



Steps to Form a Nonprofit Tax-Exempt Corporation in California

For Public Counsel's [Guide to Forming a Charitable, Tax-Exempt, Nonprofit Corporation in California](#), visit www.publiccounsel.org/publications?id=0077.

I. FORMING A NONPROFIT CORPORATION

A. Choose corporate name.

1. Check with Secretary of State if proposed corporate name is available.
 - i. For California Corporations Name Availability page, see <http://www.sos.ca.gov/business-programs/business-entities/name-availability/#checking>.
2. Reserve corporate name with Secretary of State (optional).
 - i. For Name Reservation Request form, see <http://www.sos.ca.gov/business-programs/business-entities/name-availability/#reserving>.

B. Prepare and file Articles of Incorporation with the Secretary of State.

NOTE: Forming the corporation by filing the articles of incorporation with the Secretary of State starts the clock running on the deadline to file for federal tax exempt status retroactive to the date of incorporation. The preparation of the tax exemption application can sometimes be delayed or take much longer than originally expected. For that reason, clients and volunteer attorneys should strongly consider waiting to form the corporation until either (1) the organization is commencing operations or incurring liabilities such that there is a need to be operating in corporate form or (2) the organization has completed, and is ready to file, its federal tax exemption application on IRS Form 1023-EZ/1023.

1. For Public Counsel's sample form of Articles of Incorporation (annotated form with explanatory notes and text of form), see www.publiccounsel.org/publications?id=0059.
2. For the Secretary of State's sample form of Articles of Incorporation for a Nonprofit Public Benefit Corporation and filing instructions, visit <http://bpd.cdn.sos.ca.gov/corp/pdf/articles/arts-pb.pdf>.
3. For filing tips, see www.sos.ca.gov/business-programs/business-entities/filing-tips/filing-tips-corp/#artsnp. For processing times, see www.sos.ca.gov/business/be/processing-times.htm (check under Corporate Filings > Formations).

- C. Complete organizational documents of nonprofit corporation.
 - 1. Prepare Bylaws. For Public Counsel’s sample form of Bylaws (annotated form with explanatory notes and text of form) see www.publiccounsel.org/publications?id=0060.
 - 2. If initial directors not named in Articles, incorporator must elect initial directors and resign. See [sample form of Minutes of Incorporator and Resignation of Incorporator](#).
 - 3. Prepare organizational minutes of Board of Directors. See [sample form of Minutes of Action of Board of Directors](#).
- D. Complete and file Statement of Information by Domestic Nonprofit Corporation (Form SI-100) within 90 days after filing of original Articles of Incorporation. For instructions and form, see http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf. Form SI-100 may be filed online at <https://businessfilings.sos.ca.gov/>.
- E. Apply for an Employer Identification Number (EIN). For information and instructions on how to apply online or by phone, see www.irs.gov/Charities-&-Non-Profits/Employer-Identification-Number.
- F. Register with the Attorney General’s Registry of Charitable Trusts within 30 days of initially receiving/accruing assets, even if a required document is not available at that time. Attorney General will request that any missing document be submitted later when it becomes available.
 - 1. For registration information and instructions, see <http://oag.ca.gov/sites/all/files/agweb/pdfs/charities/charitable/initialReg.pdf>.
 - 2. For Form CT-1, see <http://oag.ca.gov/sites/all/files/agweb/pdfs/charities/charitable/ct1-form.pdf>.

II. APPLYING FOR FEDERAL AND STATE TAX EXEMPT STATUS

- A. Complete and submit IRS forms.

NOTE: Beginning July 1, 2014, a qualifying exempt organization with total assets valued at \$250,000 or less and annual gross receipts of \$50,000 or less during the preceding 3 years or projected 3 years is eligible to file a Form 1023-EZ, a streamlined version of the application for recognition of exemption. Refer to the eligibility worksheet in the Form 1023-EZ instructions for complete eligibility requirements.

- 1. For general information on the federal Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code and information about the procedure for using either Form 1023-EZ or Form 1023, see www.irs.gov/Charities-&-Non-Profits/Application-for-Recognition-of-Exemption.

2. Form 1023-EZ: Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code
 - i. For eligibility worksheet and specific instructions on completing Form 1023-EZ, see www.irs.gov/pub/irs-pdf/i1023ez.pdf.
 - ii. Form 1023-EZ: <http://www.irs.gov/uac/About-Form-1023EZ>.
3. Form 1023: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code
 - i. For specific instructions on completing Form 1023, see www.irs.gov/pub/irs-pdf/i1023.pdf.
 - ii. Form 1023: www.irs.gov/pub/irs-pdf/f1023i.pdf.
 - iii. Form 2848: For Power of Attorney and Declaration of Representative, see www.irs.gov/pub/irs-pdf/f2848.pdf. For instructions, see www.irs.gov/pub/irs-pdf/i2848.pdf.
 - iv. For the top ten reasons for delays in processing Form 1023, see www.irs.gov/Charities-&-Non-Profits/Top-Ten-Reasons-for-Delays-in-Processing-Exempt-Organization-Applications. For Form 1023 processing times, see www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Where's-My-Application.
4. For additional information about tax-exempt organizations and IRS forms, see www.irs.gov/Charities-&-Non-Profits. A very useful resource for nonprofits is the “Life Cycle of a Public Charity.” See www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Life-Cycle-of-a-Public-Charity.

B. Complete and submit California forms.

NOTE: If the organization has already obtained a determination of tax exempt status from the IRS, the review process in California will be expedited via Form 3500A. Therefore, clients and volunteer attorneys should consider whether it is appropriate to wait to file the California application until the IRS has already granted the organization a determination of tax exempt status.

1. Form 3500A/3500: For information about the procedure for using either Form 3500A (Submission of Exemption Request) or 3500 (Exemption Application) and forms, see www.ftb.ca.gov/businesses/Exempt_organizations/Applying_for_tax-exemption.shtml.
2. Form 3520: For Power of Attorney, Declaration for Administration of Tax Matters, see www.ftb.ca.gov/forms/misc/3520.pdf.

3. For additional information about California tax-exempt organizations and California forms, see www.ftb.ca.gov/businesses/exempt_organizations/.

III. PROVIDING CLOSING ADVICE TO CLIENT

Before closing representation, volunteer attorney should provide to client a memorandum summarizing legal requirements that may be applicable to California nonprofit organizations going forward. See sample form of “[now that you’re incorporated](#)” memorandum.

- A. For state and local permits and licenses, see www.calgold.ca.gov.
- B. For the IRS online training website “Stay Exempt – Tax Basics For 501(c)(3)s,” see www.stayexempt.irs.gov/Existing-Organizations/Maintaining-501c3-Tax-Exempt-Status.
- C. For the Attorney General’s Guide for Charities, see http://ag.ca.gov/charities/publications/guide_for_charities.pdf.
- D. For additional resources available to nonprofits, see www.publiccounsel.org/tools/assets/files/np_resources.pdf.

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