

INCORPORATION AS A NONPROFIT ORGANIZATION

*** WORDS TO THE WISE *** Make a copy of everything (including any checks) for your files before you intrust them to the mail. Mail everything "Certified – Return Receipt Requested"; it is a little more expensive, but you will know when everything is received. Clip the receipt to your file copy.

BASIC STEPS

1. Organize – decide purposes; elect Directors; select Incorporators.
2. Write and adopt ByLaws
3. Compose Incorporation papers
4. Submit to Secretary of State for a Charter number.
5. Apply for an Employer Identification Number.
6. Fill out Non-Profit Status forms.

1. ORGANIZE

If an organization wishes to incorporate, it must first decide its primary purpose(s). An organizational meeting must be held at which a Board of Directors (at least three) are elected; the Directors may serve as Incorporators (can be one or more) or select any other person. The only rules are that Incorporators must be natural persons of the age of eighteen (18).

2. WRITE AND ADOPT BYLAWS

Prepare a set of ByLaws to be adopted by the organization. ByLaws must have sections on: **BUDGET, BOARD OF DIRECTORS, BUSINESS, AND TAX EXEMPT.** The section on business must cover contracts, checks and drafts, deposits and gifts. The official name in the ByLaws must match the name in the Articles of Incorporation. It is strongly recommended that the Tax Exempt section be copied word for word as the State is very picky about the wording. The following wording has been accepted: "Notwithstanding any other provisions of these bylaws, the corporation shall not carry on any other activities not permitted to be carried on: (a) by a corporation exempt from Federal Income Tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any future United States Internal Revenue Law); or (b) by a corporations contributions to which are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1954 (or the Revenue Law). Possible wording under the Purpose clause could be: (1) the specific and primary purposes are (2) The general purposes and powers are ... (only one of these may be used if one statement covers everything. (3) Notwithstanding any of the above statements of purposes and powers, this, this corporation shall not, except to an insubstantial degree, engage in any activities and exercise any powers that are not in furtherance of the primary purpose of this corporation. This corporation is organized pursuant to the Texas Non-Profit Corporation Act and does not contemplate pecuniary gain or profit to the members thereof and is organized for nonprofit status.

Somewhere in the Article on Fiscal policy, it is best to include a statement such as; "There shall be no dividends to the members of the corporation (or club, department, whatever)."

There should also be a section on **Disposal Of Property** such as: "If, for any reason, this corporation is disbanded, the funds and property of the corporation shall be distributed to a nonprofit organization with the same tax-exempt status under the current Internal Revenue Code and with the same general aims and purposes as this organization."

3. INCORPORATION PAPERS

Sample guidelines for Articles of Incorporation from the State of Texas are attached.

Send two copies of the incorporation papers along with a check for \$25.00 payable to the Secretary of State to:

Secretary of State
Statutory Filings Division
Corporations Section
PO Box 13697
Austin, Texas 78711-3697

Additional information can be obtained by calling 1-512-463-5555. The State will only accept specific articles. You must also name an executor to act as the incorporator (must be at least 18).

If approved, the State of Texas will issue a Certificate of Incorporation, which will have the charter number along with a stamped file copy of your articles. This usually takes about three weeks.

4. **EMPLOYERS IDENTIFICATION NUMBER**

You will need a Form SS-4 (Application of Employer Identification Number) (EIN). The local IRS will have this form available or call 1-800-829-3637 to request that one be mailed to you. Complete and file this form with the IRS. Like a social security number for individuals, this EIN is used to identify the corporation's business accounts and related tax returns and documents, even if you have no employees. You also need this number to open a bank account and apply for tax exempt status.

5. **NONPROFIT TAX STATUS**

Call the IRS Forms phone number 1-800-829-3676 and request the following items; Publication 557, Forms 8718, 1023 or 1024 and 872-C.

Read Publication 557 – Tax Exempt Status for your Organization. This will tell you whether you qualify for a 501© (3) or 501-© (4) exemption. It also contains a sample Articles of Organization (Incorporation) which include their suggested statements on funds distribution and on dispersal of assets upon dissolution. You must also complete Form 8718 – User Fee for Exempt Organization Determination Letter Request. This is where the budget is discussed. If the organization averages or plans on averaging less than \$10,000 annually, the filing fee is only \$150.00. If your budget is more than \$10,000 the fee jumps to \$465.00. This fee must be paid before they will consider your application. The form and fee must accompany your application along with conformed copies of the ByLaws and Articles of Incorporation. If all is accepted, the IRS will issue a letter recognizing your organization as nonprofit.

After you have received a tax-exempt status, you may have to register locally with the city or county to avoid paying sales tax. Some areas may charge a \$10.00 or \$15.00 fee depending on tax laws.