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Nonprofit Law &

Ethics

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Introduction

- Name
- Why this workshop is of interest to you?

This presentation is for informational purposes only and not for the purpose of providing legal advice.

Nonprofit Law & Ethics



Why a nonprofit? What is it?

Nonprofit organizations exist for dozens of purposes. The one thing they have in common is that the purpose can't be to generate and distribute profits. Nonprofits raise money but they spend it to further their mission, not to benefit the donors or founders. They are allowed to pay employees.

Key Themes

- Forming a NPO at the state level. What are the main considerations?
- Acquiring and maintaining tax exempt status. IRS Sec. 501. Most common 501c3.
- Reporting requirements. 990 990EZ and 990N. See [irs.gov](https://www.irs.gov). Where this information is accessible online.
- Rules for Charitable Giving. Assessing what is a gift for NPO purposes.
- Disclosures requirements – when in doubt- the thrust on NPO law is that NPO activities must be transparent.
- Fiduciary Duties

Clarification:

- People often interchange **Non-profit** vs **Not-for-profit** to refer to organizations that do **not** redistribute **profits** or funds to owners or shareholders. **In the** U.S., the term “**non-profit**” is used more common. ... But most **non-profits** and **not-for-profits** do make **profits**. Instead, reinvest the **profits** (surplus) ***back into the organization***.

Formation



Articles of Incorporation: State Action

- What are incorporators?
- What are contained in AOsIs?

What is the AOl

- The articles [Articles of Incorporation] function like a constitution for the nonprofit corporation. Ordinarily, the document is short and simple, and you can prepare it on your own by filling in the form provided by your state. A number of items in the articles, however, are important in order to obtain tax-exempt status from the federal government, such as the statement of purpose and statements indicating that the organization will not engage in ***prohibited*** political and legislative activity and that all of its assets will be dedicated to its exempt purpose under 501(c)(3).

What is included - A01:

- Name of the Nonprofit Organization
- Name of Registered Agent
- Legal Address of the Nonprofit Corporation
- Duration of the Nonprofit Corporation
- Name of Incorporator(s)
- Name and Address of Director(s)
- Statement of Purpose

A01-Statement of Purpose

The IRS offers the following language:

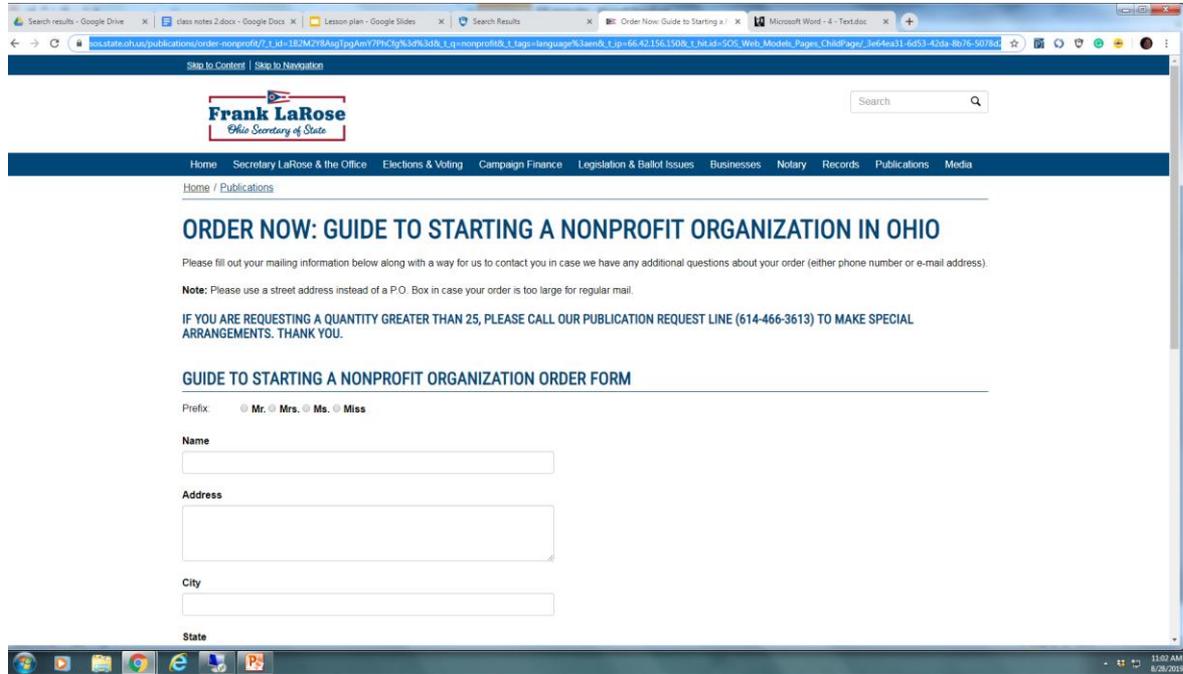
Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Purpose Statements- Think Broad

- To avoid imposing an overly restrictive constraint on the charity's mission (which may evolve over time) and activities.
- To avoid imposing an overly restrictive charitable trust on the charity's assets (which may be restricted to uses only in furtherance of the charity's purposes at the time they were received).
- To avoid the need to amend the articles and file amended articles with the Secretary of State each time the purpose statement changes.

Ohio Secretary of State

- <https://www.sos.state.oh.us/>



The screenshot shows a web browser window displaying the Ohio Secretary of State's website. The page title is "ORDER NOW: GUIDE TO STARTING A NONPROFIT ORGANIZATION IN OHIO". The website features the Frank LaRose logo and a navigation menu. The main content area contains instructions for ordering, a note about quantities, and a form titled "GUIDE TO STARTING A NONPROFIT ORGANIZATION ORDER FORM". The form includes fields for Name, Address, City, and State, and a prefix selection dropdown menu.

Search results - Google Drive | class notes 2.docx - Google Docs | Lesson plan - Google Slides | Search Results | Order Now: Guide to Starting a | Microsoft Word - 4 - Textdoc

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Site to Content | Site to Navigation

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ORDER NOW: GUIDE TO STARTING A NONPROFIT ORGANIZATION IN OHIO

Please fill out your mailing information below along with a way for us to contact you in case we have any additional questions about your order (either phone number or e-mail address).

Note: Please use a street address instead of a P.O. Box in case your order is too large for regular mail.

IF YOU ARE REQUESTING A QUANTITY GREATER THAN 25, PLEASE CALL OUR PUBLICATION REQUEST LINE (614-466-3613) TO MAKE SPECIAL ARRANGEMENTS. THANK YOU.

GUIDE TO STARTING A NONPROFIT ORGANIZATION ORDER FORM

Prefix: Mr. Mrs. Ms. Miss

Name

Address

City

State

11:02 AM
8/26/2019



Understanding bylaws vs. Articles of Incorporation is important since both are essential documents to a corporation. Articles are the charter that creates a corporation, whereas bylaws set out the rules and procedures for internal governance of the corporation.



IRS

- Reporting requirement
- Financial health of the organization
- Executive Compensations
- PR
- Audit vs 990

Tax Exemption -

- A **tax-exempt organization** is a trust, unincorporated association, or nonprofit corporation described in the Internal Revenue Code as exempt from Federal income tax. A **501(c)(3)** is a type of exempt organization. It must be organized and operated for one or more exempt purposes described in Code section 501(c)(3)

Nonprofit Corp vs Tax Exemption

- A nonprofit corporation is a **state entity** that does not automatically come with a federal tax exemption. A nonprofit corporation that has been given **501c3 status by the Internal Revenue Service** is not only tax exempt, but it also allows donors to write off donations.
 - Form 1023 with IRS
 - Periodic reporting to the Sec'y of State

IRS 990 <more>

Which nonprofits have to file a 990? Tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations file this form to provide the IRS with the information required by section 6033.

- All private foundations, regardless of income. They file Form 990-PF.
- Larger nonprofits that have gross receipts (normally) more than \$50,000 file Form 990 or 990-EZ.
- Small nonprofits with gross receipts of \$50,000 or less must file the 990-N (e-Postcard) in order to maintain their exempt status.
- Organizations that are tax-exempt under Sections 501(c), 527, or 4947(a)(1) of the U.S. tax code, and that don't fall into certain exemptions.

IRS 990

IRS Form 990 is the tax document that federally tax-exempt organizations file each year with the IRS. This includes charitable nonprofits.

The screenshot shows the IRS website page for Form 990. The browser address bar shows the URL [irs.gov/forms-pubs/about-form-990](https://www.irs.gov/forms-pubs/about-form-990). The page features the IRS logo and navigation links for Help, News, Language, Charities & Nonprofits, and Tax Pros. A main navigation bar includes File, Pay, Refunds, Credits & Deductions, and Forms & Instructions. The breadcrumb trail is Home > Forms and Instructions > About Form 990. The main heading is "About Form 990, Return of Organization Exempt from Income Tax". A language selector indicates "English".

Current Year
Tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations file this form to provide the IRS with the information required by section 6033.

Prior Year

Accessible

eBooks

Browser Friendly

Post Release Changes to Forms

Order Forms and Pubs

Help with Forms and Instructions

Current Products

- [Form 990](#)
- [Instructions for Form 990 \(HTML\)](#)

Recent Developments

None at this time.

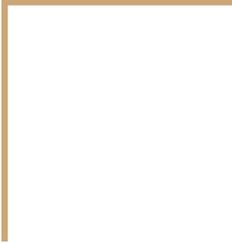
Other Items You May Find Useful

- [All Form 990 Revisions](#)
- [About Publication 15 \(Circular E\), Employer's Tax Guide](#)
- [Publication 4303, A Donor's Guide to Vehicle Donations](#)
- [Publication 4386, Compliance Checks](#)
- [Additional Publications You May Find Useful](#)
- [Other Current Products](#)

Related Items

- [About Form 1023](#)
- [About Form 1023-EZ](#)
- [About Form 1024](#)
- [About Form 1120-B](#)
- [About Form 2848](#)
- [About Form 3115](#)
- [About Form 4506](#)
- [About Form 8822-B](#)
- [About Form 8868](#)
- [About Form 990 Schedules](#)

Comment on Form 990



Fiduciary Responsibility



NPO Board Mememebers as Fiduciaries

It has ultimate **responsibility and accountability** for the organization's actions. According to the Midwest Center for Nonprofit Leadership, a nonprofit board and its members individually have three fundamental fiduciary duties: **a duty of care, a duty of loyalty, and a duty of obedience.**

Duties...

- **Duty of Care**:Duty of care means that board directors **must give the same care and concern to their board responsibilities as any prudent and ordinary person would**. This means board members should be actively participating in board meetings and on committees. It also means that they should be actively working with other board directors to advance the organization's mission and goals. They can fulfill their responsibilities by overseeing and monitoring the nonprofit's activities. Board directors should be able to read and understand financial reports and be willing to question expenditures and examine variances. They are also responsible for strategic planning and achieving the nonprofit's short- and long-term goals.
- **Duty of Loyalty** -Duty of loyalty means that board directors must **place the interests of the organization ahead of their own interests at all times**. Duty of loyalty means publicly disclosing any conflicts of interests and not using board service as a means for personal or commercial gain.
- **Duty of Obedience** Duty of obedience means that board directors must make sure that the nonprofit is **abiding by all applicable laws and regulations and doesn't engage in illegal or unauthorized activities**. The duty of obedience also means that board directors must carry out the organization's mission in accordance with the purpose they stated in getting qualified as a nonprofit organization.

Duties: Conflict of Interest(Loyalty)

- *Most nonprofit discussions about conflicts of interest are similar to those in the for-profit sector: they focus on financial benefit to board members or staff to the detriment of the nonprofit organization. The classic examples: the nonprofit buys something unnecessary or overpriced from a board member's business, or the nonprofit hires an unqualified, overpaid family member of the executive director.*

Problem?

- NPO purchases new phone system from board member's spouse's company?
- NPO sends staff to work at a private, retail store owned by a board member? 50% of proceeds from sale that day go to NPO.
- NPO asked to write a gift acknowledgment letter for \$25,000 for a painting donated by a board member for a silent auction? Board member's partner is the artist.
- Board member's daughter hired as PT Executive Director?
- NPO asked to lend Tax ID number to board member to buy supplies for BBQ at member's home?

Difference between 990 and audit

- 990 is reporting for IRS
- Audit may be required by public or private funders or others stakeholders. An audit should be independent and completed by a CPA.
- Management Letter may be done instead of an audit.

Conflict of Interest

- Disclosure – when potential conflict arises and during regular check-ins.
- C/I review in anticipation of 990 and/or audit process

Difference - 501 c3 and 501 c4

One fundamental difference between 501(c)(3) and 501(c)(4) organizations, is in their ability to **freely conduct political or lobbying efforts**. ... By contrast, 501(c)(4) organizations may engage in unlimited lobbying and promotion of candidates, provided that these efforts dovetail with the purpose of the organization.

- A 501c4 may establish a 501c3 as an education fund

Law Traps...

- **Private benefit/inurement** --An organization may not permit an insider (someone with a personal or private interest in the organization) to **benefit substantially** from the activities of the organization.
- **Lobbying** --“ While 501(c)(3) organizations are permitted to engage in lobbying on some level, the amount of lobbying activities must be limited **so that it's not a substantial** portion of the organization's activities.
- **Political campaign activity/electioneering** --501(c)(3) organizations and their representatives (while acting in an official capacity) may not campaign **for or against candidates** for elected office.
- **Unrelated business income (UBI)** -- “ An organization may lose its exempt status if it generates **excessive income** from a regularly-carried-on trade or business that **is not substantially related** to the organization's exempt purpose.
- **Annual reporting obligation** -- With the exception of churches and subordinate organizations, all 501(c)(3) public charities are required to file some version of the Form 990 with the IRS on an annual basis. While smaller organizations with gross receipts under \$50,000 were previously exempt from this requirement, these charities must now file the Form 990-N (e-Postcard) each year in order to stay compliant.
- **Operation in accord with stated exempt purpose** -- An exempt organization is expected to operate in accordance with the charitable purpose or purposes outlined in its application for recognition of tax-exempt status (Form 1023 or 1023-EZ). An organization must notify the IRS of any **substantial changes** to its operating purpose.

What is substantial?

- Finder of fact

Risk Management

- Director and Officer Insurance
- Liability Insurance
- Protecting tax exempt status

Governance & Liability

- Board should govern
- Director's and Officer's Insurance
- Liability Insurance
- Fiduciary Responsibilities
- Nonprofits as Lawsuit Plaintiffs
- Nonprofits as Lawsuit Defendants
 - Liability
 - Employees
 - Others

Gifts?

- What are main elements of gifts?

Essential elements of a gift include: **capacity** of the donor; **intention** of the donor to make the gift; completed **delivery** to or for the benefit of the donee; and **acceptance** of the gift by the donee.



Charitable Contributions - Written Acknowledgments

The written acknowledgment required to substantiate a charitable **contribution of \$250 or more** must contain the following information:

- Name of the organization;
- Amount of cash contribution;
- Description (but not value) of non-cash contribution;
- Statement that no goods or services were provided by the organization, if that is the case;
- Description and good faith estimate of the value of goods or services, if any, that organization provided in return for the contribution; and
- Statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.
- In addition, a donor may claim a deduction for contributions of cash, check, or other monetary gifts only if the donor maintains certain [written records](#).

<https://www.irs.gov/charities-non-profits/charitable-organizations/charitable-contributions-written-acknowledgments>

Unrelated Business Activities

Related vs Unrelated: Where do the profits go?

Social Enterprise – A nonprofit may own a ‘social enterprise’. Where profits go back to the nonprofit.

SE

NPO

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graph TD; NPO[NPO] --- SE[SE];
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NPO

SE



Fundraising Regulations

Why does “the state” have an interest?

- KY Revised Statute K.R.S Ch. 273.00; Ch. 367.650
- Ohio Ohio Revised Code Ch. 1716; 109:1-1, 109.23



New Issues and Trends

- What will impact nonprofit law?
 - Changes in demographics?
 - Changes in public policy?
 - New areas of research?
 - Political landscape? Today's movement = tomorrow's nonprofit?



Sources

- IRS.gov
- <https://www.sos.state.oh.us/>
- Nonprofit Law Made Easy by Bruce R. Hopkins | Apr 20, 2005
- <https://boardsource.org/>
- <https://blueavocado.org>

Q&A



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