

Forming and Maintaining a Nonprofit Organization

Delaware Edition

A Foundation Group® Guidebook

Introduction

You have an idea and a vision to form a nonprofit organization. Because you have purchased this guidebook, you have demonstrated an understanding that there is more to starting a nonprofit than just hanging a sign and getting to work. There are a number of steps involved in being properly established and in compliance with federal and state laws.

The purpose of this guidebook is to show you these steps so that you have a better understanding of what might be required. This guidebook is not so much a how-to guide, but rather a *what-to-do* guide. We have included links to both relevant state and local web pages as well as pages from the [Foundation Group website](#) that will provide you with additional, important information.

I. Formation

There are a number of tasks involved with forming a nonprofit organization at the state level. The most important of these is the incorporation process. While it is possible to form a non-corporate, nonprofit organization, and obtain federal 501(c) tax exemption, the vast majority of organizations choose *corporate* status. Before we look at registrations and required filings, let's clarify what a nonprofit corporate entity is compared to other legal entities.

What is a nonprofit corporation?

Merriam-Webster's defines a corporation as

"...a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession."

In plain English, forming a corporation means that the founders, or incorporators, are creating a legal entity that exists wholly apart from the people involved with it. In a for-profit corporation, the new entity exists as separate from its shareholders or owners. A nonprofit corporation exists separate from its members and/or directors. It is essential to understand that a nonprofit corporation DOES NOT have owners or shareholders.

While nonprofit corporations are the most popular form of organization for nonprofit activities, *unincorporated associations* and *trusts* are also options to consider. The choice of entity may be necessitated by factors such as the longevity of the endeavor, the planned activities, the need to own or lease facilities and the need to hire staff. Many people prefer to form a nonprofit corporation, in part,

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because of the liability protection a corporation provides. For example, if a nonprofit corporation is sued, the assets of its directors and members are generally protected because corporate assets are distinct from personal assets.

NOTE: Because the use of unincorporated associations and trusts as entity structures is relatively uncommon for most startup nonprofits, this guidebook will deal only with the corporate structure.

What a nonprofit isn't – identifying other entities

Sole Proprietorship: One person who conducts business for profit. The sole owner assumes complete responsibility for all liabilities and debts of the business.

General Partnership: Two or more individuals as co-owners of a for-profit business.

Corporation (for-profit): The corporation itself assumes all liabilities and debts of the Corporation. A corporation is owned by shareholders. A shareholder enjoys protection from the corporation's debts and liabilities.

S-Corporation: A corporation may seek to obtain "S Corporation" status for federal income tax purposes. The income of an S Corporation is taxed only once: at the employee or shareholder level.

Limited Liability Company: An LLC is a formal association which combines the advantage of a corporation's limited liability and the flexibility and single taxation of a general partnership. An LLC has members rather than shareholders.

Limited Partnership: A partnership with at least one General Partner and one Limited Partner. A limited partner's liability is limited to the amount invested, while the General Partner(s) assumes all the liabilities and debts of the partnership.

Limited Liability Partnership: A General Partnership which elects to operate as an LLP. Unlike a General Partnership, the partners in an LLP enjoy protection from many of the partnership's debts and liabilities.

Steps to Forming a Nonprofit Corporation in Delaware

A. Formation Meeting

The initial corporate meeting is the essential first step in forming a nonprofit organization. It is at this meeting that the initial board of directors is installed and officer titles determined. The minutes (notes) of this meeting should include a resolution that shows unanimous affirmation by the initial board to establish the organization and pursue both incorporation and federal tax-exemption. The purpose of the organization should be articulated in writing, as well.

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B. Federal Employer Identification Number (FEIN)

While this section of the guidebook deals primarily with state-level incorporation, obtaining an FEIN is an important early step. An Federal Employer Identification Number or FEIN, is a numeric identifier for businesses. Much like a Social Security number, it is a 9-digit number assigned by the Internal Revenue Service that becomes permanently associated with your organization. It is required of all organizations, both for-profit and nonprofit, and its acquisition should be among the first things accomplished by new startups. For more information on how to obtain an FEIN, download our free, how-to guidebook at <http://www.501c3.org/shop/>.

FORM NAME: Application for Employer Identification Number

FORM NUMBER: SS-4

FILING FEE: \$0

FOR ADDITIONAL INFORMATION:

<http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>

FOUNDATION GROUP SERVICE: Yes (included with all formation packages; not available a la carte)

C. Incorporation

Incorporating a nonprofit involves the filing of a formation document referred to as Articles of Incorporation, unless otherwise indicated below. In Delaware, this document is filed with the state's corporation division of the DE Secretary of State's office.

FORM NAME: Non-stock Certificate of Incorporation

FILING FEE: \$139.00

FOR ADDITIONAL INFORMATION: <http://www.corp.delaware.gov/corpforms.shtml>,

<http://www.501c3.org/501c3-services/start-a-501c3-nonprofit/>

FOUNDATION GROUP SERVICE: Yes (included with all formation packages)

NOTE: While the state of Delaware provides a template (boilerplate) form for incorporation, be aware that the Delaware template does NOT meet Internal Revenue Service requirements for obtaining 501(c) status. If your intent is to seek federal tax-exempt status as a 501(c), it is advisable to seek the assistance of someone familiar with federal requirements.

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D. Bylaws

Bylaws are the rules used by the board to govern the organization. Delaware does not require a copy of the bylaws to be filed with the state. Regardless of filing requirement, their creation is a part of the formation process and are required by state law. It is critical that the bylaws be drafted by someone with knowledge of both state and federal law governing the operation of a tax-exempt organization.

NOTE: Bylaws must be filed with the Internal Revenue Service when seeking tax-exemption as a 501(c)(3) organization.

FOUNDATION GROUP SERVICE: Yes (draft bylaws sample provided with all formation packages)

II. Federal Tax-Exemption

Once a nonprofit corporation has been formed, the next step is to seek tax-exemption from the Internal Revenue Service, more commonly referred to as getting 501(c) status. The IRS recognizes statuses from 501(c)(2) through 501(c)(27). The overwhelming majority of tax-exempt organizations are recognized as 501(c)(3) organizations for their charitable purposes.

To obtain recognition as a 501(c)(3), tax-exempt entity, [Form 1023](#) must be filed with the Internal Revenue Service. Form 1023 is a 29-page, comprehensive look at an organization's structure and programs. Given the number of additional schedules, attachments and exhibits that may be required in addition to the application itself, most Form 1023 filings range between 50-100 pages of information.

FORM NAME: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

FORM NUMBER: 1023

FILING FEE: \$400.00 or \$850.00 (depends upon gross revenue history/projections)

FOR ADDITIONAL INFORMATION: <http://www.irs.gov/charities/content/0,,id=96986,00.html>,
<http://www.501c3.org/501c3-services/start-a-501c3-nonprofit/>

FOUNDATION GROUP SERVICE: Yes (included with all formation packages)

NOTE: For organizations seeking federal tax-exemption under another 501(c) section, Form 1024, Application for Recognition of Exemption Under Section 501(a), must be filed.

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Should the IRS grant tax-exempt status, the applicant will be issued a *Letter of Determination* to that effect.

III. State Income Tax-Exemption (Corporate Income Tax)

Most states recognize the federal Letter of Determination and do not require any additional, state filings in order to be income tax-exempt for state purposes. A handful of states, however, have their own recognition requirements.

DELAWARE REQUIRES FILING: No

FORM NAME: N/A

FORM NUMBER: N/A

FILING FEE: N/A

FOR ADDITIONAL INFORMATION:

http://revenue.delaware.gov/services/Business_Tax/Non_Profit.shtml

FOUNDATION GROUP SERVICE: Yes (included with Complete Compliance package)

NOTE: Corporate tax- exemption does NOT exempt you from Unrelated Business Income tax(UBIT). For additional information: <http://www.501c3.org/blog/tag/unrelated-business-income/>

IV. Charitable Solicitations Registration

Most states require a nonprofit organization to register with its Department of Charitable Solicitations, typically administered by the Attorney General's office (though not the case in every such state). Each such state has its own filing forms. An effort to standardize registration (particularly for those nonprofits registering in multiple states) was started several years ago by the National Association of State Charities Officials and the National Association of Attorneys General. The result is called the *Unified Registration Statement* (URS), which is accepted in most states that require registration. The results have been mixed at best. While the attempt to standardize registration is noble in its intent, each URS-accepting state has widely varying criteria as to its use and suitability. In addition, most states require additional information not required on the URS and these additional requirements are far from standardized. As a result, it is our professional opinion that most nonprofits use the appropriate state form in order to register with that state's Department. The following is the state-specific information.

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The following is the state-specific information.

FORM NAME: N/A

FORM NUMBER: N/A

URS ACCEPTED: No

STATE SUPPLEMENT TO URS REQUIRED: N/A

FILING FEE: N/A

EXEMPTION FROM FILING ALLOWED: N/A

FORM NAME: N/A

FOR ADDITIONAL INFORMATION:

http://revenue.delaware.gov/services/Business_Tax/Fund.shtml

FOUNDATION GROUP SERVICE: Yes, although not required in this state we do offer this service.
(included with Complete Compliance package)

V. Sales Tax Exemption

Many nonprofits can benefit from being exempt from sales tax on purchases of services, goods and materials. Some of the states that allow for sales tax exemption require that you have received your 501(c)(3) status from the IRS. Others do not.

DELAWARE ALLOWS: No-Delaware does not have a sales tax

FORM NAME: N/A

FORM NUMBER: N/A

FILING FEE: N/A

FOR ADDITIONAL INFORMATION:

http://revenue.delaware.gov/services/Business_Tax/Exemptions.shtml

FOUNDATION GROUP SERVICE: Yes

VI. County Registrations

There are 3,140 counties in the US. While many do not require business licenses or other filings by nonprofits, some do. We highly recommend that all organizations contact their County Clerk's office to inquire as to any necessary filings.

FOUNDATION GROUP SERVICE: No

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VII. Ongoing Compliance

Once a nonprofit organization has been created and has obtained tax-exemption and other necessary qualifications, these statuses must be maintained. Below is a list of the ongoing compliance filing requirements for a nonprofit, tax-exempt organization in Delaware.

A. Corporate annual report

Your nonprofit corporation must file an annual corporate report with the state in order to remain in good standing. This report keeps the state updated concerning the organization's current board of directors' structure and other relevant information.

FORM NAME: Corporate Annual Report

FORM NUMBER: N/A

FILING FEE: \$25.00

DUE DATE: March 1

LATE FILING PENALTIES: \$125.00

FOR ADDITIONAL INFORMATION: <http://www.corp.delaware.gov/paytaxes.shtml>,
<http://www.corp.delaware.gov/taxfaq.shtml> , <http://www.corp.delaware.gov/frtax.shtml>

FOUNDATION GROUP SERVICE: Yes

B. Federal IRS Form 990

[IRS Form 990](#) is an annual information return that must be filed by all 501(c) organizations. Form 990 is similar to a corporate tax return, but with several key distinctions. It is an annual report of income and expense activity, along with information specific to nonprofits: the prior year's activities and accomplishments, significant detail about structure and operations and information about larger donors. No taxes are due on net income from tax-exempt activities.

There are 5 different versions of Form 990: Form 990, Form 990-EZ, Form 990-N, Form 990-PF and Form 990-T. Which one is required of any particular organization depends on a number of factors, the most significant of which is the amount of annual, gross revenue received by the organization. In tax year 2008, the IRS significantly increased the amount of information that is required to be reported by organizations. 2009 added even more to those savings. It is highly advisable that nonprofit organizations seek the assistance of a qualified professional to assist with the preparation of Form 990.

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NOTE: Some version of Form 990 is now required of all 501(c) organizations (except churches), regardless of gross revenue or past filing requirements...even if an organization has not yet filed for official 501(c) determination. Significant penalties, and even revocation of tax-exempt status, can result from failure to file a timely and accurate return.

FORM NAME: Return of Organization Exempt from Income Tax

FORM NUMBER: Form 990, 990-EZ, 990-N, 990-PF, 990-T

FILING FEE: \$0

DUE DATE: 15th day of the 5th month after fiscal year end

LATE FILING PENALTIES: \$20.00 per day, up to the lesser of \$10,000.00 or 5% of the organization's gross revenue

FOR ADDITIONAL INFORMATION: <http://www.irs.gov/instructions/i990/ar01.html#d0e43>,
<http://www.501c3.org/blog/radical-changes-to-form-990/>

FOUNDATION GROUP SERVICE: Yes

NOTE: There are no financial penalties associated with the late filing of Form 990-N. The IRS will, however, revoke tax-exempt status for organizations that fail to file any version of the Form 990 for 3 consecutive years. Other than one official notice the I.R.S. will not send annual reminders that your 990 is due. 990's are always due by the 5th month and 15 day after fiscal year end.

C. State Exempt Organization Information Reporting

Most states recognize the IRS Form 990 as acceptable for state reporting. Many states require no reporting, depending upon the type of organization.

DELAWARE REQUIRES FILING: No

COPY OF IRS FORM 990 ACCEPTABLE: N/A

FORM NAME: N/A

FORM NUMBER: N/A

DUE DATE: N/A

FILING FEE: N/A

FOR ADDITIONAL INFORMATION: No

FOUNDATION GROUP SERVICE: No

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D. Charitable Solicitations Renewal

Once an organization has registered with the state Department of Charitable Solicitations, it may have to report annually to the state of registration. Delaware does not require annual reporting. If required, the threshold to report usually depends upon the type of organization and the amount of gross revenue.

FORM NAME: N/A

FORM NUMBER: N/A

FILING FEE: N/A

DUE DATE: N/A

LATE FILING PENALTIES: N/A

FOR ADDITIONAL INFORMATION:

http://revenue.delaware.gov/services/Business_Tax/Fund.shtml

FOUNDATION GROUP SERVICE: Yes

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E. Other Reporting Requirements

The regulatory world we inhabit is in a constant state of change. It is imperative that all businesses stay aware and informed, including (and especially) nonprofit, tax-exempt organizations. Know what your state and the federal government require and stay current. It is a lot easier, and much less expensive, to do things correctly the first time.

Important Notice: Form changes occur periodically to implement new requirements. Forms may be eliminated or revised, or new forms may be created. Before submitting forms for filing, please be sure that you have the most recent version of forms.

Links can change frequently. If you have a problem with a link, copy and paste the link in your navigation bar.

Employers - If the nonprofit organization has or is thinking of having employees and/or speakers/guests/independent contractors, there could be additional registration and reporting requirements at the federal and state level. A common mistake for organizations is compensating people as independent contractors when the relationship requires paying them as employees. You can find information at both the federal and state level to clarify such relationships. Below you will find helpful I.R.S. links. For state requirements, check with the Department of Revenue. This is the most commonly used name for that department; your state may identify it by a different name. At this department you will find topical information about: state unemployment insurance (SUTA), state income tax (SIT), new hire reporting requirements and workers compensation.

<http://www.irs.gov/file/article/0,,id=111140,00.html>

<http://www.irs.gov/pub/irs-pdf/fss8.pdf>

<http://www.irs.gov/pub/irs-pdf/p1779.pdf>

DELAWARE COMPLIANCE CHECKLIST

FEDERAL FILING REQUIREMENTS

1. **990 FORM FILINGS** - due by the 5th month and 15th day after fiscal year end.

Filing Due Date:

Location of past filed copies:

NOTE: Churches are the only 501(c)(3) organizations that do not have an IRS Form 990 requirement.

STATE FILING REQUIREMENTS

2. **CHARITABLE SOLICITATIONS** - Your state does not have a charitable solicitations filing requirement. However, if you solicit funds in other states you may have filing requirements for those states. If you utilize a Professional Fundraising Counsel or Professional Fundraiser, please inquire with your Attorney Generals office for guidelines and regulations.
3. **CORPORATE REPORT**
Annually - Your state has an annual filing requirement.
Due date and year:
Location of past filed copies:
4. **STATE CORPORATE/INCOME/EXCISE TAX** – Your state recognizes the federal Letter of Determination and does not require any additional state filings in order to be income tax-exempt for state purposes.
5. **STATE SALES TAX EXEMPTION** - Sales Tax Exemption is not available in your state.

The organization could have additional state and federal filing requirements. This would depend on the type of organization and other factors such as: product sales, employees and independent contractors.

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Our Mission

"To provide our clients with the expertise they need so that they can concentrate on what they do best...fulfilling their mission."

Don't miss out on **FREE** continuing education for the nonprofit world:

- Click here to sign up for our **free** [Newsletter!](#)
- Click here for [10 questions you must consider before starting a nonprofit!](#)
- Our CEO recently conducted an in-depth webinar. Our attendees paid \$69.00 each, but we are giving you access to the recording at **NO COST**. Just click the link and you will be taken directly to the webinar. Click here: [Starting a New Nonprofit!](#)

Please feel free to make as many copies as you need for your organization's internal use. We ask that you refrain from any other distribution. Thank you!

About Foundation Group

The Foundation Group provides complete formation and compliance services to nonprofit organizations all across America...and has done so since 1995. We have successfully guided over 12,000 nonprofits through the IRS 501(c)(3) process. Simply put: No firm in America has more experience!

From Form 990 preparation to Charitable Solicitations Registration and other services, our team works hard assisting existing nonprofits with staying fully compliant with state and federal regulations. Our clients stay educated through our frequent articles and online newsletter, semi-annual Boot Camp conferences and our newest initiative, 501(c)(3) University. We will continue to develop both new and updated services to meet the ever-changing needs of the nonprofit community.

The Foundation Group is the nation's leading specialty firm for most of the formation and compliance needs any nonprofit organization will encounter. Put our expertise to work for your organization. We look forward to the opportunity to help you on your road to nonprofit success!

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