



# Nonprofit Compliance

It ain't sexy, but it's the law



# “I want to start a nonprofit”

After realizing there is a social need that you feel you must to fulfill,

Ask yourself (or your team): Do I (we) need to be a 501(C)(3) or is locating a Fiscal Sponsor better for us.

“A fiscal sponsor is a nonprofit organization that provides fiduciary oversight, financial management, and other administrative services to help build the capacity of charitable projects.” <https://www.councilofnonprofits.org>



## What it Costs to Form an Ohio Nonprofit

- The filing fee for Articles of Incorporation is \$125.
- The filing fee for annual reports may be as much as \$200, but some organizations can file the report free of charge.
- The fee for charitable organization registration statements depends on the amount of contributions an organization has solicited, but may be as much as \$200.
- The fee for a statement of continued existence is \$25.



## Considerations for Starting a Nonprofit

### Advantages:

- Ohio not for profits are exempt from Ohio income tax.
- Non-profit corporations may provide their shareholders, directors and officers with protection from liability.
- Some Ohio nonprofits have advantages in fund raising, especially 501(c)(3) non-profits.
- A non-profit corporation can outlive its original organizers, unlike partnerships and associations.
- Not for profit organizations may be exempt from property taxes on all or part of their real property.



# Establishing a Nonprofit Corporation

## Register a Nonprofit Corporation With the Secretary of State

- To be legally organized, a nonprofit corporation must file Initial Articles of Incorporation (Articles) (Form 532B) with the Ohio Secretary of State's Office.
- The filing fee is \$99.00.
- Ohio Revised Code Section 1702.04 provides a list of the information that must be included:
  1. The name of the corporation.
  2. The place in Ohio where the principal office of the corporation is to be located.
  3. The purpose or purposes for which the corporation is formed.
  4. The incorporator, as the person who creates the corporation, must sign the articles

<http://www.sos.state.oh.us/sos/upload/publications/busserv/nonprofit.pdf>

## Appointing a Statutory Agent

At the same time the Articles are filed, a nonprofit corporation must appoint a statutory agent to accept service of process on behalf of the corporation.

A nonprofit corporation is a fictitious “person” under the law, and the law requires that a statutory agent be appointed to receive notices and other documents on the corporation’s behalf.

When filing your Articles, you will also need to complete the Original Appointment of Statutory Agent portion of the Initial Articles of Incorporation to appoint the statutory agent.

If a statutory agent is not appointed when the Articles are filed, the Secretary of State must reject the Articles.

The statutory agent must be one of the following:

(1) A natural person who is a resident of this state; or (2) A domestic or foreign corporation, nonprofit corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited partnership association, professional association, business trust, or unincorporated nonprofit association that has a business address in this state.

If the agent is a business entity then the agent must meet the requirements of Title XVII of the Revised Code to transact business or exercise privileges in Ohio.

The incorporator, or a majority of the incorporators if the entity has more than one, must sign the Original Appointment of Statutory Agent.

The statutory agent must also sign to indicate his or her acceptance of the appointment. The filing fee for the Articles and the Original Appointment of Statutory Agent (Form 532B) is \$99.00, payable to “Ohio Secretary of State.”



## Choosing a Corporate Name

- One important step in forming a nonprofit corporation is choosing a name.
- A nonprofit corporation's name cannot be registered unless it is "distinguishable upon the records" from the name of any corporation, limited liability company, limited partnership, limited liability partnership or trade name previously registered or currently reserved with the Ohio Secretary of State.
- To determine whether the name you wish to use is available, please visit the Secretary of State's website, [www.OhioSecretaryofState.gov](http://www.OhioSecretaryofState.gov), or call the Secretary of State's Office at (877) SOS-FILE (877-767-3453).
- If the name you have chosen is already reserved or registered, you may still register and use the name if you obtain consent from the prior registrant.

## Name Reservation

- If you choose a corporate name that is available but you are not ready to register it with the Secretary of State's Office, you may reserve the name.
- Essentially, reserving a name is like putting it on "hold" temporarily so that others cannot register the name before you do. To do this, please submit the Name Reservation (Form 534B) and the corresponding filing fee of \$39.00 payable to "Ohio Secretary of State," and the name will be reserved for a period of six months (180 days).



## Register with the Ohio Attorney General

Ohio requires charitable organizations located in Ohio and groups that ask Ohioans for contributions to file annual reports with the Attorney General's Office. These filings are public and contribute to accountability and transparency within the charitable sector.

Groups are required to use the online system to fulfill their duties under the Charitable Trust Act (RC 109.23) and the Charitable Solicitations Act (R.C. 1716.02). Multiple individuals from each organization are encouraged to create accounts in order to receive reminders on filing deadlines, confirmation of filings, and other important information.

<http://www.ohioattorneygeneral.gov/Business-and-Non-Profits/Charity/Charitable-Registration>





# Developing a Board

One of the most important tasks you face is creating a board, this needs to be a very thoughtful process, the future of your nonprofit depends on how well you do this task.

- ✓ Charities are required by law to have board members to ensure integrity and accountability in their governance.
- ✓ They may be called by different titles — board member, trustee, or director — but they have the same important responsibilities.
- ✓ Organizations seek community members to serve in this capacity for several reasons, including:
  - Honoring an individual's previous volunteer services or commitment to those the charity serves.
  - Adding credibility to the board through an individual's management and business skills.
  - Strengthening an organization through an individual's significant contacts.
  - Increasing the variety and level of skills on the board.

<http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Non-Profits/NonprofitHandbook>



# Fiduciary Obligations of a Board

The fiduciary obligations of board members fall under four specific legal duties:

❖ Duty of Care

Board members should be active in the charity's affairs, to attend the meetings, to know stay informed about organizational operations.

❖ Duty of Loyalty

Board members must understand that the interest of the charity and its objectives take precedence over a board member's personal interests or those of family or friends.

❖ Duty of Compliance

Board members have a duty to be faithful to the organization's purpose and mission. They also must adhere to the organization's governing documents and to laws and regulations that relate to the charity and its operations.

❖ Duty to maintain accounts

Board members are responsible for the charity's financial stability and accountability. They do this primarily by establishing procedures to help the organization operate in a fiscally responsible manner.



## **Accountability, Transparency and Ethics**

Board members should avoid conflicts of interest. They must disqualify themselves from decisions if a conflict is present.

Nonprofits should respect the intentions of their donors in areas such as anonymity and the use of gifts. Written agreements can help avoid disputes about how gifts will be used.

Nonprofits operate for public purposes with public support, so information regarding your nonprofit's mission activities and finances should be made available to the public.



## Mission Statement

**Creating a Mission Statement is not a requirement for setting up your nonprofit, however, it is considered to be a best practice.**

How you prepare your mission statement, and the information you include in it, will help you answer questions from future lenders, board members and employees.

Create your mission statement by outlining what you want your non-profit to do and by explaining its purpose.

Answer these six important questions: who, what, where, when, why and how?

Lay out your company's objectives, activities, and resources, and explain how and where it will obtain funding.




Once you have established corporate status within the state of Ohio, next comes the IRS!

Submit Form 1023, Application for Recognition of Exemption, to the Internal Revenue Service.

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

This process can take anywhere from 6 weeks to three months, be patient!





# Top Ten Tips for Filing for Exemption Status

## **10. Provide the required information on the principal officers and board of directors**

List the following information for the principal officers and board of directors:

a) Names; b) Mailing addresses; c) Titles and Positions; d) Annual compensation

## **9. Ensure a director, trustee, principal officer or other authorized individual signs the Form 1023**

- Generally, a principal officer is the president, vice president, secretary or treasurer.
- The person signing the application must indicate his or her title or other authority to sign.
- A taxpayer's representative may not sign the application.
- An original signature is required.
- Neither a stamped signature nor a faxed signature is permitted.



**8. Don't forget to submit a copy of adopted by-laws,** code of regulations or any other document that sets out the organization's rules of operation, but only if adopted.

**7. Include all of the necessary financial data.**

See the [instructions to Form 1023](#) to determine how much information you need to provide, based on how long your organization has existed.

**6. Include the month the organization's annual accounting period ends**

The accounting period ending date on the application should match the date stated in your by-laws, on financial statements, and on any prior returns filed.

**5. Attach all required schedules**

Some lines require supporting schedules. Check all line items on financial statements.



## 4. Complete all required pages

- The information contained on each page and schedule of Form 1023 and Form 1024 is necessary for the IRS to make a determination about your tax-exempt status.
- Form 1023 has various schedules and pages that must be filled out for churches, schools, hospitals, scholarships, supporting organizations and certain other organizations.


## 3. Provide enough information about the organization's activities to show us how it will achieve the exempt purpose

- Please don't restate the purpose.
- Explain the specific activities that will achieve that purpose. Consider a "who, what, when, where, why and how" approach.
- Explain past, present, and planned activities.
- If you haven't started activity yet, develop plans that provide a clear understanding of how your organization will operate.
- It is not necessary to describe activities that are speculative at this time.



## 2. Attach a complete copy of the organizing document and all amendments

- ▶ If the applicant is a corporation, include a complete copy of the articles of incorporation that shows it has been filed with and approved by the state.
- ▶ If the applicant is not incorporated, include a similar organizing document such as a constitution, articles of association, or by-laws.
- ▶ At a minimum, it should state the legal name, the purposes and the date of adoption.
- ▶ At least two members of the organization should sign the document.
- ▶ A trust document must be signed by the trustees and show the date of formation.
- ▶ For section 501(c)(3) applicants, the organizing document must comply with the organizational test for exemption.



**1.** The **Number 1** tip to reduce delays in processing exempt organization applications is . . .

***INCLUDE THE CORRECT USER FEE!***

*Ensure the application includes a check or money order made payable to the United States Treasury for the appropriate user fee.*

Upon completing this process you will receive “THE” notice from the IRS, referred as a Letter of Determination, make several copies, and store the original in the safest place you can find. You will be called often for a copy, and if you have to contact the IRS for a copy, you may wait for up to three months to receive. Not good when you need to report locally or apply for a grant.





## Next steps

- Nonprofits that are exempt from federal tax are also automatically exempt from the Ohio corporation franchise tax.
- 501(c)(3) nonprofits are exempt from sales tax. Sales and use tax exemption certificates can be obtained from the Ohio Tax Commissioner's Office.
- All Ohio nonprofits that will solicit contributions must register with the Ohio Attorney General within 6 months of creation. Submit copies of your Articles of Incorporation, IRS exemption letter, bylaws, Form CFR-1, and a charitable organization registration to the Office of the Attorney General Charitable Law Section.
- Nonprofit organizations must also register with the Ohio Attorney General before they solicit contributions in Ohio.
- In the City of Columbus, you must obtain a Solicitation Permit.



## City of Columbus Code of Ordinances

### **525.03 - Charitable solicitations permit required.**

No person shall solicit contributions for any charitable purpose from any person located within the city unless the person for whose benefit the solicitation is conducted has obtained a permit from the board. An application for a permit to solicit for charitable purposes shall be made to the board on forms provided by the city. Such application shall be sworn to and filed at least thirty (30) days prior to the time of the contemplated use of the permit.

<https://www.columbus.gov/public-safety/License-Section/>



# Annual Reporting

- Ohio Attorney General - Fifteenth day of the fifth month following the close of fiscal year (June 30 – due by November 15<sup>th</sup>, December 31 – due by May 15<sup>th</sup>.)
- Ohio Secretary of State - Statement of Continued Existence every five years.
- City of Columbus – Expires one year from application, must be renewed month before expiration
- Internal Revenue Service - Fifteenth day of the fifth month following the close of fiscal year (June 30 – due by November 15<sup>th</sup>, December 31 – due by May 15<sup>th</sup>.)

<https://efile.form990.org/frmefilingdeadline.asp>

NOTE: A current IRS Form 990 is necessary to file all other annual reports.



# Attorney General – State of Ohio

- Annual Charitable Registration  
The annual filings are due on the 15<sup>th</sup> day of the fifth month following the close of a fiscal year. For example, if a group's fiscal year ends Dec. 31, the filing is due on May 15. The office does not grant extensions but abides by extensions granted by the IRS. If an organization has requested and received an IRS extension, the Ohio filing will be due on the same date as the IRS deadline.
- Determinations on when groups have submitted materials are based on the time and date of the online submission, unless checks and other materials are mailed to the office. When groups elect to mail a check instead of paying online, the submission date will be based on the postmark date on the envelope. Late fees may be assessed for materials mailed after the due date. For this reason, it is best to submit payments online.
- <http://www.ohioattorneygeneral.gov/Files/Business-and-nonprofits/Charity/Reggie-Online-User-Guide-2015>
- <http://www.ohioattorneygeneral.gov/Files/Business-and-nonprofits/Charity/Charitable-Registration/Online-Charitable-Registration-Tool-Tips>
- <http://www.ohioattorneygeneral.gov/Files/Forms/Forms-for-Non-Profits/Charity-Forms/Charity-Dissolution-Form>



# Secretary of State of Ohio

A nonprofit must submit proof of continued existence (every 5 years)

<http://www.sos.state.oh.us/sos/upload/business/forms/522.pdf>

However, these filings are also proof of continued existence:

- ▶ Amendment to Articles  
<http://www.sos.state.oh.us/sos/upload/business/forms/541.pdf>
- ▶ Statutory Agent Update  
<http://www.sos.state.oh.us/sos/upload/business/forms/521.pdf>
- ▶ Address Change (for Statutory Agent or Organization only)  
<http://www.sos.state.oh.us/sos/upload/business/forms/526.pdf>
- ▶ Cease to operate - Certificate of Dissolution
- ▶ <http://www.sos.state.oh.us/sos/upload/business/forms/560.pdf>





# The dreaded IRS Form 990

**Most organizations exempt from income tax under section 501(a) must file an annual information return (Form 990 or 990-EZ) or submit an annual electronic notice (Form 990-N), depending upon the organization's gross receipts and total assets.**

Form 990 must be filed by an organization exempt from income tax under section 501 (a) (including an organization that has not applied for recognition of exemption) if it has either:

- (1) gross receipts greater than or equal to \$200,000 or
- (2) total assets greater than or equal to \$500,000 at the end of the tax year (with exceptions described below for organizations eligible to submit Form 990-N and for certain organizations described in Section B



## Organizations Not Required to File Form 990 or 990-EZ

This includes:

Organizations described in section 501(c)(3) (other than private foundations), and Organizations described in other 501(c) subsections (other than black lung benefit trusts).


Gross receipts are the total amounts the organization received from all sources during its tax year, without subtracting any costs or expenses. For purposes of Form 990 reporting, the term section 501(c)(3) includes organizations exempt under sections 501(e) and (f) (cooperative service organizations), 501(j) (amateur sports organizations), 501(k) (child care organizations), and 501(n) (charitable risk pools).

In addition, any organization described in one of these sections is also subject to section 4958 if it obtains a determination letter from the IRS stating that it is described in section 501(c)(3).



## Applying for Grants & Loans

- Grants and loans from federal, state and private sources are a major source of funding for Ohio non-profits.
- A not for profit corporation is responsible for complying with grant requirements and keeping appropriate records.
- It's important for non-profits to keep money received from grants separate and apart from the non-profit's general fund.
- A good reputation in administering grant monies helps non-profits obtain more funding from these sources.



Nonprofits must retain their charitable status to:

- Be exempt from paying corporate taxes on property and income (35%)
- Purchase goods and services used in the production of programs and services, without paying Sales and Use tax
- To entitle donors to a charitable contribution deduction against their income tax
- Accept funds from grants (both public/private/government).

Nonprofits that fail to maintain compliance run the risk of losing their nonprofit status. In 2011, the Internal Revenue Service revoked the charitable status of 275,000 nonprofits.

[www.philanthropy.com/article/275000-Nonprofits-Lose-Tax/158275](http://www.philanthropy.com/article/275000-Nonprofits-Lose-Tax/158275)

In 2015 the IRS revoked the charitable status of 23 Ohio nonprofits.

[www.irs.gov/charities-non-profits/charitable-organizations/revocations-of-501-c-3-determinations](http://www.irs.gov/charities-non-profits/charitable-organizations/revocations-of-501-c-3-determinations) dated 9/16/2016

## What happens if I don't file?

You will be taxed at the corporate rate of 35% on all income for the current year (they can actually assess for a prior year as well)

You will pay sales tax for goods and services

You may be required to return any grant monies

Your donors will be unable to deduct their contributions for the year.



It's your decision







# Ohio and National Nonprofit Resources

[Ohio Association of Nonprofit Organizations](#): OANO provides training, networking, information, discounts and advocacy for Ohio nonprofits.

[Legal Information For Nonprofits - Ohio](#): Linc-Ohio is sponsored by the Ohio Bar Association and provides advice on managing Ohio nonprofits.

[National Council of Nonprofits](#): This national organization offers resources for starting and maintaining a nonprofit organization.

[BoardSource](#): A national organization working to strengthen nonprofit board leadership. Great Resources.

<https://www.boardsource.org>