

How to Form a 501(c)(3) Nonprofit Corporation

Here's how to form a nonprofit corporation and receive a 501(c)(3) tax exemption.

Forming a nonprofit corporation is much like creating a regular corporation, except that nonprofits have to take the extra steps of applying for tax-exempt status with the IRS and their state tax division. Here is what you need to do:

1. Choose an available business name that meets the requirements of state law.
2. File formal paperwork, usually called articles of incorporation, and pay a small filing fee (typically under \$100).
3. Apply for your federal and state tax exemptions.
4. Create corporate bylaws, which set out the operating rules for your nonprofit corporation.
5. Appoint the initial directors. (In some states you must choose your initial directors before you file your articles, because you must list their names in the document.)
6. Hold the first meeting of the board of directors.
7. Obtain licenses and permits that may be required for your corporation.

Choose a Business Name

Before you form your nonprofit corporation, you need to decide on a name that complies with the rules of your state's corporate filing office. The information packet you receive from the filing office should contain your state's rules, but the following guidelines commonly apply:

- The name of your nonprofit cannot be the same as the name of another corporation on file with the corporations division.
- The name must end with a corporate designator, such as Corporation, Incorporated, Limited, or Corp., Inc., or Ltd. (This is required in only about half of the states.)
- The name cannot contain certain words prohibited by the state, such as Bank, Cooperative, Federal, National, United States, or Reserve.

Your state's corporations division can tell you how to find out whether your proposed name is available for your use. Often, for a small fee, you can reserve the name for a short period of time until you file your articles of incorporation.



Contact Your State's Corporations Division

Your state's corporate filing division, usually part of the secretary or department of state's office, will often send you a packet of nonprofit materials that will be immensely helpful to you in forming your nonprofit. This packet may include sample or fill-in-the-blank articles of incorporation, your state's nonprofit corporation laws, a filing fee schedule, and forms and instructions for checking the availability of your proposed business name. Contact your state's corporate filing office to obtain this packet.

In addition to confirming that another corporation in your state isn't already using your proposed name, you must make sure your name won't violate a trademark owned by another company (in your state or out of state). To do this, you'll need to conduct a trademark search.

Once you've found a legal and available name, you aren't usually required to file or reserve the name with your state -- when you file your articles of incorporation, your nonprofit's name will be automatically registered.

Prepare and File Your Articles of Incorporation

After you've decided on your business name, you must prepare and file articles of incorporation with the corporate filing office. This document goes by a different name in a handful of states; your state may instead use the term articles of organization, certificate of incorporation, certificate of formation, or charter.

Your state's corporate filing office will usually provide you with nonprofit articles of incorporation -- either a fill-in-the-blank form or a sample on which you can base your articles. Although preparing this document isn't difficult, you do need to include specific language to ensure that you'll receive tax-exempt status. Your state's nonprofit formation packet, if available, may include the required information. If not, or if you need help understanding the requirements, consult a good legal self-help guide such as *How to Form a Nonprofit Corporation*, by Anthony Mancuso (Nolo), to make sure your articles comply with your state's nonprofit law.

Apply for Your Federal 501(c)(3) Tax Exemption

After the corporate filing office returns a copy of your filed articles, you can submit your federal 501(c)(3) tax exemption application to the IRS. (The IRS requires you to submit a copy of your filed articles with your application.) This is a critical step in the formation of your nonprofit organization since most of the real benefits of being a nonprofit flow from 501(c)(3) tax-exempt status.

To apply for your exemption, you must complete IRS Form 8718, *User Fee for Exempt Organization Determination Letter Request*, and IRS Package 1023, *Application for Recognition of Exemption*. For instructions on filling out these forms, read IRS Publication 557, *Tax-Exempt Status for Your Organization*. (You can obtain all of these items for free by calling 800-TAX-FORM, or you can download them from the IRS website at www.irs.gov.) If you need a bit of help deciphering the IRS-speak, consider downloading Nolo's plain-English eGuide, *Nonprofit Corporations: Qualify for Federal Income Tax Exemption*.



Read the Tax Exemption Application Before Filing Your Articles

While you can't actually file your exemption application until the corporate filing office has approved your articles of incorporation, before you file your articles, take a couple of hours to learn what it takes to qualify for the tax exemption. If you file your articles and then discover a problem as you begin working through the tax exemption application, you could be stuck paying taxes while you work through these issues -- or even learn too late that your group isn't eligible for an exemption.

After the IRS reviews your application, it will send you a letter indicating that it has approved your nonprofit status, or it might ask you for more information about your organization. The IRS can also deny your application outright. If this happens, see a lawyer who specializes in nonprofits.

Apply for a State Tax Exemption (If Necessary)

In a few states (California, Montana, North Carolina, and Pennsylvania), you must complete a separate application to get a state tax exemption. In other states, as long as you file nonprofit articles of incorporation and obtain your federal 501(c)(3) tax-exempt status, your state tax exemption will be automatically granted. In still others, to get your state exemption you must send in a copy of the IRS determination letter that granted your federal exemption. Contact your state tax agency to find out what steps you must take.

Draft Corporate Bylaws

Next you must create bylaws, the internal rules that govern your nonprofit corporation. Bylaws contain rules and procedures for holding meetings, voting on issues, and electing directors and officers. To create bylaws, you can either follow the instructions in a self-help resource or hire a lawyer in your state to draft them for you. Typically, the bylaws are adopted by the corporation's directors at their first board meeting.

Appoint Directors

Directors, who meet and make decisions collectively as the board of directors, have the authority (and responsibility) to manage and run the nonprofit corporation. Many states allow nonprofits to have just one director, but other states require at least three.

Hold a Directors' Meeting

The purpose of the first meeting of the board of directors is to conduct the initial business of the corporation and take care of other formalities, such as recording the receipt of federal and state tax exemptions.

The directors should first adopt the bylaws and elect officers -- state law usually requires a president, secretary, and treasurer, and sometimes a vice president as well. Then, the directors should authorize the newly elected officers to take actions necessary to start the business of the nonprofit -- for example, setting up bank accounts and admitting members.

After the meeting is completed, minutes of the meeting should be created and filed in your corporate records book.

Obtain Licenses and Permits

Many businesses, whether operating as for-profit or nonprofit corporations, partnerships, or sole proprietorships, are required to obtain state or local licenses and permits before commencing business. So, while you may not be subject to the kind of red tape that entangles profit-making enterprises, you should check with your state department of consumer affairs (or similar state licensing agency) for information concerning state licensing requirements for your type of organization. For instance, a local business license (sometimes called your tax registration certificate) may be required for your activities, and if you sell anything to consumers, you'll need a sales tax permit.