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*The Harry H. Beren  
Dina D'malchusa  
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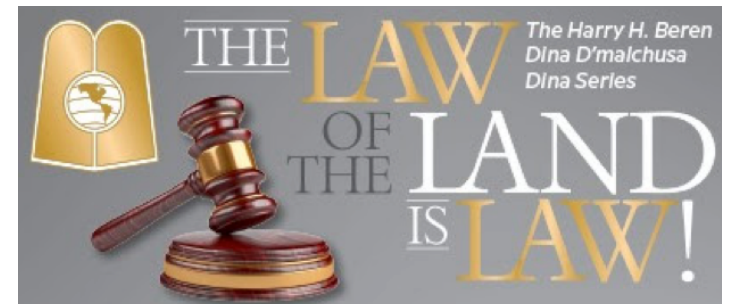
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# **Keeping Your Organization Compliant Monday, April 24, 2017**

# Today's Agenda:

- Introduction
- Role of Trustees and Executive Directors
- Record Keeping and Filing Obligations
- Other Revenue
- Q & A



# Your Hosts:



## Baruch S. Gottesman, Esq.

- Attorney in NY and NJ
- Over decade of experience with government examinations, internal investigation, and compliance issues for Nonprofits



## Rabbi Eliyahu Stern

- Executive Director of large Yeshiva Ketana in Lakewood
- Responsible for multi-million dollar budget including compliance program under Federal and New Jersey law and food program oversight

# Disclaimers:

i. For Information Purposes Only:

*This presentation is for general information purposes only. Every situation is unique and you must speak with your accountant, counsel and other appropriate professional about the rules and regulations that may apply to your particular situation.*

ii. No Attorney-Client Relationship Created:

*This is a public presentation intended to alert participants of the general sorts of issues that Nonprofits must address. No attorney-client relationship is created by this discussion and no information provided is intended as legal guidance for any participant.*

iii. IRS Circular 230 Disclosure:

*To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication and presentation is not intended or written to be used, and cannot be used, for the purpose of: (i.) avoiding penalties under the Internal Revenue Code; or (ii.) promoting, marketing, or recommending to another party any transaction or matter addressed therein.*

# Role of Trustees and Directors:

Responsibility of גבאייים to the community has a long legacy in Halacha See, e.g., ש"ך and שולחן ערוך יורה דעה רנ"ז, ז

## ש"ך יורה דעה רנ"ז ס"ק ג'

**ג אבל מי שאינו כשר בו' . חפי' נחמנה מדעת הלבור אס קוראים עליו חגר שלא נהג כסורה וחושדין אותו בדבר שראוי להסחפק צעיוני כדיין פשיטא שלריך לתת חשבון לפני כל מערער עליו דידוע שכמה דברים לריבים להוציא ממשות לבור שאין לגלות אלא לכוועים . מהרי"ו סס ומציאו ד"מ :**

הוא חייב על ידי ש"ך :  
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# Titles do not Matter

Folks in charge have responsibility  
regardless of name they are given.

**New York:** Not-for-Profit Corporations Law § 701(a) (Not-for-Profits managed by **Board of Directors**)

Religious Corporations Law § 207; and § 192, 4th Paragraph  
(Jewish and Article X Religious Corporations managed by **Trustees**)

Not-for-Profit Corporations Law § 701(b)  
**(Managers in Cert. of Incorporation have same obligations and same liabilities as Trustees)**

**New Jersey:** Title 15A. Corporations, Nonprofit §§ 15A:2-8(6); 15A:6-1, et seq.  
(Certificate of Incorporation identifies and management conducted through **Trustees**)

§ 15A:1-2(i)(Definitions: Trustee)  
(includes "**Director**", "**Manager**", "**Governor**" or **any other title**)

**Internal Revenue Code:** Treasury Regulations (e.g. § 53.4958-6) discuss "**authorized body**".

# Directors/Trustees/Donors do not own their מוסד

- Under American law, the managers are trustees on behalf of the public – not owners.
- Donors and Trustees have no ownership

**New York:** Not-for-Profit Corporations Law § 204 (no activities for pecuniary profit or financial gain)  
Not-for-Profit Corporations Law § 515 (dividends prohibited)  
Not-for-Profit Corporations Law § 715 (prohibiting related party transactions)

**New Jersey:** § 15A:6-8(a)(Effect of common trusteeships and trustees' personal interest)  
(any contract or other transaction with Trustee must be fair and reasonable)

**Internal Revenue Code:** Treasury Regulations, including § 1.501(c)(3)-1(c)(2) prohibit private inurement.

# Directors/Trustees Face Liability

- Identity of Directors are often a Public Record
  - All sorts of people want a piece of you

**State of New York:** New York State Office of the Attorney General's Charities Bureau  
New York State Department of State, Division of Corporations  
County Clerk's Office

**State of New Jersey:** New Jersey Office of the Attorney General, Division of Consumer Affairs,  
Charities Registration Section

**United States Treasury Department:** Exempt Organizations Division

**Members:** New York Not-for-Profit Corporations §§ 621, 623, 719, and elsewhere  
New Jersey: Provisions Relating to Actions in the Right of a Corporation, § 15A:3-5

**General Public:** If gross negligence alleged, CPLR § 3211(11)



# How to Protect Directors - 1

- Oversee operations prudently and in good faith
- Keep contemporaneous documentation of considered decisions (including Minutes, Notes)
- Delegate responsibility to Committees
- Rely on accountant, counsel or other professionals' reports and opinions
- Serve without compensation
- Avoid “gross negligence”, “bad faith”, “deliberate dishonesty”

## How to Protect Directors - 2

- Indemnification clause in Cert. of Incorporation Bylaws, and agreements with Directors
- Errors and Omissions Insurance
- Have risk management plan
- Keep the organization's state corporate and federal nonprofit status active
- Keep Registered Agent active
- Beth Din Arbitration agreements where possible

# Filing Requirements:

**Form 990**  
 Department of the Treasury  
 Internal Revenue Service

**Return of Organization Exempt From Income Tax**  
 Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundation).  
 Do not enter social security numbers on this form as it may be made public.  
 Information about Form 990 and its instructions is at [www.irs.gov/form990](http://www.irs.gov/form990).

**2016**  
 OMB No. 1545-0047  
 Open to Public Inspection

**A For the 2016 calendar year, or tax year beginning** \_\_\_\_\_, 2016, and ending \_\_\_\_\_, 20

**B** Check if applicable:  
 Address change  
 Name change  
 Initial filing  
 Final return/terminated  
 Amended return  
 Application pending

**C** Name of organization \_\_\_\_\_  
 Doing business at \_\_\_\_\_  
 Number and street (or P.O. box if mail is not delivered to street address) \_\_\_\_\_  
 City or town, state or province, country, and ZIP or foreign postal code \_\_\_\_\_

**D** Employer identification number \_\_\_\_\_  
**E** Telephone number \_\_\_\_\_

**F** Name and address of principal officer: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**G** Gross receipts \$ \_\_\_\_\_  
 Yes  No   
 Are all subsidiaries included? Yes  No   
 If "No," attach a list (see instructions)

**H** EIN (insert no.) \_\_\_\_\_  
**I** 527  501(c) \_\_\_\_\_  
**J** 501(b) \_\_\_\_\_  
**K** Year of formation: \_\_\_\_\_  
**L** State of legal domicile: \_\_\_\_\_

**M** State of legal domicile: \_\_\_\_\_

**N** Tax-exempt status:  501(c) \_\_\_\_\_  
 501(b) \_\_\_\_\_  
 Association \_\_\_\_\_  
 Other \_\_\_\_\_

**O** Website: \_\_\_\_\_

**P** Form of organization:  Corporation  Trust  Association  Other \_\_\_\_\_

**Part I Summary**  
 Briefly describe the organization's mission or most significant activities: \_\_\_\_\_

**Part II Activities & Governance**

	Prior Year	Current Year
1		
2		
3		
4		
5		
6		
7a		
7b		

**Part III Revenue**

	Prior Year	Current Year
8		
9		
10		
11		
12		
13		
14		
15		
16a		
17		
18		
19		

**Part IV Expenses**

	Beginning of Current Year	End of Year
20		
21		
22		

**Part V Signature Block**  
 Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

**New Jersey Office of the Attorney General**  
 Division of Consumer Affairs  
 Office of Consumer Protection  
 Charities Registration Section  
 124 Halsey Street, 7th Floor, P.O. Box 45021  
 Newark, NJ 07101  
 (973) 504-6215

**Form CRI-150-I**  
**Long-Form Initial Registration/Verification**  
 (Revised April 2008)  
 All questions must be answered.

ent contains the facts and financial information for the fiscal year  
 number (EIN) \_\_\_\_\_ 2a. N.J. Charities F  
 of the registering organization:  
 necessary, otherwise leave this line blank)  
 postal, private or rural delivery mail box  
 address of the registering organization  
 Address  
 have any offices in New Jersey  
 the street address and  
 above is not where the organization  
 the name, full address, phone  
 correspondence should be addressed.

Street address \_\_\_\_\_  
 Fax number (include area code) \_\_\_\_\_  
 Street address \_\_\_\_\_  
 Fax number (include area code) \_\_\_\_\_  
 Street address \_\_\_\_\_  
 Fax number (include area code) \_\_\_\_\_  
 Web site \_\_\_\_\_

**4. Schedules and Attachments**  
 See instructions for filing on following page

**3. Annual Reporting Exemption**  
 Check the exemption(s) that apply to your filing. If your organization is claiming an exemption under one category (7A or EPTL only filers) or both categories (DUAL filers) that apply to your registration, complete only parts 1, 2, and 3, and submit the certified Char500. No fee, schedules, or additional attachments are required. If you cannot claim an exemption in any of the categories above, you must file applicable schedules and attachments and pay applicable fees.

7A filing exemption: Total contributions from NY State including residents, foundations, government agencies, etc. did not exceed \$25,000 and the organization did not engage a professional fund raiser (PFR) or fund raising counsel (FRC) to solicit contributions during the fiscal year.

EPTL filing exemption: Gross receipts did not exceed \$25,000 and the market value of assets did not exceed \$25,000 at any time during the fiscal year.

**2. Certification**  
 Check your organization's registration category:  7A only  EPTL only  DUAL (7A & EPTL)  EXEMPT

We certify under penalties of perjury that we reviewed this report, including all attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this report.

President or Authorized Officer: \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Chief Financial Officer or Treasurer: \_\_\_\_\_  
 Signature \_\_\_\_\_

Confirm your Registration Category in the Charities Registry at [www.CharitiesNYS.com](http://www.CharitiesNYS.com).

**1. General Information**  
 For Fiscal Year Beginning (mm/dd/yyyy) \_\_\_\_\_ and Ending (mm/dd/yyyy) \_\_\_\_\_

Check if Applicable:  
 Address Change  
 Name Change  
 Initial Filing  
 Final Filing  
 Amended Filing  
 Reg ID Pending

Name of Organization: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_  
 Website: \_\_\_\_\_

Employer Identification Number (EIN): \_\_\_\_\_  
 NY Registration Number: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Email: \_\_\_\_\_

**CHAR500**  
 NYS Annual Filing for Charitable Organizations  
[www.CharitiesNYS.com](http://www.CharitiesNYS.com)

**2016**  
 Open to Public Inspection

Sold with fee and attachments to:  
 NYS Office of the Attorney General  
 Charities Bureau Registration Section  
 120 Broadway  
 New York, NY 10021

# You are not Trump

## And even Trump isn't Trump

**2015**  
Open to Public Inspection

**Return of Private Foundation**  
or Section 4947(a)(1) Trust Treated as Private Foundation  
Do not enter social security numbers on this form as it may be made public.  
Information about Form 990-PF and its separate instructions is at [www.irs.gov/form990pf](http://www.irs.gov/form990pf)

**Form 990-PF**  
Department of the Treasury  
Internal Revenue Service  
For calendar year 2015 or tax year beginning

**2015**  
OMB No. 1545-0052  
Open to Public Inspection

**lefile GRAPHIC print - DO NOT PROCESS As Filed Data -**  
Form **990**  
Department of the Treasury  
Internal Revenue Service  
Under section 501(c), 527, or 4947(e)(1) of the Internal Revenue Code (except private Foundations)  
Do not enter social security numbers on this form as it may be made public  
Information about Form 990 and its instructions is at [www.irs.gov/form990](http://www.irs.gov/form990)

**Return of Organization Exempt From Income Tax**  
DLN: 93493320136275  
OMB No. 1545-0047  
**2014**  
Open to Public Inspection

Name of foundation: **THE DONALD J. TRUMP FOUNDATION**  
Number and street (or P.O. box number if mail is not delivered to street address): **WEISERMAZARS LLP 60 CROSSWAYS PK DR**  
City or town, state or province, country, and ZIP or foreign postal code: **WOODBURY, NY 11797**

**A Employer identification number**  
13-3404773

**B Telephone number**  
212.715.7231

**C If exemption application is pending check:**  
1. Initial return  Final return  Amended return  Name change   
2. Foreign organizations, check here and attach copy:  Initial return  Final return/terminated  Amended return  Application pending

**D 1. Foreign organizations, check here and attach copy:**  
2. Foreign organizations meeting under section 507(b)(1)

**E If private foundation status under section 507(b)(1)**   
**F If the foundation is in under section 507(b)**

**G Check all that apply:**  
Initial return  Final return  Amended return  Name change   
Address change

**H Check type of organization:**  
 Section 4947(a)(1) nonexempt charitable trust  Other taxable private foundation  Section 501(c)(3) exempt private foundation  Other (specify) \_\_\_\_\_

**I Fair market value of all assets at end of year (from Part II, col (c), line 16)**   
**J Accounting method:**  Cash  Accrual  Other (specify) \_\_\_\_\_

**K Form of organization:**  Corporation  Trust  Association  Other \_\_\_\_\_

**L Website:** WWW.CLINTONFOUNDATION.ORG

**M State of legal domicile:** AR

**N Name and address of principal officer:** Donna E. Shalala, 1271 AVENUE OF AMERICAS, NEW YORK, NY 10020

**O City or town, state or province, country, and ZIP or foreign postal code:** LITTLE ROCK, AR 72201

**P Number and street (or P.O. box if mail is not delivered to street address):** 610 PRESIDENT CLINTON AVE 2ND FL, LITTLE ROCK, AR 72201

**Q Name and address of principal officer:** Donna E. Shalala, 1271 AVENUE OF AMERICAS, NEW YORK, NY 10020

**R City or town, state or province, country, and ZIP or foreign postal code:** LITTLE ROCK, AR 72201

**S Tax-exempt status:** 501(c)(3)  501(c) ( ) (insert no.)  4947(a)(1) or 527  Other \_\_\_\_\_

**T Gross receipts \$ 194,422,359**

**U Telephone number:** 31-1580204

**V Telephone number:** (501) 748-0471

**W Group exemption number:** \_\_\_\_\_

**X Year of formation:** 1997

**Y State of legal domicile:** AR

**Part I Analysis of Revenue and Expenses**  
(The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a).)

	(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income
1 Contributions, gifts, grants, etc., received	781,370.	2,622.	N/A
2 Check <input type="checkbox"/> if the foundation is not required to attach Sch. B			
3 Interest on savings and temporary cash investments	2,622.	2,622.	
4 Dividends and interest from securities			
5a Gross rents			
b Net rental income or (loss)			0.
6a Net gain or (loss) from sale of assets not on line 10			
b Gross sales price for all assets on line 10			
7 Capital gain net income (from Part IV, line 2)			
8 Net short-term capital gain			
9 Income modifications			
10a Gross sales less returns and allowances			
b Less: Cost of goods sold			
c Gross profit or (loss)			
11 Other income			

**Part II Summary**  
1 Briefly describe the organization's mission or most significant activities: IMPROVE GLOBAL HEALTH & WELLNESS, INCREASE OPPORTUNITY FOR WOMEN/GIRLS, REDUCE CHILDHOOD OBESITY, CREATE ECONOMIC OPP & GROWTH AND HELP COMMUNITIES ADDRESS EFFECTS OF CLIMATE CHANGE

2 Check this box  if the organization discontinued its operations or disposed of more than 25% of its net assets

3 Number of voting members of the governing body (Part VI, line 1a) \_\_\_\_\_

4 Number of independent voting members of the governing body (Part VI, line 1b) \_\_\_\_\_

5 Total number of individuals employed in calendar year 2014 (Part V, line 2a) \_\_\_\_\_

6 Total number of volunteers (estimate if necessary) \_\_\_\_\_

7a Total unrelated business revenue from Part VIII, column (C), line 12 \_\_\_\_\_

7b Net unrelated business taxable income from Form 990-T, line 34 \_\_\_\_\_

**Revenue**

	Prior Year	Current Year
8 Contributions and grants (Part VIII, line 1b)	142,885,956	-52,086
9 Program service revenue (Part VIII, line 2g)	2,375,976	172,579,474
10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	159,457	2,897,690
11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	2,421,380	99,109
12 Total revenue—add lines 8 through 11 (must equal Part VII, column (A), line 12)	147,842,769	2,228,339
13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)	8,865,052	177,804,612
14 Benefits paid to or for members (Part IX, column (A), line 4)	0	5,160,385
15 Salaries, other compensation, employee benefits (Part IX, column (A), line 5-10)	29,914,108	0
16a Professional fundraising fees (Part IX, column (A), line 11e)	634,720	34,838,106
16b		850,803

## Who Does not have to File

- Formally recognized as a § 6033 Church
- Less than \$50,000.00 in a typical year
- Organizations that are not Nonprofits

**BUT**

- Still have disclosure requirements to Members
- Less transparency opens you up to potential issues

# **Who Does File and What is Disclosed?**

- Everyone else files something
- Different filing requirements depending on your budget and your State
- In some situations may not require an accountant, but certainly have one on call
- Most information goes online within 18 months
- Donors are supposed to be private

# Consequences of not Filing

- Yellow flags you for examination
- Three years (i.e. 2 years and-a-day) lose status
- Eligibility for federal and state grants compromised
- Eligibility for some foundation grants lost

# Other Revenue:



Agudath Israel of America Dinner 2016



# Nothing Wrong with Profit

- That’s why New York calls it “Not-**for**-Profit”
- Clinton Foundation mentioned earlier:

<b>Form 990</b> <small>Department of the Treasury Internal Revenue Service</small>	<b>Return of Organization Exempt From Income Tax</b> <small>Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)</small> <small>▶ Do not enter social security numbers on this form as it may be made public ▶ Information about Form 990 and its instructions is at <a href="http://www.irs.gov/form990">www.irs.gov/form990</a></small>	<small>OMB No 1545-0047</small> <b>2014</b> <b>Open to Public Inspection</b>												
<b>A For the 2014 calendar year, or tax year beginning 01-01-2014 , and ending 12-31-2014</b>														
<b>B</b> Check if applicable: <input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Final return/terminated <input type="checkbox"/> Amended return <input type="checkbox"/> Application pending	<b>C</b> Name of organization <u>BILL HILLARY &amp; CHELSEA CLINTON FOUNDATION</u> % ANDREW KESSEL Doing business as Number and street (or P O box if mail is not delivered to street address) Room/suite 610 PRESIDENT CLINTON AVE 2ND FL City or town, state or province, country, and ZIP or foreign postal code LITTLE ROCK, AR 72201 <b>F</b> Name and address of principal officer Donna E Shalala 1271 AVENUE OF AMERICAS NEW YORK, NY 10020	<b>D</b> Employer identification number 31-1580204 <b>E</b> Telephone number (501) 748-0471 <b>G</b> Gross receipts \$ 184,422,359 <b>H(a)</b> Is this a group return for subordinates? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>H(b)</b> Are all subordinates included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small>If "No," attach a list (see instructions)</small> <b>H(c)</b> Group exemption number ▶												
<b>I</b> Tax-exempt status <input checked="" type="checkbox"/> 501(c)(3) <input type="checkbox"/> 501(c) ( ) ◀ (insert no ) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527														
<b>J</b> Website: ▶ WWW.CLINTONFOUNDATION.ORG														
<b>K</b> Form of organization <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input type="checkbox"/> Other ▶														
		<b>L</b> Year of formation 1997 <b>M</b> State of legal domicile AR												
<b>Net Assets or Fund Balances</b>	<table border="1"> <thead> <tr> <th></th> <th style="text-align: center;">Beginning of Current Year</th> <th style="text-align: center;">End of Year</th> </tr> </thead> <tbody> <tr> <td><b>20</b> Total assets (Part X, line 16) . . . . .</td> <td style="text-align: right;">277,805,820</td> <td style="text-align: right;">354,190,170</td> </tr> <tr> <td><b>21</b> Total liabilities (Part X, line 26) . . . . .</td> <td style="text-align: right;">30,506,362</td> <td style="text-align: right;">21,718,821</td> </tr> <tr> <td><b>22</b> Net assets or fund balances Subtract line 21 from line 20 . . . . .</td> <td style="text-align: right;">247,299,458</td> <td style="text-align: right;">332,471,349</td> </tr> </tbody> </table>		Beginning of Current Year	End of Year	<b>20</b> Total assets (Part X, line 16) . . . . .	277,805,820	354,190,170	<b>21</b> Total liabilities (Part X, line 26) . . . . .	30,506,362	21,718,821	<b>22</b> Net assets or fund balances Subtract line 21 from line 20 . . . . .	247,299,458	332,471,349	
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<b>Part VII Signature Block</b>														

# Commerciality

- No longer doing exempt activities
- Consider how much time and money involved
- Can consider request for approval from IRS

Examples:

- + Matzah / Lulav & Esrogim sales
- + Dorms for folks not in the Yeshiva
- + Publishing

# UBTI

## Unrelated Business Taxable Income

- More involvement more likely UBTI
- Consider why you are using tax-exempt vehicle
- Can always ask for Private Letter Ruling or pre-approval from IRS
- Organizations with excess UBTI loses status

### Examples:

- + Use funds in account to build local housing
- + Fundraising programs that take on a life of their own



# Questions & Answers

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