

# Starting a Nonprofit in Arizona

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### Disclaimer

The information in this resource is meant to be helpful.

It is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation.

While contacting us does not create an attorney-client relationship, we're happy to answer your questions.

We invite you to contact us and welcome your calls and electronic mail.

[Contact Us](#)

## Introduction

You are passionate about your cause, and you can't wait to start your nonprofit, begin operating and working to serve your purpose!

At For Purpose Law Group, we understand you. Our attorneys have helped nonprofit leaders like you for over twenty years, and have guided hundreds of nonprofit clients through the establishment of their "purpose-driven" enterprises, continuing to serve as their Outside General Counsel.

If you have questions, we're here to assist.

This resource is not meant to be the only resource you will need to complete this process, but we hope it will serve as a useful overview. We have included links to other resources, and encourage you to also print out a copy as a record of your corporate information.

*Well begun is half done. – Mary Poppins*

## About the Author

Mary Dowling is a Partner at For Purpose Law Group and co-chairs the firm's Nonprofit and Business practice areas. Ms. Dowling represents a wide variety of public charities, private foundations, and other nonprofit organizations, including museums, religious and faith-based organizations, social welfare organizations, sports-based organizations, business leagues, educational institutions and social clubs.

Using her unique background that couples a strong understanding of business with her legal skills, Ms. Dowling is able to combine her areas of expertise to help her clients create, manage, and maintain successful business pursuits across various sectors.

## Before You Start

You have a purpose, a vision, and a plan to make it all happen — and now it's time to legally establish your nonprofit organization in California.

First, use the space below to jot down the purpose this organization will have for existing:

This Organization's Purpose: \_\_\_\_\_

Starting a new nonprofit organization, and equipping it for long term success, isn't for the faint of heart. It can be expensive, and improper set-up and operations can open the founders and board members to potential personal liability.

The purpose you just wrote down? That purpose is what is going to make the obstacles you will inevitably face worth tackling. It's also going to help guide you in determining which exemption category is right for you.

There are many purposes that are appropriate for a nonprofit organization and obtaining tax exempt status. The most common designation is exemption under Section 501(c)(3) as either a public charity or private foundation. (*Hint: Don't make the mistake of thinking it doesn't matter whether or not your designation is as a public charity or a private foundation, because it does.*)

Generally speaking, as long as your organization exists for religious, charitable, scientific, literary, or educational purposes, it qualifies as a nonprofit that is eligible for state and federal tax exemption under Section 501(c)(3).

For a list of different exemption types, with explanatory links, go to the Appendix.

This Organization's purpose qualifies it for exemption under 501(c) ( \_\_\_\_\_ )

## Start With the Basics

In the state of Arizona, the entity type you will form with the Arizona Corporation Commission is an Arizona Non-profit Corporation. Forming as a nonprofit corporation also provides the benefit of creating a liability shield for the founders of the entity.

To form with a corporate structure, your nonprofit needs a name, at least one director (but the IRS expects three independent directors), and a plan for operations. The name can't be too similar or identical to an existing nonprofit name on record, it can't be misleading to the public, and it can't infringe on anyone else's trademark rights.

**TIP:** In this case, a simple Google search can go a long way. Then, if all looks good, you might still want to check the registration database with the United States Patent and Trademark Office.

In Arizona you can check the database of the Arizona Corporation Commission to determine if someone is already registered to do business under your preferred name. However, it's important to note that just because the name might be acceptable to the Arizona Corporation Commission, it still may infringe on someone already using the name. Due diligence in researching your proposed name at this point is important!

This Corporation's Name is Going to Be: \_\_\_\_\_

**TIP:** Arizona requires corporations, including nonprofits, to include a corporate designator, i.e. "Inc.", "Incorporated," etc. Other states, on the other hand, do not. So go ahead and include an "Inc." after your name to comply with the statute.

## File Articles of Incorporation

When you file articles of incorporation with the Arizona Corporation Commission, you are seeking to charter a new, separate entity that will be recognized by the state apart from yourself. To keep up your end of the charter, you need to treat the new entity as separate; separate tax ID number, separate bank accounts, separate everything.

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The articles of incorporation must contain information like the name of your entity, the street and mailing address of the new entity, the name and address of the registered agent, and a statement of purpose that identifies your corporation as a nonprofit. The names and addresses of the officers/directors are optional.

**TIP:** The Arizona Corporation Commission provides a sample form of the articles of incorporation. The sample form does not contain language that the Internal Revenue Service may require for tax-exempt status, but you will be given the option of using your own form during the online process. You should consider drafting custom articles of incorporation to include a "dedication clause" and "dissolution clause" as required by the Internal Revenue Service.

The Arizona Corporation Commission is obligated by law to provide the Attorney General of Arizona a list of all individuals associated with a business entity that has committed certain felonies or possesses a judgment involving elements of moral turpitude such as fraud, misrepresentation, theft by false pretenses, or restraint of trade or monopoly. In addition to the articles of incorporation, you will need to complete a Certificate of Disclosure disclosing certain information relating to the officers and directors of the nonprofit.

My Organization's Articles of Incorporation were filed on (date): \_\_\_\_\_

Newly formed nonprofit corporations must publish its original Articles of Incorporation in a newspaper of general circulation in the county of the known place of business in Arizona for three consecutive publications within 60 days after the incorporation date, if its known place of business is not within Maricopa County or Pima County. Nonprofit corporations that have a known place of business in Maricopa County or Pima County automatically satisfy the publication requirement through the Arizona Corporation Commissioner's posted notice of the approved Articles of Incorporation on its website at <http://ecorp.azcc.gov/publicnotice>.

## Draft and Adopt Nonprofit Bylaws

Your nonprofit needs bylaws to dictate the rules and procedures you'll need to manage the corporation's affairs. They must comply with California law, and they'll need to be filed with both the California Attorney General's Registry of Charitable Trusts and the Internal Revenue Service if you file any application for exemption other than the 1023EZ online application.

Your bylaws should include guidelines for the activities of your board of directors. This document should be kept in a safe place and available for reflection and reference.

When a question arises as to the proper structure, quorums, transaction approval requirements, or conflict of interest dilemmas, the bylaws are often the document that will describe the proper way to proceed.

- How your meetings will be called, held and conducted;
- How your officers and directors will be elected/appointed/installed;
- How the organization's committees will be structured;
- Whether or not your organization will have "statutory members" within the meaning of California Corporations Code Section 5056;
- What the organization is willing to indemnify.

**TIP:** Do not re-use a set of bylaws you might have found on the internet, or received from another nonprofit. This is how bad bylaws get perpetuated.

**ANOTHER TIP:** During this formation process, it's important to evaluate the organization's need for insurance protection. For most nonprofits, it seems like an expensive thing to obtain - until it pays for itself and then some with the first legal claim made against the organization by a disgruntled board member, statutory member, employee or member of the general public. We recommend evaluating policies for general liability, directors and officers liability (D&O), and employment practices liability. You'll be glad you did.

## Hold Your First Board Meeting

Now it's time to gather your initial directors for your first meeting! Remember to always take good minutes of the meeting. What are good minutes? Read: [Fun Facts About Corporate Minutes](#).

**TIP:** Don't use Robert's Rules of Order to conduct your meetings. Robert's been dead for over a century, and his rules are archaic, confusing and completely unnecessary to modern governance. Just don't do it.

At this meeting, we like to encourage our clients to go over the board's fiduciary duties as well. If you don't know what they are, here they are in a nutshell:

- **Duty of Care:** The standard of conduct for a director of nonprofit corporation requires the director to act with the care an ordinarily prudent person in a like position would exercise under similar circumstances. This standard includes the duty to be informed and obligation to exercise oversight over the nonprofit's operations.
- **Duty of Loyalty:** The Director must administer his or her corporate powers for the common benefit and act in a manner that he or she believes to be in the best interests of the corporation and all of its members (if any). Conflicts of interests, including the appearance of conflict of interests, must be avoided. This duty extends to personal conflicts of interest or conflicts with other organizations to which a Board member is connected.
- **Duty of Good Faith and Fair Dealing:** Obedience to the organization's central purposes must guide all decisions. The Board must act in good faith and engage in fair dealing when serving as an agent for the organization.

# Apply for a Federal Employer Identification Number (FEIN) and Tax Exempt Status with the Internal Revenue Service

Once you have formed as a corporation in California, you need to obtain a Federal Employer Identification Number (FEIN). This number is free and easy to [obtain online](#) (go to the actual IRS site, there are lots of other sites wanting to charge you) but it's also easy to make a mistake completing the questions the IRS asks of you. Just remember that you are requesting a FEIN because you are starting a new nonprofit organization – and the correct answer might be “other.”

My Organization's FEIN: \_\_\_\_\_

For organizations with purposes compatible with 501(c)(3), you will file Form 1023 or 1023-EZ (for smaller nonprofits) with the IRS for federal tax-exempt status. For other designations under 501(c), you will most likely file the Form 1024.

These applications for exemption can be both daunting and time consuming. The Internal Revenue Service estimates that the time to adequately prepare and submit the full 1023 application is about 14 hours – so many founders find themselves tempted to utilize the 1023EZ, instead (also because the user fee is cheaper (\$275) and getting a determination is faster, too).

**TIP:** The 1023EZ is not reviewed by an IRS Examiner. Thus, you **must** be certain that your proposed activities and purpose meet the 501(c)(3) small organization criteria - so don't skip the 1023EZ Worksheet. The IRS has indicated that due to perceived abuses of this "easy" form, organizations using it may be at higher risk for audit - so be sure you qualify.

The Internal Revenue Service estimates that the time to adequately prepare and submit the fill 1023 application is **about 14 hours**. So be prepared!

Once you have submitted your application for exemption, along with the “user fee” (currently at \$600) then you will need to wait for the IRS to approve, or have follow up questions. The IRS is currently so far behind, it's taking around six (6) months to receive a reply. That doesn't mean that you have to wait to operate – it just means that you can't tell any potential donor that contributions made to your organization are tax deductible. You can say that your 501(c)(3) status is “pending.” Once you receive determination of exemption, it is retroactive to your date of formation (the endorsed date on your articles of incorporation).

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My Organization submitted Form 1023/1024 with the IRS on: \_\_\_\_\_

My Organization should hear from the IRS by: \_\_\_\_\_(180 days later)

## Arizona State Corporate Income Tax

The Arizona Department of Revenue is the state taxing agency tasked with administering state tax law governing charities, private foundations and other entities exempt from state income tax. As of 2018, Arizona Non-Profit Corporations are automatically exempt from corporate income taxes in Arizona and therefore do not need to apply for state tax exemption. No action is required of you on this front!

## Charitable Solicitation Registration Obligations

As of September 13, 2013, Arizona Non-Profit Corporations soliciting charitable contributions in the state of Arizona are no longer required to register with the Arizona Secretary of State. If you intend on operating and soliciting donations solely in the state of Arizona, no action is required.

**TIP:** Charitable solicitation and fundraising is governed and regulated on a state level. As such, if you intend on soliciting charitable contributions and donations in other states, be sure to verify your registration and reporting obligations in that specific jurisdiction prior to engaging in those fundraising activities.

## File Your Annual Returns and Reports

Once you've completed all of these steps, it's likely time to start filing annual reports. Download our e-book "Nonprofit Charity Compliance in Arizona" for help with these filings!

### OTHER RESOURCES

- [IRS Publication 4221](#)
- [AZ DOR Exempt Organization Tax Highlights](#)
- [Arizona Corporation Commission FAQ](#)

### Need Guidance?

For Purpose Law Group is a firm dedicated to providing guidance to nonprofit, tax exempt organizations.

We have a team of dedicated attorneys, paralegals and support staff with years of experience tackling the obstacles you will inevitably face as you establish your organization, and then in keeping it compliant.

We're here to help you change our world.

[Learn more about FPLG](#)

# APPENDIX: Types of Tax Exempt Organizations

**Charitable Organizations:** Tax information for charitable, religious, scientific, literary, and other organizations exempt under Internal Revenue Code ("IRC") section 501(c)(3).

**Social Welfare Organizations:** Information, explanations, guides, forms, and publications available on irs.gov for tax-exempt social welfare organizations.

**Agricultural or Horticultural Organizations:** Links to helpful information about points of intersection between agricultural or horticultural organizations and the IRS, including access to explanatory information and forms that an organization may need to file with the IRS.

**Labor Organizations:** Links to helpful information about points of intersection between labor organizations and the IRS, including access to explanatory information and forms that an organization may need to file with the IRS.

**Business Leagues (Trade Associations):** Links to helpful information about points of intersection between business leagues and the IRS, including access to explanatory information and forms that an organization may need to file with the IRS.

**Social Clubs:** A brief description of the requirements for exemption under Internal Revenue Code section 501(c)(7).

**Fraternal Societies:** A brief description of the requirements for exemption under Internal Revenue Code ("IRC") sections 501(c)(8) and 501(c)(10).

**Employee Benefit Associations or Funds:** A brief description of the requirements for exemption for employees' associations under IRC sections 501(c)(4), 501(c)(9), and 501(c)(17).

**Veterans' Organizations:** A brief description of the requirements for exemption of veterans organizations under Internal Revenue Code sections 501(c)(19) and 501(c)(23).

**Political Organizations:** Tax Information for political parties and campaign committees subject to tax under IRC section 527.

**Other Tax-Exempt Organizations:** Miscellaneous types of organizations that qualify for exemption from federal income tax. Tax Information for political parties and campaign committees subject to tax under IRC section 527.