



## FLEMING PETENKO LAW

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### SUMMARY OF STEPS TO FORM A PENNSYLVANIA NONPROFIT CORPORATION AND OBTAIN TAX- EXEMPT STATUS

- Identify charitable purpose (must be an IRS exempt purpose)
- Identify type and structure of legal organization to be formed
  - Determine membership structure and voting rights
- Check the availability of desired organization name
  - [corporations.pa.gov/search/corpsearch](http://corporations.pa.gov/search/corpsearch)
- Appoint a registered agent if organization does not have a PA address (cannot be PO Box)
- Prepare and file Articles of Incorporation with the Department of State to form a corporate entity
  - Include IRS required provisions: charitable purpose, inurement, dissolution
  - Docketing Statement and Articles of Incorporation: [dos.state.pa.us/corps](http://dos.state.pa.us/corps)
- Identify directors (recommend an odd number and at least 3)
- Prepare Consent of Incorporator (sets the number of directors and elects initial directors)
- Prepare Bylaws and Conflict of Interest Policy
- Identify officers (PA requires a President, Secretary, and Treasurer)
- Have organizational meeting or prepare Unanimous Written Consent in Lieu of Organizational Meeting (accepts Articles, adopts Bylaws and Conflicts of Interest Policy, elects officers, selects accounting period (i.e., fiscal and tax year ending date), authorizes the opening of bank accounts and other organizational matters, etc.)
- Obtain Employer Identification Number from IRS
  - Use IRS Form SS-4 and EIN Authorization
  - [irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online](http://irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online)
- Advertise formation of corporation in one newspaper of general circulation and one legal publication
- Prepare and file with the IRS an Application for Recognition of Exemption seeking recognition of tax-exempt status as 501(c)(3) charitable organization (found at [pay.gov](http://pay.gov))
  - Generally, must prepare IRS Form 1023 or 1023-EZ within 27 months of formation

- To be eligible to use Form 1023-EZ, the organization must have (among other things): (i) projected annual gross receipts less than \$50,000 in each of its first three years of operation, and (ii) a fair market value of total assets less than \$250,000
  - See Eligibility Worksheet: [irs.gov/pub/irs-pdf/i1023ez.pdf](https://irs.gov/pub/irs-pdf/i1023ez.pdf)
- The Form 1023-EZ requires information such as:
  - (a) Organization's contact information (address, phone number, website);
  - (b) Names, titles, and mailing addresses of the officers, directors, and/or trustees;
  - (c) Certifying that the organization's Articles contain the necessary provisions and the organization will not engage in prohibited activities;
  - (d) A brief description of the organization's mission or most significant activities (limited to 250 characters); and
  - (e) The organization's tax classification.
- In addition to the information required for the 1023-EZ, the Form 1023 also requires a detailed description of the organization's past, present, and future activities; detailed financial information; and copies of the organization's governing documents.
- Currently, IRS fees are \$600 for the Form 1023 and \$275 for the Form 1023-EZ
- Receive an IRS Determination Letter granting tax-exempt status
  - The IRS is currently delayed, but typically takes 1-3 months to review Form 1023-EZ applications and 3-6 months to review Form 1023 applications
- If applicable, register to solicit contributions in necessary states (e.g., with the Bureau of Corporations and Charitable Organizations in Pennsylvania)
  - In PA, file initial registration using a Form BCO-10 (Charitable Organization Registration Statement)
    - Applies to organizations that have over \$25,000 in gross national contributions OR pay someone to fundraise (unless exempt, see link below)
      - [dos.pa.gov/BusinessCharities/Charities/RegistrationForms/Pages/Exclusions-and-Exemptions-Chart.aspx](https://dos.pa.gov/BusinessCharities/Charities/RegistrationForms/Pages/Exclusions-and-Exemptions-Chart.aspx)
    - Registration must be renewed annually (due by the 15<sup>th</sup> day of the 11<sup>th</sup> month after the close of the organization's fiscal year) using Form BCO-10
- If applicable, prepare and file state and local applications for Sales and Use Tax Exemption and Real Estate Tax Exemption
- After an organization is recognized by the IRS as a tax-exempt 501(c)(3) entity, it will have to satisfy several on-going state and federal filing/compliance requirements, mostly on an annual basis