

INDUSTRY

## Nonprofits

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### OVERVIEW

#### NONPROFITS

Charitable and nonprofit organizations throughout Massachusetts and the region have sought our counsel and representation for decades. The lawyers on our Nonprofit Industry Team have the close relationships, depth of knowledge and cost consciousness that nonprofit clients demand. Our nonprofit clients include private foundations, colleges and universities, public charities, charitable trusts, cultural, social service, religious and civic welfare organizations, professional groups, trade associations, human services and healthcare institutions.

We have a long history of serving the charitable and exempt organization community, a history that is complemented by our broad expertise in a variety of legal needs, including complex issues in taxation, corporate law, litigation, environmental law, intellectual property, healthcare, employment issues and real estate. With these broad capabilities serving as a foundation, we handle all phases of a charitable and exempt organization's existence, from initial organization and attainment of exempt status, through mergers, consolidations and reorganizations, to dissolutions. Along the way, we provide counsel in the following matters:

- Governance, planned giving and organization of charitable and private foundations
- Contracts
- Financing and asset protection
- Executive compensation and Directors and Officers liability and insurance
- Government regulation and corporate compliance
- Real estate purchasing, sales, development and leasing
- Employment and labor, including policies, hiring and firing, and wage and hour
- Pensions and profit-sharing and employee benefit plans, including health insurance, life and disability insurance, and retirement
- Affiliations, both not-for-profit and for-profit

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## OF COUNSEL

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In all cases, we strive to take a proactive approach that can only result from a thorough knowledge of an organization's needs and concerns and a depth of experience in the nonprofit sector. Most of our attorneys serve on the boards of nonprofit organizations, which allows us to bring a unique perspective and an ability to anticipate issues before they become problems.

## EXPERIENCE

### Helping a non-profit find a way to accommodate unforeseen changes

Several charitable and educational non-profits rely on Bowditch for legal counsel, including a land conservancy. The group's mission is focused on three river watersheds in central Massachusetts, stemming from a bequest in the 1970s for the purchase of fee interests of land in one town. The gift and town have grown significantly, and environmental science has evolved over the past 50 years. In order to protect more land and still serve the bequest's purpose, we drafted and submitted a Deviation Complaint to the court for relief and negotiated with the Attorney General's Office for its OK. The Attorney General's office assented to the requested relief, which the court subsequently granted. Now the group will use its resources for land protection and stewardship projects with many fewer restrictions. This approach is significant as a practical way for non-profits to accommodate the fact that times, science and other conditions might have moved on since the terms of an original bequest.

### Helping a social services agency grow

An attorney's involvement with a non-profit, social service agency goes back more than 25 years, when one of Bowditch's senior partners at the time encouraged the attorney to engage in community activity. Over time, the attorney became integral to the planning and growth of the agency, including managing its first venture into the development of affordable housing, a three-family house in Framingham. The agency realized that they could make an impact on sobriety and homeless issues in their communities and started buying distressed properties and leveraging commercial bank financing with government subsidies. This strategy provided the client with greater borrowing power and fostered its statewide reach, eventually creating over 2,000 residential units – especially ones located in MetroWest – and growing the annual operating budget from \$4 million to \$100 million.

## OTHER EXPERIENCE

- Museum of World War II in all real estate related to an expansion from a 10,000 sq. ft. building to a new two story 60,000 sq. ft. museum building (Dover Amendment)
- Museum in employment counseling matters and employment litigation
- Living museum in multiple matters, including leases for commercial tenants, complex financing including revolving lines of credit, joint venture agreements for historical performances, negotiation of a solar installation, sale of a portion of the property to a long-time restaurant tenant, trademark infringement issues, and liquor license renewals
- Provider of residential and vocational services to developmentally challenged community, with 1200 employees and 55 locations, in all employment matters, including employee attempt to unionize
- Continuing care community with exemption and abatement applications for expansion
- Consortium in opposition to development of natural gas pipeline in Franklin and Berkshire counties with general advice and advocacy
- Group which hosted one of the 2014 Massachusetts gubernatorial debates; one candidate, who was polling at less than 5%, was not invited and filed suit to compel our client to allow him to participate; the case raised important and complex Constitutional issues and we achieved a successful ruling in

favor of our client

- National historic society in obtaining a certificate of appropriateness from the city historical commission, an order of conditions from the city conservation commission and site plan approval from the city planning board for the construction of a new parking lot
- Colleges and universities with investigations and defense of discrimination matters before the Massachusetts Commission Against Discrimination (MCAD) and the Superior Court and address governance, compliance and the application of federal laws and regulations
- Colleges and universities with issues involving student accommodation, disciplinary actions and litigation
- Health and human services provider with internal investigation of billing irregularities and whistleblower claims
- Youth services organization with the sales of facilities and purchase of new land to construct facilities
- Public charity and associated private foundations in corporate re-structuring
- Secondary school and a medical society with developing gift acceptance policies and documents for large bequests
- Regional school district on possible solar projects intended to save electricity costs
- Town with creating an exempt land trust in connection with the disposition of municipal property
- Large human services provider in corporate re-structuring involving multiple merger transactions, including acquisition of properties, exemption, financing, compliance and Attorney General reporting matters
- Two college athletic conferences with developing tax-exempt corporate structures
- College in land purchase and site plan approval from town planning board for \$20 million center which will be built on a 50-acre parcel
- Colleges and universities with internal investigations in sexual orientation claims, and advice and training on wage and hour matters, policies and procedures, Title IV and affirmative action
- University in all financing and real estate matters for the development of a \$19 million, 36,000 square foot center which will contain classroom, office and meeting space and will be built on a site that will consist of both purchased and ground leased parcels, including acquisition of the site, site plan approval from the city planning board, project financing, which will include New Market Tax Credits, and construction contracts
- Health care organization in defense of a municipality's challenge to its property tax exemption
- Client before the Internal Revenue Service and U.S. Department of Labor in matters involving benefit plan compliance
- Client in negotiations with senior executives employment contracts, including specific issues such as executive benefits, supplemental retirement plans, incentive compensation arrangements, and early termination issues
- Bond counsel services in multiple and varied types of conduit financing transactions, including tax-exempt small issue industrial development bonds, qualified 501(c)(3) bonds, exempt facility bonds, pool loan programs and new market tax credit transactions (participated in over 100 conduit bond financing transactions, serving as any of bond counsel, borrower's counsel, bank/trustee's counsel, purchaser/credit enhancer counsel and underwriter's counsel)