

ABCs & 123s OF NONPROFIT FORMATION GUIDE

DECIDE WHERE TO INCORPORATE AND FILE ARTICLES OF INCORPORATION

There are several factors that will influence where you decide to incorporate. The biggest being is at least one of the founders must reside in the state where the nonprofit will be incorporated. Other factors include the following:

- Number of officers necessary to incorporate
- State-level requirements for fundraising
- State-level processes for tax exemption

If your founders live in multiple states, a side-by-side comparison of the requirements between these states may allow you to quickly ascertain the advantages and disadvantages of the different options.

When you are ready to draft the articles of incorporation, there is a template available in NORD's RareLaunch toolkit.

There are many online resources that can provide information and processes for filing for incorporation, including nolo.com, harborcompliance.com and councilofnonprofits.org.

YOUR FOUNDING MEMBERS: ESTABLISH A TEAM

You probably have some people in mind who are interested in starting this nonprofit with you, and perhaps they are already hard at work on your shared cause. Think of these individuals—and others—as a team! The founding team for this rare disease nonprofit should be chosen wisely, but it need not be overly complicated. For the nonprofit's initial board of directors, search your network for those people with passion for the community, ability to work collectively, and who support the organization's mission.

Consider hidden skills among potential board members and how they align with the needed skills for officers and directors. Friends and associates also have their own networks. They might be able to refer you to other motivated people who might want to join your mission and your team.



Learn more about board member roles through in our previous RareLaunch Toolkit available at: bit.ly/RareLaunch-toolkit

Consider group dynamics as well. Your founding team should include people with whom you can work well. Different opinions are welcome, but all team members should be willing to compromise and cooperate. It's also important to avoid "group think," which is the practice of thinking or making decisions as a group in a way that discourages creativity or individual responsibility.

DRAFT BYLAWS AND GOVERNANCE POLICIES

A strong nonprofit has a firm foundation in well-written bylaws and governance policies.

BYLAWS

Bylaws provide the structure for an organization's operations and provide the foundation for its self-regulation. Articles generally follow the structure below:

- I. Name
- II. Object (or purpose)
- III. Members (if applicable)
- IV. Officers
- V. Meetings
- VI. Executive Board
- VII. Committees
- VIII. Parliamentary authority (often Robert's Rules of Order)
- IX. Amendment(s)

NORD's RareLaunch toolkit has draft bylaws for your reference.

Your board should also establish other policies including conflict of interest and privacy policies. Templates for all of these can be found in the RareLaunch toolkit.

Find these resources and more in our previous RareLaunch Toolkit available at: bit.ly/RareLaunch-toolkit

These policies serve as the framework by which your nonprofit will conduct itself. The policies also exist as tangible statements of principles for those who may wish to donate to or volunteer for your organization.

HOLD AN INAUGURAL BOARD MEETING

Plan to host your inaugural board meeting once your organization becomes incorporated. While this may not be the first time your board members are meeting one another, this meeting marks the start of the formal activity of the board as a legal entity.

Meeting Agenda and Minutes

Create an agenda for your inaugural board meeting a few weeks in advance and send a copy to board members as the meeting approaches (along with any documents to read in advance). For a sample board agenda, see the Board Meeting Agenda Template at the end of this guide.

During your first meeting, you should plan to complete the following items:

- Determine the name and the legal address for the organization to be included in its legal documents;
- Elect officers (officer roles and descriptions can be found in the RareLaunch toolkit);
- Authorize new officers to make business decisions for the organization, such as open bank accounts, sign checks, sign a lease, etc.;
- Adopt a set of bylaws (if they have already been drafted) or start creating this document; and
- Assign duties and draft job descriptions.

The secretary should record any decisions in the meeting minutes. Meeting minutes act as a practical means for documenting what actions were taken at the meeting. See the Meeting Minutes Template at the end of this guide for an example of how meeting notes may look.

Once the meeting concludes, the secretary should circulate a copy of the meeting minutes to board members. If a board member notices any mistakes, missing information or suggests minor corrections, these can be addressed via email or at the next meeting. The board will approve the prior meeting's minutes at their next meeting. The minutes should be signed by the secretary and the chair before being archived. Board members should be able to easily locate the archived meeting minutes. Some organizations host a password-protected intranet on their organization's website, while others use a secure Google drive or other online service for file sharing.

Meeting Duration

You should set a time limit for the meeting. The limit can certainly be adjusted at future meetings depending upon how much material is circulated in advance for pre-reading and the items up for discussion on your agenda. BoardSource recommends one- to two-hour meetings for boards who meet monthly and longer half- or full-day meetings for boards who meet semi-annually.

Robert's Rules of Order

Your board meetings need structure to run smoothly and effectively. *Robert's Rules of Order*, also known as parliamentary procedure, were originally created as the manual for parliamentarians to better structure official assembly meetings. *Robert's Rules of Order* can also be used at your board meetings to help ensure that meetings are fair, efficient, democratic and orderly.

BoardSource explains that while some of the basic elements of the parliamentary procedure can provide a good foundation for board decision-making, discussion and deliberation should be in a more flexible format. Refer to the most recent edition of *Robert's Rules of Order* to implement these practices at your next board meeting (bit.ly/rules-of-order).

Chairperson Best Practices

A skilled chairperson will create an environment in which all board members can voice their opinion in an orderly manner. This allows all to be involved in the meeting discussion and to be heard. Here are some tips on how to run a successful board meeting:

- Follow the meeting agenda to keep the discussion moving toward its goals.
- Let the group do its own work and have autonomy (do not be overbearing).
- Help direct the flow of the meeting by recognizing members who ask to speak.
- Be sure to allow all members to speak once before anyone speaks a second time.
- Guide the discussion back to the agenda when it gets off-track.
- Be a model for courtesy and respect and expect others to act the same.
- Instruct board members on how to use parliamentary procedure by properly using motions.
- Allow a consensus to have the final authority of the group.

REFERENCES:

Board Meetings — FAQs (BoardSource)

bit.ly/boardsource-faqs

Board Meeting Minutes (BoardSource)

bit.ly/boardsource-meeting-minutes

How to Conduct a Board Meeting for a Nonprofit (BoardEffect)

bit.ly/BoardEffect-conduct-meeting

FILE FOR STATE LICENSES AND FEDERAL TAX EXEMPTIONS

State Filing Requirements for Nonprofits

As an incorporated nonprofit, your organization must follow state requirements for annual and periodic registrations. This guide will help you prepare for fundraising filing requirements, annual corporate filings, annual financial returns and confirm your tax-exempt status with your state. As your organization grows and hires employees, you will have additional filings with your state's Department of Labor.

Fundraising Filing Requirements

Fundraising activities are regulated by state law. Regardless of what method your nonprofit is using for fundraising — be that your website, social media, texting, phone calls or mailed letters — if the underlying activity is solicitation (i.e., asking for a donation) it is a regulated activity in most states.

All nonprofits have some requirement to register in states before beginning any solicitation campaign, meaning you are required to register for exemptions and make your presence known before asking for donations.

Where should you register?

A good place to start is registering in the state in which you are incorporated. You may consider registering in other states if donations from that state's residents exceeds \$250 per year. Otherwise, registering in another state may not make sense because the cost of registration will exceed the value of the donations your nonprofit receives.

Additionally, consider the following:

1. You must register if your organization specifically solicits contributions from persons in the state on a repeated and ongoing basis through or in response to website solicitations, or
2. You must register if your organization's non-internet activities alone would require registration in the state.

Note: this information is not intended as legal advice. We recommend you consult your nonprofit's legal advisor if you have questions on how fundraising regulations affect your nonprofit.

Annual Corporate Filings

Depending upon which state your organization is incorporated in, you may be required to file an annual or biannual corporate report. Completing and filing this report will ensure you maintain your "good standing" status with your state. If you lose your "good standing," your nonprofit will not be permitted to make major changes, such as amend its articles of incorporation, change its name, change its registered agent or merge/dissolve.

Annual Financial Returns and Tax-exempt Status Confirmation

Your state may also require that your nonprofit submit financial disclosures along with your corporate report. Many states do accept the IRS Form 990 that is filed with the federal government each year, but since each state has its own requirements, be sure to confirm what your state accepts.

You may also be required to periodically update your state on your nonprofit's tax-exempt status. For example, many states issue their own "tax-exempt certificate" for sales that nonprofits must apply for and periodically renew.

For Further Consideration:

- For additional help, contact your state association of nonprofits for information on filing deadlines, access to forms and where to file: bit.ly/find-your-state-association
- The Nonprofit Fundraising Registration Digital Guide (available for purchase and created by NOLO.com) summarizes state-specific information on fundraising filings. It is updated twice a year to reflect changes in state requirements: bit.ly/fundraising-registration

Federal Filing Requirements for Nonprofits

The Life Cycle of Your Nonprofit with the Internal Revenue Service (IRS)

As a 501(c)(3) public charity, your nonprofit will have numerous interactions with the IRS—from filing an application for recognition of tax-exempt status to filing the required annual information returns and making changes to your mission and purpose. The IRS categorizes these interactions according to the five stages of an organization's life cycle:

1. **Starting a Nonprofit:** Creating an organization under state law, acquiring an employer identification number and identifying the appropriate federal tax classification (in this case, that is a 501(c)(3))
2. **Applying for Exemption:** Acquiring, completing and submitting 501(c)(3) application forms; how the IRS processes applications; and getting help from the IRS during the application process
3. **Required Filings:** Filing annual exempt organization returns and other returns, reports and notices that an organization may have to file
4. **Ongoing Compliance:** Avoid jeopardizing its tax-exempt status, disclosure requirements, employment taxes and other ongoing compliance issues
5. **Significant Events:** Conducting audits, private letter rulings, and termination procedures

This document reviews interactions with the IRS when applying for exemption and submitting required filings.

Tax Exemption

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, your organization must be organized and operated exclusively for exempt purposes, either charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and/or preventing cruelty to children or animals.

How to apply for tax-exempt status:

1. For the IRS to recognize your organization's exemption, your organization must be organized as a trust, a corporation or an association, and you must have an exempt purpose. You can become a corporation under state law by filing your articles of incorporation with the state.
2. You must submit a completed, signed and dated Form 1023 or Form 1023-EZ application with the appropriate user fee to be recognized as exempt under section 501(c)(3) of the Code.

- Only certain organizations are eligible to apply for exemption using Form 1023-EZ. You can check the IRS website to determine which Form 1023-series application you should complete.
 - The user fee is \$600 for Form 1023 and \$275 for Form 1023-EZ and must be paid online when submitting the form (as of April 2021).
 - You must note your Employer Identification Number (EIN) in your form and attach exact copies of your group's organizing documents.
 - If your organization has not existed for three tax years, you must attach financial statements for the current year and proposed budgets for the next two years, including a detailed breakdown of revenue and expenses.
3. Once your application is complete, you are ready to mail it to the Internal Revenue Service (bit.ly/internal-revenue-service-application).

Annual Filings

As a 501(c)(3) tax-exempt organization, you are required to file annual returns with the IRS.

Once you receive/apply for tax-exempt status:

- If your organization normally has **\$50,000 or more** in gross receipts, you must file either Form 990 (Return of Organization Exempt from Income Tax) or Form 990-EZ (Short Form Return of Organization Exempt from Income Tax).
- If your organization normally has **\$50,000 or less** in annual gross receipts, you can satisfy your annual reporting requirement by electronically submitting Form 990-N (e-Postcard) if you choose not to file Form 990 or Form 990-EZ.

The return is due every year by the 15th day of the 5th month after the close of your tax year (the IRS defines tax years as either the January-December calendar year or your 12-month fiscal year). For example, if your tax year ended on December 31, the return is due May 15 of the following year. If the due date falls on a Saturday, Sunday or legal holiday, the due date is the next business day.

REFERENCES:

State Filing Requirements for Nonprofits (National Council of Nonprofits)

bit.ly/state-filings-nonprofits

Charitable Solicitation Registration (National Council of Nonprofits)

bit.ly/charitable-solicitation-registration

Frequently Asked Questions (Charity Compliance Solutions)

bit.ly/charity-compliance-FAQ

Does Your Nonprofit Need to Register? (NOLO)

bit.ly/NOLO-nonprofit-registration

Annual Filing and Forms (Internal Revenue Service)

bit.ly/annual-filing-IRS

Annual Exempt Organization Returns, Notices and Schedules (Internal Revenue Service)

bit.ly/annual-exempt-IRS

Tax Years (Internal Revenue Service)

bit.ly/tax-years-IRS

Exempt Organization Annual Filing Requirements Overview (Internal Revenue Service)

bit.ly/exempt-organization-filing-IRS

Life Cycle of a Public Charity (Internal Revenue Service)

bit.ly/life-cycle-IRS

Exemption Requirements - 501(c)(3) Organizations (Internal Revenue Service)

bit.ly/exemption-requirements-IRS

Applying for Tax Exempt Status (Internal Revenue Service)

bit.ly/applying-tax-exempt

Internal Revenue Bulletin: 2020-1 (Internal Revenue Service)

bit.ly/IRS-bulletin

Fundraising Registration: An Overview (NOLO)

bit.ly/fundraising-registration-NOLO

Charleston Principles (Charity Compliance Solutions)

bit.ly/charleston-principles

BOARD MEETING AGENDA TEMPLATE

[Organization Logo]

Organization Name

Board Meeting Agenda

Month Day, Year

Time: [time the meeting will begin]

Location: [meeting address/conference call details]

1. Welcome
2. Call to Order
3. Approval of the Minutes
4. Reports
 - a. Executive Director
 - b. Finance Director
 - c. Nominating and Governance Committee
 - d. Program Committee
 - e. Fundraising Committee
5. Unfinished Business
 - a. Example: Board Training
6. New Business
 - a. Example: Special Event
7. Comments and Announcements
8. Adjournment

Next meeting date: Month Day, Year

As your new board becomes familiar with board meetings, consider implementing a more strategic agenda to streamline updates and allow more time for discussion. For more information on strategic agendas, review BoardSource's guide on "The Best Board Meeting I Ever Attended" (bit.ly/best-meeting-boardsource) or the National Council of Nonprofit's comparison of traditional and strategic board agendas (bit.ly/board-agenda-comparisons).

REFERENCES:

Compare Traditional and Strategic Board Agendas (National Council of Nonprofits)

bit.ly/board-agenda-comparisons

Nonprofit Board Meeting Agenda Sample (BoardEffect)

bit.ly/board-agenda-sample

BOARD MEETING MINUTES TEMPLATE

[Organization Logo]

Organization Name

Board Meeting Agenda

Month Day, Year

Time: [time the meeting will begin]

Location: [meeting address/conference call details]

Names of Attendees and Absentees (*Board members and any guests/staff in attendance, excused, and absent*) noting if the meeting has a quorum.

Meeting Start Time: [time]

Mission and Vision Statements (*if they have already been drafted to reinforce the message to board members*)

Copy each meeting agenda item, noting:

- Motions made and by whom.
- Brief account of any debate.
- Voting results.
- Names of abstainers and dissenters.
- Reports and documents introduced.
- Future action steps.

Meeting End Time: [time]

REFERENCES:

Board Meeting Minutes (BoardSource)

bit.ly/boardsource-board-meeting-minutes

Board Meeting Minutes Template (Board Effect)

bit.ly/meeting-minutes-template