

Short Guide for Nonprofits

This brief guide is intended to assist small, start-up organizations in the formation and maintenance of a nonprofit entity. While accurate, information in this document is not intended to be comprehensive, so it is important to consult with a legal or tax professional if questions arise. (See [disclaimer](#)). The following overview provides a brief summary of the most common issues that nonprofits face and how to deal with them.

Formation

I. Needs Assessment

Before you begin an organization, it is important to research the community demographics to determine the size and needs of the geographic area that your organization would like to serve. Secondly, it is imperative to identify area competitors and other organizations that provide the same or similar services so your organization does not offer a service already in place. Additionally, your organization should identify stakeholders (individuals, corporations, foundations and other nonprofits) with whom the organization can collaborate to promote and maintain the organization. These identified stakeholders may be sources of funding, general support, volunteers and referrals. Remember to take advantage of the many free resources available online while completing the needs assessment.

II. Mission Statement

Every organization should draft a mission statement. The mission statement should explain a nonprofit's purpose in a concise manner. The mission statement should include both a short one-sentence statement that is easily remembered and another longer version with more detail. The short statement should be a brief tag line for the organization to allow the board members and volunteers to quickly convey the purpose of the organization to potential donors or new volunteers. The mission statement should be kept broad to allow your organization to expand and reinvent in the future.

III. Articles of Incorporation

Most nonprofits choose to incorporate to limit individual liability. The Articles of Incorporation serve as the defining document for your organization, listing the purpose and the main aspects of the organization and governance. Generally,

most states require that the Articles of Incorporation include the corporate name, the director(s) of the organization, a registered agent and office, an incorporator, and whether the organization will be member-based. Specific state codes list certain mandatory and optional provisions to be included in the Articles. When drafting the Articles, you should include less rather than more, including only what is formally required by statute to avoid the need for frequent amendment.

Upon completion, the Articles of Incorporation must be submitted to the State Corporation Commission or similar agency along with the appropriate fee (dependent on the state in which state you choose to incorporate).

IV. By-Laws

In addition to the Articles of Incorporation, a nonprofit organization must file Bylaws to secure tax-exempt status. The Bylaws and Articles of Incorporation are filed at the same time, but the Bylaws outline the internal governance structure and operations of the board. The Bylaws should be drafted to be general enough to allow for flexibility but specific enough to serve as a guiding document concerning the responsibilities, structure, and operations of the Board of Directors. The Bylaws also create a framework for the organization which aids in resolving internal disputes and ensures that financial resources are used properly.

The By-laws outline the structure of the Board of Directors (number, terms, leadership positions, committees). Each organization should structure the Board in the most effective way possible depending on the stage of operations, size and scope of the organization.

Additionally, the By-laws should have provisions for keeping the copies Article of Incorporation, By-laws and financial statements in a specified location

V. Determine Board Structure

The duty of Board of Directors is to carry out the mission of the corporation. The Board makes decisions about the policies and operations of the corporation and has the responsibility to tend to the legal, financial, operational and human resources functions.

When choosing Board members, it is important to evaluate skill sets that will be valuable to your organization (such as finance, legal, business, marketing backgrounds). Members of the Board must be able to commit to monthly or quarterly meetings (as required by the By-laws). The board members should

be fully briefed about the organization's history, goals and operations. The new board member should be provided with a number of documents such as the (1) mission statement, (2) Articles of Incorporation, (3) Bylaws, (4) most recent annual report, (5) financial statements including the budget and tax filings of form 990, (6) policies, (7) expectations for meeting attendance and committee work, and (8) a list of current board members with complete contact information and committee designations.

Individuals who serve on boards must understand that they are bound by two primary duties: the *Duty of Care* and the *Duty of Loyalty*.

The Duty of Care requires Board members to act (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interests of the corporation.

The Duty of Loyalty requires Board members to pursue the organization's best interest, avoiding conflicts of interest. The Duty of Loyalty prohibits a director from engaging in self-dealing (for example, getting the organization to contract with the board member's private business) unless there is full disclosure to the Board, the conflicted board member does not participate in any decision relating to his or her personal interests, and the transaction is clearly in the corporation's best interest.

Maintenance

I. Corporate Status

An organization must file an Annual Report with the State Corporation Commission to maintain corporate status each year. It is important review your organization's specific state statute regarding regulations, fee requirements, and procedural requirements for filing the Annual Report.

II. Tax Requirements

If your organization does not gross more than \$5,000 it is not necessary to file an application for tax exempt status,. If the organization exceeds 5,000 in gross receipts, however, an application for tax exempt status must be filed within 15 months from when the organization's creation (Form 1023). Most nonprofits fall under Section 501(c)(3), which not only exempts the organization from federal taxes but also allows donors to deduct contributions from their taxes. Do not forget to include all necessary fees, a copy of your Articles of Incorporation, a description of your organization's activities, and a financial budget for the next few years. In addition to the tax exemption application, your organization will need to apply for an EIN (Employer

Identification Number) even if your organization does not have employees (Form SS-4).

Once your organization obtains tax exempt status, your organization must file an Annual Report (Form 990). The returns must state specifically the items of gross income, receipts, and disbursements, and such other information in order to comply with the IRS requirements. Thus, good recordkeeping is important. Also, nonprofits with 501(c)(3) status must comply with legal limitations on political activity and lobbying.

If your organization would like more information, the IRS explains tax information for charitable organizations on its web site: <http://www.irs.gov> .

III. Fundraising

Before fundraising or soliciting donations, an organization must properly register with the specific state and local government. Check with each state in which your organization plans to solicit money, because different states have different requirements and fees based on the amount of money your organization plans to raise.

Most nonprofit organizations rely on donations to sustain their operations, so an annual giving campaign is a good way to ensure that the operational budget is covered. Be sure to provide receipts to donors. Additionally, it is important to identify and apply for grants from government agencies, foundations and corporations that are applicable to the mission of your organization. Finally, your organization should ensure that all fundraising professionals that you consult are registered with state or proper local authorities before solicitations begin.

IV. Employees/ Volunteers

As your organization hires employees or takes on volunteers, it is important to have a handbook in place to outline guidelines, policies, and procedures of your organization. The handbook should contain a policy that encourages reporting of problems under the Sarbanes-Oxley Act.

Since many nonprofit organizations rely on volunteers, it is important to be aware of different legal issues that will arise. A volunteer cannot receive anything of value in excess of \$500 a year. Additionally, your organization may be held liable for the actions of volunteers, so it is important to properly train and orient all volunteers to minimize risks.