

## Should You Incorporate?

### *Potential advantages:*

- Protection of limited liability. Incorporation protects both board and staff from legal liabilities incurred by the organization – the corporation holds the debts and liabilities, not the individuals and officers who work for the organization.
- Done thoughtfully, the process of incorporation can be strengthening for an organization. It requires thinking through what you are about, and how you are going to do your work.
- It readies an organization for application of federal tax-exempt status. However, nonprofits choosing to remain unincorporated may still file for tax-exempt status.
- It helps to formalize decision making and ownership among the principals involved.
- It reinforces legitimacy of the organization.

### *Potential disadvantages:*

- It takes time and money to accomplish.
- It entails playing by the state and federal government rules. You must be knowledgeable about the laws related to charitable organizations.
- There may be some risk of over-structuring or under-structuring the organization.
- There is some risk of people involved thinking incorporation will accomplish something magical.

## Faith-Based Organizations

A large number of churches are setting up nonprofit organizations in order to operate community assistance programs. A new guidebook from the Alban Institute helps congregations answer some important questions about establishing a nonprofit.

“Starting a Nonprofit at Your Church” explains that the nonprofit structure allows for new funding sources and collaboration partners and volunteers. It also explains some of the risks involved with a nonprofit. It includes step-by-step procedures for setting up a 501(c)(3) organization, and offers plenty of examples of churches that have already started programs. The guide is available at [www.alban.org](http://www.alban.org). The Alban Institute is an ecumenical, interfaith organization that supports congregations through consulting services, research, book publishing and educational seminars.

## Forming a Nonprofit Organization

### Step 1 — Get organized!

Obtain from the IRS a copy of **Publication 557, *Tax Exempt Status for Your Organization***, and **Package 1023, *Application for Recognition of Exemption***. Review the requirements and develop a plan.

Establish a board of directors (or trustees) with at least three members. Decide on the statement of purpose (mission) of the organization. Develop and adopt *Articles of Incorporation*. Publication 557 includes samples of recommended language for Articles. *Robert’s Rules of Order, Newly Revised* has samples and provides additional information on procedures and parliamentary rules for organizations. Other organizations may allow you to review their *Articles of Incorporation* and *Bylaws* for examples.

This is a good time to establish some long range goals for the organization and to do some detailed planning that includes a budget. The IRS requires budget information, which is supporting documentation for your goals and objectives.

### Step 2 — File with your State or Local Government

Laws and regulations vary in each state. Contact is generally made through the Secretary of State or Attorney General. There is most often a fee for incorporation and a requirement for copies of *Articles of Incorporation* and *Bylaws*.

### Step 3 — Apply to the IRS for recognition of tax-exempt status.

Information on how to apply is found in Publication 557 and Package 1023. If you wish to be a status other than 501(c)(3), consult Publication 557 for the process and forms to use. Secure from the IRS a **Form SS-4**, for an *Employer Identification Number*, and file it with your application. The IRS charges a processing fee for tax-exempt applications. For 501(c)(3) organizations with anticipated annual revenues of less than \$10,000, the fee is \$150. For larger revenue 501(c)(3)s and other types of tax-exempt organizations, the fee is \$500. These fees must accompany the application. The approval process may take up to 120 days after the application and all required forms are filed.

## The Bylaws

### *Your Primary Governing Document*

Bylaws are your organization’s primary governing document. They establish the organizational “rules” by which the organization will conduct itself. It is important these be documented, approved and followed by the organization. Amendments can be made as the organization evolves.

Good organization bylaws should have a lot in common with the Constitution of the United States. The Constitution covers all the big questions, yet it is a relatively brief document, unburdened with needless detail. It is clear about who is responsible for what, and who can get to be leaders, and how. It states guiding principles.

A cautionary note, many organizations have attorneys develop their bylaws which often makes them more wordy and harder to understand and use. It is recommended that you use examples from other organizations and that they are developed by the directors. You may wish to have an attorney review the completed bylaws and give an opinion before they are adopted.

### Some general thoughts:

- Decisions to amend the bylaws should require considerable effort and serious thought.
- If you have provisions for getting people *into* office or membership, you should have provisions for getting them *out*.
- A brief description of the committees’ responsibilities is sufficient.
- Policies, job descriptions for the board, committees and other necessary documents can be developed later in the life of the organization by the board.

### Items commonly covered in bylaws:

- The name of the organization.
- The mission or purpose of the organization.
- The geographic area served by the organization.
- Membership
  - Membership classes; qualifications for each class; and the benefits, rights, and responsibilities of each class.
  - Dues (Should indicate clearly how and by whom dues are established, and what period of time they cover).

- Annual Meeting (i.e. “shall be held each year in October, or such other time as the board of directors may designate”).
- Called or special meetings (by whom and how?).
- Quorum.
- Voting procedures.
- Notice requirements.
- Provision for waiving notice requirements.
- Provision for expulsion or suspension of members.
- Board of Directors
  - Directors*
  - Number of directors. Length of terms. Staggering terms.
  - Limitation of the number of terms to which a director can be elected.
  - Qualifications.
  - Nominating and election procedure.
  - Conditions and procedures for removal of directors from office.
  - Procedures for filling vacancies.
  - Statement about compensation and reimbursement of directors.
  - Officers*
  - Description of each office and its duties.
  - Nominating and election procedure.
  - Conditions and procedures for removal from office.
  - Procedures for filling vacancies.
- Meetings
  - Frequency.
  - Manner of calling a meeting, including notices.
  - Provision for waiving notice requirements.
- Committees
  - Description of each standing committee and its duties.
  - Limitations of committee actions and powers.
  - Provision for the creation of other committees, including appointment procedures.
  - Quorum requirements.
  - Requirements for committee composition.
  - Reporting requirements.
- Rules of Order
- Fiscal Year of the Corporation
- Books and Depositories
  - Description of principles of financial record keeping and reporting.
  - Procedure for designating institutions in which funds will be deposited.

- Limitation or qualifications for custodians of funds and books.
- Indemnification of officers and directors
- Procedures for Amending the Bylaws
  - Initiation of proposed amendments.
  - Voting procedures, including notice requirements.
  - Margin by which amendments must be approved.
- Procedures for dissolution of corporation.

### Additional Resources:

*How to Form a Nonprofit Corporation, Fifth Edition*, by Anthony Mancuso. Published by Nolo Press, 950 Parker St, Berkeley, CA 94710. Visit [www.amazon.com](http://www.amazon.com).

*Legal Guide to Starting and Managing A Nonprofit Organization*, by Bruce R. Hopkins. Visit [www.amazon.com](http://www.amazon.com).

*Robert’s Rules of Order, Newly Revised*, available at most major book stores or visit [www.amazon.com](http://www.amazon.com).

*Drucker Foundation Self-Assessment Tool Process Guide*, Contact: Jossey-Bass Publishers, 415-433-1740 or visit [www.josseybass.com/WileyCDA/](http://www.josseybass.com/WileyCDA/).

*Strategic Planning for Nonprofit Organizations*, Contact: National Trust for Historic Preservation, 202-588-6296 or visit [www.nthp.org](http://www.nthp.org).

*How to Form a Nonprofit Corporation*, by Mark Warda. Visit [www.amazon.com](http://www.amazon.com)

*Managing a Nonprofit Organization in the Twenty-First Century*, by Thomas Wolf and Barbara Carter. Visit [www.amazon.com](http://www.amazon.com).

*Strategic Planning for Public and Nonprofit Organizations*, Contact: Jossey-Bass Publishers, 415-433-1740 or visit [www.josseybass.com/WileyCDA/](http://www.josseybass.com/WileyCDA/).

*The Nonprofit Handbook* by Gary M. Grobman. Visit [www.amazon.com](http://www.amazon.com).

*Internal Revenue Service*, visit [www.irs.gov](http://www.irs.gov), or call the IRS tax exemption information line at 1-877-829-5500.

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