Institute of Certified Public Accountants Statement of Position (SOP) 98-2, where applicable.

4. Stewardship of resources

- 4.1 All the organization's resources should be directed toward the efficient advancement of its mission as articulated in the mission statement.
- 4.2 The organization should develop, in consultation with relevant experts, effective policies regarding financial control, protection of assets, and management of risk. By way of example, these policies should cover such matters as the rank and number of individual signatories on checks by size and nature of disbursement, controls for cash receipts and disbursements, safeguarding of assets from theft, the approval process for transactions by size and nature of transaction. Under no circumstances should the policy permit any single individual access to organizational resources without appropriate oversight.
- 4.3 Accumulation of assets
- 4.3.1 The organization should have on hand an adequate level of liquid assets relative to operating expenses and other obligations to assure its smooth operation.
- 4.3.2 The organization should avoid the accumulation of excessive assets. The accumulation of net assets in excess of amounts necessary for the smooth functioning of the enterprise indicates that the organization may not have adequate beneficial uses for the contributions it receives from donors. Moreover, a large net worth can encourage profligate spending. In evaluating whether asset holdings are excessive, due regard should be given to the need for physical assets used in the provision of services and assets whose use is restricted by donor conditions.
- 4.3.3 The board is responsible for adopting broad policies for the investment of assets. Investment policies should be consistent with the overall mission of the organization.
- 4.3.4 According to Jewish custom, funds set aside for the poor should not accumulate unduly, as the poor have urgent needs.
- 4.3.5 As a guideline, organizations should have available assets, unencumbered by donor restrictions, and excluding plant and equipment, equal to between three and 18 months of operating expenses.
- 4.4 *Program expenses.* The bulk of revenues should be expended directly for advancing the organization's mission. As a general matter, program expenses should amount to at least 60% of total expenses.
- 4.5 *Administrative Expenses.* Adequate resources should be devoted to administrative activities to assure proper oversight and governance of the organization and its staff, efficient use of resources, protection of assets, management of risk, and avoidance of waste. All expenditures on

administration should be justified by a corresponding improvement in organizational effectiveness. Accounting practice defines management and general (M&G) expenses as relating only the overall management of the organization, as distinct from program administration. Expenditures on the administration of particular programs are included as part of program expenses. Program administration expenses should fall in the range of 10%-33% of each program's expenses. M&G expenses should fall in the range 5% - 10% of total expenditures.

4.6 *Fundraising expenses.* According to Jewish tradition, fundraising costs should balance the need to finance the mission against the desires of donors. On the one hand, fundraising expenses should not be kept so low as to forgo opportunities to efficiently collect revenues that can be used to advance the organization's mission, and help those in need. On the other, fundraising expenses should not be so high as to frustrate the donor's desire and intention that a substantial share of his or her gift be used to directly advance the mission. As a general matter, the fundraising efficiency ratio (see 3.6) should not be less than 15% nor more than 35%. If the ratio is under 15%, the organization should examine whether it is being sufficiently aggressive in raising funds to optimally fulfill its mission. If the ratio exceeds, 35%, donors and prospective donors should be explicitly informed of the proportion of their contributions going to pay fundraising expenses.

5. Fundraising practices

5.1 Solicitation materials should accurately describe the intended use of funds being solicited. According to Jewish law, misleading solicitations of funds can be a form of theft.

5.1.1 Solicitations to underwrite general operations should accurately reflect the broad range of the organization's activities rather than focus on a particular program that may be popular among donors.

5.1.2 If a solicitation is largely targeted at a particular purpose like funding an endowment rather than current operations, that should be made clear.

5.1.3 The organization's fundraising efficiency ratio (see 3.6) for the prior year should be included in all solicitations, when the ratio exceeds 35%, unless there is substantial reason, based on objective evidence, to believe that the fundraising efficiency ratio will fall below 35% in the current year.

5.2 *Pressure on donors.* It is a strict prohibition of Jewish law and tradition to embarrass individuals into making contributions or to knowingly allow donors to risk their own financial health in order to support philanthropic endeavors.

5.2 *Acceptance of gifts.* The board should have a clear policy regarding the acceptance of gifts covering such issues as limits on (a) donor-imposed conditions, and (b) individuals and organizations from whom gifts may be accepted.

6. Human Resources

- 6.1 The organization should have a written human resources policy, specifying such issues as frequency of performance reviews, employee benefits, policies governing relations between subordinates and supervisors, and the rights and responsibilities of employees, volunteers, and beneficiaries. Where staff, volunteers, or beneficiaries come in contact with minors, policies should include specific attention to the appropriate interaction with children and protection of their rights.
- 6.2 Employees, volunteers, and beneficiaries should be made aware of the policies regarding the rights of others to be free of inappropriate discrimination and harassment. Each employee and volunteer should sign a document certifying that he or she has read the policy, understands it, and agrees to abide by it.
- 6.3 Grievance procedures should be established to fairly and promptly respond to complaints of violations of ethical or human resources policies. Procedures should assure timely adjudication by qualified, reputable, and impartial individuals. Procedures, including the name and contact information of an ombudsman to whom complaints may be directed, should be displayed prominently, so that all parties who might be affected are aware of them.

Standards of Practice for Jewish Philanthropies in the United States

Selected Supporting Texts

Below are quotations culled from Jewish sources that support major principles on which "Standards of Practice for Jewish Philanthropies in the United States" is based. This small collection of sources is in no way meant to be an authoritative halachic guide, or anything remotely close to it. For one thing, many of statements quoted below do not reflect halachic requirements at all, but merely describe what is thought by our sages to be right and good. For another, halachah, like any legal code, is too complex to be defined by a few verses. Perhaps, however, these excerpts provide a general flavor of the inclinations and tendencies of Jewish tradition with regard to the management and accountability of tzedakot. For a more nuanced discussion of relevant halachic issues, see "Ethical Principles Pertaining To Charitable Organizations." That document appears on pages 14-23, through the courtesy of the Orthodox Caucus.

Numbers refer to paragraphs in Standards of Practice for Jewish Nonprofit Organizations in the United States

1. Governance. Jewish law forbids donors to contribute to incompetent and untrustworthy charity administrators.

וצריכים הגבאים שיהיו נאמנים וחכמים וידקדקו על העניים שלא יהיו רמאים. וכל שהגבאי אינו נאמן, אסור ליתן צדקה על ידו (הכל מטור). רמ"א יורה דעה סימן רנו סעיף א

Administrators must be trustworthy and wise and strict with the poor that they not be frauds. And it is forbidden to give tzedakah to any administrator who is not trustworthy. Ramah, Yoreh Deah 256:1

1.1.4 Conflict of interest. Jewish tradition strongly discourages even the appearance of conflict of interest among tzedakah officials.

דתניא: גבאי צדקה שאין להם עניים לחלק - פורטין לאחרים ואין פורטין לעצמן. גבאי תמחוי שאין להם עניים לחלק - מוכרין לאחרים ואין מוכרין לעצמן משום שנאמר והייתם נקיים מה' ומישראל. פסחים, יג.

We learn in a braita: if there are no poor, tzedakah administrators must exchange the tzedakah's excess coins with others and not with themselves, if there are no poor to feed, administrators of soup kitchens must sell any excess food to others and not to themselves, as it is said "and be pure before God and Israel." Pesachim 13a

2. Compliance with all laws

והאמר שמואל: דינא דמלכותא דינא. בבא בתרא, נד:

And Shmuel said: The law of the land is the Law! Baba Batra, 54b

Bottom line: Laws enacted by the state for the benefit of its citizenry are binding.

3. Reporting and disclosure. On donors' rights and obligation to investigate those soliciting contributions.

ורב יהודה אמר: בודקין לכסות ואין בודקין למזונות; אי בעית אימא: סברא, ואי בעית אימא: קרא. אי בעית אימא סברא, האי קמצערא ליה והאי לא קמצערא ליה; אי בעית אימא קרא, הכא כתיב: הלא פרוס לרעב לחמך - פרוס לאלתר, וכדקרין, והתם כתיב: כי תראה ערום וכסיתו - כשיראה לך. בבא בתרא ט.

And Rav Yehuda said we investigate the person asking for clothing but not one asking for food. This may be demonstrated with a verse or with logic. If you prefer logic: The one seeking food may be suffering and the one seeking clothing is not. If you prefer a verse (Isaiah 58:7) "Are you not going to break your bread for the hungry?" Slice immediately. With regard to clothing, it says "when you see the naked clothe him." When you see that he is not a fraud. Baba Batra 9a

Bottom line: One should investigate strangers who solicit funds, unless the need for tzedakah is urgent.

3. Reporting and disclosure. The desirability of accountable tzedakah administrators.

ואין מחשבין בצדקה עם גבאי צדקה, ולא בהקדש עם הגזברים, שנאמר: ולא יחשבו את האנשים אשר יתנו את הכסף על ידם לתת לעושי המלאכה, כי באמונה הם עושים (מלכים ב, יב, טז) (רמב"ם שם). הגה: ומ"מ כדי שיהיו נקיים מה' ומישראל, טוב להם ליתן חשבון (טור). וכל זה בגבאים הכשרים, אבל מי שאינו כשר, או שנתמנה באלמות וחזקה, צריך ליתן חשבון. שולחן ערוך יורה דעה, רנז סעיף ב

No accounting is required for tzedakah held by tzedakah administrators nor for temple funds held by temple treasurers. As it is said: "And they would not account with the men to whom they gave the money for the workers because they act honestly." (II Kings 12:16) (Maimonides). *Ramah*: In any event, in order for them to be "...pure before God and Israel," it is good for them to give an accounting. All this applies to worthy administrators. Those who are not worthy or who are appointed with power, must give an accounting. Shulchan Aruch 257:2

Bottom line: Not all tzedakah administrators are required by halachah to give an accounting, but it is meritorious to do so. If civil law requires an accounting, the law must be followed. (See Compliance with all laws, above.)

4.2 Oversight

איש אמונות זה משה שנעשה גזבר על מלאכת המשכן שנו רבותינו אין ממנין שררה על הצבור בממון פחות משנים, והרי אתה מוצא שהיה משה גזבר לעצמו, וכאן אתה אומר אין ממנין פחות מבי' אלא אע"פ שהיה משה גזבר לעצמו הוא קורא לאחרים ומחשב על ידיהם, שנאמר (שמות לח) אלה פקודי המשכן אשר פקד משה אין כתיב כאן אלא אשר פקד ע"פ משה ע"י משה ביד איתמר. שמות רבה, נא

A faithful man was Moshe, who was made treasurer over the work of the Tabernacle. Our rabbis taught that we don't put fewer than two in charge of the community's money. But here you find that Moshe was assigned to be a treasurer by himself. You say that at least two should have been appointed. Even though Moshe was a treasurer unto himself, he called in others to do the accounts, as it is said, "These are the accounts of the Tabernacle..." it does not say that Moshe did the accounts, but that the accounts were done at Moshe's command by the hand of Itamar. Sh'mot Rabbah, 51

Bottom line: Not all tzedakah administrators are required by halachah to have oversight. However, if one wants to emulate Moshe's model, that's the thing to do.

4.3.4 Accumulation of Assets. On not delaying giving tzedakah.

וצדקה מיחייב עלה לאלתר. מאי טעמא - דהא קיימי עניים. - פשיטא! ראש השנה ו.

And with regard to tzedakah, it should be distributed immediately. For what reason? There are poor standing (and waiting); it is obvious! Talmud, Rosh Hashanah, 6a

Bottom line: halachah does not require tzedakah administrators to distribute funds immediately. But it's a good idea not to accumulate funds designated for the poor unnecessarily, if there are those in need.

4.6 Fundraising expenses

מה שנהגו שהמשולח לוקח לעצמו חלק, זה ודאי מותר כיון שזהו לטובה העניים שאם לא יקבל שכר טירחה כפועל לא נמצא משולח...מיהו הנותנים לא מתכוונים שיהא רוב למשולח, ובפרט כשגובה נתינות גדולות ודאי כוונתם שעכ"פ חלק הגדול ילך למוסד תשובות והנהגות יורה דעה סימן תעה

The practice that the tzedakah solicitor takes a portion of the proceeds for himself is certainly permitted. That is for the benefit of the poor. If the collector did not receive compensation for his effort, there would be no solicitors...However, the donors don't intend that the majority should go to the collector. Specifically, large donors certainly expect that the majority will go to the institution...T'shuvot v'Hanhagot Yoreh De'ah 475*

Bottom line: Expenditures on fundraising should balance two factors. First, tzedakah would not be collected if money were not spent on soliciting. Second, donors intend and expect that

* Thanks to Mr. Nathan Lewin for bringing this source to our attention.

most of the funds they contribute will go to support the organization's program, not fundraising.

5.1 Accurately indicate the purpose of collection.

ונארה שבכל אופן אסור לגבאי צדקה לשקר בענין מטרת הצדקה, כגון שגובה לצורך הכנסת כלה ואומר שגובה עבור מטרה אחרת צדקה ומשפט פרק ז' הערה ה'

And it appears that in all events, it is forbidden for a tzedakah administrator to lie in regard to the purpose of the tzedakah, for example, that he is collecting for a needy bride, when he is soliciting for another purpose. Tzedakah u'Mishpat, Chapter 7, note 5.

5.2 Pressure on donors.

אדם שוע שנותן צדקה יותר מהראוי לו, או שמיצר לעצמו ונותן לגבאי כדי שלא יתבייש, אסור לתובעו ולגבות ממנו צדקה, והגבאי שמכלימו ושואל ממנו, עתיד הקב"ה ליפרע ממנו. שולחן ערוך יורה דעה סימן רמח סעיף ז'

It is forbidden to demand or to solicit from a person who gives more tzedakah than is appropriate for him, or causes himself hardship by giving, in order to avoid embarrassment. And the Holy One Blessed Be He will ultimately garnish the money from the person who solicits from such an individual. Shulchan Aruch, Yoreh Deah, 248:7.

**The Orthodox Caucus
A Project of the Task Force on**

Ethical and Religious Guidelines for Orthodoxy

**Tzedakah and Tzedek:
Halachic & Ethical Financial Requirements
Pertaining to Charitable Organizations¹**

**by
Rabbi Daniel Feldman**

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I. The Charity Official

1. Qualifications

The individual working in the field of organized charitable activity is fulfilling one of the most revered and admired positions within Judaism. The Talmud and Codes talk of the *Gabbai Tzedakah*, an official empowered by the community to collect, distribute, and manage the funds of the charitable affairs of that community. An appointee of the community, the *Gabbai Tzedakah* also functioned as an agent of the needy, accepting funds on their behalf.² While the structure of modern society has changed significantly, and many of the details relevant to the *Gabbai Tzedakah* do not pertain to the contemporary non-profit executive (especially in an organization that is not associated with a specific local community)³, there are nonetheless many

¹ With gratitude to Rabbi Dr. Norman Lamm, Rabbi Mordechai Willig, Rabbi Dr. Aaron Levine, Rabbi Zevulun Charlop, Dr. Moses Pava, and Dr. Ira Kaminow for their review of this document and their comments.

² An analysis of the function of the *Gabbai Tzedakah* can be found in *HaTzvi V'HaTzedek*, 10.

³ For a discussion of some of the differences and their nature, see *Arukh HaShulchan, Yoreh Deah* 250:11-12; *Responsa Iggerot Moshe, Yoreh Deah* I, 149; *Responsa B'Tzel HaChokhmah*, II, 36, and *Mishpetei HaTorah*, III, 20.

common principles, which make reference to the laws of *Gabbai Tzedakah* instructive to the modern organizational realm. It should also be emphasized that modern organizations will usually have a division of responsibilities (as was to some extent true in Talmudic times as well⁴); however, for reasons of simplicity, this paper will deal with the organization as a single unit.

We are taught that “Greater is he who moves others to do than he who does himself”; the *Gabbai Tzedakah*, in facilitating, encouraging, and directing the contributions of others, securely places himself in their distinguished company.⁵ In addition, with the tendering of his time, expertise and services, he is involved not solely in the monetary realm of charity but also in the sphere of personal, active acts of kindness.⁶ The magnificent spiritual rewards are such that they outweigh the often thankless aspects of the endeavor.⁷

This distinct role requires an equally distinct reservoir of personal qualities, in addition to the special sensitivity needed to deal with those in financial need⁸. Those who serve as *Gabbai Tzedakah* must be known to the community and be trustworthy.⁹ They are asked to avoid all suspicion, not only of their character, but of all their behavior as *Gabbai*, to the extent that they must take unusual measures to ensure avoiding even the slightest appearance of impropriety. This is particularly so in the possible entanglement of their own finances with that of the organizational funds.¹⁰ They must be capable of keeping track of extensive financial information¹¹. Further, they must be impartial: while an individual is allowed, or encouraged, to prefer his relatives in his personal giving, one who distributes the funds of others has no such privilege.¹²

2. Accountability and Responsibility

Strictly speaking, a *Gabbai Tzedakah* who works on a voluntary basis is not obligated to provide an accounting.¹³ Nonetheless, it is highly recommended that he do so. We are taught that even Moses, the paragon of honesty, opted to give an accounting; the implication is clear for all others to follow suit.¹⁴ In the case of a salaried charity worker, an accounting is obligatory. It is appropriate for every *Gabbai Tzedakah* to give at least a general accounting, although not necessarily in front of the entire community, but rather to executives well versed in the necessities of charitable activity.¹⁵ Contemporary practice is to give an accounting at least annually.¹⁶

⁴ See *Bava Batra* 8b; note the lengthy responsum of *Responsa Divrei Yoel*, *Yoreh Deah*, 86.

⁵ See Commentary of Rabbeinu Yonah, *Avot* II,9, and *Arukh HaShulchan*, *Yoreh Deah* 249:12.

⁶ See *Responsa Maharil Diskin*, 22.

⁷ See *Shulchan Arukh Yoreh Deah* 257:7, as well as *Sefer Chasidim*, 329 and 331, and *Mishpetei HaTorah*, III, 20:6.

⁸ See Rabbeinu Yonah, *Yesod HaTeshuvah*, and *Responsa B'nei Banim*, II, 44.

⁹ *Yoreh Deah* 256:1.

¹⁰ See *Yoreh Deah* 257:1,2.

¹¹ See *Sefer Chasidim* 329.

¹² *Yoreh Deah* 257:10.

¹³ *Yoreh Deah* 257:2.

¹⁴ See *Shekalim* 3:2 and Bach, *Yoreh Deah* 257.

¹⁵ See *Shach* 257:3 and *Responsa Noda B'Yehudah*, II, *Yoreh Deah*, 157.

¹⁶ *Mishpetei HaTorah*, III,33.

3. Management of Collected Funds

It is also the responsibility of the *Gabbai Tzedakah* to ensure honesty on the part of recipients as well, and to ascertain that those who benefit from charitable funds are indeed eligible to do so.

A *Gabbai Tzedakah*, particularly one who is salaried, bears a certain amount of responsibility for the funds under his management, to ensure that they are not lost, squandered, or inappropriately distributed, and that the distribution not be delayed¹⁷. The nature of this liability, however, is complex and should be analyzed in each instance by a competent authority.¹⁸

A similarly complex issue is the transference of funds from one designated purpose to another. This is fraught with difficulties and also should be undertaken with *Halakhic* guidance. In general, an attempt should be made to apply the funds to a goal as similar as possible to that originally designated¹⁹.

4. Organizational Policy of Salary and Staffing

It is understood that the organization salaries its staff²⁰ and uses a percentage of the funds collected for internal expenses²¹. The calculation of this disbursement is understandably complex; one principle to keep in mind, though, is that the funds should be used in a manner where it could be reasonably assumed that were the donor to be informed, he would not regret his donation. Otherwise, the collection was done under misrepresented circumstances,²² and risks invalidating the efforts of honest donors.²³ The organization has the right to set terms for its executives and to appoint them or replace them in accordance with communal norms.²⁴

II. Methods of Fund-raising

1. Pressure and Concern for the Fiscal State of the Donor

Although it is part of the job of the *Gabbai Tzedakah* to be persuasive, there are nonetheless limitations on pressuring a prospective donor. Jewish law places the

¹⁷ In general, a prohibition exists against delaying the fulfillment of any commitment of a donation (*bal ta'acher*). Technically, this prohibition attaches to the donor, rather than the organization; it is presumed, however, that the organization, once in possession of the funds, will disburse them without delay.

¹⁸ See *Shulchan Arukh* 292:7, and *Sma*; *Mishpetei HaTorah* III, 20 and 23; *Responsa Shraga HaMeir* VIII,14; *Kol HaTorah*, vol. 47, p. 251-257; *Tzedakah U'Mishpat*, 7:13 and 17-20; *Responsa Ateret Moshe*, 193 and 196.

¹⁹ See *Yoreh Deah*, 253:6 and 259:2; *Kovetz Teshuvot Chatam Sofer*, p. 55b; *Mishpetei HaTorah* III, 22; *Nikdash B'Tzedakah*, ch. 21-22; *Tzedakah U'Mishpat*, ch. 9. There is in general an extensive body of responsa literature on this subject.

²⁰ See *Tzedakah Umishpat*, 7, n. 4, in detail.

²¹ Note the discussion in *Tzedakah U'Mishpat*, 7, n. 23.

²² See *Responsa Mishneh Halakhot*, IV, 237 and *Responsa Teshuvot V'Hanhagot*, II, 475.

²³ See *ibid.*, 238

²⁴ See *Rama*, *Yoreh Deah*, 257:2, and *Shach*. See also *Tzedakah U'Mishpat*, 7, n. 22 and sources cited there.

responsibility on the *Gabbai Tzedakah* not to try to extract a donation that is beyond the means of the donor, who acquiesces only to avoid embarrassment. Humiliation is an inappropriate tactic even when the individual is capable of larger donations, and thus negotiations in that area must be done privately.²⁵ The great merit associated with one who persuades another to be generous is applicable only when the donor is capable of such generosity.²⁶ (Furthermore, there is a concern that pressure and embarrassment will backfire and inhibit even a small contribution)²⁷. Nonetheless, the *Gabbai Tzedakah* need not be inhibited in his fund-raising due to the unknown fiscal state of all who are approached.²⁸

Corresponding to the tithe minimum for charity is a maximum limit as well, constraining the average individual from donating more than one fifth (20%) of his funds, for fear that going beyond this limit will cause destitution in the donor himself.²⁹ One who is extraordinarily wealthy, however, is not subject to this limitation³⁰. Further, as the obligation of charity is incumbent on all, a nominal amount is accepted even from truly destitute individuals³¹.

It is possible, further, that there is more flexibility in dealing with estates, as the one-fifth limitation may not apply.³² However, out of concern for the inheritors, there is some limitation found.³³

2. Organizational Honesty

The *Gabbai Tzedakah* is asked to be honest not only in dealing with the finances but also in his methodology of raising them. Thus, discouraged practices would include announcing contributions greater than the actual in order to spur additional donations³⁴. Far worse, however, is misrepresenting the cause being supported, in favor of a more popular one; this practice may enter the realm of theft.³⁵ Similarly, the organization must be absolutely honest in representing itself to the government in reference to aid that the government provides, and not attempt to extract more

²⁵ See *Matteh Efraim* 607:7 and *Mishpetei HaTorah* III, 20:6.

²⁶ See *Bava Batra* 8b, and *Yoreh Deah* 248:7, and *Be'er HaGolah*, and *Arukh HaShulchan* 248:15; see also *Hilkhos Tzedakah U'Ma'aser K'safim*, IV, 2:4, as well as *Responsa Torah L'Shmah*, 238, and *Minhag Yisrael Torah*, V, *Yoreh Deah*, 248:1.

²⁷ See *Me'il Tzedakah* 17:18.

²⁸ See *Sefer Banayahu*, *Shabbat* 118b, and *Responsa Iggerot Moshe*, *Yoreh Deah* III,95.

²⁹ See *Ketubot* 50b, and Rama, *Yoreh Deah* 249:1. There is some discussion as to whether or not this limitation exists in relation to the support of Torah institutions; see *Aspaklariat HaTzedakah*, 2:7.

³⁰ See *Chokmat Adam* 144:10; *Ahavat Chesed* ch. 20; *Sheilat Ya'avetz* 1:3; *Yafeh L'Lev* III, *Yoreh Deah* 249:7; *Responsa Teshuvah MeAhavah* II, 115 to O.C. 656; *Responsa Minchat Yitzchak* V, 34; *Yeshuot Chaim* 11:5, 12. For further exceptions, see *Mitzvat HaTzedakah*, 72-81, and *Ahavat Chesed*.

³¹ *Yoreh Deah* 248:1. 253:8

³² *Ketubot* 67a, and Rama, *Yoreh Deah* 249:1.

³³ See *Chidushei R. Akiva Eiger*, *Yoreh Deah* 249:1, citing the *Sh'iltot* of R' Achai Gaon as limiting it to one third, and *Arukh HaShulchan*, where one half is the recommended limit; see also *Peri Megadim*, *Mishbetzot Zahav*, *Orach Chaim* 656, and *Tzedakah U'Mishpat* 1:9.

³⁴ *Responsa Minchat Yitzchak*, III, 97, per *Sukkah* 29a-b, and Maharsha. However, note *Tzedakah U'Mishpat*, 7, n. 5*.

³⁵ *Responsa Divrei Yatziv*, *Yoreh Deah* 146; *Responsa Yashiv Yitzchak*, *Yoreh Deah* 28; *Responsa Shevet HaLevi* II, 119; *Responsa Shraga HaMeir* IV,20:3; *Responsa Ateret Moshe*, II, 188.

funds than are deserved, which is also considered theft.³⁶ It should be emphasized that the *halakhah* adds its endorsement to the tenets of secular law in these matters, whose restrictions become automatic points of *halakhah* as well³⁷.

Strict honesty need not, however, deter one from convincing a worthy recipient to accept funds. Funds need not be described as charity so as not to embarrass the beneficiary.³⁸

III. Sources of Support

One of the most challenging aspects of the job of the *Gabbai Tzedakah* is determining when it is appropriate to accept funding from sources that are connected with questionable endeavors. Such decisions are exceedingly complex and often require a careful analysis and balancing of factors. Nonetheless, there are several concerns that the Halakhah recognizes as significant, to be taken into account.

Tzedakah is always spiritually beneficial, regardless of the intent of the donor³⁹, which is in any event beyond the ability (or the responsibility) of the *Gabbai Tzedakah* to discern.⁴⁰ However, there are overt elements that are often known that might be significant.

The Torah prohibits the wages of immoral activity⁴¹ from being used for the Holy Temple. In contemporary *Halakhah*, this is taken as a general exclusion of such profit from all matters of religious significance.⁴² In general, there is a principle in *Halakhah* that *mitzvot* cannot be performed through the means of a transgression (“*mitzvah haba-ah ba’veirah*”)⁴³. Thus, wealth that is known to come wholly and directly from immoral activity is essentially tainted. This is true not only for the source of the donor’s income, but also for the manner of raising funds by the organization. Thus, charitable solicitation does not justify holding a function that contravenes Jewish morality, such as for example, standards of modesty.⁴⁴

If the money itself is actually stolen (or illegally retained), other issues apply.

³⁶ See *Responsa Iggerot Moshe, Choshen Mishpat*, II, 29. See below for a complete citation.

³⁷ “*Dina D’Malkhuta Dina*”: *Nedarim* 28a, *Gittin* 10b, *Bava Kama* 113a, *Bava Batra* 54b. The parameters and details of this concept are complex; an extensive treatment of the subject, in English, was authored by Rabbi Hershel Schachter and appears in the *Journal of Halachah and Contemporary Society* (Vol. 1, #1, Spring 1981, pp. 103–132).

³⁸ *Yoreh Deah* 253:9; see also *Responsa Shevet HaKehati*

³⁹ See *Bava Batra* 10b and *Rosh HaShanah* 4a, with Rashi, and at length, *Aspaklariat HaTzedakah* 1:1,2,3; but note also *Ketubot* 66b, with Maharsha and *Sefer Hafla’ah*, and *Yoreh Deah* 249:13, with *Biur HaGra*, and *Ahavat Chesed* ch. 23. See also *Me’il Tzedakah*, 1676 and 1681.

⁴⁰ See *Aspaklariat HaTzedakah*, 1:5.

⁴¹ Specifically, the *Etnan Zonah*.

⁴² Rama, *Orach Chaim* 153:21.

⁴³ *Sukkah* 30a

⁴⁴ See *Responsa Beit She’arim*, II, 337 and *Responsa Minchat Yitzchak*, V, 99:1.

First and most simply the money is not the property of the donor, and thus not his to give⁴⁵, invalidating the donation in and of itself.⁴⁶

Further, there is also a specific prohibition to partake of stolen property, to purchase it or benefit from it⁴⁷. This prohibition applies when there is a certainty that the actual property being received is in itself stolen,⁴⁸ or if there is a fair presumption to that effect.⁴⁹ To participate in theft in such a manner is considered to be supporting and encouraging immoral behavior.⁵⁰ In general, there is an aversion to being supported by those known to be disreputable⁵¹, for several reasons, among them:

1. This allows such individuals to be known as patrons of a distinguished institution; the imprimatur of that institution, thus grants an unwarranted and inappropriate stature;⁵²
2. Similarly, such stature gives him influence on the larger community, a potentially dangerous prospect⁵³.
3. Further, this influence could be exercised on the institution itself⁵⁴, compromising its own morality and goals. This is especially true if the agency is one involved in conveying a moral message, such as a school.
4. Likewise, such dependence hampers the institution's ability to criticize the behavior involved, again a possible impairment of its mission.⁵⁵

As mentioned, these factors are complex and nuanced, and require specific analysis in each case. There are possible mitigating factors, such as: the objectionable endeavor is not known to the organization; the donor has substantial legitimate

⁴⁵ For this reason, care must also be taken to ensure that the family member making the donation is indeed in charge of the funds, particularly if the donation is large; See *Yoreh Deah* 248:4; *Pitchei Teshuvah*, citing *Noda B'Yehudah*, I, *Yoreh Deah*, 72; *Responsa Beit Ya'akov*, 12 and 56; *Pitchei Teshuvah*, *Even HaEzer* 91:1; *Responsa Shraga HaMeir*, III,52; *Responsa VaYa'an David*, 144; *Responsa Teshuvot V'Hanhagot*, I, 564 and 573. *Responsa Noda B'Yehudah* II, *Yoreh Deah*, 158, warns that an overzealous family member attempting to atone for a miserly head of the household is still not entitled to seize funds without permission.

⁴⁶ See *Yoreh Deah* 258:7 and *Responsa Halakhot K'tanot* I, 65. However, in an instance where it is impossible to return the money to its rightful owners, charity might be the best option; see *Beitzah* 29a; *Responsa Iggerot Moshe*, *Choshen Mishpat*, I,188 and *Responsa Shraga HaMeir*, VI, 85.

⁴⁷ See *Bava Kama*, 119a; *Mishneh Torah*, *Hilkhos Gezeilah* 5:1, and *Hilkhos Geneivah* 5:1. Note also the discussions in the journal *Kol HaTorah*, vol. 47, p. 246-250, and in *Pri Moshe: Inyanei Gneivah U'Gzeilah*, 27.

⁴⁸ See *Hilkhos Gezeilah* 2:8.

⁴⁹ See *Yoreh Deah* 248:4.

⁵⁰ In violation of the biblical imperative of “*Lifnei Ivver Lo Titein Mikhshol*” and its rabbinic correlate, “*msayeia lidei ovrei aveirah*.”

⁵¹ See *Arakhin* 6a; *Sefer HaChinukh*, 429; *Magen Avraham*, *Orach Chaim* 154:18, and *Mishnah Berurah*, 48; *Sefer Chasidim* 1073; *Responsa Shevut Ya'akov*, III, 85; *Responsa Shraga HaMeir* III, 110; V, 46; and VII,74:1. Note *Tzedakah U'Mishpat*, 1:24.

⁵² See *Hilkhos Yesodei HaTorah* 6:8.

⁵³ Compare *Ritva*, *Avodah Zarah*, 27, and *Rabbeinu Yonah*, and *Resonsa HaRosh*, 19:17.

⁵⁴ See *Sefer Chasidim* 687.

⁵⁵ See *Bava Kama* 107; *Ketubot* 105a: *Orchos Tzadikim*, *Sha'ar HaChanifah*.

sources of income as well to which to attribute his donation⁵⁶; the funds of the disreputable donor are mixed with those of other donors⁵⁷; under the proper circumstances, the organization might be expected to have more of an effect on the donor than vice versa⁵⁸; and other related possibilities.

In all instances, the overarching concern of the organization must be *Kiddush Hashem* – Sanctification of the Divine Name, and the avoidance of *Chilul Hashem* – Profanation of the Divine Name⁵⁹. As a representation of the Jewish community, the organization brings honor or disgrace upon Judaism with its behavior and with its associations. Such a responsibility mandates a policy that acknowledges the reality of public perception of all behavior. Thus, every action would be preceded by the litmus test of how it will be understood and judged by the world at large, were it to become public knowledge. Such a standard may indeed disqualify behavior that would be technically legal and/or halachic. As *Kiddush Hashem* stands at the forefront of the Jewish mission, this factor must loom largest in all decisions made by the organization.

Many of the above concerns are perhaps best summarized by citing the authoritative words of one of the pre-eminent halachic decisors of the twentieth century⁶⁰:

Concerning the matters of kindness that our government in the United States of America, (that G-d has, in His great kindness toward the survivors of European Jewry and the survivors among the Torah giants and their students, brought us here, and we founded Torah institutions, established ones from Europe, and also new ones,) which through the "Kingdom of kindness", whose entire purpose is to benefit all its citizens, has made available many programs to help students in all the schools in the country, so that they can learn and grow in their studies, and also Torah institutions receive substantial assistance for their students; certainly all the *Roshei Yeshivot* and their principals, and the students, appreciate all the benevolence of the government, and bless the welfare of the Nation and all who stand at its leadership with all blessings.

And even though there is no suspicion on the *Roshei Yeshivot* and the principals, who are too fearing of Heaven to violate prohibitions of theft, and of speaking

⁵⁶ See *Bava Kama* 119; *Hilkhos Gezeilah* 5:2.

⁵⁷ See *Responsa Maharitatz* I,96, and *Sefer Chasidim* 687, and *Responsa Maharam Shick, Yoreh Deah*, 231; *Shut Maharitz*, 1, 96.

⁵⁸ See *Responsa Maharam Shick, Orach Chaim* 31.

⁵⁹ It is also for this reason that when soliciting donations, particularly in matters of basic sustenance, the focus should be within the Jewish community (See *Shulchan Arukh, Yoreh Deah* 254:1-2 and 259:3-4 and *Orach Chaim*, 154:11; *Responsa Da'at Cohen*, 132; *Responsa Teshurat Shai*, I, 15 and II,51; *Responsa Divrei Yatziv Yoreh Deah* 142; *Responsa Ketav Sofer* 114; *Responsa Avnei Tzedek* 14; *Yeshuot Chaim*). While contributions from the larger world population are welcome, to turn outside the Jewish community for needs of basic survival is considered a *Chilul Hashem* in that it casts a very negative light on the concern Jews show for one another. (See *Sanhedrin* 27b, and *Taz* and *Shach* to *Yoreh Deah*; *Responsa Beit Shearim, Yoreh Deah*, 337; and see *HeChafetz Chaim*, 75, who details the different forms of *Chilul Hashem* involved.) See also *Responsa Iggerot Moshe, Yoreh Deah*, II, 117, who identifies additional problems with holding a parlor meeting in a non-Jewish home.

⁶⁰Rabbi Moshe Feinstein, *Responsa Iggerot Moshe, Choshen Mishpat*, II, 29. The translation here is slightly abridged and adapted.

falsehood and untruth and deception, and violation of the law of the land with any type of leniency, for they know of the severity of the prohibitions and the terrible punishments from Heaven, and it is against the whole purpose of the foundation of the *yeshivot* and the study there, which is for the students to be truly G-d-fearing and to beware of monetary prohibitions in the extreme; even so, it is appropriate to be raise the issue in order to draw attention also to the donors, who bring donations to support the Torah, that they should not cause theft, or a loss of money to the government, not in accordance with the laws of the Torah and the laws of the government, that they should not stumble even unintentionally in these great transgressions. And to all who are very careful, great blessing should come to them, and they should succeed in their Torah institutions, to have many G-d-fearing students; which is a great blessing to the Nation as well, as it is well-known to all that the Yeshiva students are, thank G-d, the most distinguished citizens in their personal traits and good behavior.

IV. Donor Conditions

Often, money is donated only under the fulfillment of set conditions mandated by the donor. Money that has already been donated, unconditionally, is the property of the community, and the donor has no say over how it is spent⁶¹. However, prior to donating, a donor does have the prerogative of asking that his contribution be used as he sees fit, and the institution must decide whether or not these terms are reasonable before accepting. To accept a conditional gift and then disregard the conditions is deceptive and borders on theft.⁶² In the event that circumstances change to the point that it is impossible (or unnecessary) to fulfill the conditions, and the donor is unavailable for consultation, it is the responsibility of the *Gabbai tzedakah* to attempt to evaluate what the donor's wishes would be under the new circumstances.⁶³

V. Honors

The widespread practice of honoring significant donors is one that is rooted in early *Halakhic* sources⁶⁴. It is appropriate to publicize those who serve the public good, and in addition to the expression of gratitude⁶⁵, such honor goes toward establishing communal standards in a charitable direction.⁶⁶ The same is true for plaques and other methods of identification of specific donors⁶⁷.

⁶¹ *Yoreh Deah*, 251:5. Nonetheless, the *Gabbai Tzedakah* might choose to listen to the donor in order to encourage his continued support (*Sefer Chasidim* 1022).

⁶² See *Shach*, *Yoreh Deah* 254:3, and *Taz* and *Be'er HaGolah*; *Responsa Shraga HaMeir*, VI, 8:3. Note also *Mishnat Rabbe Aharon*, 33, who considers whether or not theft is actually involved.

⁶³ See *Bava Batra* 8b; *Arukh HaShulchan*, *Yoreh Deah* 251:14; *Chiddushei R. Akiva Eiger* 258:12; *Gilyon Maharsha* 259; *Responsa Divrei Yatziv*, *Yoreh Deah* 145; *Responsa VaYa'an David*, 149.

⁶⁴ See *Responsa Rashba*, I, 682. See also *Responsa Divrei Malkiel*, introduction, volume 1, and *Responsa Teshuvot V'Hanhagot*, II, 481.

⁶⁵ See *Iggerot Moshe*, *Yoreh Deah* II, 117, and *Aspaklariat HaTzedakah*, 3:8

⁶⁶ See *Mitzvat HaTzedakah*, 37.

⁶⁷ See *Rama*, *Yoreh Deah*, 249:13, and *Arukh HaShulchan* 21. A lengthy exposition of the various benefits of these practices can be found in *Minhag Yisrael Torah*, V, *Yoreh Deah*, 249:9.

However, the above concerns in regard to accepting donations from questionable sources are relevant here as well, and more so. Thus, careful attention must be given to these factors; erecting a plaque bearing the name of one who is in flagrant violation of Jewish values would be inconsistent with the goals of an organization representing Judaism.⁶⁸ A specific issue to keep in mind is the prohibition of flattery (*chanifah*), which proscribes the apparent endorsement of questionable behavior by reputable individuals.⁶⁹

VI. Closing

In closing, the mission of one involved in organized charitable endeavors is a glorious one, if not on Earth then certainly Above. These individuals give of all of their resources, perhaps most importantly, of their precious time, toward perfecting the world in accordance with the vision of the Torah and of Judaism. Like any undertaking of consequence, however, the path is not always simple and clear. It is often the most noble of enterprises that becomes most susceptible to rationalization and compromise. It thus falls on the individual in this field to be extraordinarily vigilant and conscientious that his holy task not be thrown off track by the taint of impropriety. *Kiddush Hashem* is the stamp of the Jew, the underlying theme of his individual and communal existence. It is our fervent hope that the constant awareness of that fact ensures its realization.

⁶⁸ See *Responsa Maharam Shick, Yoreh Deah*, 231; *Responsa Teshuvot V'Hanhagot*, II, 479; and *Responsa Minchat Yitzchak* IX, 157:3.

⁶⁹ See *Pesachim* 113b and *Sotah* 41b. For a full treatment of this topic, see R. Alfred S. Cohen, *Journal of Halachah and Contemporary Society*, XXXVII, p. 5-19.

Three Recent Developments in Nonprofit Accountability

1. American Institute of Certified Public Accountants, Statement of Position 98-2: What Costs Must be Included as Fundraising Expenses?

The following summary of American Institute of Certified Public Accountants Statement of Position (SOP) 98-2 is for information purposes only, and should not be relied upon in actual practice. The Statement of Position is published in: *Accounting for Costs of Activities of Not-for-Profit Organizations and State and Local Governmental Entities That Include Fund Raising*, American Institute of Certified Public Accountants.

This statement of position defines how an organization is to allocate costs when it engages in an activity which includes the solicitation of funds. In particular, the entire cost of any activity which solicits funds must be included in fundraising costs unless *all three* of the criteria mentioned below are met. If all three criteria are met, costs should be charged to fundraising, program, or management and general, when the cost can be clearly identified with a single function. Costs not clearly identifiable with a single function should be allocated using systematic and reasonable criteria.

The purpose criterion. “The purpose criterion is met if the purpose of a joint activity includes accomplishing program, or management and general functions.” The SOP suggests a variety of tests to help determine whether this criterion is met. For example, if anyone involved in the activity receives a majority of compensation based on the amount of funds raised, the purpose criterion is *not* met; the entire cost of the activity must be counted as fundraising. If the organization engages in the same activity on the same scale in another context, but without a fundraising component, the purpose criterion is met.

The audience criterion. A presumption exists that the activity does *not* meet the audience criterion if it is directed at individuals selected for the likelihood they will contribute to the organization; a mailing addressed to past donors, for example, is presumed to fail the audience criterion. The presumption may be overcome if factors other than the likelihood of contribution are significant in selecting the audience.

The content criterion. The content must support the program, or management and general functions. The content criterion is met if the “activity calls for specific action by the recipient that will help accomplish the entity’s mission.” However, “Information identifying and describing the entity, causes, or how the contributions provided will be used is considered in support of fund raising.” For example, a mailing recommending actions to be taken during a heart attack would meet the content criterion for an organization whose mission includes reducing deaths. A mailing detailing the number who die from heart attacks each year would not.

2. The Intermediate Sanctions Law

The summary below is for information purposes only, and should not be relied upon in practice. Organizations are advised to consult with a competent attorney on all legal matters.

The Intermediate Sanctions Law was enacted to help assure that certain individuals do not receive undue financial benefit from non-profit organizations, as a result of their influence within the organization. Temporary regulations were issued by the U.S. Treasury Department on January 10, 2001. Further information may be found on the Internet, at www.irs.gov/pub/irs-utl/topich02.pdf and www.irs.gov/pub/irs-utl/m4958art.pdf

The law applies to certain influential individuals, known as “disqualified persons,” who are employed by or trade with 501(c)(3) and 501(c)(4) organizations. Disqualified persons include the organization’s president, chief executive officer, treasurer, chief financial officer, certain substantial contributors, the organization’s founder, and others.

A transaction in which a disqualified person receives financial remuneration in excess of fair market value, may constitute an excess benefit transaction. The disqualified person who benefited from the transactions is liable to pay a tax equal to 25% of the excess benefit. Organization managers who participate in the excess benefit transaction may be liable for a tax equal to 10% of the excess benefit.

Protecting against liability under the Intermediate Sanctions Law with a rebuttable presumption of reasonableness.

An organization can go far in protecting itself and its disqualified persons from liability under the Intermediate Sanctions Law by following steps described in the regulations. If followed, these steps will establish a rebuttable presumption of reasonableness, and the burden of proving the existence of an excess benefit transaction will fall on the IRS.

Payments under a compensation arrangement are presumed to be reasonable and the transfer of property (or right to use property) is presumed to be at fair market value, if the following three conditions are met.

The transaction is approved by an authorized body of the organization (or an entity it controls) which is composed of individuals who do not have a conflict of interest concerning the transaction.

Prior to making its determination, the authorized body obtained and relied upon appropriate data as to comparability. There is a special safe harbor for small organizations – if the organization has gross receipts of less than \$1 million, appropriate comparability data include data on compensation paid by three comparable organizations in the same or similar communities for similar services.

The authorized body adequately documents the basis for the determination concurrently with making the determination. The documentation should include:

The terms of the approved transaction and the date approved;

The members of the authorized body who were present during the debate on the transaction that was approved and those who voted on it;

The comparability data obtained and relied upon by the authorized body and how the data were obtained;

Any actions by a member of the authorized body having a conflict of interest; and

Documentation of the basis for the determination before the later of the next meeting of the authorized body or 60 days after the final actions of the authorized body are taken, and approval of records as reasonable, accurate and complete within a reasonable time thereafter.

From Steven T. Miller, "Easier Compliance is Goal of New Intermediate Sanction Regulations," available on the Internet at: <http://www.irs.gov/pub/irs-utl/m4958art.pdf>

3. New Disclosure Requirements.

Internal Revenue Service regulations require nonprofit organizations to make certain documents filed with the IRS more accessible to the public. The regulations became effective on June 8, 1999. More detailed information is available on the Internet at: www.irs.gov/pub/irs-utl/topico00.pdf. Below is a summary of the regulations. This summary should not be relied upon in actual practice.

Covered documents. An organization required to file the following documents, must make them available to the public: Form 1023 or 1024 (application for exemption from income tax), forms 990 or 990-EZ for the three most recent years.

In-person request must be honored the same day. An in-person request to see the forms or to obtain copies of the form, made at the principal office or a regional office with three or more employees, must generally be honored on the day of the request.

Written request must be honored within 30 days. A written request that is mailed, faxed, e-mailed or sent by private courier must be honored within 30 days.

Copying and postage fees. The organization may charge reasonable copying costs and the actual cost of postage before providing copies, if timely notice of the approximate cost and acceptable form of payment is given. Acceptable payment must include cash and money order (in the case of an in-person request) and certified check, money order, and personal check or credit card, in the case of a written request.

The Internet alternative. A tax-exempt organization need not comply with individual requests for copies if it makes the documents available on the Internet. The format must exactly reproduce the image of the original document and allow an Internet user to access, download, view and print the posted document without the payment of a fee. The portable document format (*.pdf) meets these criteria.

Selected Resources for Boards and Managers of Nonprofit Organizations in the United States

Support Organizations

Listed below are organizations that support nonprofits with regard to governance and management. Several will send you email newsletters, if you sign up.

Alliance for Nonprofit Governance
www.angonline.org

Help for Nonprofits
www.help4nonprofits.com

Alliance for Nonprofit Management
www.allianceonline.org

**The Management Assistance
Program for Nonprofits**
www.mapnp.org

BoardSource
www.boardsource.org

Milano Nonprofit Knowledge Hub
www.newschool.edu/milano/hub

Center for Nonprofit Management
www.cnmsocal.org

**National Council of Nonprofit
Associations**
www.ncna.org

Charity Channel
www.charitychannel.com

Support Center
www.supportctr.org

CompassPoint Nonprofit Services
www.compasspoint.org

**The Peter F. Drucker Foundation for
Nonprofit Management**
www.drucker.org

Periodicals

Two trade newspapers for nonprofits are:
The Chronicle of Philanthropy, www.philanthropy.com
The Nonprofit Times, www.nptimes.com

Books

Excellent books on organizational governance can be found at the following sites:

American Bar Association's nonprofit governance library
(www.abanet.org/webapp/wcs/stores/servlet/ProductDisplay?storeId=10251&productId=-17696&categoryId=-3587)

American Society of Corporate Secretaries (www.ascs.org/cgi/pubs.pl) (see especially the free download at www.ascs.org/governnfp/index.html)

BoardSource (www.boardsource.org/bookstore/index.shtml)

CompassPoint (<http://search.compasspoint.org/bookstore/home.lasso>)

Jossey-Bass, Inc. (www.josseybass.com/cda/sec/0,,2991,00.html)

Sample conflict of interest policies

Sample conflict of interest policies are available on the Internet at:

www.japonica.com/japonica/frames/conflictpolicy.html
www.crcmn.org/npresources/conflictinterest.htm