



NonProfit
HelpDesk

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RIGHT FROM THE START

**HOW TO FORM A NON-PROFIT ORGANIZATION IN
NEW YORK**

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Steps to Form a Nonprofit in New York

When deciding whether to form a nonprofit organization or use a fiscal sponsor, consider your objectives, available resources, and the level of control you want over your project:

Fiscal Sponsorship

A fiscal sponsor may be a good choice if you want to:

- **Avoid the nonprofit formation process:** Establishing a 501(c)(3) nonprofit can be a long, expensive, and complex process.
- **Test a new idea:** A fiscal sponsor allows you to carry out charitable programs and try new initiatives with fewer administrative burdens.
- **Get operational assistance:** An established nonprofit can handle daily operations, allowing you to focus on fundraising and other tasks.
In a fiscal sponsorship model, the sponsor oversees your project, receives donations and grants, and ensures financial reporting. They are responsible for compliance and fund management.

Nonprofit Organization

Forming a nonprofit might be a better option if you need:

- **Limited liability protection:** Directors, officers, and members are not personally liable for the organization's debts.
- **Tax-exempt status:** Qualified organizations under IRS 501(c)(3) are exempt from federal income tax.

Things to consider when deciding between fiscal sponsorship and nonprofit formation:

- **Control:** With fiscal sponsorship, you have less control over the project and depend on the sponsor.
 - **Fees:** Fiscal sponsors charge fees for their services.
 - **Finding a sponsor:** It can be challenging to find a sponsor that aligns with your mission and has the necessary resources and expertise.
 - **Relationship:** Fiscal sponsorship is often temporary. Over time, you may seek 501(c)(3) status for greater financial independence.
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Once you have made the decision to establish a non-profit corporation in New York State, here are steps:

1. Choose Your Organization's Name

Your nonprofit's name is crucial for branding and legal purposes. It must be unique and meet state requirements.

Check name availability via the **New York Department of State - Division of Corporations**. The name must contain words like "corporation," "incorporated," or "limited" unless the organization is formed for charitable or religious purposes.

2. Decide on Your Nonprofit Structure

New York offers two types of nonprofit corporations:

- **Religious Corporations:** These are for religious groups and have special status under New York law.
- **Non-religious Corporations:** These include charitable and non-charitable nonprofits under the Not-for-Profit Corporation Law (N-PCL). Nonprofits can either be:
 - **Charitable:** Including educational, religious, scientific, and cultural purposes.
 - **Non-charitable:** For civic, political, fraternal, and other non-charitable activities.

3. Recruit Incorporators and Initial Directors

Incorporators are individuals who sign the Articles of Incorporation. You need at least one. Directors form the governing board and play a key role in your nonprofit's success.

New York Director Requirements:

- **Minimum number:** 3 directors.
- **Qualifications:** Must be at least 18 years old (exceptions apply). No residency requirement.
- **Term:** 1-year terms unless specified otherwise, up to 5 years.
- **Quorum:** A majority of directors.
- **Committee:** At least 3 directors required for committees.

Officers: The board may elect officers, such as president, vice president, secretary, and treasurer. Officers serve one-year terms, with no more than 3 terms for each. A single individual may hold multiple positions, except president and secretary.

4. Appoint a Registered Agent

A registered agent receives legal notices on behalf of the organization. The agent must be physically located in New York and available during regular business hours.

5. Obtain Agency Approval

If your nonprofit's purpose aligns with any of the following categories, you must get written approval from the appropriate state agency before incorporating. Examples include:

- **Trade Associations:** Office of the Attorney General - Antitrust Bureau
- **Childcare, Adult Care, and Health Programs:** Office of Children and Family Services, Department of Health, and related agencies
- **Educational, Health, and Mental Health Services:** Department of Education, Department of Health, Office of Mental Health, etc.

6. File Articles of Incorporation

Your Articles of Incorporation legally establish your nonprofit. These documents must meet state and IRS requirements to ensure you can apply for 501(c)(3) status.

Submit to: **New York Department of State - Division of Corporations**

Form: **Certificate of Incorporation**. The filing fee is \$75, plus optional fees to expedite the application.

7. Apply for an Employer Identification Number (EIN)

The EIN is a unique nine-digit number used by the IRS to identify your nonprofit. You need it to open a bank account, apply for tax-exempt status, and file IRS reports.

Submit to: **IRS (Form SS-4)**. There is no filing fee and the number is received immediately if filed online or via phone.

8. Create Governing Documents and Policies

Bylaws are the operational guidelines for your nonprofit. They should align with your Articles of Incorporation and state laws. The Board of Directors should approve these at the first meeting.

Other Key Policies:

- **Conflict of Interest Policy:** Ensures directors act in the nonprofit's best interests.
- **Whistleblower Policy:** Protects employees reporting illegal or unethical practices.
- **Banking and Document Retention Policies:** Ensures financial transparency and compliance.

9. Hold the First Organizational Meeting

During this meeting, ratify the bylaws, appoint officers, elect directors, and take care of administrative tasks like opening a bank account. Document everything in meeting minutes.

10. Apply for 501(c)(3) Status

Obtaining 501(c)(3) status can seem daunting, but it is essential for securing grants and tax exemptions. Apply using **IRS Form 1023 or 1023-EZ**.

Form 1023-EZ is for smaller organizations and is simpler to complete.

Fee: \$275 (Form 1023-EZ) or \$600 (Form 1023).

Turnaround:

11. Obtain a New York State Tax Identification Number

If conducting activities in New York City, register for city taxes with the NYC Finance Commissioner. 1 month for 1023-EZ; 6-8 months for Form 1023.

12. Report Beneficial Ownership Information to FinCEN

As of January 1, 2024, all nonprofits must report their beneficial owners to **FinCEN** under the Corporate Transparency Act (CTA). Nonprofits that were established before January 1, 2024, must submit their beneficial ownership information by December 31, 2024. Once 501(c)(3) status is granted, nonprofits can update FinCEN to claim an exemption.

13. Apply for State Tax Exemption

After receiving 501(c)(3) status, apply for state-level tax exemptions for income, sales, and use taxes.

Submit to: **New York State Department of Taxation and Finance**

Form: **CT-247** for corporate franchise tax exemption

Form: **ST-119.2** for sales tax exemption

14. Register for Charitable Solicitation

If your nonprofit raises more than \$25,000 in gross revenue annually, you must register with the **New York Attorney General's Charities Bureau**. This includes filing annual reports to ensure transparency and compliance with state fundraising laws.

15. Organize and Store Nonprofit Records

Ensure you keep track of your nonprofit's official documents, such as the EIN letter, bylaws, meeting minutes, and tax-exemption documentation.

Some of the information contained in today's presentation can be found at:

www.harborcompliance.com/how-to-start-a-non-profit-organization-in-New-york