



Michigan Nonprofit Association

Starting a Tax-Exempt Nonprofit in Michigan

Getting Started: A Summary of Key Steps to Starting a Tax-Exempt Nonprofit in Michigan*

This document contains information helpful to those who want to form a public charity as a Michigan corporation and apply to the Internal Revenue Service (IRS) for 501(c)(3) status. While List A below is a quick reference list, the details explained in List B on the following pages are necessary to your success in forming a Michigan charity and obtaining tax exempt status from the IRS.

It is **HIGHLY RECOMMENDED** that you **READ ALL OF THE STEPS IN BOTH LISTS A & B** first before going back to follow links to other websites. A thorough understanding of the entire process before you begin is strongly recommended.

A. The Basic Steps

(See List B below for many more important details)

1. Bring together a group of people who share a vision or concern and who are willing to volunteer their time to the project.
2. Do the research to learn whether there are organizations in your region active with the issue and find out if there are “gaps” in service. This will let you to know if you are meeting a unique need, or simply duplicating an existing service. It will also let you know if you will be competing with other nonprofits for clients and funding.
3. Determine whether your organization meets the IRS criteria for 501(c)(3) tax-exempt status. Review [IRS Publication 557, Tax-Exempt Status for Your Organization](#).
4. Complete and file either Form 502, Articles of Incorporation (Nonprofit) or 503 Articles of Incorporation (Ecclesiastical) with the [State of Michigan's Bureau of Commercial Services, Corporation Division](#), along with the required filing fee. The standard fee is \$20 to file the form, but may be much more if expedited service is requested. The fees and filing procedure is explained on the last page of the form.
5. Get an Employer Identification Number (EIN) for the nonprofit from the IRS by using Form SS-4. The [IRS](#) website discusses ways to obtain the EIN.
6. When the Articles of Incorporation are returned by the State:
 - a. a. Hold your first board meeting;
 - b. b. Elect the first board of directors;
 - c. c. Adopt Bylaws by a vote of the board; and
 - d. d. Elect the first officers (President/Chair, Treasurer, and Secretary). These
 - e. board members volunteer to take on additional leadership responsibility.
7. Apply for 501(c)(3) status with the IRS, using [Form 1023 \(Instructions\)](#).
8. File with the Michigan Department of the Attorney General, Charitable Trust Section for a License to Solicit Charitable Contributions.

B. Organizing a Nonprofit, Tax-Exempt Charitable Organization

I. Purpose and Structure.

Bring people together for a general meeting to discuss the purpose you share. Determine if there are enough interested volunteers ready to take on the work involved in reaching your goal. This could take several meetings. Also assess whether the organization will qualify as a charitable organization under the IRS Code and Michigan law. For more information on what it means to be a charity go to www.stayinglegalmi.org and visit the “Forming a Charity” page and/or Chapters 18 and 19 of the Michigan Nonprofit Management Manual, 5th Edition available for sale on [MNA's website](#).

Come to an agreement regarding the purpose and structural form of the proposed organization. Is it going to be a nonprofit membership organization that people join in order to participate in

governing the organization or will it be a directorship with the decision making power assigned to the board of directors? The biggest difference between the two forms: in a membership organization, the members elect the board and can vote on certain organizational issues. In a directorship organization, the incorporator(s) name(s) the first board which chooses officers and fills board vacancies. A directorship organization may choose to have “members” that receive certain benefits, but members have no voting rights.

NOTE: An organization can form as an unincorporated association, although there may be some disadvantages to the structure. For example the directors of the organization may be personally liable for acts of the organization, including debts. One or more directors must personally sign contracts, without the protection of signing on behalf of a corporation – a separate legal entity. For more information contact your own legal counsel.

Ask people to work on their own or as a committee to draft proposed Bylaws and complete the formation tasks. Those chosen need to make a commitment to complete the filing of the Articles of Incorporation, develop a business plan (strategy for carrying out the mission of the nonprofit) and develop a budget and fundraising plan.

2. Incorporation.

The primary governing documents for the organization are the Articles of Incorporation and the Bylaws. File Articles of Incorporation as a domestic, nonprofit corporation with the State of Michigan, Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Corporation Division (Corporation Division). You may submit the Articles in person, through the mail, or by fax. The standard fee for filing Articles of Incorporation is \$20; however, fees may be more for various types of expedited processing. Information regarding filing methods and fees is found on [Form 502, Articles of Incorporation, For use by Domestic Nonprofit Corporations](#). The filed Articles of Incorporation are generally returned within four weeks of filing showing the date they were filed.

Note that, although churches have similar filing requirements, they file a different form to incorporate: [Form 503, Articles of Incorporation for Use by Ecclesiastical Corporations](#). All Corporation forms can be obtained from the [DELEG website](#). The Forms are arranged by Form Number. You can also reach the Corporation Division by phone at: 517/241-6470. Customer service representatives respond to questions you may have.

The individual or individuals who sign the Articles of Incorporation are called the incorporator(s). The sole purposes of the incorporator(s) is/are to prepare and file the Articles of Incorporation and designate the initial members of the Board of Directors. The incorporator(s) may also adopt the proposed Bylaws. Being an “incorporator” does not mean that this person must join the board of directors, although they may serve on the board. An incorporator does not “own” the organization or have any special rights to leadership. Once a person’s name is on Form 502 as an incorporator, the name cannot be removed, but they do not necessarily have any continuing involvement.

The Incorporation Process

- a. Determine the availability of your chosen corporate name by contacting the Corporation Division to make sure no other corporation is using the same name. You can search online at their Corporation Division [search page](#). You may choose to reserve a name by filing Form 540, Application for Reservation of Name, with the Corporation Division.
- b. Prepare and mail notice for the first meeting of incorporators, if more than one incorporator.
- c. Hold the first (or only) meeting of incorporator(s). At the meeting:
 - Appoint a secretary to take minutes of the meeting or keep records;
 - Decide on a membership or directorship structure;
 - Discuss initial draft Articles of Incorporation and Bylaws;
 - Discuss who will serve on the initial Board of Directors to be elected after the Articles of Incorporation have been filed -- as a general rule, at least five board members if you plan to seek 501(c)(3) status – Michigan law requires at least three board members for nonprofit corporations;
 - Prior to the first meeting of Board of Directors, file the Articles of Incorporation with the Corporation Division.

Organizations wishing to apply to the IRS for recognition of tax exempt status as a 501(c)(3) organization must include certain statements, disclosures and assurances in the Articles of Incorporation and/or Bylaws. To learn about these required statements, click on this link to the [IRS website](#), or go to www.stayinglegalmi.org and enter “required language” in the search box. Organizations that do not incorporate may include this required language in their Bylaws.

NOTE: As stated on Page 1, **Basic Steps**, all forms necessary to incorporate can be located and downloaded at the Michigan Department of Energy, Labor and Economic Growth, Corporation Division, [website](#). From that website, you can also download Form 540, Michigan Nonprofit Corporation Filing Information, for more specific information on filing requirements, fees, and filing procedures.

3. SS-4 to Obtain an Employer Identification Number (EIN).

File Federal Form SS-4 to obtain an EIN – also referred to as a Tax ID Number, TIN or FEIN. This number is generally required to open a bank account and is the organization’s official identification number. The IRS can issue an EIN over the telephone or over the Internet. Receiving the EIN **does not mean that the organization is approved, or that it is tax-exempt**. For more information, visit the [IRS website](#). Also download the help [IRS Publication 1635, Understanding Your Employer Identification Number](#).

4. Draft Bylaws.

Prepare Bylaws that will state the membership/board rights and requirements, the process for selecting board members and officers, their duties and powers, the controls placed on the

disbursement of funds and other key operational issues. These should be detailed enough to clarify the responsibilities of the officers, board, and committees (and membership, if appropriate). Some provisions of the Michigan Nonprofit Corporation Act allow provisions to be included either in the Articles of Incorporation or in the Bylaws. For more information on this issue, you may wish to attend one of the [Corporation Division's Nonprofit Seminars](#).

There are many resources to assist an organization in drafting bylaws, including MNA's Principles & Practices on [MNA's website](#) and the *Michigan Nonprofit Management Manual, 5th Edition* that is available for sale on [MNA's website](#). There is no one correct resource for learning about bylaws, and organizations should be cautious about using sample bylaws that they obtain from the Internet or other source. Organizations must adapt whatever model they use, since each organization must draft bylaws that meet their own specific needs.

5. Draft Plans and Budget.

Now it is time to prepare your three-year plan of action. What will you do, how will you do it, and what will it cost? The IRS 501(c)(3) application requires a preliminary three-year budget. The IRS knows that you do not have a crystal ball, but they expect every nonprofit organization to have a plan to carry out their charitable mission and a budget designed carry out the plan. Developing and putting in writing your plan of action will require several meetings on the part of the prospective board and other volunteers. Both MNA's [Principles & Practices](#) and many of the chapters in the *Michigan Nonprofit Management Manual, 5th Edition* contain information to assist in planning and budgeting.

6. Organizational Meeting.

The nonprofit corporations law in Michigan provides for an organizational, or "first meeting of the Board" following incorporation. Any Board member may call the first meeting upon not less than three days notice by mail to each director. A majority of directors constitutes a quorum for the first meeting of the Board. The notice should include an agenda for the first meeting, a copy of the Articles of Incorporation and the proposed Bylaws, and minutes from any incorporators' meeting(s).

7. Business Meeting of the Board.

The designated Board should take the following actions at its first meeting:

- a. Accept the Articles of Incorporation as filed.
- b. Adopt the proposed Bylaws with any necessary amendments. Bylaws should be accepted, if only on a provisional basis. After this meeting, the organization should operate as prescribed in the Bylaws.
- c. Elect officers pursuant to the Bylaws. The Michigan Nonprofit Corporation Act requires nonprofit corporations have a President, Secretary and Treasurer and may elect a Chair, Vice Chair, and any other officer prescribed in the Bylaws or determined by the Board. Two or more offices may be held by the same person, but an officer cannot execute a document in more than one capacity.
- d. Authorize necessary financial transactions.
- e. Authorize a person to prepare the [IRS Form 1023 \(Instructions\)](#) to apply for tax-exemption with the IRS. The organization will want to review the draft of the form prior

to submission to make certain it fairly represents the organization's plans, budget and leadership. Consider the proposed activity plans and budgets and recommend revisions. Mail the application to the IRS, along with the filing fee. This is not something you can hand-deliver to the IRS.

8. Board of Directors' Legal Responsibilities and Duties.

While forming a corporation can help protect directors from personal liability for the activities of the corporation, directors are not protected if they fail in their duties. The following is a list of areas where directors must be diligent to protect themselves from liability:

- a. The funds and property of all nonprofit corporations are to be acquired, held, and disposed of only for their lawful purposes, and the directors are individually liable if any such money or property is misused as a result of the director's neglect or misbehavior; or if they fail to exercise reasonable care in administering the affairs of the corporation. Directors must act in good faith, remain up-to-date on the actions and needs of the organization and attend meetings.
- b. If a corporation is harmed by a depletion of assets because a director failed to diligently perform his/her duties or acted in bad faith or by fraud, the director may be personally liable to the corporation, as well as to creditors.
- c. Directors should receive summaries of officer activities so they can make a reasonable review of performance. If directors are put on notice of possible misbehavior or non-attentiveness by officers or subordinates in carrying out corporate affairs, a director is required to use reasonable care to investigate and correct any abuse.

9. Fiscal Year.

The fiscal year is the financial year of the organization. Establish a fiscal year which ends during a natural break in the organization's activities. If possible, coordinate the end of the fiscal year with funding sources. The fiscal year must end on the last day of a month; for example, December 31, September 30 or June 30.

10. Accounting.

Establish an accounting system to record the receipt and expenditure of money in accordance with the Bylaws and with the reporting requirements that will be imposed on the organization by funders and governmental agencies. Keep in mind that simple is better. This doesn't necessarily require a computer; a notebook is often sufficient in the beginning.

11. Minutes and Documents.

Establish a system for preserving corporate documents such as Articles of Incorporation, Bylaws and amendments (originals as well as a copy of each), the minutes of board meetings, committee meetings and the meeting(s) of the incorporator(s), the IRS Form 1023 that was filed to obtain tax exempt status, the IRS determination letter, the license to solicit donations, and other important documents. These documents are a permanent part of the organization's history. The IRS or other agency could ask to see those papers in the future, and you must be able to produce them.

Chapter 21, Record Keeping, of the *Michigan Nonprofit Management Manual, 5th Edition* includes further discussion of maintaining records and provides a “Suggested Document Retention Schedule.”

12. Beginning Program Activities.

Programs can start once the organization establishes its plans and budgets and obtains the resources it needs to carry out a program. Sometimes, the easiest way to begin is to start with an event or activity in partnership with a strong, stable existing nonprofit – especially if the new organization is waiting for recognition as a tax exempt entity or waiting for verification that it is licensed to solicit and receive contributions. An organization may even be able to solicit some contributions, but directors and others who are raising funds must be completely honest with donors that the organization cannot issue receipts showing that contributions are deductible until the organization receives recognition from the IRS.

13. Additional Employer Registration.

Once the organization intends to hire employees, register with the appropriate state and local government agencies for withholding required for income and unemployment taxes. Employees in a nonprofit business have the same rights and responsibilities as any employee. Once the organization becomes an employer it will also need to purchase worker’s compensation insurance, unemployment insurance (and maybe health insurance) for employees. Note that it is not up to the organization to decide which workers are “independent contractors” and which are “employees” – the IRS and the State of Michigan have clear definitions of those roles and employers must comply with those definitions. The IRS also sponsors a helpful website that has a tutorial on determinations of independent contractor status at www.stayexempt.irs.gov.

14. Application for Tax Exemption (Form 1023).

File [Form 1023 \(Instructions\)](#) with the IRS so that the organization may become exempt from taxes on its mission-related income, and so donors may be eligible to receive a tax deduction for their gift. This application should be filed within 27 months of the date you file the Articles of Incorporation and at least five to eight months before you hope to obtain any grants from foundations or large contributors. Note that you will be required to provide supporting documents, including filed Articles of Incorporation that contain the necessary 501(c)(3) restrictions, Bylaws, statements of current income and expenses, a preliminary three-year budget for new organizations, and miscellaneous materials describing activities. This application is required of any charitable organization that has received or plans to receive \$5,000 in assets (through cash gifts or other contributions) during a fiscal year.

Information about various IRS requirements for public charities can be found on the [IRS website](#). Also see [IRS Publication 557, Tax Exempt Status for Your Organization](#) for language that must be included in organizing documents. Filing fees are published in January of each year. In 2010, the fees were increased to \$400 for organizations with annual budgets averaging less than \$10,000; and \$850 for organizations with annual budgets of \$10,000 or more.

The IRS Exempt Organizations hotline can be reached at 877/829-5500 if you have questions throughout the process.

.....
15. Annual Federal Information Return (Form 990).

Most tax-exempt nonprofit organizations with gross receipts of more than \$25,000 per year must file this return. The return is due no later than the fifteenth day of the fifth month following the close of the tax year (May 15 for organizations with a fiscal year end of December 31). There is a penalty of \$20 a day for failure to file, unless it can be shown that a late filing was due to a reasonable cause. Tax-exempt organizations with less than \$25,000 per year in gross receipts are required to file Form 990-N, an “electronic postcard” (which is not available in hardcopy). The filing deadlines are the same as for the Form 990. Some form of 990 MUST be filed by every tax exempt organization. If an organization fails to file for three years the organization will lose its tax exempt status and will be required to reapply and pay new filing fees if it wants to operate under a tax exempt status. For more information on the various types of 990s and schedules, go to either the [IRS website](#) or the www.stayinglegalmi.org website.

16. Exempt Organization Business Income Tax Return (Form 990-T).

Exempt organizations engaged in business activities unrelated to the organization’s purpose must file this return if they have \$1,000 or more of unrelated business income. The return is due on the fifteenth day of the fifth month following the close of the tax year. To learn more go to the [IRS website](#). The IRS-sponsored website www.stayexempt.irs.gov has a helpful tutorial on the definition of “unrelated business income” and who must file [IRS Form 990-T \(Instructions\)](#).

17. Property Tax Exemption.

Apply with your local tax assessor for exemption from local taxes on any real or personal property held by the organization that are used by the organization to carry out its charitable mission. This application should be made before taxes are assessed since obtaining retroactive exemptions is frequently difficult. Required supporting documents will likely include your Articles of Incorporation, Bylaws and 501(c)(3) determination letter.

18. Sales Tax Exemption.

Information about exemptions can be found on the [Michigan Department of Treasury website](#). You can complete [Form 3372, Michigan Sales and Use Tax Certificate of Exemption](#) online and print it for your use. You will need to make copies to present to vendors as needed. You must provide the completed form to vendors for their files, along with a copy of your IRS determination letter.

19. Solicitation License.

Organizations that expect to, or actually do, receive \$8,000 or more per year from the public, not including government grants or contracts, or organizations that pay anyone for fundraising services, even employees, must obtain a license to solicit donations in Michigan. To obtain the license, the organization must submit the [Initial Solicitation Application / Registration](#) to the Michigan Attorney General, Charitable Trust Section. The [Charities page of the Attorney General's website](#) provides additional information about requirements, exemptions that may apply and filing instructions, including electronic filing. If the organization wishes to claim an exemption from the license requirement, a [Request for Exemption](#) must be filed with the Attorney General’s office. Fundraisers contracted by charitable organizations must also be licensed with the Michigan Attorney General, Charitable Trust Section.

20. Charitable Trust Registration.

Charities that hold assets in Michigan are also subject to registration of those assets with the Michigan Attorney General's Charitable Trust Section. The [Initial Solicitation Application / Registration](#) form referenced above also serves as a registration of the charity's assets.

The [Charities page of the Attorney General's website](#) provides additional information about requirements, exemptions that may apply and filing instructions, including electronic filing.

You can reach the Charitable Trust Section by phone at 517/373-1152. If the organization wishes to claim an exemption from the license requirement, a [Request for Exemption](#) must be filed with the Attorney General's office.

21. Charitable Trust Annual Report.

An annual financial report to the Michigan Attorney General is required of those organizations that are registered as charitable trusts as described in #20 above. This reporting requirement may be met by filing copies of Form 990, Form 990-EZ, Form 990-PF, an audited financial statement from a certified public accountant (CPA), a copy of a probate court accounting, or a bank trustee accounting. The report must be filed within six months after the end of the organization's fiscal year.

22. Solicitation of Small Donations.

Solicitation of small donations and memberships may occur before obtaining the 501(c)(3) tax exemption. This is a risk for the donor seeking a tax deduction for that gift. If the organization applies for exempt status within twenty-seven (27) months of the organization's incorporation, and is approved, the deductibility of donor contributions will be recognized retroactively to the date the organization was formed. If the application is not approved, the donor will not receive a tax deduction for their contribution.

23. Private Grant Solicitation.

Almost all corporate and foundation grant solicitations, as well as large contributions, will require the final ruling of the IRS. Most funders will require proof of official recognition of 501(c)(3) tax exempt status provided by the determination letter before they will fund the organization.

24. Liability Insurance.

Strongly consider insurance policies to cover any property of the organization, if it is substantial, and to cover the organization and its directors and officers against possible personal injury suits by clients or guests. Chapter 15 of the [Michigan Nonprofit Management Manual, 5th Edition](#) includes an extensive discussion of insurance needs of nonprofit organizations.

25. Nonprofit Bulk Mail Rates.

Apply for reduced rates for bulk mail (not individual mailing) at the post office. IRS recognition as a 501(c)(3) tax-exempt organization will make this easier. There is information on nonprofit mailings at the [United State Postal Service website](#). Mailing and packaging service companies will also be able to assist in learning about rates and applications for discounted bulk mailing rates.

26. Annual State Corporation Reports.

The State of Michigan, Department of Energy, Labor and Economic Growth, Corporation Division, will require a completed Michigan Nonprofit Corporation Information Update Form on an annual basis. They will provide you with the necessary form, which is due before October 1 of each year. Organizations that are up to date in filings may choose to file the form online at the state of [Michigan website](#). The filing fee is \$20. If you do not receive the Annual Information Update form or cannot locate the form, call the Corporation Division Customer Service number at 517-241-6470.

To ensure you receive the form, it is important to notify the Corporation Division if you change addresses. If the contact person (Resident Agent) or address (Registered Office) of the organization changes, be sure to file the [Certificate of Change of Registered Office and/or Change of Resident Agent](#) with the Corporation Division.

27. Certificate of Amendment to the Articles of Incorporation.

The Articles of Incorporation may be amended to add or modify any article, including the name of the organization, provided the amended provision does not contravene applicable law. File [Form 515, Certificate of Amendment to the Articles of Incorporation](#), restating the entire article being amended or stating the article(s) to be added. File the form as explained on the last page of Form 515, along with the filing fee. The amendments must be approved by the incorporator, members, or directors, as appropriate.

28. Certificate of Assumed Name.

If the organization transacts business under a name different than the legal name as stated in the Articles of Incorporation, you must file [Form 541, Certificate of Assumed Name](#). A separate Certificate must be filed for each assumed name used by the organization. File the form along with the filing fee. The assumed name expires the end of the fifth year after the certificate was filed, at which time a new certificate must be filed. [Form 543, Certificate of Termination of Assumed Name](#), may be filed prior to the expiration date.

29. Change of Registered Office, Mailing Address and/or Resident Agent.

If there is a change of either the registered office (or mailing address, if different than the registered office) or the resident agent, or both, you must file [Form 520, Certificate of Change of Registered Office and/or Change of Resident Agent](#), along with the filing fee.

30. Restating (Replacing) the Articles of Incorporation (Form BCS/CD-511).

When an organization has made several amendments and has filed several certificates over the course of its years of existence, or when an organization wants to make significant changes to its Articles of Incorporation, then file [Form 511, Restated Articles of Incorporation](#). Completion and filing of this form, along with the filing fee, allows the organization to supersede the original Articles of Incorporation and all previous amendments. It can be used to avoid confusion as to which Articles are most recent.

Additional Resources

MNA offers a number of valuable resources to help Michigan nonprofits maximize their effectiveness and efficiency in carrying out their missions by providing resources to assist nonprofits comply with laws regulating charities, operate according to best management practices, and obtain the ongoing information and support.

1. For information about legal compliance in organizing and operating a nonprofit charitable organization, go to a website sponsored by the Michigan Nonprofit Association at www.stayinglegalmi.org.
2. MNA's Principles & Practices available on their website offers valuable information on best practices in managing a nonprofit organization. Also find out how you can obtain assistance tailored to the individual needs of an organization. Go to the [Principles & Practices](#) page of MNA's website.
3. A newly revised and extensive resource offered by MNA is the Michigan Nonprofit Management Manual, 5th Edition. The manual, which includes 22 chapters written by authors who are experts in various areas of nonprofit management, is available for sale on the [MNA website, Publications page](#).
4. MNA membership provides ongoing information about policies affecting Michigan nonprofits and provides an avenue to become involved in the nonprofit community. For more information go the [MNA's website](#).

This list is based on “Eight Basic Steps” and “Organizing a Nonprofit, Tax-Exempt Organization” contained in the booklet *Getting Started, Seventh Edition 2008*. The list has been expanded and updated to provide users with more complete and accurate information.

1048 Pierpont, Suite 3
Lansing, MI 48911
Phone: 517-492-2400
Fax: 517-492-2410
www.MNAonline.org





Michigan Nonprofit Association

Lansing Office:

1048 Pierpont Dr., Suite 3
Lansing, MI 48911
Phone: (517) 492-2400
Fax: (517) 492-2410

Detroit Office:

28 W. Adams, Suite 1500
Detroit, MI 48226
Phone: (313) 394-1980
Fax: (313) 965-3755

www.MNAonline.org