

Nonprofit Incorporating - The Business Plan

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INTRODUCTION

This article has been prepared to give guidance to people who are considering starting a not-for-profit corporation. It is not intended to be a full and detailed step-by-step manual about starting a nonprofit corporation, however. There is a list of Federal forms and booklets at the end of this document. Religious groups that are considering the development of a faith-based nonprofit organization will also find this article timely.

The purpose of this paper is to bring into question the reasons why someone wants to start a nonprofit corporation, to discuss the necessary processes to do that and to provide Internet and other resources for further work in the development of the corporation. For some readers this will be a handy introduction to starting a nonprofit group. To others, it may be a cold shower of reality that it requires a lot of work and commitment to start and maintain a nonprofit business - and it is a business.

As you develop your NPO concepts, remember that the organization will have to meet legal standards, ethical standards and other forms of accountability. You will find links to a number of standards that are being developed and strengthened at the web site of AVAGARA, <http://www.avagara.com/nonprof/accountability/>, and others listed below. You will find that some of these standards will help you in the development of your group. There is increasing pressure from State Attorneys General, the Internal Revenue Service (IRS) and foundations, corporations and government to assure quality return from public charities and a clear sense of goals and objectives. Foundations and other grantors are using the Internet to ascertain the viability of organizations before providing grants.

I strongly advise that any person starting a nonprofit to talk to an attorney about the process. There is a brief discussion later about finding an attorney, page 23. As you take the next step in looking at beginning a nonprofit organization, I wish you every success.

POINTS TO CONSIDER BEFORE YOU START A NONPROFIT

Before you decide whether or not to start and to incorporate a nonprofit, you should consider a number of questions. They are serious questions. They will cover the next

several sections of this paper. I recommend that you sit down, spend some time and write your answers to the questions on a pad. There are many successful nonprofit organizations and there are failures. For the purpose of this paper, I am not including the incorporation of churches and other religious houses of worship; schools, colleges and universities; hospitals and medical research organizations; section 509 (a) (3) supporting organizations; private operating foundations, homes for the aged or handicapped, organizations providing scholarship benefits, student aid, etc. to individuals; or successors to "for profit" institutions. All of those are required to file the Federal Form 1023 that is addressed in this article. There are, however, additional schedules for those organizations that are not addressed here. Those additional schedules are not difficult but you may want to talk to an attorney familiar with tax exempt and nonprofit law. I have included notes about incorporating childcare centers.

The first know charity law began in 1601 with the passage of the Statute of Charitable Uses in England. More than half the nonprofits that exist in America were started after 1945. Some of the most successful providers of care were begun more than 100 years ago. The five oldest national organizations are still in the top 400 recipients of contributions: YMCA (1851), YWCA (1866), Salvation Army (1879), American Red Cross (1881) and Volunteers of America (1896). See <http://fdncenter.org/learn/topical/fdnhist.html> and <http://www.cof.org/Content/General/Display.cfm?contentID=60> for additional history.

Historically in the United States examples of a charitable organization include:

- Relief for the poor, the distressed or the underprivileged
- Advancement of religion
- Advancement of education or science
- Erection or maintenance of public buildings, monuments or works
- Lessening the burden of government
- Lessening of neighborhood tensions
- Elimination of prejudice and discrimination
- Defense of human and civil rights secured by law, and
- Combating community deterioration and juvenile delinquency.

Elsewhere the IRS Code section 501 (c) (3) describes charitable organizations as those that are formed for "religious, charitable, scientific, testing for public safety, literary or educational purposes or to foster national or international amateur sports competition".

There are benefits and detriments in becoming a nonprofit organization under State and Federal laws. They will be discussed shortly. At this point, it is important to realize that being recognized as a nonprofit organization in your State and as a section 501 (c) (3) corporation by the IRS gives the organization public recognition of tax exempt status. It gives contributors an advance assurance of deductibility of contributions and it allows the nonprofit to be exempt from certain State taxes and Federal excise taxes. Foundations and government grants are available to nonprofits that have the recognition of the IRS.

There are other benefits including nonprofit mailing privileges and it may provide relief from property taxes. I say, "may provide relief from property taxes" because there have been periodic movements by lawmakers to tax certain nonprofit property. Early in 2001 Baltimore MD considered taxing the huge holdings of Johns Hopkins University and other large NPOs in the city, but the matter was settled by negotiations. NPOs may have to pay property taxes if the property is viewed as a profit-making source of revenue. According to the New York Times on January 6, 2001, Bridgeport CN was initiating a property tax on all nonprofit organizations.

In most states there are property tax assessments that can be charged to nonprofits including houses of worship, churches, synagogues, mosques and other NPOs as they are with businesses and housing. Each can be required to pay property tax on space leased to other entities such as a day care center, a weekday parking lot or for-profit-businesses. A number of churches have leased their steeples or towers to cell phone carriers. Usually it is up to the local municipalities to enforce the law and to assess the appropriate property tax. That is the bad news. The good news is that the assessment on these lease agreements may help protect houses of worship and other NPOs from fully losing their status as a tax-exempt organization.

There is no way to know how many nonprofit organizations exist beyond paper and are currently viable. The only organizations that can be ascertained as having some money are those which file Federal Form 990 because they have annual revenue of \$25,000 or more. When we look at nonprofits as a whole, we have to realize that faith-based religion, universities and colleges and hospitals are in the mix. Religious organizations do not have to file Form 990 if they do not want to.

Independent Sector published a report on July 18 2001 showing there has been a 74% increase in the number of charities in the United States in the last ten years. There are now about 1.626 million nonprofit organizations including 734,000 501 (c) (3) charities. A copy of the press release and the report can be viewed at <http://www.independentsector.org/> and "Nonprofit Information Center" at http://www.independentsector.org/Nonprofit_Information_Center/information_center.html. The American Bar Association reported in late 2001 that the IRS is receiving 85,000 requests for 501(c) (3) application a year, about 325 a day!

The intent here is to challenge you to give you the best shot at success.

REASONS NOT TO INCORPORATE A NONPROFIT ORGANIZATION

This is the start of the questions. Jot down your answers as you read this and the next several sections.

1. You do not have a group of people who share your mission and sense of vision who will work with you to create this nonprofit tax exempt organization.
2. You are not sure whether other people will work with you on the project.
3. You left a similar organization and you want to compete with them.

4. You really do not know how much work it will take to incorporate in the State and file with the Internal Revenue Service.
5. You do not expect to raise money or seek grants, at least no more than two to three thousand dollars a year.
6. You are not sure what kind of work goes into operating a nonprofit corporation after it is incorporated and recognized by the State as a nonprofit organization and by the IRS as a tax exempt organization.
7. You know there is a need for this service but you have not documented the need and do not know how to go about meeting the need.
8. You believe it is easy to incorporate a nonprofit group.
9. You believe it is easy to operate and maintain a nonprofit organization.
10. You believe it will be easy to raise the money to accomplish your goals and objectives.
11. You like to be independent.
12. You have a great idea and you are concerned that other people who become involved will change the programs and activities you want.
13. You and your family want to control the organization so that it will be run right.
14. You want to be the chief executive officer such as the executive director for a salary and sit on the board as chairperson.

Please rethink why you want to start a nonprofit. There are many great reasons and motivations but these are not among them. Nonprofits as with for-profit businesses can fail. The reasons listed above will help you along the path to failure. Nonprofits can fail when they are not mission-driven but driven by some other force. The mission, the purpose, the vision have to be the reasons to start a nonprofit. So rethink your motives. A second reason a nonprofit may fail is the failure to have a market plan, and a plan to collaborate and to partner with others rather than to duplicate and to compete. A third reason for failure can be a lack of attention to the fiscal details involved with the budgets, bookkeeping and other elements of administration and management. A fourth reason why it may not succeed is a failure to understand who or what is being served, who is the constituency, why the service is needed and by whom. A fifth reason a nonprofit may fail is because the leadership is not creative and has not diversified the supporters, the volunteers or staff to fill in for the leader's and others' weaknesses. Therefore if you are one of the fourteen folks listed above, give some new thought to your motives and your mission - and read on. All is not lost, simply altered. See the article by Tony Poderis at <http://www.raise-funds.com/1101forum.html> for a discussion about mission and mission statements.

**WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF
INCORPORATION?**

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none">• A corporation is treated by law as an individual rather than a group of individuals.• Protection from individual liability from group's debts, negligence, etc• Can own property in corporation's name.• Can enter into contracts, borrow money, etc. in corporation's name.• Must be incorporated in the State to qualify and maintain legal status of corporation.• More likely to qualify for tax-exemption.• More likely to qualify for grants and other funds.	<ul style="list-style-type: none">• Increased government regulations and reporting requirements.• Increased paperwork and face some costs necessary to operate the organization.• More formal procedures required.

REASONS FOR INCORPORATING

1. Your group intends to become a permanently established not-for-profit organization.
2. The mission you are pursuing has a charitable purpose.
3. Your group needs to raise \$5,000 or more a year.
4. You want to make grant applications to private entities, foundations or government, to have fundraising activities or you will be charging a service fee.
5. You have or wish to hire employees.
6. The group owns or plans to purchase significant equipment or property.
7. You contemplate entering into a contract, such as a lease.
8. Your members, board and/or officers need or desire protection from liability for the group's activities.

QUESTIONS TO ASK YOURSELF BEFORE INCORPORATING

Take the first question below, "What is the purpose of your nonprofit?" (It is really not yours, you know; it belongs to the board, not an individual) Your answer may be to save whales, to overcome AIDS, to work with troubled youth or to have a community development corporation. Go beyond those answers. Review and work on the rest of the questions and come back to the first one and see if you have some additional purposes or reasons for starting a nonprofit.

1. What is the purpose of your nonprofit? Why are YOU starting a nonprofit? Why are you starting THIS nonprofit? What is your vision, your mission?

2. Can you partner or join with another nonprofit organization performing the same or similar mission without incorporating another group? How will you avoid duplication of work?
3. What are your qualifications and experience to open and operate this not-for-profit business?
4. What kinds of activities will your nonprofit involve or sponsor? Who will be responsible for these activities?
5. Will you be providing a service? Will that service be limited to certain customers/clients/others? Who? How? Why? When? What will be the proximity of your office and service to your customers/clients/others?
6. Will you have membership? If so, who will be eligible and what duties, obligations and authority will members have?
7. What will be the name of your organization? Have you reserved that name with the State?
8. Where will you be opening and operating this nonprofit?
9. Who will you have on your board of trustees and other people providing money and assistance? Why will you have them on the board? What part will they have in decision-making? What part will they play in the organization?
10. What are the advantages and disadvantages to incorporating THIS organization? Make two columns and list both advantages and disadvantages. Talk to others who are working with you to add to both lists. Do the advantages outweigh the disadvantages?
11. What are your resources? What are your talents, experience or education to operate this organization?
12. Will you have paid staff and personnel? Will you have volunteers? What are their responsibilities and authority? What roles will they play in the organization? What are the responsibilities of the organization to its employees and volunteers? Who will handle those responsibilities?
13. What is your experience in managing a nonprofit organization or other endeavor?
14. Will your organization or personnel require licenses, registrations, approvals, certificates or permits? Will your staff require licensing, criminal background checks, or drug testing?
15. Do you own equipment or other forms of property? Do you plan on acquiring property and equipment? Will you purchase or lease the equipment and property? How will you acquire these resources? How will you pay for renovations, furniture and signs at an office? How will you pay for the continuing maintenance and improvements?
16. How and where will you keep supplies, stock and inventory?
17. What are your financial needs? Does the organization have a bank account? What are your financial skills? What kind of grants or funds will you need? How much money will you need to begin to open this organization and sustain it - for 1 to 6 to 12 months, or for three years? Where will that money come from?
18. What potential liability does this nonprofit have? What insurance protection will you need?
19. Have you received any training, education or technical assistance to operate a nonprofit business? If you have not received any training, education or technical

- assistance, will you need that kind of help? Where will you find that help? How will you pay for it?
20. Have you developed a business plan? Do you know what a business plan is and why you need one?
 21. How will you keep financial records and other important records such as contracts, orders, wage payments, vouchers, bills of lading, bank accounts, tax information, personnel records, annual reports, audits and so on?
 22. Are there other not-for-profits or for-profit groups - competition - like yours in the community where you will open? How and why is your nonprofit different than they are?
 23. What are the major impediments for you to start this organization? What are the barriers? How will you overcome these impediments and barriers?
 24. How will you advertise or market the nonprofit's service? How will you get customers/clients/supporters? What will be your niche or specialty in the community you serve, the market place?
 25. Have you or other members of your family and friends operated a business or another nonprofit? Will they help you in this enterprise? What will that help be?
 26. Does your group plan on dissolving after a period of time or is it a long-range project?
 27. Do you believe the organization will be involved with lobbying, advocacy and/or political activities?
 28. Do you have the right stuff to create, maintain and sustain this dream?

DEVELOPING A BUSINESS PLAN

Starting a nonprofit is complex. You cannot simply have a great idea and a community need and look for funders, customers or clients. You need a plan, a plan in writing. Such a written plan is called a business plan. If you sat down and started writing answers to the 27 questions listed above, you have a start to producing your business plan.

Why do you need a business plan? Generally for-profit leaders prepare a business plan to get ready to open the business and to have a document to give to potential investors or lenders. Not-for-profit leaders have a responsibility also to get ready to open for business. The State and the IRS will ask a significant number of questions about the organization, particularly the IRS. Nonprofits have to find funding. The business plan becomes an introductory document to give out locally to community leaders, the United Way, the mayor and town/city council, local trust funds and others, State elected and appointed officials and partners in the venture. If you will be seeking foundation, corporate or government funding, the business plan will be helpful to leave with leaders at the first introductory meeting. Perhaps even more important - it will give you and your helpers a clear idea what it takes to develop your dreams into reality and to plan for the future.

Here is an outline about what you should have in your business plan.

- **Title Page** - The Title Page will have the name of your organization, a list of the board of trustees or directors, the chief executive officer (I will refer to this person throughout this paper as the "executive director"), and the office address, telephone and fax numbers. If there is an e-mail address and a web site, include them as well. Note: some States call the board "trustees" and some States refer to the board as "directors". There is no real difference; use the word that is in your State law.
- **Executive Summary** - Actually you will write this last but it should be placed right after the Title Page. The reason you will write this last is that it summarizes briefly all the material following. The Executive Summary will tell the reader how the nonprofit is organized. It tells who you are and the function of the nonprofit organization. If you are looking for grants and money or will conduct fundraising activities, it will summarize your method and purpose for raising money that way. . Key elements of the Executive Summary include clear identification of the organization, at least one sentence each on credibility, the problem being addressed, objectives, and methods. Include budget totals - total project cost, funds already obtained. Be sure it is brief, it is clear, it is interesting and it is truthful.
- **Corporation Description** - Here you will give an overview of the function of your organization. Discuss briefly a history of how the idea of the organization began, its projected size (building needs, space, employees, equipment and tasks), a description of the service you will provide and the community or market your organization will be in. Character is the general impression you make to a prospective supporter, contributor or funder. Describe the character of your organization and its leadership. Discuss the values this organization and its leadership will exhibit. Supporters and funders will form a subjective opinion as to whether or not you are sufficiently trustworthy actually to be able to perform the service and to handle the funds. The educational background and experience of the board and staff will be reviewed. The quality of the references and the background and experience of your leadership and employees will also be taken into consideration. Discuss those items here.
- **Market Analysis, Data** - Starting a nonprofit requires doing your homework, study and research. In this section you will discuss that research and the conditions and trends in the needs you want to meet. Write about the need for your service and the demand for it; how is it unique? Describe how many other major competitors you have, both for-profit and not-for-profit organizations, how much of the need your competitors meet and control, and your strategy for gaining a place meeting that need or developing a new niche. You need to be able to explain any barriers that you will have to face at the beginning, how you will sustain your activities as a nonprofit organization how you plan to overcome those barriers. You may have discovered a gap in services; describe that gap, why you believe it exists and how you will close that gap. Are there other organizations that are willing to help you close that gap (list them and include letters of support in the Appendix)? How many people or other needs will you serve and what are those needs? Place the demographics about the need for this service in this section. Detailed surveys, tables and charts can be placed in the Appendix. You may need statistical information or data from the US census, for instance. Who will be your collaborators or partnering

organizations? Do not name them unless you asked them and they agreed to be included. Are there community leaders, both public and private, who support this effort? Have they written supporting letters? Put such letters in the Appendix. Is there anecdotal information that can support your plan?

- **Services** - Explain your vision, your mission, the goals and objectives, the kind of services that will be provided and the activities and functions in detail. How will other people know that you are able to meet these goals and objectives? How are your goals and objectives measurable? How will anyone know you are meeting your stated goals and objectives? How do you know the activities you have planned will meet the stated goals and objectives? You have to answer the question, "So what?" So what if you will perform these activities? So what if you outline an extremely busy and detailed activity list? What will be different because you perform these activities in the way you perform them? What difference will it make? How will people or the problem be better or resolved? I have met with many community groups that work very hard and I have asked the question, so what? What have you changed or accomplished? Many are not able to articulate and prove they accomplished or changed anything. So...what will you change, how will you change it and how will you know your activities produced the change? What are the conditions under which your service will work? What is your mission and what is your mission statement? If your mission statement is brief and you have a logo, consider placing them on the Title Page as well. Here are some thoughts about a mission statement. There are those who believe it should encompass the basic reason for existence and can be several sentences long. There are others who say make it short so everyone can say it by memory and so it will fit on a T-shirt. Either way put the time in on creating this. It is not easy. Include others in the discussion and allow refinement as time goes on.

- **Operations** - Explain how you will create and how you will deliver your service and meet the identified need(s). Specify how you will get your service out the door to customers/clients or supporters and meet the needs you see. Give the location of your service and state how and why that location was selected. Are there any barriers for your clients/customers because of this location? Do you have a storage area? Where will your inventory be warehoused or kept? Create a flow chart that shows the steps you will take to offer and to provide the service. One of the two most difficult sections in completing IRS Form 1023 is Part II, Activities and Operational Information, particularly question 1. The IRS wants "a detailed narrative description of all the activities of the organization - past, present and future" (emphasis added). Providing this information in this and other sections of your business plan will go a long way in helping you complete Part II of Form 1023.

- **Marketing Plan** - Describe how you intend to provide your service and who will use it. How will people know about the service? Describe your distribution plan and advertisement plan. Give the details of your marketing plan. Will you use fliers, the Internet, local newspapers and media, e-or snail-mailings or word of mouth? As with any other business the new nonprofit has to include in its marketing plan product positioning. Placing the NPO and its mission in front of its constituents, possible supporters and

volunteers is vital to the success of providing the service. How will people know your address, your telephone number, how to reach you? For many new NPOs the marketing plan seems to be to have a web page up and running. I am surprised by the development of a web presence before the group is even incorporated. Do not be confused by this - I believe in a web presence but it is only one part of the marketing plan that has to be broader. How will your organization handle public relations? Who can speak for the organization? Will there be a committee of the board developing and handling marketing and public relations? If there will be such a committee, discuss its role here. If there is no experience in the group concerning marketing, how will you overcome this barrier? How will the organization handle bad publicity and other risks?

- **Board of Trustees and Members** – It takes a TEAM to raise a nonprofit organization – to raise it, to maintain and to sustain it. That team begins with the governing body. Describe the governing body of the organization, the board and state whether you will have members. Do you have bylaws? If you have bylaws, place them in the Appendix. What role will the members play? Who is on the board and who are the officers? Describe how these individuals became members, board members and officers. What experiences do the board members bring to the organization and its mission? NPOs should carefully consider paying for board and staff Errors and Omissions (E&O) or Directors and Officers (D&O) insurance and liability insurance as protection in legal actions. If you intend to have a significant web site presence on the Internet, consider insurance to protect the organization with that as well. In my view insurance is a necessary ingredient to the budget. See my material Insurance Questions for Nonprofits - <http://www.nonprofits.org/npofaq/19/56.html>. Attach resumes of at least the officers to the Appendix although it would be more helpful to have the resumes for all board members if the board is not too large.

- **Management and Personnel** - Explain who will direct the day by day operation of the nonprofit. Who will work with that person? What are the standards that will be used to hire and train the executive director and other staff? Describe how their experience will contribute to the success of the mission of the organization. Demonstrate the use of technology in your plan of service, particularly finances and budgeting, e-mail strategy and web site development, and availability to employees, volunteers and constituents. Give an outline of the work plans that will be followed by employees and volunteers to meet the mission of the organization. A work plan shows what work will be done, who will do it, how it will be accomplished, where activities will take place, the date by which it will be done and feedback and analysis of the effectiveness and efficiency of the tasks accomplished. Outline the employee policies you have or will have in place such as a personnel manual, anti-sexual harassment policy, equal employment opportunity and so on. Include employees' job descriptions and personnel needs. Include copies of resumes for all known key staff people in the Appendix.

- **Funds Required and Expected Use of the Funds** - If you are going to raise money, seek grants, hold fund raisers, collect dues, explain how you intend to raise the money, why you need the funds and how you will use the money. Show how you will account for the money and what records you will keep. Describe your accounting system

and the policies you have or will have in place concerning salaries and fringe benefits, travel expenses, bank reconciliation, separation of functions and so on. State a specific amount of money you will need for the first year and for the next two years. If you have letters of support and persons who are willing to provide funds once you are approved by the IRS as a nonprofit organization, consider whether to include them in the Appendix. You may not want to publicize them at this stage of your progress; they may want to remain anonymous. Describe your plan to secure funding and give a contingency plan in case your initial plan fails. One of the two most difficult sections of IRS Form 1023 is Part IV, the Financial Data. The time spent in preparing fiscal information here and in the next section below in the business plan will reduce the time and effort answering the questions in Form 1023, Part IV. Demonstrate the role of the board in funding and accounting in this section. Indicate how the organization will be maintained and sustained during the first three years. See internal controls suggested by the New York State Attorney General - http://www.oag.state.ny.us/charities/internal_controls.pdf

- **Financial Statements and Projections** - Include projections and budgets for the expected performance of your nonprofit for the upcoming three years. You will need to demonstrate your understanding of basic accounting and the financial concepts that are crucial to the success of your organization. Detail the budget for three years covering personnel, fringe benefits, employee taxes, telephones, computers, insurance, space costs, travel, training, supplies and so on. By using complete and accurate projected financial statements, you will be able to communicate to a prospective contributor or funder how these concepts will be successfully applied in your organization. The narrative about the finances will be in this section and the documents are to be attached to the Appendix.
- **Appendices/Exhibits** - This section will document any issues you cannot address in other sections. An example is an agreement you have with other nonprofits or individuals, contracts for the lease or purchase of your property, equipment, job descriptions, professional, operating or health licenses and so on. Other sections above list other documents to include in the Appendix.

Are you finished? Then you can prepare the Executive Summary.

The Nolo Press has an excellent brief article answering the question, Why you need to write a Business Plan located at http://www.nolo.com/encyclopedia/articles/sb/why_bp.html?e=b20b0000206032001. The article addresses the reasons to create a business plan, the importance of financial forecasts and the need to raise money. There are temptations to skip financial projections; they are hard. There is an old bromide that says the devil is in the detail. That is true for the business plan and will be in every grant application you prepare. Do not skip the financial projections. Program precedes money. Planning precedes program.

SCORE has a useful 32-page business plan template at http://www.score.org/template_gallery.html. While it is aimed at small businesses, it can serve the purpose for a nonprofit as well. SCORE is a nonprofit association that provides entrepreneurs with free, confidential face-to-face and e-mail business counseling. Sample

business and marketing plans are also available at http://www.morebusiness.com/templates_worksheets/bplans/.

Developing your business plan early in the process will save you headaches and heartaches later, particularly when you are seeking grants. Depending on the instructions in a Request for Proposal (RFP), you may want to include your business plan or an executive summary. Some RFPs limit the number of pages and attachments. If you seek a grant and it is not approved, politely ask why. Seek an appointment to talk briefly about the application so that you can learn what can be improved. Each governmental and private foundation has different standards for providing grants, so there may be reasons stated that would help you understand why they did not give you a grant this time. That can help you assess future grant applications. Remember that this is part of the public relations process as well and alienation of a funder will certainly hurt the organization in the future. Such pursuit for assistance and understanding can help you assess future grant applications and develop a relationship with the funder. Perhaps your business plan has to be strengthened or amended.

OTHER FACTORS TO CONSIDER

You are working on your business plan, but there are still other significant factors to consider. This section will be a brief outline of those factors. You can find help in addressing these factors both in this section as well as the next section, "Other Resources Available to Help You".

- **Deciding Your Business Name and Registering It** - you will want to check with your appropriate State office to learn if the name you want for your organization is available. In some States that office is the Secretary of State, in others it is the Department of Commerce or the Treasury Department. Check your State's web site. If you are having trouble finding what you are looking for, put "nonprofit" or "tax exempt" in the search box and follow the leads. Some States require that nonprofits use the words "Incorporated", "Company" or "Corporation", abbreviations or similar language. Other States do not permit those titles.
- **How to Reserve/Register Your Business Name** - you can check on the availability of the name and /or reserve the name in your State. You may be able to reserve the name for 120 days by contacting the appropriate State office. There is probably a fee to reserve the name. If you expect to use the initials of the name, you may have to reserve that as well.
- **Filing Incorporation Papers** - you must register your business with your State by filing Articles or Certificate of Incorporation. Some States refer to the incorporating papers as "Articles" and other States call them "Certificate". There is certain language that the federal IRS requires in the Articles to be approved under Section 501 (c) (3). Be sure to include that language. Individual States have additional language they require in the Articles. Your State may have a form or a model incorporating form but the form may not have the language the IRS requires. Be certain to have the language both your State and the IRS require. The instructions to Federal Form 1023 have sample-incorporating papers with the required Federal language (and not the language required

by States). The language can be also found in IRS Publication 557. Be sure to include that language. There are fees required at various steps by States. Check the State web site for fees or contact the appropriate State office. For links to State offices, see <http://www.nasconet.org/index.php?topic=Offices>.

- **If You Will Have Employees** - you will need to file IRS Form SS-4, "Application for Employer Identification Number (EIN or FEIN)" – The instructions for SS-4 include the address and contact information for the regional office to file for the FEIN. Application may be filed by telephone, FAX or by regular mail. (See also IRS websites for forms listed below.)

Please note: do not open a bank account for your nonprofit group under your own Social Security number. If you open such an account for your organization under your Social Security number or that of another individual, all income will be taxed under that number. If you have an EIN, bank accounts can be opened under that number and the name of the organization. An EIN is like a Social Security number, but for a nonprofit organization or business.

- **Form 1023 and Other Federal Material** - after you have the State approval for your Articles/Certificate of Incorporation and the EIN, you may file IRS Form 1023, Application for Recognition of Exemption. Form 1023 is a lengthy document and is not easy to complete. The IRS charges a fee upon filing Form 1023. The work you did on developing a Business Plan will, however, give you enough information for an excellent first draft. Other forms you will have to file are Forms 872-C (Consent Fixing Period of Limitation upon Assessment of Tax under Section 4940 of the Internal Revenue Code, to be submitted in duplicate), and 8718 (User Fee for Exempt Organization Determination Letter Request). You will also find Federal Publication 557, Tax-Exempt Status for Your Organization, absolutely helpful. Publication 557 has sample Certificate and Articles of Incorporation containing the Federal language the IRS requires (but not the language States require). Other IRS documents, IRS 15 Circular E, Employer's Tax Guide, Publication 15-T, Withholding Income Taxes and Publication 598, Tax on Unrelated Business Income of Exempt Organizations, should be part of your library early. Form 8718 will list the fees to file with the IRS; read the instructions carefully. If you will have an attorney filing the forms for you, you will need a signed Form 2848. Links to these and other IRS Forms, Publications and Instructions are located at page 26. File copies of all other documents the IRS requires in the instructions, including:

- Current Bylaws and all amendments
- Conformed copy of your Certificate or Articles of Incorporation
- List of current Board of Trustees, officers and addresses
- Material written by or about your organization, e.g.: newsletters, publications, news articles, pamphlets
- Contracts your organization is or has been a party to
- Grant applications your organization has submitted for funding
- And others as required.

The filing of these forms and processing them may take several months before you receive a ruling. The 1023 may be returned to you for corrective action. When the IRS is satisfied with your application it will issue a letter of determination of tax exemption, usually an "Advance Ruling". The Ruling can be retroactive. Please be aware the IRS

issues letter opinions and Revenue Rulings that also have to be considered. The beginning web site for Federal requirements is <http://www.irs.gov/charities/index.html>

- **Childcare** - filing IRS Form 1023 for operating a childcare center requires filing Schedule G as well. See Form 1023 and read the sections about childcare in Publication 557. The Schedule is not complex but must be read and answered carefully. If the childcare center mission is to operate a school in addition to childcare, Schedule B of Form 1023 must also be completed. It is important to know that for IRS purposes childcare is defined as "the providing of care for children away from their homes if substantially all the care provided is to enable individuals (the parents) to be gainfully employed and the services are available to the general public". Remember this definition when you complete Schedule G. There may be State laws and offices that also must be contacted for licensing purposes. Technical assistance may also be available from one or more State agencies or other nonprofits. The Americans with Disabilities Act (ADA) applies to child-care centers. For further information about the ADA see material from the U.S. Department of Justice, <http://www.usdoj.gov/crt/ada/childq&a.htm>.

- **Registering with Your State Concerning Tax Exemption** - many States require that you file the IRS determination letter in order to be tax exempt in your State. When you register your nonprofit, the State may send you the necessary forms and information for compliance with your State's tax and employment laws. Be sure to have your EIN on all forms, returns, checks and other correspondence. The State may also issue a number for your organization's identification. The purpose for this filing in most States is to have the nonprofit organization avoid paying sales tax for items to be used by the organization and for employee income tax.

- **Unified Registration Statement (URS)** - your State may be one that is using the standardized form to register NPOs that perform charitable solicitations. The URS is developed by the National Association of Attorneys General and the National Association of Charities Officials to standardize, simplify and economize compliance under State's solicitation laws. For further information, you can learn more at <http://www.multistatefiling.org/>.

- **Permits and Other Regulations** - you need to contact the clerks of the municipality and the county/parish where the nonprofit is to be located to determine if there are any local regulations to which your organization must conform. Also check if there are any permits required.

- **Employee-related Issues** - even if you have a single employee, you may be required in your State to register for employee income tax, unemployment, Workers Compensation and disability insurance. Other employee-related issues include child support reporting and immigration concerns. There can be serious consequences for failure to make these contacts and to set up the accounts if you have an employee. Both your State and the United States Government have posters that are required to be placed in a public area concerning employees' rights. There are severe penalties for failure to place the posters in public. See HRDocs.com at <http://www.hrdocs.com/Posters> for a list of posters and for copies. You can secure an electronic version of federal posters free. Fill out the requested information at the web site and click the Continue button. HRDocs.com will send a file containing each poster to the e-mail address you provide. Simply open the files, print each poster, and post them. <http://www.hrdocs.com/Posters/federal.asp>. You can also check your state and any other state for a free e-mail update notice of changes of

posters. I have subscribed to all states for my e-newsletters. This is a commercial site and the owner is selling a service. He may be willing to provide the full service to a nonprofit at no cost. I have no investment interest here. We shared some e-mails last year and he was willing at that time to hear from NPOs who need a free assistance. It is highly likely that your state's web site also has these posters and more available at no cost. HRDocs.com does NOT feature all state required signs, so be certain that you verify information with your state. Also take a look at the Alexander Hamilton Institute's listings of posters by state. The Institute offers free Federal posters for download and a free state-specific reminder system when changes in posters occur - <http://www.ahipubs.com/posters/index.html>. You may be able to secure the posters free from your State web site. For the Federal posters, see <http://www.dol.gov/elaws/posters.htm>. If you will operate a virtual office over the Internet, you would be safe posting all required posters on an employee page or public page to protect the corporation. If you have staff in several states, post all States' posters. Annual and Other Reports - your State may automatically send annual filing forms to the organization's "registered agent" who is named in the Articles/Certificate of Incorporation. Please remember that if you change who your "registered agent" is, you must notify the State. The annual filing form has to be returned by a deadline and there may be an annual filing fee. If the organization does not receive the annual form, it is the organization's responsibility to file the annual report and the fee nevertheless. In many States failure to file and to pay the fee for two consecutive years will result in revocation of the corporate charter. The IRS will require various reports including a Form 990 or 990-EZ (short form), maybe the 990-T (exempt organization's business income tax return) and possibly 8300 (report of cash payments over \$10,000 received in trade or business). Form 990 and other Federal documents are required by law to be public. See my discussion, "Nonprofit Organizations - Disclosure of Information: What Must We, What Can We Disclose to the Public, Staff, Board and Clients?" <http://www.nonprofits.org/npofaq/0/1505.html>, Disclose It from Maryland Association of Nonprofit Organizations <http://www.marylandnonprofits.org/documents/Disclose.pdf> and a Guidestar tutorial about Form 990, http://www.guidestar.org/learn/tutorial/990_0intro.jsp. Ongoing IRS Filing Requirements are listed at <http://www.irs.gov/charities/article/0,,id=96103,00.html>

The checklist above is only informational and instructional. There are many other issues that leaders developing a nonprofit need to be aware from handling public disclosure to maintaining files. This paper does not address those and other issues. It does not constitute legal advice. Please contact an attorney in your State who is familiar with tax exempt or nonprofit law before you complete forms for your organization.

OTHER RESOURCE AVAILABLE TO HELP YOU

The Internet web sites listed below have "hot links" so that this article can be used while you are online and access the sites. If you have a paper copy of this document and do not have a computer, you can access this material at your local library with computer availability.

The starting place is the Internal Revenue Service NPO Application Process - <http://www.irs.gov/charities/index.html>. Here you will be guided through the process of filing the appropriate forms to be recognized as a tax-exempt organization. There are links to all the IRS forms so they can be printed from your computer. Other sections of the IRS web site are the following:

IRS Application Process - <http://www.irs.gov/charities/article/0,,id=96210,00.html>

Life Cycle of a Public Charity – http://www.irs.gov/pub/irs-tege/tege_life_cycle_of_a_public_charity_-_final.pdf

IRS and Disclosure of Contributions - <http://www.irs.gov/charities/article/0,,id=96102,00.html>

IRS Field Memoranda - <http://www.irs.gov/charities/article/0,,id=96374,00.html>

IRS Bulletins - <http://www.irs.gov/charities/content/0,,id=125361,00.html>

IRS Revenue Rulings - <http://www.taxlinks.com/rulings/findinglist/revrulmaster.htm> and <http://www.irs.gov/irm/part7/index.html>

IRS Frequently Asked Questions (FAQ) - <http://www.irs.gov/charities/content/0,,id=96986,00.html>

IRS Filing Requirements - <http://www.irs.gov/charities/article/0,,id=96103,00.html>

IRS and Unrelated Business Income Tax - <http://www.irs.gov/charities/article/0,,id=96104,00.html> and Special Rules <http://www.irs.gov/charities/article/0,,id=96106,00.html>

IRS Tax Kit listing the forms and pamphlets that are needed- <http://www.irs.gov/charities/article/0,,id=96774,00.html>

There is web site assistance by Sandy Deja available in preparing the Federal Form 1023 at <http://www.form1023help.com>. Form 1023 Help has a page by page review of 1023 and important information to maintain the exempt status.

You can look at, read and print your State statute or code at Free Advice. Here you will find a map of the United States, <http://law.freeadvice.com/resources/statecodes.htm>. Click on your State. The web site for your State statutes will appear. Scroll through and find the law on business or corporations. Some States have specific sections or articles listed as "Nonprofit" or "Tax Exempt". In other State statutes, nonprofit organizations are part of the corporation law and you have to read all of it to find the appropriate sections. Some sections are specifically aimed at tax-exempt organizations but the entire corporation law may apply. The use of this site and your State law is not a substitute for talking with an attorney.

There are links to all states' incorporating law,
http://firstgov.gov/Business/Nonprofit_State.shtml

The Foundation Center has an incorporating outline at its Learning Lab,
http://fdncenter.org/learn/ufg/ufg_tab1.html and
<http://fdncenter.org/learn/classroom/establish/index.html>.

Business Filings features brief statements about incorporating a tax exempt organization -
<http://www.bizfilings.com/learning/nonprofitfaq.htm>

Under the topic, Starting a Nonprofit Organization (for-profit or nonprofit), in the Free Management Library assembled by Carter McNamara, MBA, PhD you will find valuable links to information - http://www.managementhelp.org/strt_org/strt_org.htm and
http://www.managementhelp.org/strt_org/strt_np/strt_np.htm

Putnam Barber has excellent material at the FAQs of the Internet Nonprofit Center,
<http://www.nonprofits.org/>. In particular see the article Where to start when creating a nonprofit at <http://www.nonprofits.org/npofaq/02/01.html>. The topics include organization, management, regulations, resources, development, mission statement, employment opportunities, accounting and much more.

Nolo Press has an excellent handbook on nonprofit organizations, How to Form a Nonprofit Corporation, which is for sale at the site. Nolo Press also maintains a useful web site. The basics for incorporating are discussed at http://www.nolo.com/encyclopedia/articles/sb/np_basics.html covering liability issues and reasons for incorporating. As with many web sites dealing with nonprofits there is a link at the bottom to a section about Frequently Asked Questions (FAQ) that in each instance I highly recommend reviewing. At <http://www.nolo.com/article.cfm/ObjectID/F63DD4C1-456C-418F-A1066A3F3FBE05A5/catID/CE94A6B3-EFB6-4036-8498D5414328FD73/111/262/ART/> there is a list of five reasons to incorporate a nonprofit organization.

The material about a business plan discussed above features the words "mission" and "mission statement". There are many excellent sites to assist you in these concepts - too many to list here. But one that I will list is from Tony Poderis, <http://www.raise-funds.com/1101forum.html>. Read it carefully. The statement about your organization's mission is vital and should be the focus of much work and discussion. See also The Mission Statement Checklist, <http://www.raise-funds.com/exhibits/exhibit46.html>

The web site for the Small Business Administration is <http://www.sbaonline.sba.gov/> where you will find a significant amount of information about the beginning of a business. Basically, however, nonprofit organizations are not eligible for loans from the SBA. Although this site addresses issues for for-profit ventures, there is useful information for not-for-profit organizations as well.

Material about marketing and publicity can be found at Independent Sector - http://www.independentsector.org/mission_market/index.html and Nonprofit FAQ - <http://www.nonprofits.org/npofaq/keywords/2n.html>. For assistance in preparing a press release, visit <http://www.press-release-writing.com/> for helpful hints, templates and other assistance. This is a business site but they offer a significant amount of material without cost.

- Basic elements of a press release – <http://www.press-release-writing.com/content-basics.htm>
- How often should you have a press release – <http://www.press-release-writing.com/newsletters/t113-how-often-press.htm>
- Ten essential tips to produce a press release – http://www.press-release-writing.com/10_essential_tips.htm
- Suggestions for formatting a press release – <http://www.press-release-writing.com/formatting-suggestions.htm>
- Sample press releases – <http://www.press-release-writing.com/sample-press-release.htm>
- Press release template – <http://www.press-release-writing.com/press-release-template.htm>
- Style Guide, International - <http://www.economist.com/research/StyleGuide/index.cfm>
- Lists of radio, TV and newspapers nationally, media links - <http://www.gebbieinc.com/aio.htm> and <http://newslink.org/news.html>
- A Managers Guide to Creating a Newsletter - <http://www.managersguide.com/indexa.html>

The key to the success of a nonprofit, its mission and its accountability starts with the board of directors. There is significant information about boards on the Internet. Some of the most useful is –

- Carter McNamara and the Free Complete Toolkit - <http://www.managementhelp.org/boards/boards.htm>
- Alliance for Nonprofit Management - <http://www.allianceonline.org/FAQ>
- Pennsylvania Attorney General Handbook for Charitable Nonprofit Organizations - <http://www.attorneygeneral.gov/pei/brochures/charities/html/handbook.cfm>
- Nonprofit Good Practice Guide - <http://www.npgoodpractice.org/>
- The Council on Quality and Leadership resources - <http://www.thecouncil.org/resources/?c=free-resources>

Your State law may cover the obligations and responsibilities of a board of trustees. Under most if not all State laws a board of directors of a nonprofit corporation has a duty of care, a duty of loyalty and a duty of obedience to the organization. Each state specifies what it considers is an acceptable level of behavior in determining if board members are acting in the best interest of the nonprofit organization. There are model and sample job

descriptions for the president or chair of the board as well as for members and discussions about the role of officers. See

- http://garberconsulting.com/job_description_president.htm
- http://garberconsulting.com/Job_Description_Secretary.htm
- <http://www.managementhelp.org/boards/brdjobs.htm>.

The issue of conflict of interest in nonprofits is a matter for concern. The conflict may come about in the context of a contract between the organization and a board member or with a family member of a staff or board member. The bylaws should have a distinct section addressing conflict of interest and how it will be handled. In the beginning period the question is often asked if the founder can be the salaried head of the organization and on the board, or have the board filled with family members. The appearance of a conflict can be as serious as an actual conflict. Loyalty to the organization is paramount in a group's activities. One useful article on the Internet is found at <http://www.boardsource.org/FullAnswer.asp?ID=89>. Each State nonprofit law has provisions concerning conflict of interest. The concern around the involvement of the founder is called "Founder Syndrome" where the founder has over-bearing influence upon the organization. NPOs are a public trust, not a personal venture. This issue should be addressed in the bylaws. <http://www.managementhelp.org/misc/founders.htm>

The IRS has interest in conflicts as well. There is such a thing as "Intermediate Sanctions" that affect persons who are "in a position to exercise substantial influence over the affairs of" a 501(c) (3) organization. The persons who can be in this group are the founder (that Syndrome again), the president, the Executive Director, the Chief Executive Officer (CEO) or the Chief Operating Officer (COO), substantial contributors, and certain relatives. For more information on this subject review this memo - http://www.runquist.com/article_intermedsancts.htm

Accountability and transparency are the new words for nonprofit organizations. It appears to some that the whole field of tax exemption should be reviewed and made more "transparent". There is a lot of movement to tighten the material in the 1023 and 990s. One law that was stimulated by Enron and other for-profit companies is the Sarbanes-Oxley (SOX) that requires CEOs to sign financial papers filed with the Security and Exchange Commission. There are other elements to the law. For a discussion on the significance of SOX on nonprofit groups see <http://ncna.org/index.cfm?fuseaction=Page.viewPage&pageID=429>.

Nonprofit organizations in Maryland developed a statement of ethics and accountability covering mission and program, governing body, conflict of interest, human resources, financial, legal, openness, fundraising, public affairs and public policy. The standards are posted at http://www.mdnonprofit.org/ethics_initiative.htm. Other groups have developed similar standards and useful rules for philanthropy by Internet, <http://www.nasconet.org/>, <http://www.ephilanthropyfoundation.org/> and as core values, <http://www.utahnonprofits.org/ethics.html>. Many foundations are starting a search about applicants through GuideStar; GuideStar offers basic, in-depth, and customized data services on more than 1 million U.S. nonprofits. <http://www.guidestar.org/index.jsp>

The Organizational Assessment Tool (or OAT) is for organizations who are interested in taking a look at their own capacity and effectiveness. (It makes sense to review your organization's own structure and readiness before you begin using their program planning and evaluation tools.) The OAT leads you through an online survey, asking questions about key areas of organizational development, and then produces an immediate snapshot report of your organization's strengths and challenges. You can use the report as a springboard for discussions of next steps, and to help you determine whether there are areas of organizational capacity that you need to address before moving on <http://www.innonet.org/tools/oat> .

Faith-based and community-based organizations can find assistance at the Pew Forum on Religion and Public Life, <http://pewforum.org/faith-based-initiatives/>. The White House web site features dates for conferences, grants and planning material, <http://www.whitehouse.gov/government/fbci/>. For links to many organizations with information for faith-based organizations, see my material at <http://charitychannel.com/publish/templates/?a=1581&z=0> .

The Utica NY Public Library maintains a virtual nonprofit library. There are links to other web sites concerning Boards, Management, Planned Giving, Volunteering and many other important topics. The library is found at <http://www.uticapubliclibrary.org/non-profit/directory.html>.

If you are looking for help on technology as you plan out your organization. TechSoup offers excellent articles, a newsletter and has a forum for questions and answers, <http://www.techsoup.org/>. They list nonprofit discounts and sections on building the technology plan and at the Tech Soup Stock web site <http://www.techsoup.org/stock/default.asp> . See also a report on community-based technology centers, Computers in Our Future, and the "Toolkit" to make them useful, <http://www.ciof.org/index.html>. See Tech Foundation, <http://www.imakenews.com/techfoundation/>, for technology grants and a free newsletter.

The Nonprofit Financial Center is a membership organization. Nevertheless they have financial material, forms, policies and procedures at no cost. <http://www.nfconline.org/main/info/guides.htm>

Jayne Cravens maintains an excellent site through her consulting firm, Coyote Communications, at <http://www.coyotecom.com/free.html>. She has valuable links to other organizations to assist in the development and growth of your organization. There are also helpful tips about technology, especially used equipment.

Management Information Exchange (MiX) has a sample job description for board members and additional information concerning the board of directors, worksheets and toolkits, <http://www.lcmmix.org/articles.cfm?cat=0&top=0>

BoardSource is a valuable asset to the development and maintenance of an NPO. The URL for BoardSource with information about nonprofits is <http://www.boardsource.org>. You will find essential information about board governance and formation.

Board meetings can be exciting and focused. A lot depends on the leadership, knowledge and experience of the chairperson. The setup of the room where meetings are conducted can also affect the meeting. For ideas about room setup, see <http://www.llrx.com/columns/guide59.htm> and http://www.rwjf.org/grantee/howtoPlanMeeting_1.jhtml.

An issue confronting nonprofit groups is using Robert's Rules of Order. I have found several web sites that I think are helpful to understanding Robert's Rules of Order. Although there is a push to sell the book on each, there are useful "cheat sheets" and discussions as well on the sites.

<http://www.robertsrules.com/> - The Official Robert's Rules site

<http://www.rulesonline.com/> - An adaptation and helpful outline to Robert's

<http://www.jimslaughter.com/> - An excellent site with an available "cheat sheet"

<http://www.parliamentarians.org/parlipro.htm> - The web site of the National Parliamentarian Association with another useful "cheat sheet" and discussions about meetings and an agenda.

<http://www.everett.com/parli-pro/> - A web site from a consultant with free material on presenting motions, writing minutes, counting a quorum and other matters

<http://www.newkent.net/rules.html> - Trout's Top Ten Rules of Order

<http://www.carvergovernance.com/> - John Carver has been preaching an alternative board governance process and policy and this is his web site.

Incorporating is not the end of the process of developing, maintaining and sustaining the organization's mission and vision. Nonprofit groups have to consider written policies, procedures, forms and recordkeeping. Some web sites that can help you in this phase of operation are listed here. This is not a complete list, but will give you a head start. Greenlights has a number of downloadable forms and draft policies for nonprofits, <http://www.greenlights.org/site/pp.asp?c=iuIYLdP4G&b=14665&sid=7651530>. Findforms.Org has sample legal forms relative to leases, employment contracts and much more, <http://www.findforms.com/>. They also sponsor the web site, Lawguru that features a FAQ section about sexual harassment, employment law and so on, <http://www.lawguru.com/faq/11.html> and <http://www.lawguru.com/>. Office Depot has a number of free downloadable forms and a small business handbook near the bottom at <http://www.officedepot.com/>. Microsoft has templates for accounting, stationary and

much more, <http://office.microsoft.com/templates/default.aspx>. CCH features a business toolkit and a human resources toolkit, <http://www.toolkit.cch.com/>

FINDING A LAWYER

I have made it abundantly clear that it is vital to talk to a lawyer about the incorporation process with your State and with the Federal IRS. You or one of your partners may already know a lawyer. Great. If you do not know one there are several places to seek some out.

The first preference is to find an attorney who has experience and interest in tax exempt law and nonprofits. The second choice is to find either an experienced and interested corporate lawyer or a tax lawyer. The last choice is a lawyer with interest in your mission and endeavor who will put in the necessary time to learn the law and to process the papers with all due haste and timeliness.

If you do not know any attorney to help you there are several steps you can take to find one locally. You can use all of those listed here or any variations. Check the Yellow Pages of your telephone book under "Lawyers". Read the ads. Check the section where there is a listing or grouping by type of law. Select several possible candidates. Ask around in the community about them in the context of your needs. Call some nonprofits or the United Way for names of attorneys known to help nonprofits. Check the Internet. Contact the state university to see if there is a state coop branch near you. Under all these scenarios, be sure to seek all the information you can about the lawyer(s) including Googling them.

Call the local Lawyers Referral Service (LRS) listed by that name in the Yellow Pages. Generally the LRS has a listing of lawyers by type of law they practice. The lawyers usually select the listing themselves as areas of law they handle or are interested in. It does not set expertise. The LRS will give you one or more names of attorneys signed up for tax-exempt, nonprofit, and corporate or tax law. The normal process is that you can have a half-hour free consultation with an attorney about what you want. The LRS will charge a referral fee that is either paid to the LRS directly or to the attorney who sends it to the LRS. Get a receipt. The fee is usually \$15-25. Ask the LRS receptionist if the LRS requires the member attorneys to have malpractice insurance and if they must report any ethical or malpractice claims to the LRS. If the LRS requires these, it is helpful for you to know that. It is still advisable to ask around about the lawyer you will have referred to you. Check with the state bar to see if there are any public disciplinary decisions against the attorney.

The National Council of Nonprofit Associations (NCNA) may have an associate office in your State. Offices are listed at <http://www.ncna.org/>. Your State office may be able to assist you in locating an attorney.

Do your homework. Prepare questions. What is her/his experience; will there be a retainer agreement or letter of scope of service with deadlines? Verify the lawyer has

malpractice insurance. Assess the lawyer. I recommend two people from your group go so that after the meeting you can talk about whether this is the lawyer for your project.

See <http://www.lawyers.com/>, "Twelve Questions to Ask Your Lawyer" and other material, for some helpful discussion about hiring a lawyer.
http://www.lawyers.com/legal_tips/lawyer_questions/index.php?LDC_userId=95329170&LDC_sessionId=156123572

There is an outside possibility you can secure a pro bono attorney. "Pro bono" means for the public good, at no cost. Many attorneys provide pro bono work but not always for nonprofits. If your group will be providing service to a low-income community, call the local legal services program, sometimes also called legal aid. Many legal services programs and sometimes the LRS will have a pro bono program. If your group qualifies and there is an attorney familiar with tax exempt law on the panel, you may have a free attorney.

You can find the name of the legal services program near you through <http://www.rin.lsc.gov/rinboard/rguide/pdir1.htm>. If there is a law school in your community, it may have a community law clinic or a professor who is interested in the same issues you are and who may help.

The difficulty may occur in access to the pro bono lawyer. When you pay for time, access can be better, but you pay for each contact. When the service is free access may be less. My experience is that most pro bono attorneys do an excellent job, develop a retainer agreement or a letter describing the scope of service with time deadlines and provide other helpful advice. Your group will still be responsible for all filing fees with the State and the IRS.

Realize, however, you are probably going to pay for legal assistance. In that case, at the first meeting ask about the costs for the attorney time. Associates and paralegals bill at a lower rate; ask about their role. Will charges be by the hour or for the project, such as one fee for getting the State incorporation processes completed, another for the bylaws and then another charge for the IRS designation? Will there be a retainer agreement or letter of scope of service with deadlines and a payment plan? Some attorneys have a low-fee plan that is between pro bono and the usual fee - ask if there is one.

You may secure a pro bono attorney but you have to be prepared in case you do not succeed. The cost of filing all the legal papers with the State and the IRS along with paying an attorney can rise quickly. Planning early on for these initial costs is part of developing a business plan.

I wish you every success. Although most nonprofit groups prepare their own State and Federal incorporation papers and bylaws, there are many organizations that do not do them very well and have early difficulties. So...I advise contact an attorney to help you. As you have seen, this is a complex process.

The estimated amount of time it takes to complete the preparation of the IRS Form 1023, Parts I - IV is about 9 hours - when you know what you are doing.

CAVEATS

The services and the sites that are contained in this article may have information, facts and opinions from a variety of individuals and organizations. These services and sites are provided on an "As Is" basis. The services and sites may include bulletin boards, chat rooms and other user and member created pages which allow the reader and others to post information, provide feedback and interact in real-time. The reader uses the services and the sites entirely at the reader's own risk. The author has made an attempt to review the sites listed in this article but there are linkages at those sites that he has not reviewed. Readers link to web sites at her/his own risk. Neither sites nor companies listed in this article have paid or offered payment to the author for the inclusion in this article. Many of the sites have User Agreements that should be reviewed. The speed at which sites become obsolete is only exceeded by the speed of light. As I researched the web, many sites were deadends or had not changed for several years. In fact, by the time you read this, several sites may no longer be in existence.

The author is an attorney in New Jersey. The purpose of this article is not to provide legal advice to anyone in any state or country. The material contained in this article is for information purposes only. End of lawyer-speak. Almost

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Federal/IRS Forms and Booklets for Your Library

Tax Kit; many of the forms here may be filled out and completed online -

<http://www.irs.gov/charities/article/0,,id=96774,00.html>

Frequently Asked Questions with Answers - <http://www.irs.gov/faqs/index.html>

SS-4 Form for a Federal Employer Identification Number (FEIN) -

<http://www.irs.gov/pub/irs-pdf/fss4.pdf>

Publication 4245 - Common Reasons for Rejection -

<http://www.irs.gov/pub/irs-pdf/p4245.pdf>

IRS Form 1023 (Fill-in format for typing) and Form 872-C - file in duplicate –

<http://www.irs.gov/charities/charitable/article/0,,id=130145,00.html> and

<http://www.irs.gov/pub/irs-pdf/f1023.pdf>

IRS Publication 557 - <http://www.irs.gov/pub/irs-pdf/p557.pdf>

IRS Publication 526, Charitable Contributions, information for the taxpayer who makes charitable contributions - <http://www.irs.gov/publications/p526/index.html>

IRS Publication 1771, Charitable Contributions - Substantiation and Disclosure Requirements – <http://www.irs.gov/charities/article/0,,id=96102,00.html>
<http://www.irs.gov/pub/irs-pdf/p1771.pdf>

Publication 1771 is for the NPO that accepts charitable contributions. Both Publications 526 and 1771 are important to understand, but 1771 (Substantiation and Disclosure) lays out all the IRS mandated responsibilities of an NPO concerning receipt and acknowledgement of charitable contributions.

Form 8718 (Fill-in format for typing) - shows Federal fees –
<http://www.irs.gov/pub/irs-pdf/f8718.pdf>

Form 8734 Support Schedule for Advance Ruling Period –
<http://www.irs.gov/pub/irs-pdf/f8734.pdf>

Publication 1828 - Exempt Organizations Tax Guide for Churches and Religious Organizations; also comments about lobbying and political activity -
<http://www.irs.gov/newsroom/article/0,,id=122887,00.html>

Links to IRS Articles Concerning Employment Taxes for Exempt Organizations -
<http://www.irs.gov/charities/article/0,,id=128716,00.html>

IRS Publication 4221, Compliance Guide for 501(c) (3) Tax Exempt Organizations and Record Retention - <http://www.irs.gov/pub/irs-pdf/p4221.pdf>

Form 15, Circular E - Employer's Tax Guide - <http://www.irs.gov/pub/irs-pdf/p15.pdf>

Publication 15-T - New Withholding tables for 2003 (or later year as time goes on) -
<http://www.irs.gov/pub/irs-pdf/p15t.pdf>

Publication 598 - Form to Declare Unrelated Business Income of a Tax Exempt Organization - <http://www.irs.gov/pub/irs-pdf/p598.pdf>

Forms 990 or 990-EZ and Schedules A and B – <http://www.irs.gov/pub/irs-pdf/f990.pdf>
(Fillable)

Instructions for Schedule A - <http://www.irs.gov/instructions/i990sa/ch01.html>

Sample 990s - <http://www.irs.gov/charities/article/0,,id=120864,00.html>

Form 990 Instructions - <http://www.irs.gov/instructions/i990-ez/index.html>

Form 941 (Fill-in format for typing) - Employer's Quarterly Federal Tax Return 941 Form (Rev. January 2004) See separate instructions revised January 2004 for information on completing this return (If you receive this form, you must file it even if all the dollar amounts are \$0.00) - <http://www.irs.gov/taxtopics/tc758.html>

Instructions for Form 941 - <http://www.irs.gov/pub/irs-pdf/i941.pdf>

The author has other material that may be helpful to you and the board:

Don Griesmann's Grant Opportunities Weekly E-Newsletter
<http://two.charitychannel.com/enewsletters/dggo/>

Nonprofits and Violence in the Workplace,
http://members.aol.com/_hy_a/dgriesmann/myhomepage/business.html

Where are nonprofit jobs listed? <http://www.nonprofits.org/npofaq/12/10.html>

Web Sites That are Helpful to the Disabled
<http://www.nlada.org/DMS/Documents/1004239570.5/>

Orienting the Board to the Organization's History
http://charitychannel.com/article_5381.shtml

Grant Writing Tools Web Sites <http://www.nonprofits.org/npofaq/19/64.html>

U.S. Federal Grants Web Site <http://www.nonprofits.org/npofaq/19/63.html>

The Best E-Newsletters for Grants and Nonprofit Leaders
<http://www.nonprofits.org/npofaq/19/62.html>

Insurance Questions for Nonprofits <http://www.nonprofits.org/npofaq/19/56.html>

Book Reviews

Stir it Up: Lessons in Community Organizing and Advocacy
Rinku Sen
<http://charitychannel.com/publish/templates/?a=24&z=25>

Civic Revolutionaries - Igniting the Passion for Change in America's Communities
Douglas Henton, John Melville and Kim Walsh
<http://charitychannel.com/publish/templates/?a=294&z=25>

Working Across Boundaries - Making Collaboration Work in Government and Nonprofit Organizations

Russell M. Linden

<http://charitychannel.com/publish/templates/?a=420&z=25>

The Leadership Challenge, 3rd Edition

James M. Kouzes and Barry Z. Posner

<http://charitychannel.com/publish/templates/?a=431&z=25>

Nonprofit Mergers and Alliances - A Strategic Planning Guide

Thomas A. McLaughlin

<http://charitychannel.com/publish/templates/?a=483&z=25>

Complete Guide to Nonprofit Management, Second Edition

Smith, Bucklin and Associates, Inc.

<http://charitychannel.com/publish/templates/?a=487&z=25>

Managing Nonprofits.Org: Dynamic Management for the Digital Age

By Ben Hecht and Rey Ramsey

<http://charitychannel.com/publish/templates/?a=4227&z=25>