

Obtaining 501(c)(3) Status



Objectives

You will learn:

- ◆ To identify and understand the benefits of nonprofit status.
- ◆ To understand IRS requirements.
- ◆ To prepare supporting documents and disclosures to accompany an application for nonprofit status.
- ◆ To be aware of and meet legal responsibilities of nonprofits.

Key Points

- ◆ Benefits of nonprofit status.
- ◆ 501(c)(3) status and how it can benefit NN centers.
- ◆ Overview of the application process, including timelines and requirements.
- ◆ IRS nonprofit designations—which is most appropriate for NN centers and why.
- ◆ Required supporting documents and disclosures.
- ◆ Limitations and responsibilities required of nonprofit organizations.
- ◆ Tax law variation across states and relevant agencies.



Program Development Materials

The First Decision: IRS Section 501(c)(3) Status¹

Although it is not necessary, there are many benefits of being a nonprofit Neighborhood Networks center. Some centers operate successfully as a for-profit entity, but this workshop provides information on how to obtain 501(c)(3) status. This is the first basic business decision that needs to be made.

Why is incorporation beneficial?

Often, incorporation is the first step toward tax exemption, which is a keystone in the nonprofit sector because it allows the organization to receive tax-deductible gifts and avoid paying taxes.

Also, if a Neighborhood Networks center becomes a nonprofit organization, it is appealing to funders and large grant institutions. The structure of the application generally means that the organization has a solid structure, and the ability to receive tax-exempt donations.

There are eight reasons to apply to become a nonprofit organization. The process of obtaining 501(c)(3) status may seem daunting at first, but keep referring to the “Easy Eight” for motivation for filling out the forms and applications!

- Legal protection.
- Group ownership of property and money.
- Keep and use profits.
- Cheaper cost of mass mailings.
- Cheaper cost of classified advertising rates.
- Discounted Internet Service Provider.
- Free radio and public service announcements
- Low- to no-cost government training.

Do any of the above situations apply to your new center? If so, you'll probably want to incorporate your center as a 501(c)(3).

Although there are many benefits to receiving 501(c)(3) status, there are some disadvantages. Most of them have to do with cost and paperwork required for establishing the nonprofit and completing tax returns each year. In addition, a great deal of time and energy are required for setting up accounting systems, record books and bank accounts, drafting bylaws, filing articles of incorporation and completing IRS forms.

It can take up to 1 year to receive provisional 501(c)(3) status.

Eligible Organizations

To qualify for 501(c)(3) status, your center must be organized and operated for one of the following purposes: religious, educational, charitable, scientific, literary, testing for public safety, to foster national or international sports competition, or for prevention of cruelty to children or animals. (Please see sidebar titled “501(c)(3) Eligible Organizations”).

The articles of incorporation must limit the organization's purpose to one or more of these purposes and must provide for the dedication and distribution of assets upon dissolution for one of these purposes. Your articles of incorporation must also indicate that no substantial part of

¹ From *Open for Business*, Section 3

your organization's activities will include the dissemination of propaganda, the influencing of legislation, or participation or intervention in a political campaign.

501(c)(3) Eligible Organizations

A Neighborhood Networks center must qualify underneath one of the major qualifications of organizations as designated by the IRS. Many of the qualifications are very broad and a center should have no trouble fitting underneath one of them. Here are brief descriptions of the major categories, even some that a center will not be able to fit under:

- **Charitable organizations:** charitable, religious, educational, scientific, literary, etc. organizations. Many Neighborhood Networks centers fit under this category.
- **Social welfare organizations:** civic leagues, community organizations, etc. Many Neighborhood Networks centers fit under this category.
- **Labor and agricultural organizations:** labor unions, farm bureaus, etc.
- **Business leagues:** trade associations, chambers of commerce, real estate boards, etc.
- **Social clubs:** hobby clubs, country clubs, etc.
- **Fraternal societies:** lodges and similar orders and associations.
- **Veterans' organizations:** posts or organizations of past or present members of the Armed Forces of the United States.
- **Employees' associations:** voluntary employees' benefit associations and local associations of employees.
- **Political organizations:** campaign committees, political parties, and political action committees.
- **Other tax exempt organizations:** miscellaneous types of organizations that qualify for exemption from Federal income tax.

For any questions regarding where your Neighborhood Networks center may fall, visit the IRS's Web site at <http://www.irs.gov>, and under Contents, select Charities & Nonprofits.

Articles of Incorporation

Conformed copies of your center's articles of incorporation and bylaws, both of which must first be approved by the appropriate state official, must be filed with Form 1023. A conformed copy includes a statement by an officer or director swearing that the documents are true and correct copies of the originals. IRS Publication 557 includes an example of articles of incorporation that meet IRS requirements and helps to explain this process.

Many Neighborhood Networks centers have applied for 501(c)(3) status and have had to first incorporate in their state. Information regarding each state's requirements, including the cost of incorporation, can be found at the National Association of Secretaries of State's Web site at <http://www.nass.org/sos/sos.html>. Incorporating in most states is very easy. There are a few steps that must be followed:

Step 1: Choose a mission

Just like the 501(c)(3) application, your Neighborhood Networks center must decide what kind of nonprofit organization you would like to form (a list of the options can be found in this section in the sidebar titled "501(c)(3) Eligible Organizations").

Step 2: Contact the secretary of state

When you contact the secretary of state's office, you will be asked to define your charitable purpose and provide some other basic information. This collection of information is known as your "articles of incorporation," and it includes:

- The name of the Neighborhood Networks center
- Its purpose
- Names and addresses of board members (see step 3, below)
- Bylaws

Each state makes its own laws on incorporation and rules may vary. Check your state first before rounding up your requirements.

Step 3: Name Your Board of Directors

Called a board of directors or board of governors, members officially govern the Neighborhood Networks center. You will probably want a board not only for the richness of its ideas and moral support, but because board members can bring talents and financial backing to the organization. The board should resemble the community in which you serve and will also be necessary for filing for 501(c)(3) status.

Building a nonprofit board of directors is a long-term process. Don't expect immediate success and before you start searching for quality board members, make sure you know what you would like the board to do.

One way to approach this issue is to write a job description for board members or identify a few qualifications that you would like to have represented on your board. Here are some examples of a wish list of people to comprise your board. You might seek a person who is:

- A person who is independently wealthy that can give financial support to your center;
- A person who has plenty of free time to commit to the board;
- A person who is well connected within the community to speak to public officials; and
- A person from the community that the center serves to give residents a sense of trust in the organization.
- A community business leader and civic leader.
- A business manager familiar with accounting and other business practices.

One of the most important aspects of recruiting a board of directors or governors is to emphasize the idea of term limits. Make sure that the board members know that they are not serving an indefinite term. This allows the board to renew itself every few years and fresh viewpoints are vital to keep in touch with the community surrounding your Neighborhood Networks center.

Step 4: Draft Bylaws

A Neighborhood Networks center needs a plan of operation.

Step 5: File for Incorporation

Filing a center's articles of incorporation is like filing a personal income tax return. The process is necessary, but basically the requirements are that all of the questions are answered correctly and all of the paperwork is attached. Once these few easy steps are completed, the Neighborhood Networks center is a few weeks away from incorporation.

Step 6: Another Form—IRS Form 990

IRS Form 990 is an annual requirement of the IRS for charitable organizations. Filing an accurate and complete Form 990 with the IRS and state charity officials is the law. This form allows your center to obtain a federal employer-identification number. You'll need this ID number to set up a bank account, apply for grants, hire employees and produce required reports. For more information on Form 990, visit the Urban Institute's Web site at <http://www.qual990.org>.

Bylaws

Bylaws are required by the 501(c)(3) status. Bylaws set out the rules and procedures for orderly operation and control of your organization, resolution of disputes and legal procedures for holding meetings, electing directors and officers, and handling other business.

Sample Bylaws

Bylaws can be compared to an organizations' constitution. The document lays out the structure that a Neighborhood Networks center will take on and the goals that it hopes to accomplish. There are sample bylaws that a center can use by filling in the blanks. Be aware that bylaws are serious in nature and will affect the legal and operational aspects of your center. It is possible to add items or delete items from this template and craft your own bylaws.

Necessary Information for 501(c)(3) Application

A Neighborhood Networks center must provide a detailed narrative of activities in the Form 1023 application. The narrative must demonstrate that your activities meet one of the exempt purposes and qualify the organization for tax exemption. You should word this section carefully and fully to present a complete picture of your center (see sidebar titled "501(c)(3) Status Narrative Tips and Hints").

Form 1023 also requests information on your sources of financial support, fundraising programs, the governing board, related organizations, management agreements and lease agreements, membership benefits, fees for services and whether services are limited to specific individuals. Form 1023 also includes questions about lobbying and political activities.

Certain types of organizations must file additional schedules with Form 1023. All organizations must include either three years of historical or two years of projected statements of revenue and expenses and a current balance sheet.

Usually, organizations with a limited history receive an advance ruling from the IRS indicating they will be treated as publicly-supported organizations subject to review at the end of a five-year period. Form 872-C documents your organization's agreement to pay tax on investment income earned during the advance-ruling period.

501(c)(3) Status Narrative Tips and Hints

The narrative portion of your center's 501(c)(3) application is usually the first item the IRS reads and should be compelling and to the point, all the while convincing the IRS to approve your center's nonprofit status.

The 501(c)(3) Process—Inside and Out

There are many resources, through Neighborhood Networks and in your local community, which can assist you in successfully completing the nonprofit application. One such resource is the Neighborhood Networks information line. A Neighborhood Networks Technical Representative is skilled in the 501(c)(3) process and will be able to assist you over the phone. The toll-free number is (888) 312-2743.

Many local officials and law students at colleges or universities in your area are willing to assist Neighborhood Networks centers in filing the IRS-required forms. To ask for help, contact a law school near to you or the local HUD Coordinator for contacts within your community.

Finally, The Foundation Center is a national nonprofit with local affiliates in most major regions of the country. The Center provides free advice on the process of forming your nonprofit organization. For more information and for the affiliate near you, visit The Foundation Center's Web site at <http://www.fndcenter.org>.

IRS Requirements for Nonprofits

Even though a Neighborhood Networks center may be considered a nonprofit entity, it still has responsibilities to the Internal Revenue Service.

Form 990

Form 990 is an Internal Revenue Service "information return" that must be filed every year by most nonprofits. Nearly all the information in the form is available to the public; increasingly, completed 990s are posted online.

The IRS has required an annual information return from most tax-exempt organizations since the 1940s. The form requires these organizations to document continuing eligibility for exempt status and to provide detailed financial and program information. The form is available to the public. By reviewing completed forms, the public can use the information to help decide whether or not they wish to support the organization with donations. Various regulatory bodies also review nonprofits' completed forms to check their operations for compliance with applicable laws.

990 Myths

Nonprofits are not permitted to withhold from distribution the sections of the 990 that report compensation to employees and contractors. Removing that information when providing a 990 could result in the penalties that apply to willfully refusing to provide the 990 at all. The only section of the 990 that may be withheld is the part that identifies your individual donors.

Copies of blank 990s and samples of completed ones can be downloaded in several formats from the IRS Web site at http://www.irs.gov/bus_info/eo/eo-tkit.html.

Since June 1999, every organizations that files a form 990 with the IRS has been required to make copies of its completed forms available immediately to anyone who makes a request in person. If the request is made by mail, the copy must be mailed within 30 days.

Unrelated Business Income Tax

All nonprofit organizations are subject to a tax on unrelated business income, which is income generated by a business activity that is not related to the direct purpose of the center.

This income tax usually does not apply to Neighborhood Networks centers, but it is worthwhile to investigate. For example, if a center purchases extra supplies for its own use, such as diskettes and printer ink cartridges, and sells these items to residents, this could be considered unrelated income. Even if the money is used to help fund the center, the IRS may consider it unrelated to the general business of the center.

If you believe that any of the income that your center generated can be classified as unrelated income, seek advice from an accountant, another Neighborhood Networks center or the Neighborhood Networks Information Center.

Nonprofit Risks and Compliance

Even as a nonprofit, your center encounters risks for which you must account. Risk is any uncertainty about the future that threatens to endanger your center's assets and limit your ability to provide for residents and other center users. The IRS has categorized these risks for nonprofits, such as Neighborhood Networks centers:

- ❑ Injuries to residents, employees, volunteers or the public. These risks are unavoidable but still may occur at your center. Make sure the center provides a safe environment for its users. If a person slips and falls, for instance, your center could be found negligent and therefore responsible for paying for any damages that the individual incurred. If you have properly maintained the center and can prove that you were not at fault, the person who was injured will not be able to blame the center for the injury.
- ❑ Damage to property. This is a risk that centers must take. Vandals may damage the exterior of the center or the computers. A center must be prepared to deal with these risks and fix the damaged property.
- ❑ Legal 501(c)(3) requirements. Nonprofit organizations are subject to specific laws and regulations. Centers must meet IRS requirements to maintain their tax-exempt status. The IRS can question your center's mission, bylaws and proper accounting of income and expenses. Violations can lead to fines, loss of tax-exempt status or possible dissolution. Other than the IRS, every state has laws governing 501(c)(3) organizations. For more information on these requirements, see the National Association of Secretaries of State's Web site at <http://www.nass.org>.

Although nonprofits must conform to many rules and regulations, following the law is easy with proper center management. After the first year, it is important to review the basics of your center's operation—from equipment to bylaws.

First, make sure that the center has provided a safe environment. This will help alleviate the risk of injury to residents, employees, volunteers or visitors.

Second, make sure that the security of the center is sound. All computers should be fastened to tables and the center should be locked after hours. If the property has a night guard, make sure the center is checked periodically.

Finally, reevaluate your center's mission statement and bylaws. The IRS can find you in noncompliance if bylaws are not followed or the center is performing outside its mission statement. Change these two documents if necessary to present an accurate assessment of the center's work. Also, review the center's financial documents to ensure proper accounting methods are followed. As mentioned previously, an audit may be a good judge of your financial statements. Although the IRS can be stringent when enforcing rules for nonprofits, a center easily can be in compliance by being aware of the laws and keeping the center up to date both financially and physically.

Applying for and Obtaining Nonprofit Status²

Neighborhood Networks centers can benefit from becoming a nonprofit, but obtaining 501(c)(3) status requires specific actions in order to qualify. This section describes the steps a center should follow to become a nonprofit organization, a process that is governed by state government. Developing articles of incorporation and bylaws are a critical component of this process, and this section provides guidance on how best to proceed. Finally, this section covers the application process with the IRS for tax-exempt status, the critical step that allows businesses and individuals to make tax-deductible contributions to an organization.

The Technicalities of 501(c)(3)

The next subsections are detail oriented, but provide valuable information to a Neighborhood Networks center applying for nonprofit designation. Although the task may seem daunting, rely on these sections to guide the center through the process. All it takes is a bit of organization and diligence and soon a center can reap the rewards of 501(c)(3) status. Although these subsections are straightforward and detailed, a center director may desire more information. For any question regarding nonprofit organizations or to assist with receiving tax-exempt status, visit the IRS Web site at <http://www.irs.ustreas.gov>. This site has a wealth of background information about tax-exempt status, such as the exemption process and the various types of organizations that may apply for the same status. This site also provides the annual reporting and filing requirements, applications and forms, as well as relevant IRS publications.

IRS-Required Forms

To apply for 501(c)(3) status, Neighborhood Networks centers must fill out the following forms and submit them to the IRS:

- Form 8718—User Fee for Exempt Organizations Determination Letter Request
- Form 1023—Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (IRC)
- Form 872-C—Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the IRC.

Does this sound very complicated? Although it appears that this process is difficult and the forms are confusing, the process of applying for 501(c)(3) status is relatively easy.

The forms are available for free by calling the IRS at (800) 829-3676. Also available at no charge is the IRS publication 557, *Tax-Exempt Status for Your Organization*. This publication has instructions for filling out many of the 501(c)(3) forms.

When applying for 501(c)(3) status, it would be useful to review applications of other Neighborhood Networks centers or organizations similar to yours. By law, nonprofit organizations must allow public inspection of their 501(c)(3) applications. Also, by asking organizations within the community, relationships can begin to bud. Other organizations can help your center by reviewing your 501(c)(3) application or even by partnering with your center in the future.

Sample Forms

Sample forms can be found on the IRS's Web site at <http://www.irs.gov>.

² From *Open for Business*, Section 6

Cost of Filing as a Nonprofit

Fees range from \$150 to \$500 depending on your center's annual gross receipts. Form 8718 (User Fee for Exempt Organization Determination Letter Request) must be filed with Form 1023 to apply for 501(c)(3) status. The IRS will not process the application until the user fee is paid. For more information and sample forms, visit the IRS's Web site at <http://www.irs.ustreas.gov>.

Prerequisites to Filing

A Neighborhood Networks center should be legally established under the applicable laws of your state in which the center is located. The secretary of state's office can provide information on required organizational documents, such as articles of incorporation and bylaws, which must conform to your state's statutory requirements. To find information about your state's Secretary of State, go to <http://www.nass.org>.

Many of states' articles of incorporation have similar requirements, including an organizations mission statement and by-laws.

Caution!

Apply for 501(c)(3) status within 15 months of incorporation or your center may not be eligible to qualify for exempt status during the period before the date of your center's application.

Deadlines for Filing

If you want 501(c)(3) tax-exempt status to be in effect from the beginning of your center's formation, you will generally need to file Form 1023 within 15 months from the end of the month in which your center was legally organized. If that date has passed, your center will not qualify for exempt status during the period before the date of its application.

Sample Articles of Incorporation

ARTICLES OF INCORPORATION
of
YOUR ORGANIZATION, INC.

TO: STATE CORPORATION COMMISSION:

The undersigned natural person of the age of twenty-one years or more, acting as incorporator, adopts the following Articles of Incorporation pursuant to the State Nonstock Corporations Act:

FIRST: The name of the corporation is NAME, INC.

SECOND: The period of duration is perpetual.

THIRD: The corporation is organized and will be operated exclusively for charitable and educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code. (All references to sections in these Articles refer to the Internal Revenue Code of 1986 as amended or to comparable sections of subsequent internal revenue laws.) Specifically, the corporation is organized to XXXXXXXXXX. In pursuance of these purposes it shall have the powers to carry on any business or other activity which may be lawfully conducted by a corporation organized under the YOUR STATE Nonstock Corporations Act, whether or not related to the foregoing purposes, and to do all things necessary, proper and consistent with maintaining tax exempt status under section 501(c)(3).

FOURTH: The corporation may have one or more classes of members, the qualifications and rights, including voting rights, of which shall be designated in the bylaws.

FIFTH: The registered agent is NAME, who is a resident of the state of STATE and a director of the corporation, and the address of its initial registered office is ADDRESS, which is physically located in the county of COUNTY.

SIXTH: The number of directors constituting the initial Board of Directors is NUMBER, and the names and addresses, including street number, of the persons who are to serve as the initial directors until the first annual meeting, or until their successors are elected and qualified, are:

INSERT NAMES AND ADDRESSES OF INITIAL BOARD MEMBERS

The members of the Board of Directors shall be those individuals elected, from time to time, in accordance with the Bylaws. Directors shall elect their successors.

SEVENTH: The internal affairs of the corporation shall be regulated by its Board of Directors as described in the Bylaws. Upon dissolution of the corporation, its assets shall be disposed of exclusively for the purposes of the corporation or distributed to such organizations organized and operated exclusively for charitable purposes which shall, at the time, qualify as exempt organizations under section 501(c)(3).

EIGHTH: No part of the net earnings of the corporation shall inure to the benefit of or be distributed to any director, employee or other individual, partnership, estate, trust or corporation having a personal or private interest in the corporation. Compensation for services actually rendered and reimbursement for expenses actually incurred in attending to the affairs of this corporation shall be limited to reasonable amounts. No substantial amount of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation and this corporation shall not intervene in (including the publishing or distributing of

statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles or of any Bylaws adopted thereunder, this corporation shall not take any action not permitted by the laws which then apply to this corporation.

NINTH: The name and address, including street and number, of the incorporator is:

NAME
ADDRESS

IN WITNESS THEREOF, I have hereunto set my hand and seal this _____ day of _____, 2002.

By: NAME, Incorporator

Sample Bylaws

BYLAWS OF _____
ARTICLE I—NAME, PURPOSE

Section 1: The name of the organization shall be _____.

Section 2: The _____ is organized exclusively for charitable, scientific and educational purposes, more specifically to _____.

ARTICLE II—MEMBERSHIP

Section 1: Membership shall consist only of the members of the board of directors.

ARTICLE III—ANNUAL MEETING

Section 1: Annual Meeting. The date of the regular annual meeting shall be set by the Board of Directors who shall also set the time and place.

Section 2: Special Meetings. The Chair or the Executive Committee may call special meetings.

Section 3: Notice. Notice of each meeting shall be given to each voting member, by mail, not less than ten days before the meeting.

ARTICLE IV—BOARD OF DIRECTORS

Section 1: Board Role, Size, and Compensation. The Board is responsible for overall policy and direction of the Council, and delegates responsibility for day-to-day operations to the Council Director and committees. The Board shall have up to _____ and not fewer than _____ members. The board receives no compensation other than reasonable expenses.

Section 2: Meetings. The Board shall meet at least _____, at an agreed upon time and place.

Section 3: Board Elections. Election of new directors or election of current directors to a second term will occur as the first item of business at the annual meeting of the corporation. Directors will be elected by a majority vote of the current directors.

Section 4: Terms. All Board members shall serve _____ year terms but are eligible for reelection.

Section 5: Quorum. A quorum must be attended by at least _____ percent of the Board members before business can be transacted or motions made or passed.

Section 6: Notice. An official Board meeting requires that each Board member have written notice 2 weeks in advance.

Section 7. Officers and Duties. There shall be five officers of the Board consisting of a Chair, Vice Chair, Secretary and Treasurer. Their duties are as follows:

The Chair shall convene regularly scheduled Board meetings, shall preside or arrange for other members of the executive committee to preside at each meeting in the following order: Vice-Chair, Secretary and Treasurer.

The Vice-Chair will chair committees on special subjects as designated by the board.

The Secretary shall be responsible for keeping records of Board actions, including overseeing the taking of minutes at all board meetings, sending out meeting announcements, distributing copies of minutes and the agenda to each Board member, and assuring that corporate records are maintained.

The Treasurer shall make a report at each Board meeting. Treasurer shall chair the finance committee, assist in the preparation of the budget, help develop fundraising plans, and make financial information available to Board members and the public.

Section 8: Vacancies. When a vacancy on the Board exists, the Secretary may receive nominations for new members from present Board members two weeks in advance of a Board meeting. These nominations shall be sent out to Board members with the regular Board meeting announcement, to be voted upon at the next Board meeting. These vacancies will be filled only to the end of the particular Board member's term.

Section 9: Resignation, Termination, and Absences. Resignation from the Board must be in writing and received by the Secretary. A Board member shall be dropped for excess absences from the Board if s/he has three unexcused absences from Board meetings in a year. A Board member may be removed for other reasons by a three-fourths vote of the remaining directors.

Section 10: Special Meetings. Special meetings of the Board shall be called upon the request of the Chair or one-third of the Board. The Secretary shall send out notices of special meetings to each Board member postmarked 2 weeks in advance.

ARTICLE V—COMMITTEES

Section 1: The Board may create committees as needed, such as fundraising, housing, etc. The Board Chair appoints all committee chairs.

Section 2: The five officers serve as the members of the Executive Committee. Except for the power to amend the Articles of Incorporation and Bylaws, the Executive Committee shall have all of the powers and authority of the Board of Directors in the intervals

between meetings of the Board of Directors, subject to the direction and control of the Board of Directors.

Section 3: Finance Committee. The Treasurer is chair of the Finance Committee, which includes three other Board members. The Finance Committee is responsible for developing and reviewing fiscal procedures, a fundraising plan, and annual budget with staff and other Board members. The Board must approve the budget, and all expenditures must be within the budget. The Board or the Executive Committee must approve any major change in the budget. The fiscal year shall be the calendar year. Annual reports are required to be submitted to the Board showing income, expenditures and pending income. The financial records of the organization are public information and shall be made available to the membership, Board members and the public.

ARTICLE VI—AMENDMENTS

Section 1: These Bylaws may be amended when necessary by a two-thirds majority of the Board of Directors. Proposed amendments must be submitted to the Secretary to be sent out with regular Board announcements.

These Bylaws were approved at a meeting of the Board of Directors of _____
On _____, 20XX.

Attest: _____.



Online Resources

<http://www.nonprofitlaw.com/taxworkbook.shtml>

This site contains sample Articles of Incorporation, sample bylaws, and a 36-page workbook that walks the reader through the incorporation process.

<http://nonprofit.about.com/gi/dynamic/offsite.htm?site=http://www.tgci.com/publications/96summer/tobeor.htm>

This site offers frequently asked questions (and answers) that address the most common concerns of groups that apply for tax-exempt charitable status.

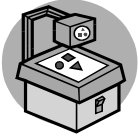


Presenters Biographies

Deborah M. Austin (Washington, D.C.) is director of the Community Economic Development (CED) Pro Bono Project, a project of the D.C. Bar Pro Bono Program. In that capacity she links nonprofit organizations, engaged in community revitalization and neighborhood development projects with corporate, business, tax and transactional attorneys from law firms in Washington, D.C. Austin also provides technical assistance to attorneys and client organizations on a wide range of community development issues, including affordable housing finance, nonprofit formation and governance, and profit/nonprofit joint ventures. Prior to joining the CED Pro Bono Project, Austin served as interim Director for the National Neighborhood Coalition (NNC) and Director of Legislation & Policy for the National Low Income Housing Coalition (NLIHC). Austin led the NNC coalition of 91 national and regional organizations in legislative advocacy efforts with the Clinton Administration and the Congress on issues concerning neighborhood development, nonprofit capacity building and affordable housing and economic development. As NLIHC Director of Legislation & Policy, Austin worked with the coalition's executive committee in developing NLIHC's legislative and policy agenda, conducted legislative campaigns for increased appropriations and new authorizations for affordable housing, and low income community development, developed testimony for Congressional hearings and wrote articles and opinion pieces for various periodicals. Prior to federal legislative work, Austin represented income eligible clients in landlord-tenant and real estate disputes, including loan restructuring for defaulting homeowners, sales contract negotiations for first time homebuyers and quiet title actions. Austin has also drafted joint venture and partnership agreements, homeowner associations and attorney opinion letters for private nonsubsidized real estate transactions. Austin, a native of Richmond, Virginia, received her undergraduate and law degrees from the University of Virginia. She is Vice President of the Board of University Legal Services, an affordable housing and disability rights legal services organization, and is the former member of the Federal Home Loan Bank of Atlanta's Advisory Council.

Juan M. Burgos (Washington, D.C.) is a staff attorney on the Community Economic Development Project of the D.C. Bar Pro Bono Program. He plans and conducts outreach activities directed to community-based nonprofit organizations. Burgos reviews requests for legal assistance from community-based organizations and disadvantaged small businesses, screens requests against project criteria, and facilitates matches with volunteer law firms for long-term partnerships. Previously, he served as a staff attorney in the community economic development unit of Legal Services of Greater Miami, Inc., where he represented not-for-profit community-based real estate development corporations in a range of corporate and real estate transactions and litigation, provided legal advice, and represented low-income taxpayers before the U.S. Tax Court and the IRS.

Nona Liegeois (Los Angeles) is an attorney in the Community Economic Development Unit of the Legal Aid Foundation of Los Angeles, which provides free community education and legal representation for nonprofit groups and community-based organizations involved in community development activities. Liegeois specializes in workforce development, public job creation, and nonprofit business development issues. She sits on the Los Angeles Workforce Investment Board, serving on the Accountability and Learning and Literacy committees. Previously she was an associate attorney in the litigation department of Skadden, Arps, Slate, Meagher & Flom, LLP. She has bachelor's degrees in international relations and French from the University of Southern California and a J.D. from Georgetown. She edited and cowrote the article "Helping Low-Income People Get Decent Jobs: One Legal Services Program's Approach," which was published in the September–October 1999 issue of the *Clearinghouse Review Journal of Poverty Law and Policy*.



PowerPoint Presentations

Slide 1

Legal Aid Foundation of Los Angeles

**Incorporating
and Obtaining
501(c)(3) Status**

Slide 2

Steps in Creation of a Nonprofit Organization

- Incorporation - State Secretary of State
- Application for Federal Tax Exemption - IRS
- Application for State Tax Exemption - State Tax Agency

Slide 3

Choose Legal Structure

Most charitable organizations choose to be nonprofit corporations, but can also be:

- Unincorporated Association
- Limited Liability Company
- Many other structures available if not pursuing tax exempt status

Slide 4

**Step 1:
Incorporation**

Advantages <ul style="list-style-type: none">• Separate legal entity• Limited personal liability• Perpetual existence	Disadvantages <ul style="list-style-type: none">• Cost• Formal structure• Formal reporting reqs.
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Slide 5

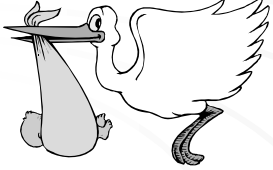
**Incorporation Process Overview -
California**

- Train board members re: responsibilities
 - initial meeting
 - organization workplan
- Choose & Reserve a name for the corporation
- Prepare/File Articles of Incorporation & Bylaws

Slide 6

**Articles of Incorporation:
What are they?**

- Creation document for your organization



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**Articles of Incorporation:
What needs to be in them?**

- Name of corporation
- Statement that corporation organized for public and/or charitable purposes
- Name & addresses of Agent for service of process
- Statement describing purpose
 - can be taken from mission statement
 - neither overly broad nor narrow
 - may think about particular funding sources

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**Articles of Incorporation:
What needs to be in them?**

- If applying for tax exemption:
 - statement that corporation is organized and operated for charitable purposes per I.R.C. 501(c)(3)
 - dedication of assets upon dissolution
 - restriction on political activity/lobbying

In California, use the Secretary of State's sample!
http://www.ss.ca.gov/business/corp/corp_artsnpinf.htm
(916) 657-5448

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Filing Articles of Incorporation

- Original + 4 copies
- \$30 filing fee - check payable to Secretary of State
- Separate \$15 handling fee check payable to Secretary of State for optional over-the-counter filing

Slide 10

Corporate Bylaws
What are they for?

- Regulate internal practices & procedures
- Define director, officer duties, limits, & powers
- Define member duties, limits, & relationships
 - membership corps requires additional provisions
- Resolve disagreements among board members

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Bylaw Provisions
What's in them?

- Logistics
 - name
 - purpose & objectives
- Board of Directors
 - number
 - qualifications, duties, powers
 - how appointed/elected, removed
 - time/place/manner/notice of meetings & quorum
 - committees
- Officers
 - appointment/elections, duties

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Bylaw Provisions
What's in them?

- Members
 - eligibility, termination
 - time/place/manner/notice of meetings & quorum
 - voting rights
 - dues/fees
- Staff
 - hiring, termination, duties, compensation
- Fiscal affairs
 - reports, payments, contracts

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Bylaw Provisions
What's in them?

- Miscellaneous
 - reporting requirements
 - dedication of assets
 - amending bylaws
 - conflict resolution
 - other specific items you require



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**Additional Requirements for
Newly Incorporated Nonprofits -
California**

- Prepare Statement By Domestic Corporation
- Register with Registry of Charitable Trusts
- Start thinking about all those continuing reporting requirements....

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Step 2: Federal Tax Exemption

<p>Advantages:</p> <ul style="list-style-type: none">• Donations are tax deductible to donor• Is often required by foundations and other large donors• Provides relief from Federal Corporate Income Taxes, but other taxes apply or have separate exemption applications• Discounts on mass mailings, classified rates, ISP, PSAs, etc.	<p>Disadvantages:</p> <ul style="list-style-type: none">• Time and cost of complying with ongoing reporting requirements• No political activity allowed• Only limited lobbying allowed• Full disclosure of operations• Public inspection of records• Personal sanctions against board members in cases where nonprofit funds are found to inure to private benefit
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Slide 16

**Step 2: Federal Tax-Exemption
Application Process**

- Get an Employer Identification Number (EIN)
- Assess if IRC 501(c)(3) exemption applies
- Order forms from IRS
- Prepare & file federal forms with IRS

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IRC 501 (c) (3) Exemption:

- Corp. purpose must be: religious, charitable, educational, scientific, or prevention of cruelty to children or animals
- Inc. Articles must state: assets for exempt, not private gain, purpose, & on dissolution go to a 501 (c)(3); no political campaigning & no substantial lobbying

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**Federal Tax-Exemption
Application Forms**

- 1023 or 1024- for Recognition of Exemption (872-C- for advance ruling on public charity purpose included with 1023)
- SS-4-for Employer Identification Number (EIN)
- 8718-for Exempt Determination Letter Request
- 2848 or 8821- for Power of Attorney or Tax Info Authorization if attorney or CPA will represent corporation before the IRS

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Federal Tax-Exemption Procedure

- Complete Form 1023 & 872-C or 1024
- Attach completed Form SS-4 if not already filed
- Attach detailed financial statements showing: support, income, expenses, year's balance sheet same information for preceding 1-3 years or budgets for next 2 years if org. less than 1 year
- Attach copy of Articles & Bd. Approved bylaws
- Attach completed Form 8718+\$150 or \$500 fee
- Send all to IRS

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Step 3: State Tax Exemption

In California:

- Order forms from Franchise Tax Board
- Prepare & file FTB 3500 with Franchise Tax Bd. (\$25 application fee)

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California Tax Exemption

- File Form 3500 with \$25 Fee
- Attach articles, bylaws, financial statements or proposed budget for new organizations
- Send all to the FTB

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Alternatives to forming a new organization

- Partnership with existing nonprofit organizations addressing issues of the digital divide or working to serve low income people in your community
- Donate a small portion of your management fee to an existing nonprofit to create a NN center in your building - get a tax deduction
