

Creating a nonprofit in Massachusetts

Want to starting a Non-Profit and not sure what to do? Here are some guidelines that you may find to be helpful.

STEPS TO BECOMING A NONPROFIT

Starting a new nonprofit may not be an easy task. Staying legal through the process can be difficult if you are not prepared. Below is an outline of the major basic steps necessary to start a nonprofit. Please keep in mind that these steps are meant to be used as a general guide and may not apply to all situations. In some more complex situations, legal assistance may be necessary.

1) Determine if you really need to start a nonprofit.

Is starting a new nonprofit organization really the best way to accomplish the goals you have set forth? Perhaps the best way to really clarify to yourself what you intend to accomplish by starting a new nonprofit is to write a basic mission statement for your organization

2) Formulate a mission statement. The purpose of a charitable nonprofit must be for the public interest and common good. As a non-profit organization, you exist to accomplish your mission, which should be crafted based upon your purpose, services and values. The mission statement is a concise expression that covers in one or two sentences who the organization is, what it does, for whom and where. It should also be compelling, as it will be used in all published materials, funding requests and public relations. It should also portray how your organization is distinct from

3) Form a Board of Directors. Forming a board requires careful thought and extensive recruitment efforts. Each state has regulations that determine the minimum size of the board, typically three, but the optimum number of people who sit on the board should be determined by the needs of the organization. The initial board of directors will assume much of the responsibility in starting a new nonprofit.

4) File Articles of Incorporation. The founders of the organization should write its articles of incorporation. This document formally names the entity, its location, and its purpose. This document is the legal record of how the organization is to be managed. Articles of Incorporation are filed with the appropriate state agency. The specific requirements governing how to incorporate are determined by each state. It is necessary to write and file the articles of incorporation prior to applying for tax-exempt status from the Internal Revenue Service. The IRS requires specific language to be used describing the charitable purpose of the organization, and the requirements it must follow for exemption.

5) Draft bylaws. Bylaws are simply the "rules" of how the organization operates. Although Bylaws are not required to file for 501(c)(3) status, they will help you in governing your organization. Bylaws should be drafted with the help of an attorney and approved by the board early in the organization's development.

6) Incorporate as a nonprofit organization.

The main purpose of incorporating an organization is that of risk management.

7) Create a business plan with a budget: A plan should include what the organization's goals are, what programs it will operate, where it will get funding, will it conduct events, will the organization have staff, volunteers, and more. It should also include a budget plan. Where will funding come from? Will programs rely on grants, individual donations, state or federal contracts? What expenses will the organization incur? A business plan and budget are but they are required as part of the narrative section of IRS Form 1023, Application for Tax-Exempt Status.

8) Apply for Federal ID Number (EIN). Organizations must receive their EIN before filing Form 1023. Use IRS Form SS-4 — Application for Employer Identification Number (EIN). Organizations must be incorporated prior to applying for an EIN.

9) Obtain income tax exempt status from the IRS.

Once the organization's articles of incorporation have been filed and the bylaws have been approved by the initial board of directors, the next step for a new nonprofit is applying for federal tax exemption from the Internal Revenue Service. A common myth is that all nonprofits are automatically tax- exempt.

File for 501(c)(3) status. To apply for recognition of tax-exempt, public charity status, the organization must obtain Form 1023 (application) and Publication 557 (detailed instructions). The filing fee depends upon the size of the organization's budget. The application is an important legal document, so it may be advisable to seek professional help when preparing it

10) Fulfill charitable solicitation law requirements. If the organization intends to solicit funds from the public, it (generally) must first obtain a "Certificate for Solicitation" from the Attorney General's Office in the specific state, unless exempted from this requirement by statute. Other state and federal agencies and taxing authorities such as the IRS may require additional filings from charitable organizations.

11) Filing of the appropriate Form 990 with the IRS.

Massachusetts State Requirements: All public charities doing business in the Commonwealth of Massachusetts must file annual financial reports with the Non-Profit Organizations/Public Charities Division. Any charities that wish to solicit funds must also obtain a "Certificate for Solicitation" before engaging in fundraising activities.

First-time Filers

Initial Registration with the Non-Profit Organizations/Public Charities Division

Before filing with the AGO, however, each charity must send initial registration materials so the AGO can enter the charity into our system and assign it an Attorney General's Account Number (AG number). This process begins when we make a determination that the organization is, indeed, a public charity. We require these items to make that determination:

1. A copy of the organization's charter, articles of organization, agreement of association, instrument of trust, or written statement of purpose, whichever is applicable;
2. A list of the current officers/directors and their addresses;
3. A copy of the organization's by-laws; and
4. A copy of the IRS letter designating the organization's 501(c)(3) status, if the organization has received one.
5. **Initial registration fee of \$100, payable to the "Commonwealth of Massachusetts". This is a new requirement mandated by a change to M.G.L. Chapter 12, Section 8E, and is effective for all registrations received by the Division on 1/1/2011 or later.**

About These Documents

If you are submitting the above items with a [Short Form PC](#), [URS](#), or [Form PC](#), please consult the appropriate section below to determine the correct filing fee. These fees are in addition to the registration fee, and separate checks should be submitted for each fee.

“Articles of organization” are not the same as by-laws; the two are separate documents entirely. Also note that a “statement of purpose” is an official document explaining in detail the organization's goals and practices.

The information a charity provides to the Secretary of the Commonwealth's Corporations Division (Corporation's Division) or the Internal Revenue Service (IRS) does not come to the AGO; the three are completely separate agencies with separate purposes and filing requirements. **Although you may be registered as a nonprofit corporation with the Secretary of the Commonwealth and file annual reports, your status as a public charity requires separate registration and filing with the AGO.** Any documents submitted to the Corporations Division or the IRS, such as the Annual Report, Articles of Organization or IRS Form 990, will not reach the AGO.

If the organization has applied for 501(c)(3) status but not yet received it, it is **not** necessary to send a copy of the IRS Form 1023. It is best to note the application in a cover letter and submit a copy of the determination letter when it is received.

The organization is responsible for filing the [Form PC](#) to account for any activity (or lack of activity) from the date of its creation, **not** the date of its IRS exemption.

The IRS determination letter is not the same as the state sales tax exemption, DOR Form ST-2. We do not require a copy of the ST-2.

It is not necessary to re-submit these materials each year. Any updates or amendments should be sent to the AGO within 30 days, but otherwise are not required annually.

If the organization has not yet finished its first fiscal year, and it does not intend to solicit funds, it may send the five required items in without any additional filings. It will be assigned an AG number and will be expected to file its “Form PC” four and one-half months after its fiscal year end. (See the “Form PC” section below for additional information on “Form PC.”)

Our mailing address is:

Office of the Attorney General
Non-Profit Organizations/Public Charities Division
One Ashburton Place
Boston, MA 02108

The Short Form PC

If the organization has not yet completed its first fiscal year, and it would like to solicit funds, the required registration items may be accompanied by a [Short Form PC](#). This form gives us an idea of the types of activities the organization will undertake to raise funds as it gets started. It covers the current fiscal year, beginning on the date the organization was created (date of incorporation) and ending on the date of the upcoming fiscal year end. If the

organization has already passed its first fiscal year end, however, it should **not** file the Short Form PC even if it did not have any financial activity, but must file a Form PC. If you have questions about whether the organization should submit a Short Form PC or a Form PC, please call the AGO at (617) 727-2200 ext. 2101.

Public charities not based in Massachusetts that would like to start doing business here must file the Short Form PC to get started. It is not necessary to send a copy of the organization's most recent 990 or financial statement with the Short Form PC.

The Short Form should be submitted with a filing fee of \$50 made payable to the Commonwealth of Massachusetts. Please note that the \$50 filing fee accompanying the Short Form PC is in addition to the \$100 registration fee. The \$100 registration fee is required for all registrations received by the Division on or after 1/1/2011.

The Form PC

If the organization's first fiscal year-end has already passed, it must report that year's financial data on a Form PC, and a Short Form PC may not be used *because it is* not designed to convey financial information. If the organization has been in existence for several years, back filings of up to four years are required. Please be sure to consult the [Instructions for the Form PC](#) before attempting to complete it.

The filing fee for the "Form PC" is a sliding scale based on the organization's gross support and revenue for that fiscal year. Please consult the [Instructions for the Form PC](#) for details. If you have questions about whether the organization should submit a Form PC or a Short Form PC, please call the AGO at (617) 727-2200, ext. 2101.

The AGO receives dozens of new registrations each week in addition to hundreds of Forms PC for groups already registered with the AGO. It may take six to eight weeks to process your initial registration.

Requesting a Filing Extension by Email

Organizations registered with the Non-Profit Organizations/Public Charities Division may now use email to request an extension of time to file their annual report (Form PC). Similar to IRS filing guidelines, an organization may request up to two 3-month extensions. We encourage those organizations that would like to request an extension to email: CharitiesExtensions@state.ma.us.

All extension requests **must** include the name of the organization, the 6-digit Attorney General number and the Federal Employer Identification Number (FEIN) **in the subject line of the email**. If you do not know your 6-digit AG number, please visit the [Public Charities Annual Filings](#) section of this website and search for your organization by name. The AG number will be listed in the search results.

Sample email subject:

RE: (organization name), AG# 000000, FEIN 00-0000000

The organization may attach a copy of the IRS Form 8868 (Application for Extension of Time to File an Exempt Organization Return) to the email. As an alternative, the body of the email should briefly outline the need for additional time to file the Form PC. **A separate email must be submitted for each organization.**

Please note that a request for an extension of time to file the Form PC will be denied for organizations that are out of compliance with the annual reporting requirements of the Division. You will receive notification *only* if the extension is denied. Extension requests will continue to be accepted via postal mail, but electronic submission is strongly encouraged.

Overview of Solicitation

Prior to soliciting contributions in Massachusetts, or having such contributions solicited on its behalf, a charitable organization must obtain a valid "Certificate of Solicitation" from the Non-Profit Organizations/Public Charities Division of the Attorney General's Office. This Certificate must be renewed on a yearly basis ([M.G.L. c. 68, s. 19](#)).

To receive/renew your "Certificate of Solicitation," you must complete Schedule A-1 and Schedule A-2 of the "Form PC" and submit it to the Attorney General's Office (AGO), along with the rest of "Form PC," other required attachments, and the appropriate filing fee. No fee in addition to the "Form PC" filing fee is required.

If a registered charity wishes to begin soliciting prior to the due date of its first "Form PC," it may submit a "Short Form PC" and a \$50 check to the Division as application for a "Certificate of Solicitation" (also see [First-time Filers](#)).

Pursuant to [M.G.L. c. 68, s. 22](#), a charity required to have a "Certificate of Solicitation" cannot begin soliciting funds or having funds solicited on its behalf until all contracts with professional fundraising counsel, commercial co-venturers, or professional solicitors have been filed with the Division.

Professional solicitors, commercial co-venturers, and professional fundraising counsel are also required to register annually with the Division, as required by [M.G.L. c. 68, s. 22 and 24](#). [Forms and Instructions](#) for professional fundraisers are available on our website.

[M.G.L. c. 68, s. 23](#), further establishes certain disclosures which professional solicitors, commercial co-venturers, and professional fundraising counsel must make in the course of their charitable solicitations.

[M.G.L. c. 68, s. 18](#), defines commercial co-venturer, professional fundraising counsel, professional solicitor, and solicitation.

The following two categories of charitable organizations are not required to have a "Certificate of Solicitation":

- An organization that is primarily religious in purpose; or
- An organization that does not raise or receive contributions from the public in excess of \$5,000 during a calendar year or does not receive contributions from more than ten persons during a calendar year, if all of their functions, including fundraising activities, are performed by persons who are not paid for their services and if no part of their assets or income inures to the benefit of, or is paid to, any officer or members ([M.G.L. c. 68, s. 20](#)).

However, such an organization must register and apply for a "Certificate of Solicitation" within 30 days after contributions received from the public during a given year have exceeded \$5,000.

If the organization has registered in a prior year, but is not up-to-date in its annual filings with the Division, then it must file the most recent four years of annual "Form PC" filings along with all required attachments and annual filing fees.

Remember, the solicitation of charitable funds cannot begin until a "Certificate for Solicitation" has been issued to the organization by the AGO.

Required Financial Statements for Public Charities

Requirements for the submission of audits or reviews are based on the gross support and revenue of the organization for the fiscal year covered by the filing (Line 5B, [Form PC](#)).

The provisions of [M.G.L. c. 12, s. 8F](#) require organizations that have gross support and revenue of more than \$200,000 in a fiscal year to submit financial statements audited or reviewed by an independent certified public accountant (CPA). Whether the financial statements must be audited or reviewed depends on whether the organization's gross support and revenue exceeded \$500,000 in that year.

If the organization has gross support and revenue that is more than \$500,000 in the fiscal year, the financial statements must be prepared in accordance with generally accepted accounting principles (GAAP) and **audited** in accordance with generally accepted auditing standards for not-for-profit or governmental organizations.

If the organization has gross support and revenue greater than \$200,000* and less than or equal to \$500,000 in the fiscal year, it may, in lieu of submitting audited financial statements, submit reviewed financial statements prepared in accordance with generally accepted accounting standards (GAAP) or other comprehensive basis of accounting (OCBOA).

If the financial statements are prepared on an OCBOA basis, consistent with the American Institute of Certified Public Accountants standards for review reports, the statements must disclose the basis of presentation and describe how that basis differs from GAAP.

** Effective for **fiscal years ending on or after 1/1/2008**. For **fiscal years ending on or before 12/31/07**, a Reviewed Financial Statement must be submitted at the \$100,000 threshold.*

The organizations currently exempted from the audit (and review) requirement by regulation are:

- Private foundations that file 990PF with the IRS;
- Trusts filing probate accounts with the Division; and (Certain trusts audited by state and federal agencies).

Dissolving a Charity in Massachusetts:

There are numerous steps to be taken upon dissolving a public charity in Massachusetts.

There are many reasons why a public charity may reach the end of its life. Economic pressures, dwindling membership, deteriorating facilities, and other factors may all play a part in causing a charity to wind up its activities and dissolve. The Attorney General's Office ("AGO") reviews all proposed dissolutions by public charities organized in the Commonwealth of Massachusetts to ensure that charitable assets are managed appropriately, even as the charity takes the necessary steps to close its doors.

The process by which charitable corporations with no assets dissolve in Massachusetts has changed dramatically. Prior to its amendment [G. L. chapter 180, §11A](#) required all charitable corporations whether or not there were assets remaining, to dissolve only by order of the Supreme Judicial Court ("SJC"). As now amended, [the law](#) permits corporations with no remaining net assets to dissolve through an administrative dissolution petition filed with the AGO. The law with respect to charitable corporations with remaining net assets that seek to

dissolve is as yet, unchanged, and those organizations must still obtain the approval of the SJC. Please note that the recent amendments also authorize the SJC to adopt rules permitting the AGO to administratively dissolve charitable organizations with remaining net assets below a threshold to be established by the Court, but no such action has yet been taken.

In response to the amendments in the law, the process for dissolution within the AGO has been substantially revamped. It is simpler and reflects the changes in the law. One new change is that all charities required to report to the AGO must submit a [Final Form PC \(Form PC-F\)](#). After completing the Form PC-F, you will know whether there are assets that will need to be transferred as part of the dissolution and what other documents are required.

Please refer to the Public Charities or Not-for-Profit section of the www.mass.gov/ago website for more detailed information.