

How to Form a 501(c)(3) Nonprofit Corporation

A Bite-Sized Legal Guide

Who should use this guide?

This Bite-Sized Legal Guide is written for people interested in forming a nonprofit organization. Operating an organization for charitable purposes is a noble endeavor, but doing so inevitably incurs fees and expenses. Luckily, you can attempt to minimize these fees by incorporating your organization as a 501(c)(3) nonprofit corporation. Filing and incorporating as a 501(c)(3) is limited to entities with specific business models and purposes. However, attaining that designation is not difficult if you follow the correct procedures and if you fall under any of the relevant categories.

Does Your Business Qualify as a Nonprofit?

To qualify for 501(c)(3) nonprofit status, your organization must fall under one of two categories:

- 1) Public benefit: organizations that operate for charitable, scientific, literary, or educational purposes.
- 2) Religious organization: not necessarily an official church, just an organization with a religious purpose.

Steps For Forming a Nonprofit Corporation in California

Setting up a nonprofit may seem like a complicated process, but following these steps and filling out the attached forms can make the process much simpler.

- **Choose a Name**

Be sure to choose a name that is unique, a name that does not sound like any other for-profit or nonprofit corporation's name. To save time and money in applying, you can search the California Secretary of State's website and determine whether your proposed name is too similar to any other name already in use:

<https://businesssearch.sos.ca.gov/>.

- **Articles of Incorporation**

After you find a good name, you will need to submit the nonprofit's articles of incorporation. This is the document you submit to the California Secretary of State that officially makes your nonprofit a legal entity. With this document, you write the name of your nonprofit, which is evaluated by the Secretary of State to determine whether it is too similar to other names or whether it is permissible. In addition, you can describe the purpose of your nonprofit and how it qualifies for tax exemption. You can find sample articles of incorporation on the California Secretary of State's website:

<https://www.sos.ca.gov/business-programs/business-entities/forms/>.

- **Bylaws**

Once the articles of incorporation have been approved by the Secretary of State, you will need to draft your nonprofit's bylaws. Bylaws must be kept on file, but they are *not* submitted to the Secretary of State. Bylaws are the rules and procedures of the corporation. They dictate how meetings are held, how

directors are elected, and how individuals are to be compensated. There are several templates you can use for these purposes, but we recommend speaking with an attorney to get input on how to organize this document.

- **Federal tax exemption**

After forming your nonprofit corporation, you will have to separately apply for federal tax exemption by completing [Form 1023](#) with the IRS. There is a \$600 application fee for filing Form 1023, but certain organizations are eligible to file the simpler Form 1023-EZ, which costs \$275. Fill out the questionnaire on [page 13 of this resource](#) to determine whether you are qualified to use Form 1023-EZ. The typical processing time for a Form 1023 is 3-6 months, although sometimes it make take as long as 9-12 months.

- **State tax exemption**

If you qualify as a nonprofit as a 501(c)(3) under federal law for federal corporate tax purposes, then you should also be able to qualify for state corporate tax exemptions under California state law. To make this exemption official, you need to file a FTB 3500 form and submit it to the CA Franchise Tax Board: <https://www.ftb.ca.gov/forms/misc/3500.pdf>. When you submit this form, you will need to include copies of your articles of incorporation and bylaws, as well as financial information that provides insight on how your nonprofit uses its funds.

- **File Statement of Information and Register with the California Attorney General's Registry of Charitable Trusts**

The Statement of Information ([Form SI-100](#)) is due 90 days after you register your nonprofit. This form updates the state on the nonprofit's business address, officers, and other information. You must also register with the Attorney General's Registry of Charitable Trusts using their [CT-1 Registration Form](#).

- **Final steps**

After you incorporate your nonprofit, it is important to follow procedures to ensure that you retain your corporate status. This includes conducting board meetings and keeping track of the minutes of those meetings to document the decisions these groups have made on behalf of the nonprofit. Once you follow these formalities, it is important to keep records of all corporate documents that are created while you are conducting business with the nonprofit. With this in mind, you can create a corporate records book to keep track of the minutes all your board, shareholder, and director meetings, as well as store original copies of your bylaws and articles of incorporation. In addition, you can store records to keep track of members of your nonprofit, as well as donations you have received.

Considerations After Formation

To avoid being personally liable for any of the decisions the corporation makes, be sure to conduct regular board meetings at least once a year. Keep minutes of those meetings, and store those minutes in your corporate records book so you can verify that the relevant groups made decisions on behalf of the corporation. Also, even if you have received federal and state tax exemptions, it is important to file [IRS form 990](#) and [California Franchise Tax Board form 199](#) during tax season to pay the relevant annual fees to maintain corporate status. Failure to do so could result in an audit or penalties from the IRS or tax board. If you follow these formalities, you should be able to maintain your corporate status without any problems.