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Forming a New York 501(c)(3) Nonprofit Organization

Forming a nonprofit¹ can be an exciting prospect. It can mean the opportunity to use skills and resources to meet the needs of those who need them most, or to connect with others to make your community stronger. It also means navigating a legal process with both state and federal agencies and multiple layers of compliance. If you form a nonprofit entity, it will generally exist until and unless it is actively dissolved.

The formation process can be time-consuming and costly. For instance, establishing a New York not-for-profit corporation and applying for 501(c)(3) tax-exempt status costs a minimum of \$350, but it can cost many thousands of dollars depending on the organization's size, need for expedited processing of filings, and attorneys' fees. An experienced attorney can set up a nonprofit corporation in a few days, but it can take much longer for the organization's Board of Directors (or "Board" for short) to adopt its governance documents and apply for tax-exempt status. Further, the Internal Revenue Service can take anywhere from a few weeks to many months to evaluate the application. Founders must be prepared to comply with ongoing obligations, which may include Board meetings, government filings, and audits.

This Legal Alert describes the general process of forming a nonprofit and what to expect at each key step. Note that this is not an exhaustive guide.² It is also most relevant for forming a particular type of nonprofit: one that is based in New York State and has 501(c)(3) tax-exempt status. This is a particular type of tax-exempt status that allows an organization to raise tax-deductible contributions. It is also favored by many foundation and government funders. However, it comes with restrictions on the organization's activities and requirements regarding governance and sources of funding, and it is not appropriate for all nonprofits. An experienced attorney can help identify the best tax status for your particular organization. We advise that you work with one throughout the formation process.

Step One: Planning

Before any paperwork is filed, founders should determine the most appropriate structure for their activities. This stage sets a foundation for all the steps that follow. Things that founders should consider include:

- **What is the organization's purpose?**
Ensure that the purpose of the organization is inherently charitable. The Internal Revenue Code Section 501(c)(3) defines exempt purposes as charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition,

¹ The terms "nonprofit" and "not-for-profit" are often used interchangeably. Different government entities use different terms. For example, New York incorporated nonprofits are called "not-for-profit corporations."

² The book, *Getting Organized*, provides a fuller discussion of everything in this Legal Alert. It is available to order at <https://lawyersalliance.org/publications/list>.

and preventing cruelty to children or animals.³ Organizations seeking 501(c)(3) status must fit within this definition. Thankfully, this definition is fairly broad; for example, many arts nonprofits receive tax-exempt status because their purpose is to educate the public through art.

- **Which legal structure fits your needs?**

[Nonprofit Corporation](#) - Most organizations that intend to apply for tax exemption, hire staff, and/or hold assets (e.g. money, property, equipment) opt to form a nonprofit corporation.

Advantages

- Limited liability for directors, officers, and members⁴
- Facilitates the process of applying for tax exemption
- May help generate revenue
- Perpetual existence

Disadvantages

- Restrictions on use of assets
- Time-consuming and relatively expensive
- Less control for founders
- Does not automatically generate revenue
- May be difficult to dissolve

[Fiscal sponsorship](#) — This is a contractual relationship between a charitable activity (or “project”) and an already-existing 501(c)(3).

Advantages

- Allows a project to receive tax-deductible donations through an existing 501(c)(3)
- Great option for testing out your mission before committing to forming a nonprofit

Disadvantages

- Can be expensive because fiscal sponsors may charge a fee
- The founders may have less control
- Fiscal sponsorships can vary widely – it is important to understand how this sponsor operates and to make sure it is financially sound and legally compliant

[Unincorporated nonprofit association](#) — This is an informal group of people gathered to do something business-like and charitable together. It’s easy to start, since unincorporated associations are not regulated in the same way as an incorporated nonprofit. But, unincorporated associations do not have the same liability protections as nonprofit corporations. While it is possible to obtain tax-exempt status as an unincorporated association, it may be more difficult to do so.

Step Two: Incorporation

A nonprofit corporation is formed by filing incorporation documents with the Secretary of State in the state in which it wishes to incorporate. Most nonprofits incorporate in the state where they will conduct

³ See I.R.C. § [501\(c\)\(3\)](#). The IRS also has a simple explainer of exempt purposes under 501(c)(3). Internal Revenue Service, Exempt purposes - Internal Revenue Code Section 501(c)(3) (<https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3>) (last visited January 29, 2026).

⁴ “Limited liability” means that directors, officers, and members are generally not personally liable for the acts of the organization or for their own actions when acting in their official capacities on behalf of the organization.

their programming and activities; however, many organizations choose to incorporate in Delaware given its corporate-friendly laws.⁵

In New York, a nonprofit files a Certificate of Incorporation for Domestic Not-for-Profit Corporations with the New York Department of State. There is a \$75 filing fee, although the cost can be higher if you need a certified copy or expedited handling, or if you use a filing service instead of doing the filing yourself.⁶

Before filing the Certificate of Incorporation, founders should:

- determine the organization's name and confirm it is available. If desirable, a name can be reserved.
- draft a purpose(s) clause.
- name at least three directors who will serve on the initial Board of Directors.
- include IRS-required language for future 501(c)(3) eligibility.⁷
- obtain any necessary government approvals. For example, groups forming a museum, library, university, or healthcare clinic may need special permission before filing a Certificate of Incorporation.

Once the Certificate is filed and accepted, the entity legally exists, but only as a corporate shell. It is generally not yet exempt from tax⁸, nor does it have the authority to raise funds, nor can it officially operate its activities⁹.

Step Three: Organization Setup

After incorporation, the Board must act to organize the nonprofit.

- **Obtaining an EIN:** Before applying for tax exemption or opening a bank account, the organization must [obtain an Employer Identification Number \(EIN\) from the IRS](#). You will need an EIN to open a bank account, even if the organization has no employees.¹⁰
- **Drafting governance documents:** These are the core documents of the nonprofit that will allow the Board to properly govern the organization.

⁵ See Lawyers Alliance, [Should a Nonprofit Organization Incorporate in New York or Delaware?](#) (https://lawyersalliance.org/userFiles/uploads/legal_alerts/Incorporation_in_New_York_v_Delaware_Legal_Alert.pdf) (last visited January 29, 2026).

⁶ The NY Department of State instructions for filing a Certificate of Incorporation for a not-for-profit corporation are available at <https://dos.ny.gov/system/files/documents/2018/12/1511-inst.pdf>. The Department of State provides a [certificate of incorporation template](#), although it does not include the language that is required by the IRS for nonprofits that wish to obtain 501(c)(3) status. See New York State Department of State, Certificate of Incorporation for Domestic Not-for-Profit Corporations (<https://dos.ny.gov/certificate-incorporation-domestic-not-profit-corporations-0>) (last visited January 29, 2026).

⁷ See [IRS, Publication 557: Tax-Exempt Status for Your Organization \(Rev. Jan. 2025\)](#) (<https://www.irs.gov/pub/irs-pdf/p557.pdf>) (last visited January 29, 2026).

⁸ See Step Four below.

⁹ See Step Seven below.

¹⁰ For more tips on applying for an EIN, see Lawyers Alliance, Legal Alert: [Read This Before You Apply to the IRS for an EIN](#) (https://lawyersalliance.org/userFiles/uploads/legal_alerts/Employer_Identification_Numbers_EIN_Legal_Alert.pdf) (last visited January 29, 2026).

- Bylaws to establish governance procedures, meeting rules, membership (if any), and officer roles¹¹
- [Conflict of Interest Policy](#) with accompanying annual disclosure questionnaire (required by New York's Not-for-Profit Corporation Law)¹²
- [Whistleblower Policy](#) (required for organizations with 20+ employees and over \$1 million in annual revenue)¹³
- **Holding an organizational meeting** to take care of initial business, including:
 - Elect officers (e.g., President/Chair, Treasurer, Secretary)
 - Adopt bylaws and other policies
 - Establish foundational administrative practices, such as maintaining corporate records, keeping minutes, and creating procedures for financial oversight
 - Authorize who will sign Form 1023, the application for 501(c)(3) status recognition
 - Authorize a bank account and who will be the signatories to it

Step Four: Federal Tax-Exempt Status

Once the nonprofit has incorporated, obtained an EIN, and adopted its governance documents, it can submit its application to the IRS for 501(c)(3) tax-exempt status. Some religious organizations, and groups with revenue under \$5,000, are not required to submit this application, although they can still do so if they want formal recognition of their tax-exempt status.¹⁴ All other organizations must use one of two forms, depending on the organization's revenue and assets:¹⁵

- [Form 1023](#) (long-form): generally required for organizations with an expected annual revenue of more than \$50,000 in *any* of the three years from the year of application or with assets of at least \$250,000. The IRS will take several months to review and possibly much longer, although expedited review may be available if you can show you need it to obtain promised funds or to provide disaster relief.¹⁶ There is a \$600 filing fee.
- [Form 1023-EZ](#) (streamlined): available to organizations with an expected annual revenue of less than \$50,000 for *each* of the three years from the year of application and assets of less than \$250,000. This form is typically reviewed within a few weeks to a few months; expedited processing is not available. There is a \$275 filing fee.

Once the Form 1023 or Form 1023-EZ is filed, the IRS will review governance, purposes, finances, and operational plans closely before recognizing the organization's tax-exempt status.

¹¹ Our book, *Bylaws That Work*, provides templates and drafting advice for NY nonprofits. It is available to order at <https://lawyersalliance.org/publications/list>.

¹² See N.Y. Not-for-Profit Corp. Law § [715-a](#) (requiring conflict-of-interest policies for New York not-for-profit corporations); N.Y. Attorney General, [Conflict of Interest Policies Under the Not-for-Profit Corporation Law](#) (https://ag.ny.gov/sites/default/files/regulatory-documents/Charities_Conflict_of_Interest.pdf) (last visited January 29, 2026).

¹³ See N.Y. Not-for-Profit Corp. Law § [715-b](#).

¹⁴ See IRS, [Organizations Not Required to File Form 1023](#) (<https://www.irs.gov/charities-non-profits/charitable-organizations/organizations-not-required-to-file-form-1023>) (last visited January 29, 2026).

¹⁵ You can assess which Form 1023 is applicable by filling out [the IRS's 1023-EZ Eligibility Worksheet](#).

¹⁶ To check Form 1023 processing times, see IRS, [Where's My Application for Tax-Exempt Status?](#) (<https://www.irs.gov/charities-non-profits/charitable-organizations/wheres-my-application-for-tax-exempt-status>) (last visited January 29, 2026). To learn more about expedited processing, see IRS, [Applying for Exemption: Expediting Application Processing](#) (<https://www.irs.gov/charities-non-profits/applying-for-exemption-expediting-application-processing>) (last visited January 29, 2026).

Keep in mind that until you receive approval from the IRS, donations to the organization are not guaranteed to be tax-deductible, which can affect early fundraising.¹⁷ However, if your application is filed within 27 months of incorporation *and* the organization is recognized by the IRS as tax-exempt pursuant to Section 501(c)(3), the organization's federal income tax exemption and the tax-deductibility of its donors' contributions are typically retroactive to the incorporation date. Even though you can start fundraising while your application is pending, it is important to let potential donors know that your tax-exempt status is pending. Please also see Step Seven below, as the nonprofit must register with the NY Charities Bureau *before* soliciting funds in New York.

Step Six: State and Local Tax Exemptions

Federal tax exemption does not automatically mean exemption from state and local taxes. After (or while) seeking IRS recognition, nonprofits may need to apply for various types of state and local tax exemptions. For information about some of these potential obligations, see our legal alert on [State and Local Tax Exemptions](#).

Step Seven: Registering with the Charities Bureau

Before soliciting any charitable contributions in New York, or within six months of receiving property in New York, a nonprofit must [register online](#) with the New York State Attorney General's Charities Bureau.¹⁸ Registration requires submitting:

- Certificate of Incorporation
- Bylaws
- Names of Board members and their contact information

Charities Bureau filings are publicly accessible, meaning organizational documents and financial information will appear on the Charities Bureau website.

If your organization solicits funds in other states, it may also need to register with the charities regulators in those states.¹⁹

Step Eight: Annual Filings and Ongoing Compliance

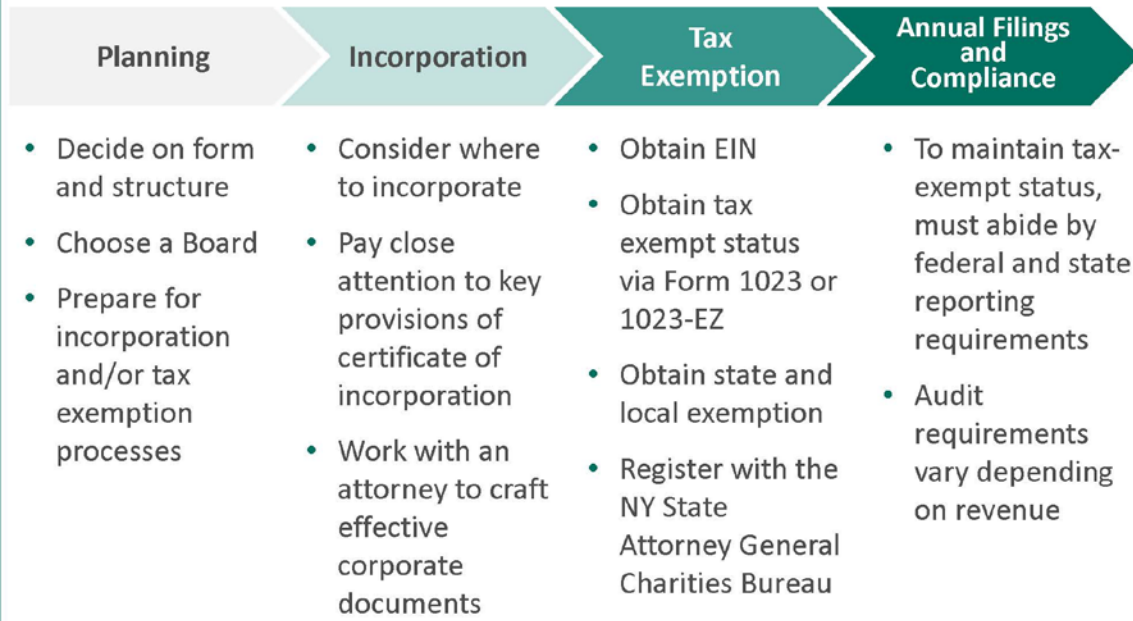
Maintaining a nonprofit requires ongoing oversight, even when the organization is small or volunteer-run. For a description of ongoing compliance obligations applicable to many nonprofits, see [You're a Nonprofit, Now What? Ongoing Compliance Obligations for New York 501\(c\)\(3\) Nonprofit Corporations](#).

¹⁷ See IRS, [Publication 557: Tax-Exempt Status for Your Organization \(Rev. Jan. 2025\)](#) (<https://www.irs.gov/pub/irs-pdf/p557.pdf>) (last visited January 29, 2026).

¹⁸ See N.Y. Exec. Law §§ 172, 172-a; N.Y. Comp. Codes, R. and Regs., Tit. 13, § 91.

¹⁹ For more information about charitable solicitation registration in different states, see National Council of Nonprofits, [Charitable Solicitation Registration](#), (<https://www.councilofnonprofits.org/running-nonprofit/fundraising-and-resource-development/charitable-solicitation-registration>) (last visited January 29, 2026).

Summary



This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Dalton Valerio at dvalerio@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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