

GUIDE TO

fiscal
sponsorship

VLAA
Volunteer
Lawyers and
Accountants
for the Arts

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St. Louis Volunteer Lawyers and Accountants for the Arts (VLAA) provides free legal and accounting assistance to financially eligible artists, arts workers, small creative businesses and nonprofit cultural organizations. VLAA also offers a wide variety of educational programs.



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Preface

Fiscal sponsorship can provide individual artists, collectives and emerging arts organizations of all disciplines with the ability to apply for funding and to use other resources that are available only to organizations with tax-exempt status from the Internal Revenue Service.

We became interested in this funding model during our work with the Community Artists Training (CAT) Institute. Founded in 1997 by the Regional Arts Commission and now considered a national model. The program has developed a robust regional network of people trained to use the arts as a tool for positive social change. To date, more than 350 social workers, educators, community activists, policymakers and artists of all disciplines have completed this cross-sector training.

The program's alumni, known as CAT Fellows, are pursuing their practices in a variety of ways. Some social service agencies have put artists on staff or are working with them as independent contractors. Some artists have applied for small project grants or raise money with crowd funding campaigns. A few CAT alumni with vision and tenacity have established new nonprofit tax-exempt organizations.

Others have secured funding and are housing their projects under the auspices of established organizations with tax-exempt status that sign on as a sort of chaperone, lending their status to the project and providing the oversight and other services. Among the organizations with robust fiscal sponsorship programs are Fractured Atlas, New York Foundation for the Arts, Women Make Movies and the International Documentary Association. Locally, Midwest Artist Project Services (MAPS) serves individual artists, collectives and emerging organizations by regularly accepting applications for fiscally sponsored projects.

Everyone benefits. The fiscal sponsorship relationship allows sponsoring organizations to further their missions by collaborating with new partners. Alternatively, providing fiscal sponsorship may be one of a nonprofit organization's core services. Fiscal sponsorship can provide grantmakers with a mechanism for supporting the important work of individual artists, for encouraging community-based projects and for building a history with emerging organizations. And the fiscal sponsorship arrangement provides some individual donors who want to underwrite projects with an additional incentive — a charitable deduction on their tax returns.

But fiscal sponsorship arrangements made by inexperienced parties can be fraught with problems. We hope to prevent those problems by offering this toolkit.

This publication seeks to educate the key fiscal sponsorship players — the Artist (an artist, collective or emerging arts organization), the Sponsor (a tax-exempt organization) and the Grantmaker (corporation, foundation, federated campaign, government arts agency or arts patron) — about their expectations and responsibilities.

Fiscal sponsorship offers tremendous opportunities for experimentation, diversity, social change. We stand ready to support the legal and accounting components of creating and sustaining successful fiscal sponsorship projects and programs.

Introduction

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But the legal status of the would-be applicant may be an obstacle because most foundations and corporations and some government arts agencies restrict their grant making to tax-exempt organizations. So artists must find a Sponsor — commonly called an “umbrella” or “fiscal agent” — an organization with 501(c)(3) status that will sign on as a sort of chaperone, lending its tax-exempt status to the Project and providing the oversight required by the grantmaker.

All too often this relationship is formed in haste. In extreme cases, the artist is like a kid lurking outside an R-rated movie who approaches an adult — any adult — to “accompany” them into the theatre. The relationship with the adult is fleeting; everyone is circumventing the intent of the rating association. And, as soon as the tickets are torn, they ditch the adult and enjoy the film.

Similarly, some entering fiscal sponsorship relationships are too casual. After the sponsor signs the grant application they think they can wave goodbye. Other artists are better partners, but may — along with the Sponsor — misunderstand crucial aspects of the relationship and make assumptions at the outset that cause trouble down the road.

This publication seeks to increase the chances for happy endings by educating the key fiscal sponsorship players — the Artist (an artist, collective or emerging arts organization), the Sponsor (a tax-exempt organization) and the Grantmaker (corporation, foundation, federated campaign, government arts agency or individual arts patron) — about their expectations and responsibilities.

A Win-Win-Win Solution for the Arts

To understand how fiscal sponsorship fits into the greater universe of funding and charitable giving, you should be familiar with the choice of business structures available to creatives and arts workers.

For simplicity and flexibility, most artists operate their businesses as sole proprietorships. No formal paperwork is required. The income generated is considered personal income and is taxed accordingly (generally by filing Schedule C). Artists also decide to establish limited liability companies (LLCs), which is highly recommended when there will be multiple partners (known as “members” under the LLC structure).

Some arts activities and collaborations operate as unincorporated associations. However, informality may present problems making bank transactions, liability, holding title to significant assets and attracting financial support.

For those planning ongoing programming, establishing a nonprofit organization and applying for tax-exempt status may be the appropriate choice, even though the process and day-to-day operations can be burdensome. The nonprofit tax-exempt structure provides continuity, enables the organization to apply for grants, solicit individual donors, and protects officers and directors against personal liability. After filing the appropriate applications, most organizations also are exempt from state sales taxes.

Fiscal sponsorship can be an invaluable means to securing funding without the costly hassle of starting a nonprofit, tax-exempt organization. For emerging nonprofit organizations, it can provide immediate access to financial support and time to establish track records with donors.

By partnering with an established tax-exempt organization, artist-driven projects with nonprofit goals can apply for grants and solicit tax-deductible donations to support their work. The Sponsor’s tax-exempt status, which includes board oversight, inspires donor confidence because the sponsoring organization has a recognized charitable purpose, has a structure for accomplishing its goals and is accountable to the public.

Sponsorship allows foundations, corporations and government arts agencies that only fund tax-exempt organizations to support:

- Projects that are short term or temporary
- Pilot projects
- Grassroots, neighborhood or faith-based projects
- Emerging nonprofit organizations
- Efforts responding to crises and urgent needs
- Collaborations

So what does a fiscal sponsor do? A Sponsor acts as a guardian of grants and donations made to support the Project. The Sponsor is directly accountable to donors and is ultimately responsible for ensuring that the Project is completed as described.

At minimum, the Sponsor signs grant agreements, receives the awarded funds, sets up a designated restricted account for the Project, writes checks and issues the charitable donation receipts required by the Internal Revenue Service. But a Sponsor may take a much larger role. It could be an active fundraising partner, provide space or equipment or offer consultation services.

In return for its oversight and services, the Sponsor usually takes an administrative fee, which can range from 2 percent to 15 percent (or more) of monies received on behalf of the Project. Although fees vary, 5 percent to 10 percent is generally considered typical and fair. Some Sponsors charge additional sign-up, consultation and/or banking fees.

Fiscal sponsorships arrangements vary. St. Louis Volunteer Lawyers and Accountants for the Arts prefers the model used by New York Foundation for the Arts. Under this model, artists are considered independent contractors, retaining their identity. The artists maintain creative control and ownership of their projects. The artists also are responsible for their own tax reporting, they accept liability for their projects, and they purchase their own insurance.

Tips for Artist Projects

Before pursuing fiscal sponsorship:

- Be aware that grant funds typically will not be awarded without a detailed proposal. Some artists find the required planning too restrictive.
- Create a written description outlining the scope of your Project, who is involved, why you are doing it and a timeline. Include a detailed budget covering expenses and income. This information will be the basis of your proposals for grant support.
- Identify potential funding sources and determine how much money may actually be available to support the Project. Get advice from local and state arts councils. Professional organizations, both local and national, are another good source. The Foundation Center's directories, which are published in print form and in an online subscription-based database, include information on foundations and corporate giving programs. Affiliated Foundation Center libraries provide free public access to the print copies and most have the online version.
- Accept that the Sponsor will be legally responsible for all aspects of the Project. Be prepared to become interdependent. You must be willing to comply with the sponsoring organization's operating procedures and reporting obligations.

Fiscal sponsorship arrangements should be based on complementary purposes, not on friendship or convenience. To find a Sponsor, begin by making a list of nonprofit organizations that are familiar with you and your work. Add organizations whose work in your community complements the purpose and/or constituency of your proposed Project.

In addition, you may want to investigate the organizations listed in the San Francisco Study Center's website, www.fiscalsponsordirectory.org. Be sure to read the Sponsor's guidelines carefully.

If you'll be approaching a local organization, do more research. Does the potential Sponsor have a reputation for risk taking? Does the organization's "personality" seem like a good fit? Does the potential Sponsor have an excellent reputation in the funding community?

Meet with someone associated with each organization on your list. Introduce your Project, and inquire about the possibility of a sponsorship relationship. Remember that fiscal sponsorship may be unfamiliar to them. Also, although you may be speaking with the executive director or another staff member, the board of directors should approve the relationship.

Discuss your fundraising strategy with the potential Sponsor before you start writing proposals or soliciting individual donors. This pre-planning will avoid the appearance of a mere "pass-through" arrangement and allow the potential Sponsor to determine how approaching a particular grantmaker or individual donor may impact its overall fundraising plans. Be aware that the Sponsor may preclude you from approaching its current or potential funders.

Don't assume that fiscal sponsor services are free. Administrative expenses that will be incurred, and the Artist Project should expect to pay for them. A Sponsor could charge a flat fee or a percentage of Project revenues. Agree on the fee in advance, in writing, and list the

services the Fiscal Sponsor will provide in return for that fee.

Some arts service organizations make membership a prerequisite for sponsorship. Membership will likely offer other advantages such as training opportunities and discounts.

When negotiating an agreement with the Sponsor, be sure to discuss artistic control and copyright ownership. These issues will be unfamiliar to non-arts organizations, and it is your responsibility to educate them.

Make sure the agreement with the Sponsor includes clear exit provisions. Can your Project be moved to another Sponsor? What happens to the Project's assets?

If you have put money into the Project before grant funds have been secured, discuss whether reimbursement for those expenses will be allowed.

Finally, be prepared to pay taxes. If you are unincorporated and receive \$600 or more in payments from the Sponsor, you will receive **an** IRS Form 1099.

Tips for Sponsors

Serving as a Sponsor is an opportunity to expand your organization's impact, but it comes with serious legal obligations. Review them carefully with your board of directors before committing to an artist project. Sponsors may want to adopt a formal written policy addressing sponsorship, especially the selection process.

When approached with a proposed Artist Project, ask and answer the following questions:

- Is the Project consistent with your organization's mission?
- Are you considering fiscal sponsorship because of collegiality or the opportunity to generate earned income through charging an administration fee? Both are weak motivations.
- Are you familiar with the artists, the quality of their work and their reputation in the community?
- How will the sponsorship relationship impact your organization's ability to raise new funds or maintain relationships with current donors?
- Are you prepared to lend support to the Artist Project's fundraising activities?
- Does your organization have the administrative capacity to undertake the sponsorship?
- How much will it cost to provide sponsorship services? How will you explain the administrative fee to the artists and donors?
- Has your organization explained its culture and values to those undertaking the proposed Project?

When negotiating the sponsorship agreement, be sure to discuss insurance, especially workers' compensation coverage. Also, clarify the employment status of Project staff. The artist(s) will be independent contractors, not employees, so you should be prepared to issue 1099s.

Be very clear about disbursement of funds. Will the Artist Project be required to meet certain benchmarks? Do you have a specific invoicing procedure?

New Programs

Arts service organizations creating new fiscal sponsorship programs should:

- Define the eligible artistic discipline(s).
- Stipulate membership requirements, if any.
- Specify the geographic, gender, ethnic or other focus, if any.
- Provide a description of services provided.
- Decide if the projects must have a minimum budget of a certain amount in order to be eligible.
- Explain the fee structure.
- Outline application guidelines and procedures.
- Specify reporting requirements.

Tips for Grantmakers

Those who are committed to funding the arts will find that the benefits of fiscal sponsorship far outweigh its risks.

Simply put, vibrant communities need creative people. They are the musicians, actors, writers, filmmakers, dancers, designers and visual artists who entertain, educate and challenge us to think bigger thoughts. Too often these individual professional artists who have no affiliation with arts organizations are left out of the philanthropic equation, on the assumption that it is more productive and less cumbersome to fund institutions. And, in the wake of the pandemic and calls for racial equity, some grantmakers are viewing fiscal sponsorship as a means to provide support to historically marginalized and underserved creatives.

Fiscal sponsorship can play a key role in fostering innovative arts-based community development by providing support for Projects that integrate performing, literary and media arts into non- conventional settings in which special populations (such as the elderly, incarcerated, disadvantaged youth and people with disabilities) are served.

An additional benefit is the two-way street that may be established by the partnership between the artists and the sponsoring nonprofit. Successful collaborations introduce sponsors to creative processes and artists to the challenges and rewards of working in the nonprofit sector.

Grantmakers seeking to support creative endeavors through fiscal sponsorship should:

- Establish clear guidelines and communicate them to potential applicants.
- Include space in the grant application form to explain why the Artist Project is applying under the umbrella of a Fiscal Sponsor.
- Recognize that administrative fees are a legitimate cost of doing business as long as they are not extraordinary or distorted.
- Require the Sponsor to submit a letter signed by the board chair and executive director endorsing the Artist Project, explaining how the Project furthers its mission, and specifying the fee or percentage the organization will charge for providing the service. The sponsoring organization also could be asked to provide a list of its current or recent sponsorship Projects, if any.
- Require that a copy of the written fiscal sponsorship agreement be submitted with the signed grant contract.

Building a Successful Relationship

A successful fiscal sponsorship relationship is built on making the right match between the sponsoring organization and the Artist Project, frequent contact, open communication and planning. Preliminary discussions should answer the following questions:

- What is motivating your interest to work together?
- Is the Project proposal clear?
- Is the Project non-commercial in nature?
- Is the Project consistent with the potential Sponsor's mission?
- Is the Project budget complete? Is it reasonable?
- Does the Artist have realistic prospects for funding? An overall fundraising strategy?
- Who will be responsible for communicating with potential grantmakers? For reporting to grantmakers that provide support? Are the grant conditions, including all deadlines, clear to both parties?
- What do you expect out of the sponsorship relationship? How will you benefit? How will your counterpart benefit?
- Does the potential Sponsor have the capacity and stability to undertake the relationship?
- What is the proposed timetable?
- What is the procedure for securing board approval?
- How have the key personnel demonstrated their competence?
- Are both parties flexible?
- Are both clear and honest communicators?

Negotiation Checklist

Good chemistry does not guarantee success. Sponsors and artists must discuss the details of their relationship and should put them down on paper. St. Louis Volunteer Lawyers and Accountants for the Arts can provide a neutral and impartial third party to help guide the discussion and attorneys to review the agreement on behalf of each party.

The written agreement, or memorandum of understanding, should cover the following big issues and small details:

Parties

- Who is authorized to act on behalf of the Sponsor?
- If the Project involves a team of artists, who will be the designated contact with the Sponsor? Will the lead artist or every member of the team sign the written sponsorship agreement? If the artist(s) formed an LLC or some other business entity, then the business should be the contracting party.
- What is the employment relationship? Most agreements specify that those involved with the Project are “independent contractors” rather than “employees.” Sponsors should require the artist(s) to complete IRS Form W-9.

Project Description

- What is the Project?
- What is the budget? The budget should be attached to the agreement.
- When will the sponsorship begin and end? The end could be set by a date or by completion of the Project, or whichever comes first, or last. If it involves completion of the Project, then what constitutes “completion” should be defined.
- Will the Project artist(s) be required to attend Sponsor meetings or other events?

Artist Project Responsibilities

- Will the Artist be required to become a member of the sponsoring organization?
- Will the Project be required to submit regular reports to Sponsor? Maintain documentation?
- Will the Project, as customary, be required to return any unused funds?

Services Provided by Fiscal Sponsor

- How will the finances be handled? The Sponsor should establish a designated and segregated account on behalf of the Project. The Project should not be permitted to maintain a negative balance in the Sponsor's account. Some Sponsors require the Artist to close all existing bank accounts relating to the Project and to deposit all funds in the segregated account, including earned income and loans.
- Who is authorized to request disbursements?
- What documentation (receipts, invoices, check requests) is required for disbursements?
- When may requests for disbursements be made? Some Sponsors want the Artist to pay expenses out of pocket, present an invoice and get reimbursed. Others provide cash advances. How quickly will the Sponsor make disbursements?
- Will the Sponsor provide monthly or quarterly statements for the Project?
- Who will retain the interest earned on Project funds? Generally, it's the Sponsor.
- Will the Sponsor provide payroll services on behalf of the Project? Will there be an additional fee for this service? Most agreements specify that the Artist Project, not the Sponsor, is the employer of record.
- Will the Sponsor provide consultation services on management, grant writing, budgets or other matters?

Risk Management, Liability and Insurance

- What are the risks associated with the Project? What steps are needed to safeguard people, property and goodwill in the community?
- Who is liable for accidents, damaged or stolen equipment, etc.? Whose insurance will cover the Project?
- Will the agreement include an indemnity clause (a common provision under which one party (or both parties) commit to compensate the other (or each other) for any harm, liability or loss arising out of the agreement?)

Ownership, Content and Artistic Control

- Who will own the Artist Project's created work, both the tangible objects and the copyright, and the right to use the name of the Artist Project?
- Who will own the items purchased with grant funds?
- Will the Artist Project maintain creative control? Will the Sponsor impose content restrictions on the Project? Even if an artist thinks she is in safe territory, or a Sponsor thinks that the inappropriateness of certain subject matter is obvious, it is best to go over the parameters in advance.
- Under what circumstance can the Project delegate or transfer control to another party?

Fundraising

- Under what conditions or circumstances may the artist solicit contributions for the Project? The Sponsor should require copies of all correspondence, proposals, solicitation materials, contracts, agreements and other associated documents relating to grants, loans and contributions. Grant proposals should be submitted to the Sponsor for approval at least two weeks before the grant deadline.

- What are the Sponsor's fundraising responsibilities? The Sponsor should be prepared to furnish copies of its IRS determination letter, annual report to the state, operating budget, year-end financial statements or audit and letters of support.
- How will donors be acknowledged? Tax-exempt organizations must send donors a written acknowledgment indicating the amount of the contribution. The Sponsor must issue the letter. However, the Artist and the Sponsor may want to work together regarding the content of the acknowledgment. For example, the Artist may want to include a personalized note thanking the donor for the contribution.
- Can the Project have multiple Sponsors? This can be advantageous for Artist Projects of national scope that might garner support from state humanities or arts councils, which must make grants within their states.

Publicity and Credit

- What are the procedures for using the Sponsor's name and logo for outreach and publicity?
- Under what circumstances will the parties be required to submit materials to each other for approval in advance of publication?
- How will the Sponsor be credited?
- How will the Project be described in the Sponsor's materials?
- How will Grantmakers and individual donors be credited?

Reporting

- What reports will the Artist be required to submit to the Sponsor? When?
- Who will prepare the formal acknowledgement and required reports to Grantmakers?

Administration Fee

- How much is the Sponsor's fee?
- Are there additional fees for additional services?
- How and when will the fee be collected?

Tax-Exempt Status

- Does the Artist understand the restrictions associated with maintaining the Sponsor's tax-exempt status? The organization (and therefore, the Artist) cannot engage in political activities to any substantial extent. Tax-exempt organizations are absolutely forbidden from participating in a political campaign. Within limits, organizations may engage in lobbying activities.
- Does the Artist understand that even though an organization is recognized as tax-exempt, it still may be liable for tax on its unrelated business income? The agreement should prevent the Artist from conduct or activities that might result in taxable income to the Sponsor and specify a pre-approval process.
- Will the Artist have access to the Sponsor's bulk mailing permit?
- Will the Artist have access to the Sponsor's sales tax exemption letter?

Termination

- What are the circumstances under which termination may occur?
- What happens to an unfinished Project? To grant funds?

Dispute Resolution

- How will disputes be resolved? VLAA encourages the arts community to include a mediation clause in agreements. Mediation is an innovative and informal process in which trained neutral mediators guide the discussion between the disputing parties. The process allows the

parties to control the outcome, rather than accept the decision made by an outsider (such as judge or arbitrator). Mediation is particularly well suited for the arts because it addresses relationship issues (like trust, respect, fairness and friendship) and procedural issues (like how decisions are made) as well as substantive issues (like money). It is confidential, fast and affordable.

What else? Be sure to raise other concerns not mentioned above. On request, VLAA can supply a sample agreement, which should be modified to address your specific needs. Be sure you understand what you are signing. The agreement should be signed and dated by both parties. An authorized official, such as the executive director or board president, should sign on behalf of the Sponsor. Both parties should keep a copy of the agreement.

Resources

Fiscal Sponsor Directory, fiscalsponsordirectory.org, created by the San Francisco Study Center to connect community projects with fiscal sponsors

Fiscal Sponsorship: the State of a Growing Service, Trust for Conservation Innovation
trustforconservationinnovation.org

Colvin, Gregory. *Fiscal Sponsorship: 6 Ways to Do It Right*, Study Center Press
A synopsis of his book: www.fiscalsponsorship.com

New Ventures Fund. *Leveraging Fiscal Sponsorship for Racial Equity*
https://newventurefund.org/wp-content/uploads/2021/09/Leveraging_Fiscal_Sponsorship_for_Racial_Equity.pdf

Tides Center publications
tidescenter.org/fiscal-sponsorship/publications/index.html