

Starting a Nonprofit in D.C.: A Guide



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Introduction

Starting a tax-exempt nonprofit organization can be both deeply rewarding and tremendously challenging. Many nonprofit founders are motivated by a desire to do good or to fulfill an important, unmet need in their community, and these goals provide the critical basis for any successful nonprofit. However, starting a tax-exempt nonprofit also requires attention to complex state and federal laws. To ensure that your organization starts with the proper legal foundation, it is important to take the right steps at the outset. This manual is intended to provide guidance to those interested in setting up tax-exempt nonprofit organizations in the District of Columbia and to help them navigate state and federal laws.

PLEASE NOTE: This guide is provided solely for informational purposes and does not provide specific legal advice for any individual situation. Moreover, the information about the laws of the District of Columbia and the U.S. federal income tax laws contained in this guide are based upon the laws as of the date it published, and these laws may be repealed, revoked or modified, possibly retroactively. Any changes to D.C. law or the U.S. federal income tax laws may result in changes to the information contained in this guide. This guide should be used in conjunction with, and not as a substitute for, qualified legal and tax counsel. Only an attorney or other tax professional with knowledge of your particular situation can provide the assistance you need. You are urged to consult an attorney or other tax professional.

I. What You Need to Know Before You Begin

Before you begin the process of starting a nonprofit, it is important to consider whether your envisioned nonprofit will meet the key legal requirements to qualify as a tax-exempt organization.

This section will provide you with important information on how the federal government defines and categorizes tax-exempt organizations, and will give you guidance on other issues you need to consider as you get started.

What is a nonprofit organization?

- A nonprofit organization is an organization that does not operate for the purpose of generating profits for private individuals. It has no owners, partners or shareholders. It pays no dividends and distributes no profits to any person. A nonprofit may also qualify as a tax-exempt organization under Section [501](#) of the Internal Revenue Code of 1986, as amended (the “Code”) but it is not required to do so. A nonprofit organization will not be tax-exempt unless it takes all of the steps necessary to obtain tax-exempt status from the IRS. A nonprofit organization can be a corporation, limited liability company, unincorporated association or trust.

What is a tax-exempt organization?

- Under Section [501](#) of the Code, certain organizations may qualify as exempt from federal income tax under Section 501(c). These include civic organizations, trade unions, business leagues, mutual aid societies, social clubs, and employee benefit trusts.

What is a 501(c)(3) organization?

- Section 501(c)(3) provides tax-exempt status to organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals (“exempt purposes”).
 - For more information on the categories above, see page 5.

In addition to being exempt from federal income taxes, §501(c)(3) organizations may be entitled to additional benefits. Contributions to a “qualifying” §501(c)(3):

- are deductible by the donor as charitable contributions under Code section [170](#). In order to receive this additional tax benefit, §501(c)(3) organizations must satisfy additional requirements. These requirements mandate that:
 - None of the organization’s net earnings benefit any private shareholder or individual;
 - Lobbying or advocacy cannot be a “substantial” part of the organization’s activities;
 - The organization cannot participate in any political campaign on behalf of, or in opposition to, any candidate for public office; and
 - The organization cannot operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose.

Qualifying organizations include an organization that meets the requirements of §501(c)(3) and is created or organized in the U.S. or any U.S. possession or under the laws of the United States, any state, the District of Columbia or any U.S. possession.

- Before starting a nonprofit organization, you should determine if your organization can satisfy these additional requirements in order to be tax-exempt under §501(c)(3). An organization that is primarily engaged in business activities that are not related to its exempt purpose, but that donates a limited amount of its profits to charity, will likely not qualify under §501(c)(3).

What is meant by “religious, charitable, scientific, testing for public safety, literary, or educational purposes, to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals?”

- **Religious:** This category typically includes churches and organizations that are closely affiliated with churches. It can also include nondenominational ministries, interdenominational and ecumenical organizations, and other organizations whose primary purpose is the study or advancement of religion.
- **Charitable:** This category includes organizations that provide services or basic necessities to the poor, such as food, shelter, and medical care. It can also include groups that advance religion, education, or science; that erect or maintain public buildings or monuments; that lessen the burden of government; that lessen neighborhood tension; that combat community deterioration and juvenile delinquency; that seek to eliminate prejudice and discrimination; or that work to defend human and civil rights.

- **Scientific:** This category includes organizations conducting scientific research carried out in the public interest, and can include aiding in the scientific education of college or university students, carrying out research that is available to the public or discovering a cure for a disease.
- **Testing for public safety:** This category includes the testing of consumer products to determine whether they are safe for use by the general public.
- **Literary:** This could include operating a library.
- **Educational:** This category is for organizations that instruct an individual to improve his or her capabilities or instruct the public on subjects useful to individuals and beneficial to the community. It includes institutions such as schools, colleges, museums, zoos and organizations that provide information to the public.
- **To foster national or international amateur sports competition:** This can include fostering or conducting national or international amateur sports competition, or supporting and developing amateur athletes for that competition. Example: The Fiesta Bowl is tax-exempt under §501(c)(3). It does not include providing athletic facilities or equipment.
- **Prevention of cruelty to children or animals:** This includes such things as preventing children from working in hazardous trades or occupations, promoting high standards of care for laboratory animals, and providing funds to pet owners to have their pets spayed or neutered to prevent overbreeding.

Are there any limits on the types of exempt purposes that a nonprofit may adopt?

- In order to qualify for tax-exempt status, §501(c)(3) organizations may not have purposes or activities that are illegal or violate fundamental public policy. In particular, an organization may not engage in discrimination when carrying out its tax-exempt mission. For example, in the case of Bob Jones University v. the United States, the Supreme Court ruled that the IRS was correct to revoke the tax-exempt status of a university that prohibited interracial dating among its students. In addition, any organization that is applying for tax-exempt status as an educational organization is required, as part of its application, to adopt a policy of non-discrimination in the admission of students.

What else should I consider when deciding whether to start a tax-exempt nonprofit?

- Ask yourself whether you are filling a need in your community that is not being addressed by another organization. Every organization has overhead—rent, salaries, insurance, accountant fees—that must be paid. If your organization’s goals overlap with those of an existing organization, you will be expending resources on overhead costs that duplicate those of the existing organization—resources that may be more

efficiently spent on providing more services. Will your organization provide enough additional services to people in need to justify the additional overhead? If not, consider volunteering for the existing organization. You should also consider whether you will be able to recruit people to serve on the organization's board of directors and how whether your organization will be able to raise sufficient funds to carry out its mission.

What are the alternatives to starting a §501(c)(3) organization?

- A fiscal sponsor—an existing §501(c)(3) organization whose mission is to serve as an incubator for startup organizations—is one alternative. For a fee, the fiscal sponsor serves as an umbrella organization providing accounting, tax filing, and other services to the startup. Contributions to the fiscal sponsor for the benefit of the startup are immediately tax-deductible. Fiscal sponsorship gives a startup the chance to develop a track record before applying for tax-exempt status and approaching funders.
- The [Fiscal Sponsor Directory](#) offers a list of fiscal sponsors. A tutorial about fiscal sponsors is available on the [Foundation Center's](#) Web site.

II. Forming a Nonprofit Corporation Under D.C. Law

Once you have decided to start a nonprofit organization, it is important that you comply with D.C. law in forming your organization. This section will answer questions and guide you through the most important steps.

What is the first step in starting a nonprofit?

- To start a nonprofit, you must first form an organization under D.C. law. Under the Internal Revenue Code, a tax-exempt organization can be a corporation, a trust, a limited liability corporation, or an unincorporated business association. However, nonprofits are almost always formed as **nonprofit corporations**.

What are the advantages of a nonprofit corporation?

- The corporate form provides the maximum amount of protection from legal liability for officers, directors, employees, and volunteers of a nonprofit corporation. It also provides the most efficient governance.

Which law governs nonprofit corporations in D.C.?

- Nonprofit corporations in D.C. are governed by the D.C. Nonprofit Corporation Act of 2010. A summary of key parts of the law is available [here](#).

How do I create a corporation?

- A nonprofit corporation is created when persons or entities, called incorporators, file articles of incorporation with the D.C. Department of Consumer and Regulatory Affairs (DCRA). An incorporator can be an individual, a nonprofit, or other business entity. In the case of startups, the incorporators are typically individuals. Only one incorporator is required by law, however, once the corporation is formed, you will need three individuals to serve as directors of the corporation.

What are articles of incorporation?

- The articles of incorporation are a legal document that must be filed with the appropriate state agency (in this case, DCRA) in order to create a D.C. nonprofit corporation you must fill out and file a form, [DNP-1](#), in addition to drafting articles of incorporation. For sample articles of incorporation, click [here](#).

What must be included in the articles of incorporation?

- **General requirement for “charitable” organizations in D.C.:** In order to receive special protections with respect to director liability and tax status under D.C. law, the articles of incorporation must demonstrate that the nonprofit will be operated primarily or exclusively for one or more “charitable purposes.”
 - A “charitable purpose” means an exempt purpose that would make a corporation exempt from tax under §501(c)(3).
- **Specific requirements under D.C. law:** The D.C. government requires that the following information be included in the articles of incorporation:
 - The name of the corporation;
 - Whether the corporation will have members;
 - For additional information, see “What are nonprofit members?” on page 10.
 - The name of the initial registered agent and the agent’s address in D.C.;
 - For additional information, see “What is a registered agent?” on page 11.
 - A statement that the corporation has been formed under the D.C. Nonprofit Corporation Act, Title 29, Chapter 4; and
 - The name and street address of each incorporator (each incorporator must sign and date the articles).
- **Requirements under the Internal Revenue Code:**
 - **Exempt purpose:** Under §501(c)(3), the organization must be organized and operated exclusively for an exempt purpose. Therefore, the articles must also specifically limit the organization’s purposes to one or more of the exempt

- The purposes for which the corporation has been formed;
 - The management of the affairs of the corporation;
 - The powers of the corporation and the board of directors; and
 - The rights and limitations of the members.
- **TIPS:**
 - If your organization wishes to maintain the greatest amount of flexibility, it is generally better to put details about the management of the organization and the indemnification of directors in the organization's bylaws (see below for more information on bylaws) and not in the articles of incorporation. If the organization wants to amend the articles of incorporation, it must file the amendment with DCRA and pay an additional filing fee. Amendments to the bylaws are not subject to this requirement.
 - Also, your organization can maintain greater privacy. This is because the articles are a public document that is on file with DCRA and open to public inspection. The bylaws, in contrast, are an internal document that is not filed with DCRA.

How do I file the articles of incorporation?

- Once the articles of incorporation have been drafted, they must be filed with DCRA, along with Form DNP-1, by mail. You will need to file two original copies of the articles of incorporation signed by the incorporators, plus the filing fee. The processing time is 15 days after receipt of mailing and processing of payment. If the incorporator wishes same-day service for the incorporation, the incorporator must file the articles of incorporation in person and pay an additional expedited service fee.
- DCRA allows you to file the articles of incorporation using an online form. However, for §501(c)(3) organizations, the online form must be supplemented to include the language required by the Internal Revenue Service (IRS).

What are bylaws?

- An organization's bylaws spell out its internal operating rules.
- The corporation should adopt the organization's bylaws immediately following the incorporation.
- Bylaws include provisions relating to:
 - The appointment of members, if any;
 - Meetings of members, if any;
 - The number of directors (minimum of three);
 - How and when to elect directors;
 - The rules regarding board meetings;
 - The appointment of officers, such as the chief executive officer and treasurer;

- The creation and appointment of committees;
- The indemnification of officers and directors; and
- How to amend the bylaws.
- For sample bylaws, click [here](#) if your organization has members. Click [here](#) if it does not.

Related Questions: Articles of Incorporation

What are nonprofit members?

- Nonprofit corporations do not have shareholders. However, a nonprofit corporation may have members. Members do not receive dividends or have any other ownership rights in the nonprofit; however, they are like shareholders because they have a right to elect the board of directors and approve major corporate transactions, such as mergers or transfer of substantial portions of the organization's assets. Like shareholders, members have the right to attend membership meetings, receive advance notice of the meetings, have access to information about the operations of the nonprofit, and vote.
- **TIP:** Though once common, it is unusual for a nonprofit corporation to have members. The number of membership organizations has decreased because nonprofits have found it difficult to gather the required number of members to perform important functions within the organization. The new D.C. nonprofit code also has placed additional recordkeeping and notice requirements on nonprofit corporations with members.

What is a registered agent?

- A registered agent is a person designated by the nonprofit to receive important notices addressed to the nonprofit organization. These include notices from the D.C. government, such as the biennial return form, and any tax or other administrative notices. The registered agent is also the person who is served with any legal papers if the nonprofit organization is sued. Thus, the registered agent must be available during business hours and must have a physical address (not a post office box) so that he or she can personally accept any legal papers.
- A nonprofit may designate either a commercial registered agent or a non-commercial agent.
 - A **commercial registered agent** is a business that will serve as the organization's agent for a fee. The commercial entity must maintain an office in D.C. A list of commercial agents is available [here](#).
 - A **non-commercial registered agent** may be any other corporation or individual with offices in D.C. The nonprofit may use an individual who is:
 - An officer, director, or employee of the nonprofit, provided the nonprofit maintains an office in D.C.; or

- An attorney licensed to practice law in D.C. who maintains an office in the District.

III. Obtaining Tax-Exempt Status

Once you have formed a nonprofit corporation in compliance with D.C. law, the next step is to file an application with the IRS and the D.C. government to obtain tax-exempt status for your organization. This section will provide an overview of the process.

Federal Tax-Exempt Status

How do I get started?

- Before you can apply for federal tax-exempt status, you must obtain an Employer Identification Number (EIN) from the IRS. You will need this number even if your organization does not have any employees. You obtain an EIN by filing IRS [Form SS-4](#). You may apply for the SS-4 online, or by telephone, fax, or mail. There is no filing fee, and if done over the phone or online you can obtain an EIN immediately, if the form is faxed or mailed the process normally takes several days.

How do I apply for tax-exempt status?

- To apply for tax-exempt status, you must fill out IRS [Form 1023](#), the Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
- Form 1023 is a 26-page, multipart form that asks for detailed information on your organization, including its mission and activities, its financial viability, and whether the organization engages in lobbying or political activity. Be sure to consult the [instructions](#) for the Form 1023 as they provide much needed detail on how to complete the form.

What is the purpose of Form 1023?

- At its core, Form 1023 asks the nonprofit organization applying for tax-exempt status to demonstrate that:
 - The nonprofit satisfies the technical requirements for a 501(c)(3) organization, meaning that it is organized and operated exclusively for an exempt purpose; and
 - The nonprofit has a business plan.

What information do I need to provide?

- Form 1023 has 11 parts, each of which requires you to provide information on a specific topic:

- **Part I** asks for preliminary information about your organization, such as its name, address, EIN, and Web address.
- **Part II** asks for information on your nonprofit's organizational structure, and requires that you attach your organization's articles of incorporation, including a certification from the appropriate state or local agency showing that the articles have been properly filed, as well as its bylaws.
- **Part III** asks whether the articles of incorporation contain the required language for a §501(c)(3) organization and requires you to indicate the location of the language in your articles of incorporation. Specifically, the language must state:
 - That your organization has an exempt purpose (such as charitable, religious, educational, or scientific); and
 - That if your nonprofit is dissolved, its assets will be used for an exempt purpose ("dissolution clause").
- **Part IV** asks for a narrative description of your organization's mission and activities.
 - **TIP:** When describing your organization, include activities you plan to do in the future, even if your activities will be more limited at first. This will give the IRS the opportunity to review such activities and determine whether they are consistent with §501(c)(3). If you provide only a list of your organization's current activities, and your nonprofit later undertakes a charitable activity that was not included in the original Form 1023, you will have to report such activity to the IRS on [Form 990](#) and give the IRS the opportunity to determine if it is consistent with §501(c)(3).
 - **TIP:** The IRS will be interested in whether your projected activities are reasonable in light of your projected fundraising. You will be asked to describe how each activity will be funded. So be sure to match your projected activities with projected income. See **Part IX** below
- **Part V** asks about any compensation arrangements with officers, directors, employees, or independent contractors to determine whether the compensation is reasonable.
 - Under the IRS "safe harbor rules," the compensation paid by a tax-exempt is presumed reasonable if the following requirements are met:
 - The compensation is comparable to that paid for a similar position by other, similar organizations;
 - The compensation is approved in advance by disinterested directors; and
 - The basis for awarding the compensation has been properly documented and the compensation has been properly reported to the IRS.

- Part V also asks you to describe the relationships between the officers, directors, employees, and independent contractors to determine if there are any potential conflicts of interest.
- **Part VI** asks whether your organization's exempt purpose involves the provision of goods, services, or funds to specific individuals or groups, and requests details on the organization's programs and on the recipients of goods, services, or funds.
- **Part VII** asks for information on your organization's history; specifically, whether your organization is the successor to another organization.
- **Part VIII** asks whether the nonprofit will engage in activities that have the potential to jeopardize the organization's tax-exempt status, such as political campaigning, excessive lobbying, or engaging in transactions for the benefit of private individuals.
 - Remember, in addition to being **organized** for an exempt purpose, a tax-exempt organization must be **operated** in furtherance of that exempt purpose. This means that the nonprofit must:
 - Ensure that its earnings do not benefit any insiders or other private interests. This includes paying only reasonable compensation to an insider and not paying more than fair market value for any goods or services provided by an insider;
 - Refrain completely from campaigning for or against any candidate for federal, state, or local office;
 - Restrict its lobbying to an insubstantial part of its activities;
 - Not operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose;
 - Not have purposes or activities that are illegal or violate fundamental public policy; and
 - Satisfy the IRS's annual filing requirements.
 - Part VIII also asks about the organization's fundraising activities, including the compensation arrangements for individuals or companies that undertake fundraising on behalf of the organization.
- **Part IX** requires the organization to provide three or four years of detailed financial information depending on the number of years the organization has been in existence. This includes information on gifts and contributions, salaries, professional fees, assets, and mortgages and other liabilities.
 - For organizations with no operating history, the applicant must provide three years of projected financial information. If the organization has been in existence for at least one year but less than four, it must provide actual financial history for the years in existence and projected financial

What else do I need to file?

- **Supplemental Forms:** Depending on what type of organization it is, a nonprofit may have to file a supplemental schedule.
 - Schedule A – Churches
 - Schedule B – Schools, colleges, and universities
 - Schedule C – Hospitals and medical research institutions
 - Schedule D – Supporting organizations
 - Schedule E – Failure to request exemption within 27 months
 - Schedule F – Elderly, handicapped, or low-income housing
 - Schedule G – Successor organizations
 - Schedule H – Organizations providing scholarships, fellowships, educational loans, or other educational grants to individuals
- **You will also need to file:**
 - The Form 1023 checklist (attached to Form 1023);
 - A certified copy of the organization’s articles of incorporation, a copy of its bylaws and a copy of its conflict of interest policy;
 - Filing fee – \$850 (if organization’s gross receipts have not exceeded or will not exceed \$10,000 annually over a four-year period, the filing fee is \$400);
 - Form [2848](#) (Power of Attorney) if an attorney is filing the form on the organization’s behalf; and
 - Any required schedules.

How soon will I receive a decision?

- This depends on how the IRS categorizes your application. Upon receipt, the application will be placed into one of four categories:
 - Those that can be approved immediately based on the information submitted;
 - Those that need minor additional information to be resolved;
 - Those that are submitted on obsolete forms or do not include the required items; and
 - Those that require further development.
- The timing of the IRS decision process is dependent on a number of factors, including the overall number of exempt applications submitted for review. Organizations that can be approved immediately based on the information submitted generally receive a determination letter within six to nine months of filing.
- If your application requires further development, this means that the IRS needs additional information in order to make a determination. For example, the IRS may have questions about whether your organization serves an exempt purpose. You will be contacted once the application is assigned to an IRS agent for further development. This may take a year or longer.

- You can request expedited treatment, but it will be given only for compelling reasons, such as in the following circumstances:
 - A grant is pending, and failure to secure the grant will have an adverse impact on the organization's ability to continue operating;
 - A newly created organization wishes to provide disaster relief to victims of emergencies; or
 - IRS errors have caused undue delays in issuing a determination letter.

If my application is approved, how soon will my exempt status go into effect?

- If the application is filed within 27 months of the date of incorporation, the exemption, if granted, will be retroactive to the date of incorporation.
- If the application is filed after 27 months, the exemption will be effective retroactive to the date the Form 1023 application was filed.

Can the IRS revoke my organization's tax-exempt status?

- Yes. If the IRS determines that your nonprofit is no longer operating in furtherance of an exempt purpose, it can revoke your organization's tax-exempt status. To maintain its §501(c)(3) classification, an organization must:
 - Ensure that its earnings do not benefit any private shareholder or individual, and it must not operate for the benefit of private interests;
 - Refrain completely from campaigning on behalf of or against any candidate for federal, state, or local office;
 - Restrict its lobbying to an insubstantial part of its activities;
 - Not operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose;
 - Not have purposes or activities that are illegal or violate fundamental public policy; and
 - Must satisfy the IRS's annual filing requirements. Organizations must file one of four versions of IRS [Form 990](#) every year, even while the Form 1023 application is pending. These include Form 990-N, 990-EZ, and 990. Your organization should determine which version of Form 990 to file based on its annual revenue and assets. (Private foundations file Form 990-PF.)

D.C. Tax-Exempt Status

How do I file for tax-exempt status in D.C.?

- In order to be exempt from taxes under D.C. law, the organization must file Form [FR-164](#). This form is filed with the D.C. Office of Tax and Revenue.
- Use the form to request exemption from local income and franchise taxes, and, under certain circumstances, from sales and use taxes and personal property taxes.

- You can file Form FR-164 when you file Form 1023, but it will not take effect until your organization has received its federal determination letter. Or you can wait until after your organization receives the IRS determination of exemption, and the D.C. exemption will be retroactive to the federal exemption's effective date. In order to avoid problems with the Office of Tax and Revenue, file Form FR-164 promptly.
- You must also file Form [FR-500](#) (Combined Business Tax Registration Application) with Form [FR-164](#).

Resources: Obtaining Federal Tax-Exempt Status

- [IRS Instructions for Form 1023](#)
- [IRS Publication 557](#) – Tax-Exempt Status for Your Organization
 - This provides a summary of all the rules pertaining to tax-exempt organizations.
- [IRS Publication 4220](#) – Applying for 501(c)(3) Tax-Exempt Status
- www.stayexempt.gov
 - This Web site has an interactive tutorial on filing Form 1023 and provides guidance on ongoing compliance with §501(c)(3).
- **D.C. Bar Pro Bono Program**
 - The D.C. Bar Pro Bono Program's Community Economic Development Project can match eligible nonprofits with a pro bono attorney to help them gain §501(c)(3) status.
 - Contact:
 - 202-737-4700
 - cedinfo@dcbar.org
 - www.lawhelp.org/dc/ced

IV. Additional Resources

Statutes

- IRC [§501](#)
- IRC [§170](#)
- [D.C. Nonprofit Corporation Act of 2010](#) (scroll to page 161, Nonprofit Corporations)
 - [Summary](#) of key parts of the Nonprofit Corporation Act

Forms

- **D.C.**
 - [DNP-1](#) (Articles of incorporation)
 - [FR-164](#) (Application for D.C. tax-exempt status)
 - [Form FR-500](#) (Combined Business Tax Registration Application)

- **Federal**
 - IRS [Form SS-4](#) (Application for Employer Identification Number)
 - IRS [Form 1023](#) (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code) with [instructions](#)
 - IRS [Form 990](#) (Form for annual filing requirement)
 - IRS [Form 2848](#) (Power of Attorney)

Sample Documents

- [Articles of incorporation](#)
- [Bylaws \(for organizations members\)](#)
- [Bylaws \(for organizations without members\)](#)

Web sites

- The [Fiscal Sponsor Directory](#) offers a list of fiscal sponsors. A tutorial about fiscal sponsors is available on the [Foundation Center's](#) Web site.
- [List](#) of commercial registered agents in D.C.
- [D.C. Department of Consumer and Regulatory Affairs \(DCRA\)–Corporate Registration](#)

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