



## Procedural Steps for Forming a Nonprofit Corporation or Social Enterprise\*

### 1. Check for availability of desired entity name in the state of incorporation

- This search can usually be performed on the website of the state corporation commission, secretary of state, or othering regulating agency.

### 2. Designate the incorporator

- The person who executes the articles of incorporation and takes the initial steps to organize the non-profit.
- Can be the founder, an initial director, or an outside third party and does not need to be an attorney.

### 3. Appoint a registered agent

- Can use a registered agent service if no one available to serve as registered agent.

### 4. Appoint board members

- Check state corporation statute on required minimum number of directors.
- Prepare Board orientation packet that includes organization's financial information, background information, board member job description and Board of Directors code of ethics (including conflict of interest policy).

### 5. Draft and file articles of incorporation with state

- Some states have a form template you can use (check state website).
- Additional requirements for nonprofits that will seek tax exemption:
  - Must have a purpose clause that is properly limited to the purposes set out in Section 501(c)(3)
  - Need to include additional language regarding use of net earnings, non-engagement in prohibited political activity, and distribution of assets upon dissolution.

### 6. Draft bylaws for organization

- These are not filed with the state.
- For nonprofits planning on providing overseas grants, should include provisions pertaining to Board's authority over all funding decisions.

\* This is a general guide that is not specific to the laws of a particular state. The applicable state corporation statutes should be reviewed to ensure compliance with state-specific requirements. In addition, while nonprofits and for-profit social enterprises have differing goals and requirements, they share many of the same initial organization tasks.

#### 7. Create a paper or electronic corporate record book

- Place to store articles of incorporation, bylaws, board minutes, federal or state tax-exempt status designation letters, and copies of annual reports and filings.

#### 8. Have directors (or, if none identified in articles, the sole incorporator) authorize organizational resolutions

- The board should meet to (or the incorporator should provide authorization to):
  - Adopt the by-laws
  - Elect and establish the board and any committees (if the articles do not identify the initial board of directors)
  - Elect the officers
  - Approve the corporate seal (if any)
  - Authorize applications for federal and state tax-exempt status
  - Set an accounting period and tax year
  - Approve the initial transactions of the non-profit, such as opening bank accounts

#### 9. Obtain Employer Identification Number with IRS (even if no employees)

- Can apply online after receiving certificate of incorporation.

#### 10. Obtain state tax identification number

#### 11. Qualify as a foreign entity in any other state where conducting business

- Check for name availability in that state.
- Appoint a registered agent in that state.
- File qualifying documents, which includes a certificate of good standing from the state of incorporation.

#### 12. Apply for 501(c)(3) tax-exempt status IRS

- File IRS Form 1023.

#### 13. Apply for state tax-exempt status

- To obtain exemptions for state income, excise tax, sales and use tax (if applicable).

#### 14. Register to conduct charitable solicitation in the state

- Generally registration is with the state attorney general.
- Must register in every state where charitable solicitation is conducted.
- Most states have registration exemptions for fundraising below certain dollar thresholds.

15. Obtain any business licenses and permits (often done at the county level)

16. Develop mandatory and recommended IRS policies

- Compensation policy, conflict of interest policy, etc.
- Have board review and adopt these policies.

17. If there are employees, register with state department of taxation and state employment commission

18. If appropriate, obtain general and property liability insurance