

perspectives

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Coplan & Aronoff LLP

MY BENESCH MY TEAM

Trends and topics in not-for-profit management

Not-for-Profit Spotlight



When her parents fell upon hard times, Lily Smith was referred to the Transitional Respite Program at New Avenues to Independence by the Cuyahoga County Board of Developmental Disabilities. Lily's family was homeless and living out of their car. Fortunately, New Avenues' Respite Program took Lily off the streets and placed her in a safe, home environment. Thanks to its contributors, New Avenues provided Lily with clothing, toiletries, bedding and special touches including a radio and TV. When Lily arrived at New Avenues, she was quiet and reserved. Within a week, she was comfortable laughing and talking. Lily now attends New Avenues' Vocational Services Program, Buckeye Industries, learning janitorial skills. Recently, because of an opening in the organization's Overlook group home, Lily moved into a permanent living arrangement and has her own room.

Lily is just one example of the many individuals whose lives have been positively changed by New Avenues. A group of dedicated parents founded New Avenues as the Parents Volunteer Association (PVA) in 1952 to provide educational, vocational and recreational experiences for children with disabilities. As the children grew and their needs changed, the founders incorporated PVA in 1956 and pursued community integration through group home settings. Thus, in 1971, PVA became owner

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Keep An Eye On Your Trustee

As the beneficiary of a charitable trust, have you ever wondered what your trustee is actually doing? Have you ever seen the actual instrument that entitles you to a distribution? Have you ever received an account or a report from your trustee concerning the trust's assets?

Many in the nonprofit world are good and honest people who are happy to receive a small sum of money, never questioning where it comes from, or why they are receiving it. However, there are reasons why you should be keeping an eye on your trustee. Although most trustees operate in a prudent manner, some do not. Unfortunately, trustees can be careless, reckless and even dishonest. For the future benefit of your organization and in order to honor the intent of the settlor, you need to make certain that your trustee is following the terms of the trust and properly performing his or her duties as trustee.

Ohio Revised Code § 5808.01 *et seq.*, sets forth the powers and duties of a trustee. To this end, a trustee's general duties include the following:

1. a duty to administer the trust in good faith, in accordance with its terms and purposes, and in the interests of the beneficiaries;
2. a duty of loyalty/avoiding conflicts of interest;
3. a duty of impartiality as to multiple beneficiaries;
4. a duty to act as a prudent person, exercising reasonable care, skill, and caution;
5. a duty to incur only reasonable administrative costs, in relation to the assets contained in the trust;
6. a duty to use any special skills or expertise possessed;
7. a duty to exercise reasonable care as to the delegation of powers;
8. a duty to take control of and protect the trust's property;
9. a duty to keep adequate records, and keep trust property separate from the trustee's property;
10. a duty to take reasonable steps to enforce claims of the trust and to defend claims against the trust;
11. a duty to take reasonable steps to collect trust property held by third persons;
12. a duty to keep the current beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests;
13. a duty to promptly respond to beneficiary inquiries, including providing a beneficiary with a copy of the trust instrument upon request, and notifying a beneficiary of any change in trustee compensation; and
14. a duty to provide current beneficiaries, an annual report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, the trust assets' respective market values.

Now that you know what your trustee is required to do, make it a point to ensure that your trustee is acting in accordance with the law. Request the trust instrument, review the annual trust account statements and ask questions—it is your right. Finally, protect your interests and honor the settlor's intent.

For more information, please contact **Thomas Kern** at tkern@beneschlaw.com or (614) 223-9369.

Nonprofit Hiring Shows Signs of Recovery in 2011

The *Chronicle of Philanthropy* reported in April that, as the economy slowly recovers, nonprofits are adding jobs. A new survey finds that one-third of nonprofit groups plan to create new jobs this year and 27 percent said they might do so. In addition, nearly 60 percent said they had no plans to freeze hiring, lay off staff members, or cut jobs this year. Please [click here](#) to read the full story and learn more about the survey results.

Event Recap

New and Exciting Trends for High Performing Not-for-Profit Boards



On April 14, Benesch sponsored a training session at the Club at Key in Cleveland which focused on rapidly emerging attributes of peak-performing boards. Michael Kumer, the Executive Director of Duquesne University's Nonprofit Leadership Institute (NLI) and Associate Dean of the University's School of Leadership and Professional Advancement, spoke to the audience on board self-assessment, committee structure, recruiting new board members and creating more effective board meetings. Attendees gained insight as to board leadership responsibilities, standing committees, term limits, job descriptions and consent agendas. Michael's interactive presentation was followed by a networking hour during which members of a variety of not-for-profits were able to meet and connect with others in their field.

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and operator of the first private, non-profit group home for individuals with disabilities in Cuyahoga County, Ohio. In the subsequent five decades, the agency continued to grow, purchasing eight additional homes and expanding services throughout Northeast Ohio. In 2000, PVA changed its name to New Avenues to Independence, Inc., to reflect the expanding array of services provided and the changing demographics of the individuals served.

New Avenues' mission is *to provide opportunities for people with disabilities and special needs to become more independent and productive members of society by offering the highest quality support services and developing innovative and inclusive programs*. New Avenues achieves its mission by offering residential, community-based, vocational, transitional respite, housing and children's programs.

New Avenues programs currently serve more than 600 individuals ages three to 100 years in Northeast Ohio, including those with developmental disabilities, mental illness, autism, cerebral palsy, brain injury and Down syndrome. New Avenues has a Clinical Services Department comprising a nursing staff charged with overseeing the health of individuals receiving services from New Avenues. In addition, New Avenues offers physical, occupational, speech, art, music and recreational therapies.

Over the past two decades, New Avenues' Benesch Team has assisted New Avenues with government affairs, bond issuance, financing and 501(c)(3) and (c)(2) status, in addition to participating on its Board of Directors as members and officers. Its Benesch Team includes the following attorneys: Gary Bilchik, Allison Binkley, Harry Brown, Tom DeRue, Sara Evans, Jason George, Mike Primrose and Marty Sweterlitsch. For volunteer or giving opportunities, including the New Avenues Endowment Fund at the Cleveland Foundation, please contact Karen Knavel at (216) 481-1909 x224 or kknavel@newavenues.net. For more information about New Avenues to Independence, please visit www.newavenues.net.

OIG Advisory Opinion Concludes Proposed Payment Arrangements for Medicaid Transportation Services Could Potentially Violate the Anti-Kickback Statute

On December 20, 2010, the U.S. Department of Health and Human Services, Office of Inspector General (OIG) issued OIG Advisory Opinion No. 10-26 concerning two different proposed payment arrangements between a Medicare and Medicaid certified provider of emergency and non-emergency transportation services and a skilled nursing facility. In both arrangements, the transportation services company proposed charging the skilled nursing facility below-cost rates. The OIG indicated that below-cost pricing arrangements give rise to an inference that the transportation services company and skilled nursing facility may be swapping the below-cost business for other, more profitable business. Accordingly, the OIG concluded that both of the proposed payment arrangements could potentially generate prohibited remuneration under the Federal anti-kickback statute. Please [click here](#) for more information.

To be successful, not-for-profit Alvis House has to stay on top of its business without losing focus on the human side of things. That's why Denise trusts Benesch. Whether navigating complex financing and real estate deals or consulting on HR and regulatory matters, we share the same goal: to make smart decisions that help Alvis House positively impact people's lives.

To learn more about our relationship with Alvis House, visit beneschlaw.com/myteam



"What sets Benesch apart from other firms is the fact that they're real people. Everyone I've met — every attorney, every partner — really cares about what we're doing."

DENISE M. ROBINSON
President and CEO
Alvis House



FEATURED ATTORNEYS (LEFT TO RIGHT)
MARTHA SWETERLITSCH—TEAM LEADER,
SUSAN PRICE, LEE KORLAND, JACOB FLEISCHMANN,
JENNIFER TURK, JASON GEORGE

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Events

Upcoming OANO Webinar May 26: Board Orientation: Do Your Board Members Know Their Responsibilities?

It may be a volunteer position, but just like any job, there are roles and responsibilities for board members. It is the role of the nonprofit organization to educate its board members about their duties. This webinar is for the executive director looking for information to incorporate into their board orientation process or for the board member wanting to understand their role as a leader of a nonprofit organization. Topics covered will include: best practices for board responsibilities, policies & procedures, board composition and evaluation, duty of care, duty of loyalty, duty of compliance and duty to maintain accounts. Please [click here](#) for more information.

Please keep an eye out for information about Benesch's next not-for-profit event, coming this fall in Columbus!