Nonprofit Organizations

**NOTE:** This document provides a summary discussion of the requirements to start and management a nonprofit organization. A complete discussion of the requirements and nonprofit management issues, along with links to the required forms, recommended publications and links to other helpful websites can be found at: [http://www.missouribusiness.net/docs/seek_nonprofit_status.asp](http://www.missouribusiness.net/docs/seek_nonprofit_status.asp) and [http://extension.missouri.edu/cd/orgdev/creating_nonprofit.html](http://extension.missouri.edu/cd/orgdev/creating_nonprofit.html).

## What is a nonprofit?

A nonprofit organization is a group of people who join together to do some activity that benefits the public, such as running a homeless shelter, an artists' performance group or a low-cost medical clinic.

A nonprofit corporation is a corporation formed to carry out a charitable, educational, religious, literary or scientific purpose. A nonprofit corporation doesn't pay federal or state income taxes on profits it makes from activities in which it engages to carry out its objectives. This is because the IRS and state tax agencies believe that the benefits the public derives from these organizations' activities entitle them to a special tax-exempt status. The most common federal tax exemption for nonprofits comes from Section 501(c)(3) of the Internal Revenue Code, which is why nonprofits are frequently referred to as 501(c)(3) corporations.

All sorts of groups, from artists and musicians to people active in education, health and community services wish to operate as nonprofit (or not-for-profit) corporations. Often the reason for doing this is that -- nonprofit status is usually a requirement for obtaining funds from government agencies and private foundations. Obtaining grants, however, is not the only reason to incorporate. There are two additional important benefits of forming a nonprofit -- tax-exempt status and personal liability protection.

Forming a nonprofit corporation is very similar to forming a regular corporation -- you must file "articles of incorporation" with the Missouri Secretary of State's Corporations Division. But, unlike regular corporations, you must also complete federal and state applications for tax exemptions -- simply filing Missouri nonprofit incorporation forms does not make the organization tax exempt.

## Stages of development

It is common for organizations to go through four distinct stages during start up. While it may seem easiest and most efficient to complete the entire start-up process at the onset of the new organization, many new nonprofits find it more manageable to grow slowly into their nonprofit status.

1. Many organizations start out as an informal organization. Your organization can continue with programs and activities informally as long as revenues do not exceed $25,000 per year and the organization does not employ anyone.
2. As donations and activities grow, the organization may find a fiscal sponsor to aid with reporting requirements, administrative tasks, and to lend their tax-exempt status. This allows the organization to continue to focus its attention on programs.
3. An organization may then incorporate at the state level and maintain fiscal agency, or begin to establish itself on its own.
4. Finally, the organization may apply for tax-exempt status from the Internal Revenue Service. If accepted, the organization is now able to accept tax-deductible donations and is responsible following regulations set by the IRS and the state, and for reporting annually to the IRS, Secretary of State's Office, and Attorney General's Office.

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As an organization goes through these stages of development, it may stop at any point and choose not to go further. Following these stages can allow your new organization to grow and succeed at its own pace.

**Why Incorporate?**

If you're involved in a startup nonprofit organization, you and the other people active in the group have probably wondered whether or not you should incorporate. Becoming a nonprofit corporation requires some paperwork, but for many groups, the benefits of nonprofit status outweigh the complications. Here are five circumstances that may make it worth your while to incorporate.

**Your Association Makes a Profit From its Activities**
If your group will make a profit from its activities, becoming a nonprofit corporation can yield a great benefit: As long as the money you make is related to your charitable activities, your nonprofit corporation won't pay income tax on it.

**You Want to Apply for Public or Private Grant Money**
Without tax-exempt status, your group is unlikely to qualify for many public and private grants. While you can form a nonprofit, tax-exempt association, rather than a corporation, qualifying for a tax exemption as an association is harder -- it requires preparing and adopting a complicated set of organizational papers and operating rules. Further, it's generally easier to get the IRS to approve a tax exemption for a nonprofit corporation.

**You Want to Solicit Tax-Deductible Contributions**
If your organization becomes a tax-exempt nonprofit corporation, donors can deduct their gifts to your group on their federal and state tax income returns.

**You Want Protection from Personal Liability for the Group's Activities**
If your group finds itself the target of a lawsuit, incorporation can provide welcome peace of mind. Nonprofit corporations can be sued -- but their members and directors are generally protected from personal liability, meaning that their own money, houses, cars or other property isn't at risk. That's not true of an unincorporated association.

**Your Advocacy Efforts Might Provoke Legal Quarrels**
Although nonprofits may engage only in very limited political advocacy (unless they elect to follow special federal lobbying rules), advocacy efforts may occasionally draw a nonprofit into an unwanted lawsuit. Incorporating can support directors and officers in defending the lawsuits and protect them from personal liability.

**Alternatives to starting a new nonprofit**

While many people are tempted to incorporate first, there are a number of options for undertaking a new activity without starting a new organization.

Because most people thinking about starting a nonprofit have more passion for the purpose than the paperwork, it is wise to understand the ongoing reporting and record keeping requirements for nonprofits. These obligations represent substantial time and financial requirements and can be an obstacle to success and an unwanted distraction for people wanting to spend their time directly involved in serving people, creating art, or promoting a cause.
Since many nonprofits are formed with high hopes and a few dedicated people and never get off the ground, investing time on the front end to determine the level of interest and availability of funds can help you better understand whether a new organization is needed.

Here are five alternatives to starting a new organization:

- **Join an existing effort** — Study the list of nonprofits already active in the same subject and geographic area and join their efforts as a volunteer, a board member or even as staff.

- **Create a special program of an existing effort** — Analyze the list of nonprofits already active in the same area, identify the three most compatible with your ideas, and meet with them to explore creating a special project or initiative and negotiate your involvement. You may have ideas that they would welcome, including resources that may be available to finance the new undertaking. Your activity could be a sponsored project with a level of independence, but without the need for separate books, government reporting and boards and committees.

- **Start a local chapter of a national or regional organization** — Explore the list of national organizations in the subject area of your interest, and see if a local chapter is needed in your geographic area.

- **Maintain an informal organization** — This is a viable option for groups with annual revenues under $25,000 and no employees. If your focus will be quite local and small, consider forming an unincorporated association or club -- have meetings and activities but skip the ongoing reporting requirements. Informal organizations can operate as a nonprofit; however, donations to an informal organization are not tax-deductible.

  Those that choose to remain informal may undertake risk to board members and founders by not incorporating the organization. By incorporating, the organization becomes a legal entity and can only be liable for the assets of the organization. An incident involving an unincorporated organization may put personal assets of board members, volunteers, or others, at risk.

- **Find a fiscal sponsor for your organization** — If you are considering creation of a group to finance activities or needs of others, plan to work on a limited-time project, or want to test a program idea first, exploring fiscal sponsorship. Fiscal sponsorship, sometimes referred to as fiscal agency, is a way to receive tax-deductible contributions by using the tax-exempt status of another organization as an umbrella. The sponsored organization will pay a fee to the sponsor for their services, generally around 10 percent of the organization’s revenues.

  Fiscal sponsorship is a complex, individualized process. Organizations considering working with a sponsor should first identify several possible sponsors with missions in sync with that of the new organization. Work with each of these organizations to find the best fit in terms of missions, working style, and location. It is recommended that both parties consult with legal professionals to ensure their interests are being met in the sponsorship agreement.

**Steps to becoming a nonprofit**

Starting a new nonprofit is neither easy nor quick. Staying legal through the process can be difficult – if you miss an important step, fail to file the correct form or miss a deadline, you may have to start over.
Below is an outline of the major steps necessary to start and maintain a nonprofit in the state of Missouri. These steps are meant to be used only as a general guide and may not apply to all situations. In many situations, legal assistance may be necessary.

1. Determine if you really need to start a nonprofit.
   Is starting a new nonprofit organization really the best way to accomplish your goals? Other alternatives, including collaborating with an existing nonprofit organization, establishing an informal club or association (a viable option for groups with annual budgets under $25,000), finding a fiscal sponsor, or forming a for-profit business, may achieve your objectives quicker, more efficiently, and for the best benefit of your target audience.

2. Decide on the purpose and mission.
   The purpose of a charitable nonprofit must be for the public interest and common good. It should establish a single mission and a set of goals and programs that will accomplish that mission. This is a step where a new nonprofit should analyze what it wants to do, who it wants to reach, and how it wants to impact society. A mission statement should be brief, timeless, and descriptive of what the organization is trying to accomplish. The Mission Statement will guide the organization through its initial formation, program development, growth and change.

3. Recruit board members.
   The initial board of directors assumes much of the responsibility in starting a new nonprofit. They will determine the direction and goals of the organization and set precedents for future board members. They approve the original bylaws, do the initial fundraising and hire staff as the organization takes shape and becomes an entity in and of itself. This initial all-volunteer period can prove to be very challenging for new organizations.

4. Check for organization name availability.
   Before you take any steps to form your organization, it is advisable that you check to make sure that the name you have selected for your organization is available — under Missouri law no two corporation may have the same name. The Missouri Secretary of State’s Name Availability Desk (573/751-3317) can verify the availability of a name.

5. Write the articles of incorporation.
   The founders of the organization should write the articles of incorporation. This document formally names the entity, its location, and its purpose. This document is the legal record of how the organization is to be managed. The General Not For Profit Law, Chapter 344 RSMo, lists laws that govern Missouri nonprofit corporations. It is important to remember when drafting the original articles of incorporation that parts of the General Not For Profit Law state the default laws that nonprofits must follow, unless their articles or bylaws state otherwise.

   It is necessary to write and file the articles of incorporation prior to applying for tax-exempt status from the Internal Revenue Service; however the IRS requires specific language be used to describe the charitable purpose of the organization, and the requirements it must follow for exemption, so it is a good idea to obtain the federal forms and IRS Publication 557 before you begin the application process.

6. Create a business plan with a budget
   Creating a realistic business plan provides a sense of direction to the organization as it develops. A plan should state the organization’s goals, what programs it will operate, where it will get funding, will it conduct events, will the organization have staff, volunteers, and more. It should also include a budget. Where will funding come from? Will programs rely on grants, individual donations, state or federal contracts? What expenses will the organization incur?
A business plan and budget are not only useful in thinking through the structure of the organization, but they are required as part of the narrative section of IRS Form 1023, Application for Tax-Exempt Status.

7. Incorporate as a nonprofit organization.
Filing articles of incorporation with the Missouri Secretary of State’s Office establishes your organization as a nonprofit under Missouri law; however, this does not make the organization a nonprofit, tax-exempt charitable organization under Federal law. Depending on the goals of your organization, it may be necessary to take the next step and file the required forms to be a federally recognized nonprofit.

Once the articles are filed, the organization will receive a “Certificate of Incorporation” from the Missouri Secretary of State’s Office. To Incorporate, complete Form Corp 52 (Articles of Incorporation) and mail to the Missouri Secretary of State, Corporations Division, P.O. Box 778, Jefferson City, MO 65102; the filing fee is $25. The form can be downloaded from the web at: www.sos.mo.gov

8. Draft the corporate bylaws.
The bylaws will serve as the rulebook for the nonprofit. Chapter 355 of the Revised Missouri Statutes http://www.sos.mo.gov/business/corporations/statutes.asp is the basis for Missouri’s nonprofit law, and the organization’s bylaws should follow this law. There is substantial flexibility to writing the organizational bylaws to fit the uniqueness of an organization. They are flexible and relatively easy to amend as the organization changes and grows.

9. Hold first meeting of the board.
The first official meeting should consist of the initial board members or incorporators. This gathering marks the official start of the organization.

At the first meeting of the board, the initial board members must approve the drafted bylaws and adopt its principles. The new organization will also vote on new board members and officers as it is called for in its bylaws. Once these activities are accomplished, the board should begin tackling the mission and start the process of obtaining tax-exempt status.

10. Apply for Federal Employer ID Number (EIN) – SS4.
Nonprofit organizations should have an EIN, often referred to as a Federal Employer ID Number, even if it has no employees. The EIN is a nine-digit number used for tax filing and reporting purposes; it is usually required to open a bank account or in other fiscal operations. Organizations must receive their EIN before filing Form 1023. Use IRS Form SS-4 — Application for Employer Identification Number (EIN). Organizations must be incorporated prior to applying for an EIN. There are no filing fees. Form can be downloaded from the web at: http://www.irs.ustreas.gov/

11. Obtain income tax exempt status from the IRS.
Once the organization’s articles of incorporation have been filed and the bylaws have been approved by the initial board of directors, the next step for a new nonprofit is applying for federal tax exemption from the Internal Revenue Service. A common myth is that all nonprofits are automatically tax-exempt.

There are several steps and filing requirements an organization needs to complete before receiving exemption. And even then, not all organizations qualify for the same exemptions. The following applies for 501(c)(3) status from the IRS, the most common type of tax-exempt organization.

First, obtain IRS Publication 557—Tax-Exempt Status for Your Organization. This 55-page document includes no forms to file, but lays out the federal laws regulating tax-exempt organizations. It is

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available free and serves as a useful reference guide for filing requirements, employment issues, lobbying expenditures, and many other complex nonprofit issues regulated by IRS codes.

Second, get copies of IRS Form 1023 and Form 8718 — Application for Recognition of Exemption under 501(c)(3) of the Internal Revenue Code. Form 1023 applies for a ruling or determination letter on an organization's exempt status under Section 501(c)(3). This package of forms contains both Form 1023 and Form 8718 (User Fee for Exempt Organizations Determination Letter Request). Form 8718 is used to process the fee for applying for tax-exempt status and must be included when filing Form 1023. Organizations applying for exemption under another 501(c) section should file IRS Form 1024.

The filing fee is $500 for organizations anticipating gross receipts averaging more than $10,000 during its first four years and $150 for organizations anticipating gross receipts averaging less than $10,000 during its first four years.

12. Apply for sales tax exemption from the state.
Not-for-profit organizations incorporated in Missouri are not automatically eligible for sales tax exemption status. This exemption allows purchases on office supplies, furniture, vehicles, computer equipment and other taxed items to be purchased without sales tax. A Missouri Sales/Use Tax Exemption Application (Form 1746 Rev. 10-98) http://www.dor.mo.gov/tax/business/sales/forms/ must be completed and approved by the Missouri Department of Revenue before your organization is exempt from Missouri Sales tax. Besides completing this form, the Missouri Department of Revenue requests the following materials be mailed for their review:
- Copy of your Certificate of Incorporation from Missouri Secretary of State office;
- Copy of your Bylaws or Articles of Incorporation;
- Complete financial history for last three years, or if just starting as an organization, an estimated budget for one year;
- Copy of your 501(c) exemption letter from the Internal Revenue Service.

Your organization will typically receive word about your status within two months of submitting your application to the Missouri Department of Revenue. If approved, your sales tax exempt status is valid for five years from date of approval. A renewal letter will be mailed out to your organization three months in advance of your five-year expiration date.

13. Receive tax identification number, if needed.
If the organization will sell products or services subject to Missouri sales tax or withhold income taxes from employees, the organization must receive a tax identification number from the Missouri Department of Revenue.

To obtain a tax identification number, complete and submit Form 2643 (Missouri Tax Registration Application). Organizations must submit this form if they register for at least one type of tax, including sales and withholding taxes, income tax, and excise and gross receipts taxes. The package also includes registration forms for each of these taxes and instructions. A bond, based on projected monthly gross sales is posted at the time of application. An application form (Form #2643) can be obtained from the Dept. of Revenue on the web at http://www.dor.mo.gov/tax/business/register/forms/ or by calling 1-800-877-6681.

14. Register as a charity
Missouri Charitable Solicitation Law requires nonprofits to register with the Missouri Attorney General’s Office. No charitable organization can solicit funds or employ a professional fundraiser to solicit funds in Missouri, for any charitable purpose unless it, and each professional fundraiser employed by it, have filed all registrations and reports required by sections 407.450 to 407.478 RSMo. Some charities exempt from this provision include religious organizations and educational
institutions. Organizations that must register are required to file annual reports with the Attorney General's Office and, on request, disclose how much of the solicited money is spent on fund-raising costs. The Attorney General's Office is given investigative and enforcement power over charitable organizations that illegally solicit donations. For more information, contact the Missouri Attorney General's Office at (573) 751-3321.

15. Annual Filing Requirements
Annual reporting ensures nonprofits are held accountable for their charitable fundraising and annual expenditures.

Even though a nonprofit organization may be tax exempt, it must file an annual tax return with the Internal Revenue Service. This is the most detailed and most misunderstood filing for nonprofits. It is the most complete documentation of an organization's financial history and is often used to hold the organization accountable for past actions and future decisions. Recent rulings by the Internal Revenue Service state that nonprofit organizations must make their Form 990 and applications for tax-exempt status widely accessible and available to anyone who requests.

The Missouri Office of the Secretary of State requires that your non-profit organization renew its state incorporation papers on an annual basis. Failure to complete and return the annual report form could place your state incorporation status in jeopardy.

Missouri Charitable Solicitation Law requires nonprofits to register with the Missouri Attorney General's Office and to file annual reports with the Attorney General's Office.

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<thead>
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<th>Form</th>
<th>Fee</th>
<th>Submit to</th>
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<tbody>
<tr>
<td>Publication 557</td>
<td>None</td>
<td>N/A</td>
<td>An IRS publication that details the rules and procedures for seeking to obtain exemption from federal income taxes</td>
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<tr>
<td>Application for Reservation of Name</td>
<td>$25</td>
<td>Secretary of State</td>
<td>Reserves a unique name for the organization for up to 60 days.</td>
</tr>
<tr>
<td>Articles of Incorporation</td>
<td>$25</td>
<td>Secretary of State</td>
<td>Legally incorporates the nonprofit under Missouri law.</td>
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<tr>
<td>Form SS-4</td>
<td>None</td>
<td>IRS</td>
<td>Applies for Employer Identification Number.</td>
</tr>
<tr>
<td>Form 1023 and Form 8718</td>
<td>$500 or $150</td>
<td>IRS</td>
<td>Applies for federal tax exemptions under Section 501(c)(3) of the IRS tax code. Must accompany Form 8718 (User Fee for Exempt Organizations Determination Letter Request).</td>
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<tr>
<td>Form 1746</td>
<td>None</td>
<td>Department of Revenue</td>
<td>Applies for exemption from Missouri sales taxes. (Not all 501(c)(3) organizations qualify for this exemption.)</td>
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<tr>
<td>Form 2643</td>
<td>Depends on type of tax.</td>
<td>Department of Revenue</td>
<td>Registers for tax ID number for organizations collecting tax on products or services, or withholding taxes for employees.</td>
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<tr>
<td>Charitable Organization Initial Registration</td>
<td>$15</td>
<td>Attorney General</td>
<td>Any charitable organization soliciting funds in Missouri must</td>
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<table>
<thead>
<tr>
<th>Statement</th>
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<tr>
<td>Form 990</td>
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<td>Files tax return for tax-exempt organizations.</td>
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<td>Charitable Organization Annual Report Form</td>
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<td>Annual Registration</td>
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<tr>
<td></td>
<td></td>
<td>Maintains organization incorporation status.</td>
</tr>
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<td></td>
<td></td>
<td>Organizations must pay a $25 fee to reinstate its incorporation.</td>
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This information was developed using information from the Missouri Secretary of State's Office, Missouri Department of Revenue, Internal Revenue Service, University of Missouri-Columbia's Community Development Extension Program, St. Louis Volunteer Lawyers and Accountants for the Arts (www.vlua.org) and Minnesota Council of Nonprofits (www.mncn.org).

Hiring Employees

Obtain a “Business Tax Kit” and a copy of “Circular E, Employer’s Tax Guide” from your local IRS office or call 1-800-829-4933. “Circular E” explains federal tax withholding and Social Security tax requirements for employers as well as containing up-to-date withholding tables for you to use to determine how much federal income tax and Social Security tax is to be withheld from each employee’s paycheck.

What Is Involved?

- Once you begin paying salary or wages to employees, you must collect taxes from your employees. The primary taxes are: federal and state income taxes, Social Security (FICA) and Medicare taxes.
- If you have not already done so, you must apply for a federal employer identification number (EIN) -- Form SS-4. This number is used to identify your business on payroll and income tax returns, as well as for other federal tax purposes. Corporations and partnerships must file Form SS-4 even if they have no employees.
- Each employee completes an I-9 Employment Eligibility Verification Form and a W-4 form.
- Missouri require that all employers in Missouri report each newly hired employee to the Department of Revenue within 20 calendar days of hire.

For more information on your responsibilities as an employer, please contact Missouri Division of Employment Security (573/751-3215) or your local Workforce Development Career Center (formerly Job Service). To locate the nearest office, check the phone book or call 573/751-3999 or http://www.dolr.mo.gov/contact.htm#ES

For a complete discussion on hiring employees, your responsibilities, and access to the required forms, refer to: http://www.missouribusiness.net/doingbusiness/hiring.pdf

Resources:
You may also find the following information helpful as you begin your business:

Evaluating Your Business Idea is a simple questionnaire-formatted document that helps you think through the elemental considerations in starting a business: http://www.missouribusiness.net/docs/evalbus.pdf

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Guide to Writing A Business Plan provides a short, but thorough introduction to the process of writing a business plan and provides a simple outline of the contents of a standard plan: 
http://www.missouribusiness.net/docs/business_plan_guide.pdf

The Missouri Business Development Network is a partnership of the key resource providers in Missouri. The website contains a vast array of helpful documents, links and information on starting and operating your small business as well as a calendar of upcoming training and educational events throughout Missouri. www.missouribusiness.net

For information on resource providers and business counselors, refer to: http://www.missouribusiness.net/sbdc/centers.asp

For Information on local (city or county) requirements, contact the City Clerk and/or County Clerk. A list of county clerks is found on the Web at http://www.sos.mo.gov/elections/countyclerks.asp

Missouri Lawyer Referral Service
  Kansas City: (816) 221-9473 (Clay, Jackson, Platte & Ray counties)
  St. Louis City & County: (314) 621-6681
  Springfield/Greene County: (417) 831-2783
  Rest of Missouri: (573) 636-3635
Web at http://www.mobar.org/directory/search_form_b.htm

Missouri Society of Accountants 1-800-959-4276
Web at http://www.missouri-accountants.com