



ASSOCIATION OF ESD PROFESSIONALS

# HOW TO

COMPLY WITH THE LAW  
(U.S. EDITION)





# TABLE OF CONTENTS

GULATIONS

**1**  
**Why Get the  
Legal Stuff  
Right?**

**3**  
**You Can Do  
This!**

**4**  
**A Few  
Disclaimers**

**5**  
**Part I:  
Compliance**

**15**  
**Table of  
Forms**

**18**  
**Part II:  
Permissions**

**20**  
**Part III:  
Contracts**

**27**  
**Conclusion**

**28**  
**Sources**

# WHY IS IT IMPORTANT TO GET THE LEGAL STUFF RIGHT?

## DOT YOUR I'S, CROSS YOUR T'S, BREATHE DEEP.



Setting aside some time to make sure you have all your legal ducks in a row is always a good idea. With most ESD practices, the list of legal matters is relatively short. So, it won't take too much of your time to get prepared. It will certainly take much less time than it would take to deal with the fallout should you not be prepared. And, again, it will save you needless legal expenses. Plus, for most practices, you will not need to hire a high-price attorney. Many of these matters you can handle yourself. For anything requiring a legal professional, you can probably use an online service like Legal Zoom, RocketLawyer, LegalSheild, or something similar (these are available in the U.S., UK, and Canada and there are probably similar services in other countries). For many things, you can hire a paralegal instead, at rates far below those of lawyers. In addition, many countries have what are called legal aid clinics in the United States which is free or low-cost legal advice for those in need. Many law schools in the United States run legal clinics with law students providing free legal assistance with oversight by experienced attorneys.

## HOW CAN PAYING ATTENTION TO THE LEGAL DETAILS BENEFIT YOUR ESD PRACTICE?

There are several reasons it is worth the extra time to dot your "i"s and cross your "t"s. First, following the law is, well, the right thing to do. Second, while not all laws pertaining to business are perfect, and some may be down-right unfair, they are there for a reason, and more often than not, that reason is to protect you and your participants. And when it comes to contracts and waivers and disclaimers, they are always there to protect you. From what you ask? From trouble. Trouble in the shape of complaints, lost business, and law suits (which translates to lost business and costs).

## HOW CAN GLOSSING OVER THE FINER DETAILS HURT YOU AND YOUR ESD PRACTICE?

On the flip side, by glossing over the legal details, you and your practice could get hurt. Should you fail to adequately comply with the law and protect yourself with contracts, waivers, disclaimers, and intellectual property protections, as needed, you could find yourself with frustrated or angry students, clients, or participants or embroiled in a lawsuit or other dispute resolution process that is time consuming, expensive, and/or unpleasant. If you have not incorporated or formed an LLC or other formalized and regulated business, you and your practice are one and the same in terms of liability. You will be personally liable for any legal transgressions and expenses. If your practice is an LLC or corporation, liability still attaches, it just won't affect your personal bank account, at least not directly. If your LLC or corporation are sued, you may not be implicated personally, but depending upon the matter, you may also be named as an individual in certain types of legal claims, like a lawsuit. For instance, violating someone's copyright or infringing a trademark can be very expensive. Bottom line, spend the small amount of time it takes to prepare those waivers and execute those contracts so that you never need to visit the inside of a courtroom as a defendant.



What legal rules and protocols should I be aware of? What are some of the documents I will need to acquire? Are there any forms that I need to fill out and file?

There are many ways to get inexpensive or even free legal advice, some online and some in person. For free help in the U.S., one example is [LawHelp](#). You can also look for legal clinics in cities and associated with law schools. Also check out court websites because they provide some assistance online, too, and sometimes in person, including forms for a whole host of things. For low-cost help, check out websites like [LegalZoom](#) or [Nolo](#) for information and forms and there are tons of other options. The Association believes that there are legal aid resources in countries around the world, but we do not yet know as much about these so cannot make specific recommendations, but do an online search for legal aid or online legal help to find resources in your country.

# SI SE PUEDE!

## WORDS OF ENCOURAGEMENT

Before jumping in, we would like to say that it is not difficult to take basic precautions. And the Association is here to help in any way we can. There is a lot you can do to protect yourself without having to hire a lawyer, online or otherwise. And we promise, none of this is difficult! The hardest part is setting aside the time to take a few key steps, so add it to your schedule now and you will be well on your way to feeling uber-prepared.



# BEWARE! DISCLAIMERS

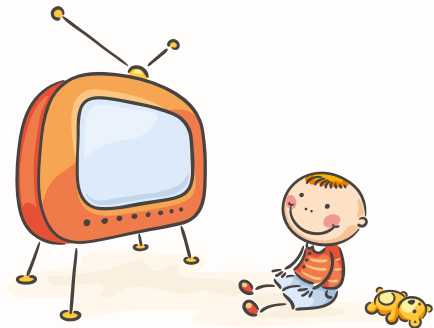
THIS PAGE CONTAINS MIND-NUMBINGLY BORING STUFF.

## Disclaimer

*Nothing in this How-To does or is intended to constitute legal advice. The Association recommends that readers seek out legal counsel when they need advice or assistance, especially with complicated, tricky, and sticky situations.*

### BE AWARE: U.S. PERSPECTIVE ON ACCOUNT OF AUTHOR BEING FROM UNITED STATES

This How-To is written for international ESD practitioners, but the examples provided use United States law. If any ESD professionals reading this know something about the law outside of the United States, we would love for you to be a guest writer for a How-To! We can only write what we know, and our resident lawyer is American and was trained and practices in the United States.



# PART 1: COMPLIANCE

Let's start by addressing the kinds of things with which you need to be in compliance. First, there are the laws and rules relating to the structure of your business (i.e., an LLC or S corporation). Second, what would a compliance section be without taxes? Third, governments require that you comply with rules and laws for accepting donations. And finally, if your organization wishes to engage in political activity (such as advocacy and lobbying), there is another set of rules and laws with which you are required to comply. So, let's dive in!

## SECTION ONE || STRUCTURE OF YOUR ESD PRACTICE

The kinds of forms you need to file depends on the type of practice you are operating. In the United States, both federal, state, county, and city laws will dictate what forms and payments you are required to submit. What makes this a bit of a job is tracking what you need to submit and to whom. There are not many forms required by each level of government, but there are up to four levels of government you'll need to check in with.

For LLCs, S Corporations (corporations most often used by small businesses), unincorporated non-LLC partnerships, and sole practitioners, the forms and fees you need to submit fall into three broad categories: 1) registrations, 2) taxes, and 3) legal.

### HELLO WORLD

A note to our members and friends outside the United States: For those of you operating your ESD practices in other countries, we are not (yet) versed in the rules and laws that apply to the country(ies) in which you practice, but there is a good chance that there will be similarities to requirements governing in the United States. Our hope is that this guide will give you an idea of the types of rules to think about and research.

## SECTION TWO || REGISTRATIONS AND FEES

### REGISTERED AGENT AND ADDITIONAL SERVICES

If you are forming a corporation or LLC for your ESD practice, you are required to appoint a registered agent in each state in which you do business. What is a registered agent, you ask? Well, it is the person to whom legal documents for your business will be sent. The idea is to ensure that every business receives due process, receives notification of all lawsuits and legal actions involving the business.

State laws dictate the rules about who can serve as a registered agent. In all cases, the person must have their physical address in the state. In many cases, you have the option to appoint yourself or someone else in your company as the registered agent, in which case it won't cost you anything. However, the registered agent does have responsibilities and may receive mail for your ESD practice at their address. Some states require the registered agent to be a lawyer or part of the company's management (Virginia).

If you don't want the responsibility of being your corporation or LLC's registered agent, you can hire one. One option is to hire a company that provides that service in many states (in case you conduct business in more than one state) and also provides other service, like making sure your annual reports and fees get filed with the state and paid. For example, the Association of ESD Professionals uses a company called Northwest Registered Agent for its registered agent and some, but not all, of our compliance needs (don't forget about those pesky city business licenses!).

### ARTICLES OF ORGANIZATION AND INCORPORATION AND STATE ANNUAL REPORTS AND FEES

States generally require that you register your business with the state. Generally, the first step is to submit your articles of organization (for an LLC) or articles of incorporation (for a corporation such as a 501(c)(3) organization) and a fee to the state in which your practice is based. In subsequent years, you may be required to file an annual report and/or fee that provides very basic, updated information about your business and keeps your business in good standing. Unincorporated LLCs are usually exempt from the annual report requirement, however that does not mean they will be exempt from having to submit an annual fee. Every state is different, so please visit the website of your state for the requirements that apply to you or seek legal advice from a lawyer or paralegal.



## WHERE TO FIND INFORMATION ABOUT BUSINESS FILING REQUIREMENTS IN YOUR STATE

Each state has a department that handles oversight of corporations and LLCs operating within that state. In some states, like California and Ohio, it is a division of the Secretary of State's office (CA SOS; OH SOS), in other states like Hawaii, it is a state department of commerce, and in yet other states, like Virginia, it is a state corporation commission (VA SCC). If you search your search engine for state business search with the name of your state, something should pop up.

## COUNTY DBAS AND CITY BUSINESS LICENSES

If your practice is not incorporated and operating as a sole practitioner, a partnership, or an LLC, you may want to establish a fictitious or assumed name for it, otherwise known as a DBA (short for Doing Business As). And just about every business, whether charitable or for profit, is required to have a business license. To register and pay for a business license, check in with your city; to establish your practice's DBA, look to your county. Usually, business license fees are not too steep, but the form and fee will need to be submitted for you to be in compliance with local laws. For those of you living in place that is not a city (e.g., an unincorporated area or a county, such as Arlington, Virginia), your county will likely handle business licenses as well as DBAs.

Some cities (and sometimes counties) may also require that your practice pay additional taxes or fees, possibly tied to your office space. And even if you do not lease or own office space for your ESD practice, you may need to report that fact so they know why you are not submitting a fee.

DBAs do not require annual filings or fees (yay!). The only reason you'll have to revisit your DBA paperwork is if you need to amend it or withdraw it. For business licenses, however, you will need to pay an annual fee, so we recommend adding that to your paperwork calendar.

## SECTION THREE || FEDERAL AND STATE TAXES

The business structure of your ESD practice will dictate what taxes you owe, what forms you should use to file, and when you will need to pay them. If you are operating as an S Corporation there is one set of rules. If you are operating as an unincorporated LLC, there is another set of rules. And if you are operating as a sole proprietor or partnership (that is not also a corporation or LLC), you will operate under yet another set of rules. There are many similarities among these, but also many differences. Please see our guide, *How to Form Your ESD Business*, for specifics.

So as not to bore you with too much detail about the differences between corporations, LLCs, and sole proprietorships, suffice it to say that you will need to file tax returns on behalf of your ESD practice one way or the other. You may or may not owe any taxes, but you will need to file a return. It is likely that you will be required to report your practice's revenue on your state and federal personal income tax returns (i.e., IRS Form 1040), but which schedules you will need to submit with that depends on the details. And if you are a non-profit and the IRS has granted you tax-exempt status, you will need to file a tax return even if you do not owe the government any money. See, *How to Comply With the Law Toolkit* for sample forms ... coming soon.



## SECTION FOUR || waivers

If you teach ESD, you may already be familiar with waivers (sometimes called releases, sometimes both). If not, please take this opportunity to acquaint yourself with the following:

- 1 Waiver and Release of Liability Form
- 2 Photo & Video Release Waiver (see Permissions section, below)

### LIABILITY WAIVERS

We recommend that every ESD instructor, whether teaching beginners or training experts, have every participant complete a Waivers and Release of Liability form. We recommend that ESD instructors and trainers do this for their in-person and virtual classes. Empowerment self-defense instruction is at least partly physical. Therefore, there is a heightened chance that participants could be injured. This could happen due to their

own actions, those of an instructor, those of a classmate, or because of an equipment failure. In addition to protecting your participants (by taking safety precautions, having first aid kits and defibrillators on site, etc.), we recommend you also protect yourself and, if you have a business, your business. To the extent anything can protect you from legal troubles in a case of injury, liability waivers can do that by having the participant acknowledge that they understand the risks and that instructors cannot guarantee their safety.

The waiver holds you, your business, and the owners of the space you are using (whether that is you or an owner from who you are leasing or even borrowing space) harmless from any and all claims, liability, loss, damage, or expenses arising out of the participant's participation.



You should also have a waiver for minors that is worded so that the minor's parent or guardian is releasing you from liability.

When you boil it all down, you want the liability waiver to have the participant acknowledge risks associated with taking your class and to release you from liability should they get injured. For a sample liability waiver, please see, *How to Comply With the Law Toolkit ... coming soon.*

## SECTION FIVE || HUMAN RESOURCES

In terms of the legal requirements of human resources, there is one thing above all that you should keep in mind when it comes to complying with the law: the difference between an employee and an independent contractor.

### INDEPENDENT CONTRACTORS

Many ESD practices use independent contractors rather than employees. If your organization hires ESD instructors or anyone else as independent contractors, you want to make sure that the IRS and your state government would consider them independent contractors. If the government determines that your hires should have been classified as employees, you may be held liable for the back payment of benefits as well as penalties.

Both the IRS and states regulate worker classification as either independent contractor or employee. The IRS is of course concerned that the proper taxes are being paid. States are also concerned with taxes, but at least some states also aim to protect workers who may be treated like independent contractors but who are really employees (and therefore not getting overtime pay, vacation pay, and other benefits).

**TIP**



If the company is supplying a computer and reimbursing expenses for professional development classes, these are signs that the worker is treated more like an employee than a contractor.

Enforcement authorities will ask the following types of questions to determine worker status:



Does the company control (or have the right to control) what the worker does and how they get their job done? Does the worker have to check in with someone at the company the way an employee would check in with a boss or ask permission for days off?

Does the company reimburse expenses for the worker? Does the company supply a computer and/or any other tools or supplies? How is the worker paid (hourly, monthly (such as on retainer for a set number of hours), or with a set salary and no minimum or maximum hours specified)?

Does the company have a contract with the worker? Does the worker receive employee-style benefits such as 401-K, health or other insurance, vacation pay, etc.? How is the time period of the relationship defined (is it not defined and indefinite or does it expire after several months or one year or on completion of a project)? Is it defined at all?

Does the worker have additional clients, other than the company in question? Does the worker have their own business, including a business license? Has the worker formed an LLC or S corporation? Does the worker negotiate their own rate of pay?

All of this has been from the viewpoint of an ESD organization who is hiring independent contractors. For ESD instructors and others who are working as independent contractors themselves, there are a few things to keep in mind:

You will be required to pay self-employment taxes, which include payments into social security. You will need to file a Schedule C with your 1040 tax return (unless you are in a partnership in which case there are different forms). This is true even if you have formed an LLC or incorporated as an S corporation.

You should always have a contract with your client. The contract should specify your rate of pay and the number of hours you expect to work. The contract should also specify the nature of your work.

When you take vacations and sick days is entirely up to you. You do not need to report this information to your client beyond common courtesy and some schedule coordination (in other words, you can let them know you won't be responding to email because you'll be away but don't ask permission).

Do not expect to be reimbursed for expenses. You are operating as your own business, whether you've formalized that through the use of a DBA or the creation of an LLC or S corporation, and so you are responsible for expenses.

*For more information, you can visit the IRS website and make sure to check out your state's website—departments that handle employment matters have different names in different states, but often include the word "employment" or "labor" (e.g., California Employment Development Department, New York and Maryland Department of Labor).*

## california

Note that California is particularly strict about independent contractor status. In 2019, California enacted a Gig Worker Law (California Labor Code § 2750.3; also referred to as AB5) that includes rigorous tests to determine independent contractor status. The law does include exemptions for about 50 categories of workers, but they are only partial exceptions—each worker category still has to satisfy a test, though a less rigorous one (and there are different tests for different categories!). ESD professionals are not addressed in the exemptions (and neither are martial artists or physical trainers). The one category that could conceivably apply is the Single Engagement Events category which is for “individuals such as DJs, caterers, or musicians who provide services at a single ... stand-alone non-recurring event or a series of events in the same location no more than once a week.”

## canada

Canada uses similar tests to those used in the United States to determine who is and is not an independent contractor. And in 2023, Canada’s Employment Standards Act was amended with respect to how “business consultants” are classified. Because “business consultant” is defined rather broadly, you should consult an attorney or other expert if you are contracting with someone who lives in Canada. It would not include an ESD instructor, but it may (or may not) include someone you hire to do marketing or PR work. Please see the Canadian links in our Resources section for more on this.

The costs can be steep for classifying a member of your team as an independent contractor when the government sees them as an employee. If you are unsure of how to classify a member of your team, please consult an attorney.



**TIP**

## EMPLOYMENT FORMS

Other things you should be aware of are some of the immigration and tax forms that all employees and contractors are required to submit in the U.S. and there are likely similar forms in many countries around the world. For U.S. workers, make sure they fill out a proof of citizenship (I-9 form) and the tax withholding form W-4 (they will receive a W-2 form to submit with their taxes at the beginning of the year). For independent contractors, they will also need to submit the I-9 form and instead of a W-4, they fill out a W-9 form (they will receive a 1099 to submit with their taxes rather than a W-2). For U.S. organizations hiring people from outside the U.S., you may need a W-8BEN. See these and other sample forms in our [HR Toolkit](#), available to Members now ... coming soon for non-Members.

For more specifics on human resources compliance relating to onboarding, check [How To Onboard New Employees](#).

## DOES MY ESD PRACTICE NEED TO CONDUCT AN AUDIT?

The simple answer is: probably not. That does not mean it isn't wise to periodically have an audit conducted, however. Publicly-traded companies are required to have audits conducted. Privately-held companies, however, are generally not required by law to have audits conducted. Having said that, there are many other reasons a business may need to conduct an audit, such as when one is requested or demanded by an insurer, in the case of a merger, when required by a lender or investor, or just because the Board thinks it would be good practice. In addition, participation in a government program or acceptance of government funding might trigger an audit requirement. And sometimes it makes more sense to conduct an abbreviated audit, called a financial review.

## TABLE OF FORMS

On the following pages is a table of some of the forms you should keep on your radar. For samples, please see our new [HR Toolkit](#) and look out for our [How To Comply with the Law Toolkit](#) ... coming soon.



# TABLE OF FORMS

	LLC	S Corporation‡
<b>Paying Your Taxes (Federal Tax Forms*)</b>	<p>IRS Form 1040 with Schedule C.</p> <p>Business revenue taxed as personal income. Pay self-employment tax.</p> <p>See IRS Publication 3402 for guidance and note that state LLC rules vary.</p>	<p>IRS Form 2553            IRS Form 1120-S            Schedule K-1 (w/Form 1065)            Schedule E (w/Form 1040)            Form 1040 (for all 1040 forms and schedules, click here).</p> <p>Owner taxed at personal income tax rate. Pay FICA rather than self-employment tax. If paid in dividends, pay taxes on dividends/distributions).<sup>oo</sup></p> <p>For Corporate NonProfit 501(c)(3)s (charities, foundations, and other nonprofit organizations)            Establish Non-Profit Status: IRS Form 1023: Application for Recognition of Exemption Under 501(c)(3)            File annual tax form, Form 990, 990-EZ, 990-N depending on amount of revenue: IRS Form 990 Series</p>
<b>Forming Your Organization</b>	<p>Business Search (e.g., California Secretary of State Online Business Search)            Articles of Organization (e.g., California Form LLC-1)            Find Registered Agent (states often provide lists, e.g., California's list of registered agents)            Operating Agreement</p>	<p>Nonprofit Articles of Incorporation for Nonprofit Corporation (from Northwest Registered Agent) and see samples from Ohio and New Mexico (Ohio Articles of Incorporation; New Mexico Articles of Incorporation)            Articles of Incorporation for Public Benefit Nonprofit Corporation</p>
<b>Forms Specific to Non-Profits</b>		<p>Establish Non-Profit Status: IRS Form 1023: Application for Recognition of Exemption Under 501(c)(3)            IRS Form 990 Series</p>
<b>DBAs</b>	<p>Usually LLC does not need DBA, but business name search recommended (e.g., Virginia State Corporation Commission Name Search)            If LLC wants name other than name in Articles of Organization, can create a DBA through state (i.e., Colorado Statement of Trade Name of Reporting Entity)</p>	<p>No DBA needed, but business name search recommended (e.g., Virginia State Corporation Commission Name Search).</p>

## TABLE OF FORMS, CONT'D

	LLC	S CORPORATION‡
<b>Bylaws &amp; Operating Agreements</b>	Sample Operating Agreement (from Nolo)	Sample Bylaws for Nonprofit Corporation (from Northwest Registered Agent)
<b>Business Filings<sup>o</sup></b>	Statement of Information (e.g., California LLC-12 to be filed biennially (once every 2 years) Registration as LLC in Other States (if you do business in states other than your LLC's state, you may have to register in those other states, depends on rules of each state) City Business License (e.g., Portland, Oregon County and City Business License Tax Form SP-2022)	City Business License (e.g., Los Angeles Business Tax Application and Aplicación de Impuestos de Negocio)
<b>Political Activity in a Nonprofit</b>	See, link in sole practitioner column.	See, link in sole practitioner column.

### Notes

<sup>a</sup> See, [How to Form Your U.S. Business](#)

\* May also need to file state version of these forms.

‡ Note that C Corporations have very different rules and forms.

<sup>o</sup> For all or most of these forms, you can file them online, using online portals. The links provided are usually to sample forms, not the portals. Most of the forms and portals are easy to find through a search engine. For New York City, business licenses are broken down by type of business, so there are tons of them (<https://nyc-business.nyc.gov/nycbusiness/index>), but the City does provide a step-by-step tool: <https://nyc-business.nyc.gov/nycbusiness/wizard>.

\*\* Some counties also require that you register your business with them, sometimes even pay a fee or tax. Please check with your county.

<sup>oo</sup> Note that state rules and tax rates vary a lot!

### Sources

Nolo on LLCs, <https://www.nolo.com/legal-encyclopedia/what-is-a-limited-liability-company.html>; <https://www.nolo.com/legal-encyclopedia/california-form-llc-31670.html#registered-agent>; <https://www.nolo.com/legal-encyclopedia/annual-report-tax-filing-requirements-california-llcs.html>.

# TABLE OF FORMS—HR

	EMPLOYEES	CONTRACTORS	BOTH
<b>Onboarding</b>			
		IRS W-8BEN or W-BEN-E*	
			USICS I-9
		W-9	
	IRS W-4		
	Sample Employment Contract ‡	Sample Contractor Agreement with SOW	
	Job Offer Letter‡	Sample Contractor Agreement with SOW	
<b>Management</b>			
			Sample Liability Waiver Form
			Sample Liability Waiver Form for Minors
			Sample Photo Release Form
<b>Offboarding</b>			
	Sample Exit Interview Form		

<sup>a</sup> See, [How to Form Your U.S. Business](#).

\* If you are a U.S. employer and hire a contractor from outside the U.S., you will need to have your contractors fill out an IRS W-8BEN form to confirm that they do not have US income tax obligations. For entities (such as independent contractors that operate through an LLC, the form is W-8BEN-E.) Where these forms have not been collected and any income tax liability is unclear, businesses need to withhold 30 percent of payments for potential income tax. <https://nhglobalpartners.com/what-is-a-w-8ben-form/>; <https://www.irs.gov/instructions/iw8ben>; <https://www.irs.gov/instructions/iw8>.

‡ Note that you can use a Sample Employment Contract or simply have your new employee sign the Job Offer Letter.

# PART 2: PERMISSIONS

## PHOTO & VIDEO waivers

Photo and video waivers are a bit different than liability waivers. Their focus is not protecting you in case something goes wrong, though they do a bit of that too; rather, they grant you permission to use photos and videos of your participants in your social media posts, on your website, in your newsletters, and in any marketing or other materials you may produce. Some liability waivers include a one-line photo waiver at the bottom of the form, but we recommend you use a separate, more extensive form. See Sample Photo & Video Waiver. We also recommend that you consider adding a signature line to your photo waiver for parents/guardians if your participants are under 18 years of age. And just because it will save you a lot of hassle, we highly recommend that you have participants fill these out before class begins since they are much more difficult to attain after the fact.

What photo & video waivers do is grant you or your organization permission to use images of participants in your publications. Publications include your website, social media posts, your magazine, and so on. The participant agrees to not only let you use their likeness for free but to own the photos and videos (or video clips), meaning you are not obliged to return those digital files (or prints) or to destroy them once you are finished with them (you can save them for future use).

On the Association's sample photo & video release form, we include a promise to do our best to share copies of photos & videos with the participant when possible, but we also make sure that you are not obligated to do so. The waiver also gives you permission to alter the photos and videos, in other words, to crop, add effects, zoom in or out, and so on, but it has you waive your right to any royalties arising from those altered images.

# COPYRIGHT



According to the United States Copyright Office, “copyright is a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression.” Examples of types of works that can be protected with a copyright are literary works (fiction and non-fiction), music, lyrics, artwork (paintings, illustrations, etc.), jewelry, digital content (from websites and blogs to computer programs), movies, video games, photos & videos, architecture, and more.

For most ESD practices, copyright protection is most relevant to original content you publish on your website or in a blog or newsletter. To be worthy of copyright, the work must have a modicum of creativity, so a list of ESD elements would not qualify but a blog about how ESD makes you feel would. If you choose to share (in other words, publish) class plans, those would be copyrightable. A presentation you prepare for a conference could be copyrightable. And a video recording of you teaching a class might qualify. If you teach and record a class for an ESD organization, you may be asked to sign a contract agreeing to sign over your rights to the video.

Copyright law also makes it possible for employers to own the works created by employees within the scope of their employment, called “works made for hire.” The work made for hire doctrine also applies to certain independent contractor relationships, for certain types of commissioned works.”

The best part is that a copyright is automatically established as soon as your work is fixed. The Copyright Office says that a work is fixed when “it is captured (either by or under the authority of an author) in a sufficiently permanent medium such that the work can be perceived, reproduced, or communicated for more than a short time.

For example, a work is fixed when you write it down or record it.” However, you do have the option to obtain additional protections by registering your copyright with the U.S. Copyright Office (these protections make it possible to sue for additional types of monetary damages).

## PART 3: CONTRACTS

Nearly everyone will need to enter into contracts at some point in their ESD practice. If you are an employee of an ESD organization, you may need to sign a contract or two, but most likely you won't have to provide them. If you run an ESD practice, especially if you run an organization that hires independent contractors or employees or solicits donations or does any number of things, you will need to supply many of these contracts. We have included a list of contracts below and will go through a few of them here.

### WHAT TO LOOK OUT FOR WHEN SIGNING CONTRACTS

This is difficult to write about because every contract is different. In addition, as a professional association, we cannot provide legal advice. However, we thought we would point out a few red flags and fine print you might want to take the time to read.

#### 1 Date

We believe that every contract should have a date. A date of effectiveness and/or the date signed. You'd be surprised how many contracts do not include a date, not even a year. This makes referring back to them (and enforcing them) problematic. If you are signing someone else's contract, add the date even if there is no line for it.

## 2 SIGNATURE

Equally surprising is how many contracts never get executed (signed by both parties). Without a signature, enforcing the contract is difficult and referring back to it may leave you guessing as to whether the promises made in the contract ever happened. In the moment, you think you wouldn't forget something like that, but it happens.

## 3 SPECIFICS

If using a contract template or sample contract, make sure to personalize it to the parties making the agreement. We also recommend always including a physical address for each participating party because addresses serve as good identifiers (especially if the names of the parties are not uncommon). If you are signing a contract and see any specifics missing, don't be shy, suggest a few amendments or additions before you sign.

## 4 PURPOSE OF CONTRACT

Make sure that the purpose of the contract is clearly stated. Again, if you are signing a contract prepared by someone else, suggest some amendments or additions before signing. Chances are your changes will be accepted or at least negotiated.

# 5 Terms

You will want to read the substantial terms of your contract closely, especially in independent contractor agreements and those involving intellectual property and non-solicitation. If you verbally agreed to a certain rate of pay, make sure that the contract includes the amount discussed. If you negotiated the description of services to be provided, make sure those put down in the contract match. And read the contract to make sure that terms you never discussed are not “slipped in” or, at least, that anything not discussed is OK with you.

# 6 FINE PRINT

There are a lot of boiler plate paragraphs in contracts that address various contingencies, paragraphs with labels like “Representations & Warranties” and “Notice” and “Severability” and “Entirety of Agreement.” If you are not one to read the fine print and do not have a lawyer to do so for you, at least read the governing law section. This section determines which state or provincial law will govern should you have a problem with the lawsuit. Similarly, notice if there is an arbitration or mediation clause. Most contracts in the United States include a provision that says the parties will arbitrate or mediate any disagreements rather than litigating in court. There is nothing wrong with this, it is usually a good thing, but you should be aware of it ahead of time.

## INDEPENDENT CONTRACTOR AGREEMENT

The independent contractor agreement is the one contract, along with the statement of work, you are most likely to need whether you work as an independent contractor or your organization hires independent contractors. We recommend using an independent contractor agreement with a statement of work (SOW).



The independent contractor agreement establishes the relationship between contractor and client and sets down some of the terms that are unlikely to change over time (such as confidentiality and intellectual property clauses and legalese such as severability, notice, and governing law). The SOW establishes the terms that may change over time (SOWs should be updated at least once a year). For instance, SOWs address the term of the contract (otherwise known as the period of performance), the description of the project or nature of the work to be performed, and contractor fees. Please see the sample independent contractor agreement with SOW in the See, How to Comply With the Law Toolkit for a sample agreement ... coming soon.

## NON-DISCLOSURE, INTELLECTUAL PROPERTY, AND NON-SOLICITATION AGREEMENTS

Another commonly used agreement is a non-disclosure agreement. If you are hiring someone who will be handling or even just exposed to information you want to keep within your organization or more confidential, we advise either executing (signing) a non-disclosure agreement (also called a confidentiality agreement) or adding a non-disclosure or confidentiality clause to the independent contractor agreement. Similarly, if you want to protect your intellectual property and want what your contractor or employee produces for you to become the property of your organization (so that you can use it multiple times and long after the contractor has gone), we recommend using an intellectual property agreement or including a clause in the independent contractor agreement.

Finally, and in the same vein, we recommend using a non-solicitation agreement or adding a non-compete clause to independent contractor agreement to ensure that what your contractors and employees learn and the connections they make are not used in competition with your organization after (or before!) they leave. For sample contracts (which can also be used as clauses in other contracts), see, How to Comply With the Law Toolkit ... coming soon.

## DONOR AGREEMENTS

The bread and butter of 501(c)(3) organizations are donations. With the exception of organizations that are funded by an endowment or something similar, most organizations rely on donations solicited and made online and on donations associated with conferences and other events. For small donations, those in the tens, hundreds, or even low-thousands of U.S. dollars (or international currency equivalent), donor agreements would be a burden, reduce gift revenue, and are not necessary. For large donations, in the tens of thousands of U.S. dollars or more, you may want to consider a donor agreement. The donor agreement is used to establish a charitable fund for accepting, holding, and investing large monetary gifts. The agreement covers the purpose of the fund, terms for investing the funds, and the sum and other specifics of the gift (whether a one-time gift or ongoing). See, *How to Comply With the Law Toolkit* for a sample agreement ... coming soon.

## SPONSORSHIP AGREEMENTS

Sponsorships are found in the space somewhere between donations and advertising. Sponsorships are different than other donations in that sponsorships bring more recognition to the sponsor than donations bring to donors, but they are not usually considered advertising. Often, sponsorships are made in conjunction with a specific program or event. The nonprofit usually thanks the sponsor publicly (on website, in print, on conference banner, verbally at event) and displays their name, logo, website home page, address, and/or phone number, but the nonprofit does not advertise the sponsor or their products or services (which means the nonprofit should not include the sponsor's tag line or add other qualifiers to the sponsor's name/logo/website, like "Coca Cola, the best soda ever"). Sponsorships are usually tax free to the nonprofit (not subject to Unrelated Business Income Tax (UBIT) the way advertising revenue would be).

## INVESTOR AGREEMENTS (NOT!)

We are not addressing investor agreements here for two reasons: 1) they can be complex and very specific to the parties involved and 2) it is still early days for ESD practices that operate as for-profit businesses and generate enough revenue to attract investors. However, when there is demand for it, we will investigate and report back!

## MOU

MOU stands for Memorandum of Understanding. An MOU is an agreement between two parties who agree to move forward with a contract in the future. They can be legally binding, or not—it all depends on how it is written. For instance, when a government entity plans on partnering with a private company to build a public works project, there are many regulatory hoops to jump through. The parties may use an MOU to solidify their intent to enter into the agreement before they are actually able to do so. For ESD organizations, it might be an agreement between an organization with a physical space and membership who might benefit from ESD classes on the one hand and an ESD teaching organization or instructor on the other hand (such as a church/temple/mosque, a domestic violence shelter, or a firehouse). Perhaps two ESD organizations want to agree to hire one another's instructors for specific training programs in certain locations. These and other circumstances might warrant an MOU because the organizations or individuals would be agreeing to enter into a contract in the future. See, *How to Comply With the Law Toolkit* for a sample MOU ... coming soon.

## COCKTAIL NAPKIN AND HANDSHAKE AGREEMENTS

We could go on about additional types of agreements (see the list below), but we are concerned your eyes are already glazing over and thought it best to rest here. We have provided samples of the contracts discussed above as well as some of the additional contracts listed below.

Although verbal contracts and those written on the back of cocktail napkins may be enforceable in some circumstances (for a contract to be viable, one party makes an offer, a second party accepts the offer, and something of value is exchanged), we don't recommend taking the risk. If you use sample contracts and tailor them to your specific practice and needs, you will have gone a long way toward protecting yourself and your ESD practice.

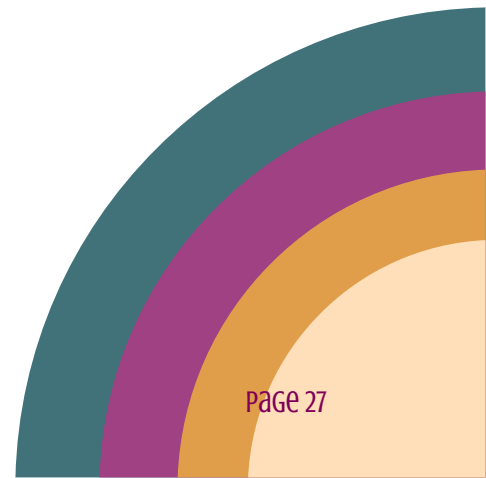
## LIST OF CONTRACTS

- INDEPENDENT CONTRACTOR AGREEMENT
- STATEMENT OF WORK (SOW)
- NON-DISCLOSURE AGREEMENT (NDA)
- INTELLECTUAL PROPERTY AGREEMENT
- NON-SOLICITATION AGREEMENT
- MEMORANDUM OF AGREEMENT (MOU)
- OFFER LETTER
- RENTAL LEASE
- HOTEL OR OTHER VENUE CONTRACT
- DONOR AGREEMENT
- SPONSORSHIP AGREEMENT
- AUTHOR AGREEMENT
- SPEAKER AGREEMENT

# CONCLUSION

This is not the briefest (corny legal pun not intended!) How-To the Association has ever produced. And so we are going to keep the conclusion short and sweet.

Be prepared, invest a little bit of time getting organized, and you will have protected yourself from unforeseen legal hazards. Running an ESD practice, whether it is 100% charitable, part-time or full-time, or a non-profit or for-profit model that supports you and your family, is no easy task. We hope that this How-To will help you with paperwork and bureaucracy so that you can focus on empowering individuals to protect and empower themselves.



# SOURCES

"Are You Misappropriating Your Nonprofit's Funds? A Look At Restricted Donations," April 25, 2022, Greg McRay, EA, Foundation Group, <https://www.501c3.org/misappropriating-nonprofit-funds/>.

"You Might Be a "Charity"—Yes, You! What Individuals Need to Know When Raising Money for a Charitable Cause," Minnesota Attorney General website, <https://www.ag.state.mn.us/Consumer/Publications/RaisingMoney.asp>.

"What is Copyright?" Copyright.gov, U.S. Copyright Office website, <https://www.copyright.gov/what-is-copyright/#>.

"California's AB5 Gig-Worker Law," Stephen Fishman and Glen Secor, <https://www.nolo.com/legal-encyclopedia/california-gig-worker-law-AB-5.html>.

"Exempt Job Categories Under California's AB5 Law," Stephen Fishman, <https://www.nolo.com/legal-encyclopedia/exempt-job-categories-under-californias-new-ab5-law.html>.

Government of Canada, Determining the Employer/Employee Relationship - IPG-069, Effective Date: April 3, 2006, Revised date: February 14, 2023, <https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/employer-employee.html>.

Ontario Guide to Employment Standards Act (including changes made in 2023), <https://www.ontario.ca/document/your-guide-employment-standards-act-0/business-and-information-technology-consultants#section-3> and <https://www.ontario.ca/document/your-guide-employment-standards-act-0/employee-status#section-2>.

"Memorandum of Understanding (MOU) Defined, What's in It, Pros/Cons, MOU vs. MOA," 3/2/2023, Will Kenton, <https://www.investopedia.com/terms/m/mou.asp>.

Stanford Law School, Mills Legal Clinic, Nonprofit Corporations, Forms and Sample Documents, Corporate Sponsor Agreement, <https://nonprofitdocuments.law.stanford.edu/wp-content/uploads/Corporate-sponsor-agreement-SLS-sample-09-08-20.pdf>.

# DISCLAIMER

The information provided in this article and on the Association website does not and is not intended to constitute legal advice, and the information and links are for general informational purposes only. Your use of any sample forms provided in conjunction with this document or at all by the Association of ESD Professionals does not create an attorney-client relationship with the Association, its Executive Director, its Board directors, or any of its employees or representatives. It is possible that some of the information provided in this article and on the Association website is not the most up-to-date information or specific to your geographic location (for instance, please note that national, state/province, and local/municipal laws and rules vary). In addition, this article and the Association website contain links to third-party websites—these links are for the convenience of the reader and they do not indicate endorsement or sponsorship of or recommendation or advertising for the linked companies, their websites, the information contained on their websites, or their products or services. Readers of this website should contact an attorney to obtain advice with respect to any particular legal matter and should contact an attorney or accountant for information regarding federal (or national), state/province, and local/municipal taxes (note that in the United States, state taxes vary from state to state). In addition, the how-tos produced by the Association most often address United States business customs, rules, and laws, though sometimes the business-related customs, rules, and laws of other countries may be similar (i.e., Canadian and United States (especially California) law regarding employees and independent contractors is very similar).

## CONTACT US

[www.esdprofessionals.org](http://www.esdprofessionals.org)  
[hello@esdprofessionals.org](mailto:hello@esdprofessionals.org)

+1 (703) 232-1636

