

Revised Form 990

I. Background:

Form 990 is the form certain nonprofits must file annually with the IRS to provide information on the filing organization's mission, programs, and finances. In 2007, the IRS put out a revised Form 990, which was the first time it had been revised in 30 years. The IRS said that the old form failed to meet the IRS's tax compliance interests and the transparency and accountability needs of the states, the general public, and local communities served by the organization.

The major areas of change include:

- a new governance section;
- changes to the reporting of the organization's compensation of officers, directors, trustees, key employees, and highest compensated employees;
- changes to determining public charity status and public support;
- changes to supplemental financial statement reporting; and
- changes to fundraising, special events, and gaming.

Additionally, the IRS revised and added several Schedules.

II. Changes of Interest to Land Trusts

A. New Part VI: Governance, Management, and Disclosure

The IRS thinks an independent governing body and well-defined governance and management policies improve tax compliance. Therefore, this Part asks about the governing body of an organization, its policies and practices, certain relationships between or among its officials, and how the organization makes certain information available to its constituents.

The IRS notes that governance, management, and disclosure policies are generally not required under the tax law, however the absence of these policies may lead to problems with excess benefit transactions, inurement, or other problems.

Number of voting members that are "independent." Under the new 990, each board needs to determine if its board members meet the three part test for "independent," which is generally:

1. The member was not compensated as an officer or other employee of the organization or a related organization.
2. The member did not receive total compensation exceeding \$10,000 from the organization or a related organization as an independent

contractor other than reimbursement or reasonable compensation for services provided as a member of the governing body.

3. Neither the member nor any family member was involved in a transaction with the organization that is required to be reported on Schedule L (Transactions with Interested Persons).

Family or business relationships. The IRS asks if any officer, director, trustee, or key employee has a family or business relationship with any other officer, director, trustee, or key employee (these terms are defined or explained in the 990 Instructions). For each relationship, the persons and type of relationship-family or business-must be listed.

Questions about policies. The new 990 asks questions about organization policies (which are not required by the Internal Revenue Code). For example: Is there a policy...

- to contemporaneously document meetings held or written actions by the governing body and committees?
- ensuring local chapters or branches act consistently with the organization?
- on reviewing the 990 and providing a copy of the 990 to the governing body before filing?
- on whistleblowers?
- on document retention and destruction?
- on compensation, including review and approval by independent persons, comparability data, and contemporaneous substantiation of the decision?
- for public inspection of certain tax forms, governing documents, conflict of interest policy, and financial statements?

B. Schedule D-Supplemental Financial Statements

The new Schedule D directly addresses conservation easements, with revised reporting requirements. The IRS expects the new requirements will increase recordkeeping and reporting for organizations significantly involved with conservation easements.

Schedule D requires, for example:

- the conservation purpose(s) for which the easements were held (e.g. open space);
- the number and total acreage of conservation easements;
- the number of easements that were modified, transferred, released, extinguished, or terminated during the tax year and an explanation of those changes;
- the number of states in which easements are held (this question is tied to the requirement that a qualified organization must have a commitment to protect the conservation purposes and have the resources to enforce the restrictions);
- reporting if the organization has a written policy on how it will monitor, inspect, respond to violation, and enforce easement, and if so, summarizing the policy;
- reporting the number of hours devoted to monitoring, inspecting, and enforcing easements;

- reporting the expenses incurred to monitor, inspect, and enforce the easements; and
- describing how the organization reports easements in its revenue and expense statement and on its balance sheet.

III. Recommendations

The IRS recommends organizations take the following steps before the end of their 2008 tax year:

- Reviewing the new Form 990-EZ filing amounts to determine whether the organization may file the short form instead of the new Form 990 for the 2008 tax year.
- Reviewing the draft form, schedules and instructions available on the IRS web site to become familiar with the new form, schedules and instructions.
- Begin identifying those schedules they may be required to complete, and their related organizations, officers, directors, trustees, and key employees, which require special reporting (Note: Each organization must complete all portions of the core form (Parts I through XI) and provide certain narrative responses on Schedule O. By completing Part IV, *Checklist of Required Schedules*, the organization will be able to determine which additional schedules, if any, it must complete.)
- The organization's management and governing body should consider reviewing Part VI, *Governance, Management, and Disclosure*, to become familiar with that part's new governance reporting, and to determine whether the organization wishes to make any changes to its existing governance policies and practices before the end of its 2008 tax year.

Policies an organization may want to consider adopting, if they have not already done so:

- A mission statement (Part III now asks for a mission description rather than the "primary exempt purpose.")
- An annual questionnaire for each officer, director, trustee, or key employee asking if he or she has a family or business relationship with any other officer, director, trustee, or key employee (including the definitions of these terms).
- A process to contemporaneously document meetings held or written actions by the governing body and committees.
- A policy ensuring local chapters or branches act consistently with the organization.
- A policy on reviewing the 990 and providing a copy of the 990 to the governing body before filing.
- An ethics and whistleblower policy.
- An investment policy.
- A document retention and destruction policy.
- A compensation policy including review and approval by independent persons, comparability data, and contemporaneous substantiation of the decision.

- A public inspection policy for certain tax forms, its governing documents, conflict of interest policy and financial statements.
- A written policy on periodic monitoring, inspections, violations, and enforcement of conservation easements.
- Recordkeeping for the expenses and hours incurred to monitor, inspect, and enforce the easements

IV. Smaller Organizations-Filing 990-EZ

Note that the cut-offs for filing the 990-EZ form for smaller organizations have changed. The IRS made the phase-in process shown below to allow organizations time to become familiar with the new Form 990.

<i>You Can File 990-EZ</i>	<i>If gross receipts are:</i>	<i>And if assets are:</i>
2008 tax year (filed in 2009)	> \$25,000 and < \$1 million	< \$2.5 million
2009 tax year (filed in 2010)	> \$25,000 and < \$500,000	< \$1.25 million
2010 and later tax years	> \$50,000 and < \$200,000	< \$500,000

V. Parts and Schedules of the New 990-Showing New and Revised Portions

A. New 990 Core Form

The 990 Core Form, which is required to be completed by all organizations, consists of the following eleven Parts. **Bold** shows new Parts; underline shows a significantly revised Part.

- **Part I, Summary, which provides certain important information regarding the organization’s mission, activities, and current and prior years’ financial results;**
- Part II, Signature Block, which contains the signature of an organization’s officer and, if applicable, paid preparer;
- Part III, Statement of Program Service Accomplishments, which requires reporting of the organization’s new, ongoing and discontinued exempt purpose achievements and related revenue and expenses;
- **Part IV, Checklist of Required Schedules, to be used by the organization to determine which schedules it must complete and file with the IRS as part of the Form 990;**
- Part V, Statements Regarding Other IRS Filings and Tax Compliance, to be used by the organization to report its compliance with other federal tax reporting and substantiation requirements;
- **Part VI, Governance, Management, and Disclosure, which requires information regarding the organization’s governing body and management, policies, and disclosure practices;**

- Part VII, Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors, to report compensation paid such persons by the organization and related organizations that is reported on Forms W-2 and 1099-MISC, and certain other compensation;
- Part VIII, Statement of Revenue, Part IX, Statement of Functional Expenses, and Part X, Balance Sheet, which comprise the financial statements of the organization for federal tax reporting purposes; and
- **Part XI, Financial Statements and Reporting, to report information regarding the organization's accounting methods and its compiled, reviewed, or audited financial statements.**

B. New 990 Schedules

The new Form 990 contains the following 16 schedules, which replace the prior form's schedules and attachments. **Bold** shows new or mostly new Schedules. The old Form 990 Schedule A was revised and separated into parts now contained in Schedules A, C, E, and R.

- Schedule A, Public Charity Status and Public Support, to be completed by organizations described in section 501(c)(3) and 4947(a)(1) to provide information relevant to their status as public charities, including satisfaction of applicable public support tests on an ongoing basis;
- Schedule B, Schedule of Contributors, to be completed by organizations to provide information regarding contributions they report as revenues;
- Schedule C, Political Campaign and Lobbying Activities, to be completed by organizations that conduct political campaign activities, organizations described in section 501(c)(3) and 4947(a)(1) that conduct lobbying activities, and organizations subject to section 6033(e) notice and reporting requirements and potential proxy tax on certain membership dues, assessments and similar amounts;
- **Schedule D, Supplemental Financial Statements, to be completed by organizations to supplement certain balance sheet information, as well as conservation organizations, museums and other organizations maintaining collections, credit counseling organizations and others holding funds in escrow or custodial arrangements, and organizations maintaining endowments, donor advised funds, or other similar funds or accounts;**
- Schedule E, Schools, which is the private school questionnaire previously contained in former Schedule A;
- **Schedule F, Statement of Activities Outside the United States, to report the organization's activities conducted outside the United States;**
- Schedule G, Supplemental Information Regarding Fundraising or Gaming Activities, which requires reporting by organizations that reported certain amounts of professional fundraising expenses, revenue from fundraising events, and revenue from gaming activities;

- **Schedule H, Hospitals, to be completed by organizations that operate one or more facilities licensed, registered or similarly recognized as a hospital under state law;**
- Schedule I, Grants and Other Assistance to Organizations, Governments and Individuals in the U.S., to report grants and other assistance provided by the organization to others within the United States;
- **Schedule J, Compensation Information, to be completed by organizations to provide more detailed compensation information for certain of the officers, directors, trustees, key employees, and highest compensated employees listed in Part VII of the core form, and report certain information regarding the organization's compensation practices and arrangements;**
- **Schedule K, Supplemental Information for Tax Exempt Bonds, to be completed by organizations with outstanding tax-exempt bond liabilities;**
- Schedule L, Transactions with Interested Persons, to be completed by organizations that engage in certain types of relationships or transactions with interested persons, including excess benefit transactions, loans, grants or other financial assistance, and other financial or business transactions or arrangements;
- **Schedule M, Non-Cash Contributions, to report contributions other than cash received by the organization;**
- Schedule N, Liquidation, Termination, Dissolution or Significant Disposition of Assets, to report major dispositions of assets by the organization;
- **Schedule O, Supplemental Information to Form 990, to be used by organizations to provide supplemental information to describe or explain the organization's responses to questions contained in the core form or Schedules; and**
- **Schedule R, Related Organizations and Unrelated Partnerships, to provide information regarding the organization's relationships with other exempt and taxable organizations.**

This memo provides general information. Please contact us or a tax advisor for answers to questions specific to your situation.