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The legalities of volunteering – understanding your options and obligations

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> *"It's in your hands to make the world a better place."*
>
> ***– Nelson Mandela***

10 Legalities around volunteering

Mandela Day has arrived, bringing with it a host of community-related initiatives running throughout the month of July.

Public Interest Lawyer Louise Bick of Werksmans Attorneys breaks down ten legalities around volunteering.

1. What are the options as regards involvement and commitment?

There are varying levels of commitment possibilities when working with a charity, depending on the volunteer's availability and organisational needs. Organisations are often in need of skilled people to get involved in their leadership and management. GreaterGood South Africa, an organisation that links volunteers to good causes, advises "Once you have made a commitment, stick to it. Causes rely on a particular number of volunteers turning up and if they don't, the project often can't go ahead."

2. What is the structure of a charity organisation?

Legally, charities can be structured in several ways, each of which uses different terminology:

Charitable Trust e.g. Nelson Mandela Children's Fund	Managed by a Board of Trustees. The overall regulator of Trusts is the Master of the High Court. Trustees can attract personal liability in certain circumstances and must act in the best interest of the Trust and its beneficiaries, exercising their duties with skill, care and diligence.
Non-Profit Company (previously known as a Section 21 Company) e.g. Reach for a Dream	Managed by a Board of Directors. A Non-Profit Company may either be structured to have members or not to have members. A member of a Non-Profit Company is similar to a shareholder and means a person who has an interest in the Non-Profit Company. The Memorandum of Incorporation of the Non-Profit Company will set out what powers the members have and the extent of their involvement in running the Non-Profit Company. A Non-Profit Company is a legal entity, separate from its members and/or Directors. However, a Director of a Non-Profit Company can be held personally liable in certain situations – particularly where they have knowingly acted recklessly, with gross negligence, for any fraudulent purpose or with the intention to defraud any person.
Voluntary Association e.g. Multiple Sclerosis South Africa	This is a group of people (known as members) who agree to work together to fulfil the same charitable objectives. The managerial structure of the Voluntary Association is set out in a Constitution and often includes a Chairperson, Secretary and Treasurer. Ordinarily, a Voluntary Association is a separate legal entity from its members.

3. What are the different registration categories?

There are different categories of registrations for charities, all of which are aimed at increased accountability.

NPC – Non-Profit Company	An NPC is registered in terms of the Companies Act (Act 71 of 2008) with the Companies and Intellectual Property Commission. Each NPC has a unique company registration number.
NPO – Non-Profit Organisation	An NPO is an entity that has registered under the Non-Profit Directorate of the Department of Social Development. This registration indicates that the entity functions to fulfil a public purpose and complies with the minimum requirements set out in the Non-Profit Organisation Act (Act 71 of 1997), including certain reporting provisions. Each NPO has a unique company registration number, which can be checked online at www.npo.gov.za and which must appear on all its documents.
PBO – Public Benefit Organisation	A PBO is an entity that has been registered with SARS as tax exempt because it conducts public benefit activities. PBO status may also allow the entity to grant a Section 18A tax certificate on donations. Each PBO has a unique PBO number.
CBO – Community-Based Organisation	This acronym is usually used for grassroots organisations, often run by members of the single community in which it functions. It does not denote any type of registration with a regulatory body in South Africa.
SED – Socio-Economic Development	This term is relevant for BEE purposes. BEE points can be earned through contributions of a company's 1% Net Profit after Tax (NPAT) to SED projects which enhance the ability of people to be included and participate in the economy and where 75% of the beneficiaries are previously disadvantaged. Charities may be assessed to determine whether they qualify for SED purposes.

4. ### Can I get a tax exemption for my contribution?

If you make a donation to a charity or organisation that is a registered PBO for purposes of Section 18A of the Income Tax Act (Act 58 of 1962), you can receive a tax exemption on your income tax payable to SARS. The maximum amount of charitable contributions that can be considered is 10% of your taxable income. The donation may be in cash or in kind (e.g. installing carpets or building classrooms) and must be made in good faith (meaning that it is for altruistic reasons and not in exchange for something else.) The PBO will give you a Section 18A Tax Certificate, setting out the value of your donation. For more information, see the Basic Guide to Tax-Deductible Donations at SARS.

5. ### Why might I be asked to sign a code of conduct?

The organisation with which you intend to volunteer may request you to sign and adhere to a Code of Conduct. This is designed to ensure clarity on your rights and responsibilities as a volunteer. If you do not understand a term of the Code of Conduct, you are well within your rights to ask for this to be explained to you in simple terms.

6. ### Can I expect payment or some sort of compensation for volunteering?

If you are volunteering with an organisation, you are not an employee and are not entitled to a salary. However, and depending on the financial position of the organisation, you may be entitled to compensation for items that you purchase out of your own pocket for use during the volunteering – such as art supplies at a children's charity. Ask upfront what the policy on compensation and processes for reimbursement are. Some organisations require purchases to be authorised prior to being made. Also, some organisations may allow for Trustees, Office Bearers or Directors to be remunerated for these services, based on what is considered reasonable in the sector.

7. ### I'd like to capture the moment on camera – Can I go ahead?

With smartphones at the ready and social media tracking our every move, it's easy to share one's volunteering experiences. You should however exercise caution when taking photographs of people – especially those under 18 – without their consent or the consent of their legal guardians/caretakers. Check with the organisers as to what is appropriate, as they may have blanket consent from participants' guardians.

8. ### When working with children and the elderly, what are special considerations?

If you are volunteering directly with children, keep in mind that they are protected by the Children's Act (Act 38 of 2005). If you are a volunteer worker at a partial care facility, drop-in centre or child and youth centre and you believe, on reasonable grounds, that a child has been abused (including sexually abused) or deliberately neglected, you have a statutory duty under this Act to report this to the police or the Department of Social Development. Enquire from the organisation with which you are volunteering as to what process must be followed if you have concerns.

It is a criminal offence to fail to report any such behaviour. The Older Persons Act (Act 13 of 2006) has a similar provision relating to the statutory requirement to report suspicion that an older person has been abused to a police official or the Department of Social Development. This Act also sets out that any person who is of the opinion that an older person is in need of care and protection (for example that person lives in circumstances which may harm them or is in a state of physical, mental or social neglect) may report this opinion to a social worker, who must then investigate.

When working with children, be aware of what types of physical contact are appropriate. The Code of Professional Ethics of the SA Council of Educators is a good starting point to ascertain this and reinforces the need to respect the dignity of children, exercise authority with compassion and refrain from any form of sexual relationships.

Finally, make enquiries before you plan events. Find out about health and dietary requirements before offering to bring food for elderly people and children and determine physical abilities before arranging activities. If you are going to be transporting children or elderly people, make sure that you have arranged for indemnity forms to be appropriately signed and take as many steps as reasonably possible to ensure the safety of everyone while under your care.

9. ### Can you give any guidelines on choosing a cause to support?

South Africa has a unique culture of social responsibility and an overwhelming need for volunteerism. Do some research before considering a cause to support in order to understand the organisation, its beneficiaries and its needs. Consider whether the organisation is a registered PBO and/or NPO and what kind of monitoring and evaluation processes it has in place for you to assess how the organisation utilises its resources to achieve its objectives. Charities need to be accountable in order to ensure effectiveness.

10. ### Who do I speak to if I have any concerns?

If you have had a bad experience in volunteering or are worried about the treatment of recipients of charitable services, or the way the organisation is managed, do not hesitate to voice your concerns.

The Independent Code of Governance of Non-Profit Organisations in South Africa sets out eight fundamental values, six leadership principles and five fiscal and legal principles to which organisations may commit. Compare the values and practices of concern to you to those set out in this Code and make constructive suggestions for improvement. If you wish to take your complaint further, the NPO Directorate website has a whistleblowing function.

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