



Michigan Nonprofit Association

Getting Started: A Summary of Key Steps to Starting a Tax-Exempt Nonprofit in Michigan

This document contains information helpful to groups incorporating a public charity in Michigan and applying to the Internal Revenue Service (IRS) for 501(c)(3) status. The following are the basic steps:

1. Bring together a group of people who share a vision or concern, and who are willing to volunteer their time to this project.
2. Do the basic research to learn whether there are other organizations in your region active with this issue and find out where the “gaps” in service may be. This will allow you to meet a unique need, rather than duplicating an existing service.
3. Determine whether your organization meets the IRS criteria for 501(c)(3) tax-exempt status. (Review IRS Publication 557)
4. Complete and file either Form 502, Articles of Incorporation (Nonprofit) or 503 Articles of Incorporation (Ecclesiastical) with the State of Michigan’s Bureau of Commercial Services, Corporation Division.
5. Get an Employer Identification Number (EIN) for the nonprofit from the IRS by using Form SS-4.
6. When the Articles of Incorporation are returned by the State:
 - a. Hold your first board meeting;
 - b. Elect the first board of directors;
 - c. Adopt Bylaws by the vote of the board; and
 - d. Elect the first officers (President/Chair, Treasurer, and Secretary). These board members volunteer to take on additional leadership responsibility.
7. Apply for 501(c)(3) status with the IRS, using Form 1023.
8. Register with the Charitable Trust Section, Michigan Department of the Attorney General for a License To Solicit Charitable Contributions.



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Organizing a Nonprofit, Tax-Exempt Organization

- 1. Purpose and Structure.** Bring people together for a general meeting to discuss the purpose you share. Figure out if there are enough interested volunteers ready to take on the extra work involved in reaching your goal. This could take several meetings.

Come to an agreement regarding the purpose and structural form of the proposed organization. Is it going to be a nonprofit membership organization that people join in order to fully participate, or will it be a directorship which has no members, only donors? Biggest difference: in a membership organization, the members elect the board (the board then elects its officers). In a directorship organization, the board elects itself and nominates and elects new board members over time.

Ask people to work on their own or as a committee to draft proposed Bylaws. People need to make a commitment (with a deadline) to complete the filing of the Articles of Incorporation, planning activities and developing a budget and a fund-raising plan.

- 2. Incorporation.** The primary governing documents for the organization are the Articles of Incorporation and the Bylaws. File Articles of Incorporation as a domestic, nonprofit corporation with the State of Michigan. The filed Articles of Incorporation are generally returned within four weeks of filing. You may either submit the Articles in person, through the mail, or by fax. Information regarding filing methods is found on Form 502.

Note that although churches have similar filing requirements at many steps in the process, they file a different form to incorporate: Form 503 "Articles of Incorporation for Use by Ecclesiastical Corporations."

These forms can be obtained from the DLEG website (the Forms are arranged by Form Number):

<http://www.dleg.state.mi.us/dms/results.asp?docowner=BCSC&doccat=Corporations&Search=Search>

You can also reach the Division by phone at: 517/241-6470.



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The individual or individuals who sign the Articles of Incorporation are called the incorporator(s). The sole purposes of the incorporator(s) are to prepare and file the Articles of Incorporation and designate the initial members of the Board of Directors. The incorporator(s) may also adopt the proposed Bylaws.

Being an “incorporator” does not mean that this person must join the board of directors. That remains an option. It does not mean the person “owns” the organization or has any special rights to leadership. Once a person’s name is on Form 502 as an incorporator, the name cannot be removed.

The Incorporation Process

- A. Determine the availability of your chosen corporate name by calling Michigan Bureau of Commercial Services, Corporation Division.
- B. Prepare and mail notice for first meeting of incorporators, if more than one incorporator.
- C. Hold the first (or only) meeting of incorporator(s).
 1. Appoint a secretary to take minutes of meeting, or keep records of important decisions made by a sole incorporator.
 2. Decide on a membership or directorship structure.
 3. Discuss initial draft of Articles of Incorporation.
 4. Discuss initial draft of Bylaws.
 5. Discuss who will serve on initial Board of Directors to be elected after the Articles of Incorporation have been filed. As a general rule, you should have at least five Board members if you plan to seek 501(c)(3) tax-exempt status.
 6. Prior to first meeting of Board of Directors, file the Articles of Incorporation with the Michigan Bureau of Commercial Services, Corporation Division.



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3. **SS-4.** File Federal Form SS-4 to obtain an Employer Identification Number (EIN) – also referred to as a Tax ID Number, TIN or FEIN. This number is generally required to open a bank account and is the organization’s official number. The IRS can issue an EIN over the telephone or over the Internet. Receiving the EIN **does not mean that the organization is approved, or that it is tax-exempt** – it is only identified and on record.

For more information, visit the IRS website: <http://www.irs.gov/faqs/faq-kw67.html>.

4. **Draft Bylaws.** Prepare Bylaws that will state the membership/board rights and requirements, the process for selecting board members and officers, their duties and powers, the controls placed on the disbursement of funds and other key operational issues. These should be detailed enough to clarify the responsibilities of the officers, board, and committees (and membership, if appropriate). You can reference the suggested Bylaws in this book, adjusting them as needed to meet your organization’s needs.
5. **Draft Plans and Budget.** Now it is time to prepare your three-year plan of action. What will you do, how will you do it, and what will it cost? The IRS 501(c)(3) application requires a preliminary three-year budget. The IRS knows that you don’t have a crystal ball but they expect that every business has a plan, and if it has a plan, it has a budget. This will require several meetings on the part of the prospective board and other volunteers.
6. **Organizational Meeting.** The nonprofit corporations statute in Michigan provides for an organizational, or “first meeting of the Board” following incorporation. Any Board member may call the first meeting upon not less than three (3) days notice by mail to each director. A majority of directors constitutes a quorum for the first meeting of the Board. Include an agenda for first meeting, a copy of the Articles of Incorporation and proposed Bylaws, and minutes from any incorporator’s meeting(s).
7. **Business Meeting of the Board.** The designated Board should take the following actions at its first meeting:
 - A. Accept the Articles of Incorporation as filed.



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- B. Adopt the proposed Bylaws with any necessary amendments. Bylaws should be accepted, if only on a provisional basis. After this meeting, the organization should operate as prescribed in the Bylaws.
- C. Elect officers pursuant to the Bylaws. Every Michigan corporation must have a President, Secretary and Treasurer and may elect a Chair, Vice Chair, and any other officer prescribed in the Bylaws or determined by the Board. Two (2) or more offices may be held by the same person, but an officer cannot execute a document in more than one (1) capacity.
- D. Authorize necessary financial transactions.
- E. Authorize a person to prepare IRS Form 1023 for tax-exemption.
- F. Review the first draft as a group to make certain it fairly represents your organization's plans, budget and leadership. Consider the proposed activity plans and budgets and recommend revisions. Mail the application to IRS. This is not something you can hand-deliver to the IRS.

8. Board of Directors' Legal Responsibilities and Duties:

- A. The funds and property of all nonprofit corporations are to be acquired, held, and disposed of only for their lawful purposes, and the directors shall be individually liable if any such money or property are misused as a result of the director(s) neglect or misbehavior, or if they fail to exercise reasonable care in administering the affairs of the corporation. Directors must act in good faith, remain "up-to-date" on the actions and needs of the organization and attend meetings.
- B. If a corporation is harmed, for example, by a depletion of assets because a director failed to diligently perform his/her duties or acted in bad faith or by fraud, the director may be personally liable to the corporation, as well as to creditors.

- C. Directors should receive summaries of officer activities so they can make a reasonable review of performance. If directors are put on notice of a possible misbehavior or non-attentiveness by officers or subordinates in carrying out corporate affairs, a director must use reasonable care to investigate and correct any abuse.
- 9. Fiscal Year.** The fiscal year is the financial year of the organization. Establish a fiscal year which ends during a natural break in the organization's activities. If possible, coordinate the end of the fiscal year with funding sources. The fiscal year must end on the last day of a month; for example, December 31, September 30 or June 30.
- 10. Accounting.** Establish an accounting system to record the receipt and expenditure of money in accordance with the Bylaws and with the reporting requirements that will be imposed on the organization by funders and governmental units. Keep in mind that simple is better. This doesn't necessarily require a computer; a notebook is often sufficient in the beginning.
- 11. Minutes and Documents.** Establish a system for preserving (with duplicates if possible) corporate documents such as Articles of Incorporation, Bylaws and amendments, and the minutes of board meetings, committee meetings and the meeting(s) of the incorporator(s). These documents are a permanent part of the organization's history. The IRS or other agency could ask to see those papers in the future and you must be able to produce them.
- 12. Beginning Program Activities.** Programs can start once the organization establishes its plans and budgets and attracts the resources it needs: volunteers, in-kind gifts, and cash donations. The easiest way to begin is to start with an event or activity in partnership with a strong, stable existing nonprofit.
- 13. Additional Employer Registration.** Once the organization intends to hire employees, register with the appropriate state and local government agencies for withholdings required for income and unemployment taxes. **Employees in a nonprofit business have the same rights and responsibilities as any employee.** Once the organization becomes an employer it will also need to purchase worker's compensation insurance (and maybe health insurance) for employees. Note that it's not up to the organization to decide which workers are "independent contractors" and which are "employees" – the IRS and the State of Michigan have clear definitions of those roles and employers must comply with those definitions.



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- 14. Application for Tax Exemption (Form 1023).** File Form 1023 with the IRS so that the organization may become exempt from taxes on its mission-related income, and so donors may be eligible to receive a tax deduction for their gift. This application should be filed within twenty-seven (27) months of the date of you file the Articles of Incorporation and at least five (5) to eight (8) months before you hope to obtain any grants from foundations or large contributors. Note that you will be required to provide **supporting documents**, including filed Articles of Incorporation with the necessary 501(c)(3) restrictions, Bylaws, statements of current income and expenses, a preliminary three (3) year budget for new organizations, and miscellaneous description materials of activities. **This application is required of any charitable organization that has received or plans to receive \$5,000 in assets (whether through cash gifts or other contributions) during a fiscal year.**

Information about various IRS requirements for public charities – including Form 1023 -- can be found on the IRS website at:

<http://www.irs.gov/charities/article/0,,id=169727,00.html>

The IRS' Exempt Organizations hotline can be reached at 877/829-5500 if you have questions throughout the process.

- 15. Annual Federal Information Return (Form 990).** Most tax-exempt nonprofit organizations with gross receipts of more than \$25,000 per year must file this return. The return is due no later than the fifteenth (15th) day of the fifth (5th) month following the close of the tax year (May 15 for organizations with a fiscal year end of December 31). There is a penalty of \$20 a day for failure to file, unless it can be shown that a late filing was due to a reasonable cause.

Tax-exempt organizations with less than \$25,000 per year in gross receipts are required to file Form 990-N, an “electronic postcard” (which is not available in hard-copy) on the same schedule.

- 16. Exempt Organization Business Income Tax Return (Form 990-T).** Exempt organizations engaged in business activities unrelated to the organization's purpose must file this return if they have \$1,000 or more of unrelated business income. The return is due on the fifteenth (15th) day of the fifth (5th) month following the close of the tax year.



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- 17. Property Tax Exemption:** Apply with your local tax assessor for exemption from local taxes on any real or personal property held by the organization and used in its activities. This application should be made before taxes are assessed since obtaining retroactive exemptions is frequently difficult. Required supporting documents will likely include your Articles of Incorporation, Bylaws and 501(c)(3) determination letter.
- 18. Sales Tax Exemption.** Obtain a blank copy of the Michigan Sales and Use Tax Certificate of Exemption from the State Department of Treasury (you can also find the language at the Department of Treasury's website: www.michigan.gov/treasury). Make copies to present to vendors as needed. You'll provide it to vendors for their files, along with a copy of your IRS determination letter.
- 19. Solicitation License.** Organizations that expect to or actually receive \$8,000 or more per year from the public (other than grants from foundations or government agencies) must obtain a license to solicit in Michigan. File an Application for License to Solicit Donation should be submitted to the Attorney General, State of Michigan, at least thirty (30) days before solicitation begins.
- 20. Charitable Trust Registration.** File an Initial Charitable Trust/Charitable Solicitation Questionnaire, a Charitable Trust Registration Statement and a Charitable Trust Inventory with the State Attorney General's Office. It is often easiest to file these documents with the Application for License to Solicit Donations. (United Way agencies, hospitals and certain other organizations are exempt from this requirement.)

Information about the process and requirements for licensure and registration can be found on the Attorney General's website:

http://www.mi.gov/ag/0,1607,7-164-17334_18095---,00.html

You can reach the Charitable Trust Section by phone at 517/373-1152.

- 21. Charitable Trust Annual Report.** An annual report to the State of Michigan Attorney General is required of organizations exempt from federal tax. This reporting requirement may be met by filing copies of Form 990, Form 990-EZ, Form 990-PF, an audited financial statement from a certified public accountant (CPA), a copy of a probate court accounting, or a bank trustee accounting. It must be filed on or before the sixth (6th) month after the organization's fiscal year end.



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- 22. Solicitation of Small Donations.** Solicitation of small donations and memberships may occur before obtaining the 501(c)(3) tax exemption. This is a risk for the donor seeking a tax deduction for that gift. If the organization applies for exempt status within twenty-seven (27) months of the organization's incorporation, and is approved, the deductibility of donor contributions will be recognized retroactively. If the application is not approved, the donor will not receive a tax deduction for their contribution.
- 23. Private Grant Solicitation.** Virtually all corporate and foundation grant solicitations, as well as large contributions, will require the final ruling of the IRS. This is demonstrated in the determination letter, which officially recognizes the organization's 501(c)(3) tax-exempt status.
- 24. Liability Insurance.** Strongly consider insurance policies to cover any property of the organization, if it is substantial, and to cover the organization and its directors and officers against possible personal injury suits by clients or guests.
- 25. Nonprofit Bulk Mail Rates.** Apply for reduced rates for bulk mail (not individual mailing) at the post office. IRS recognition as a 501(c)(3) tax-exempt organization will make this easier.
- 26. State Annual Statements and Reports.** At the end of the first accounting year (the first may be less than twelve (12) months), prepare a statement of receipts and expenditures. In addition, the State of Michigan will require a completed Michigan Nonprofit Corporation Information Update Form on an annual basis. They will provide you with the necessary form, which is due before October 1 of each year. The filing fee is \$20.
- 27. Certificate of Amendment to the Articles of Incorporation (Form BCS/CD-515).** The Articles of Incorporation may be amended to add or modify any article, provided the amended provision does not contravene applicable law. The entire article being amended must be restated; when you file this document, there will be a \$10 fee. The amendments must be approved by the incorporator, members, or directors, as appropriate.
- 28. Certificate of Assumed Name (Form BCS/CD-541).** If you transact business under a name different than that of the name stated in the Articles of Incorporation, you must file this form (\$10 fee).



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- 29. Certificate of Change of Registered Office and/or Change of Resident Agent (Form BCS/CD-520).** If you change your registered office (or mailing address, if different than the registered office), you must file this form. A change in resident agent must also be reported on this form (\$5 fee).
- 30. Restated Articles of Incorporation (Form BCS/CD-511).** Use when an organization has made several amendments and has filed several certificates over the course of its years of existence. Completion of this form allows the organization to supersede the original Articles of Incorporation and all previous amendments. Generally used to avoid confusion as to which Articles are most recent (\$10 fee).