

Incorporating Your Nonprofit in North Carolina



Elaine F. Marshall
Secretary of State

A Message from The Secretary of State of North Carolina

Nonprofit corporations play an increasingly greater role in the lives of all North Carolina residents. Many necessary public services that might have been undertaken by local, county or state governments in past years or never undertaken at all are now provided by nonprofit entities. Nonprofit corporations have become an important force in shaping public policy at all levels of government in North Carolina on issues such as the environment, business regulation and social services.



Nonprofit entities have a long and very distinguished history in North Carolina. The N.C. Department of the Secretary of State recognizes how important nonprofit corporations have been in communities throughout the state. As North Carolina's population continues to grow and urbanize, we expect to see the number of nonprofit corporations grow as well. North Carolinians prize good relations between neighbors. Nonprofit entities provide a way for the people of our state to keep that spirit of community alive and well in an era when more and more North Carolinians are living in the state's largest cities.

This guide is designed to help you through the process of establishing a nonprofit corporation and operating within the legal guidelines established by North Carolina's General Statutes. We have also tried to provide answers to some of the most commonly-asked questions we receive from people trying to establish or operate a nonprofit corporation. This guide is not intended, nor is it designed, to replace legal counsel of your own choice when it comes to establishing and operating a nonprofit corporation. If you have any questions or concerns about the process of establishing and running a nonprofit in accordance with state and federal laws, we encourage you to talk them over with your own attorney and accountant.

I'd like to welcome you to the flourishing world of nonprofits in North Carolina. Our state and its people are enriched by your hard work and devotion to helping your fellow citizens. The N.C. Department of the Secretary of State looks forward to working with your nonprofit corporation for many years to come.

Elaine F. Marshall

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NC Secretary of State

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Introduction

A ñnonprofit corporationö is a corporation intended to have no income or intended to have income none of which is distributable to its members, directors, or officers N.C.G.S. § 55A-1-40(17).

Nonprofit corporations are distinguished from business corporations not by their organizational structure, nor by the process of management of the organization, but by the purpose of such corporations. Unlike business corporations, nonprofit corporations are not organized to make profit or financial gain for their owners. They may be formed under North Carolina law for any lawful purpose. These purposes include charitable, civic, community welfare, religious and scientific. This list is not exclusive; however, many other types of corporations can be categorized as nonprofit if they satisfy the statutory requirements. A homeownersøassociation would be one such example. The creation, operation and dissolution of nonprofit corporations are governed by the provisions of Chapter 55A of the North Carolina General Statutes.

Nonprofit corporations are created by filing the appropriate documents with the NC Department of the Secretary of State. Domestic nonprofit corporations, which are those incorporated under the laws of the state of North Carolina, are created by filing Articles of Incorporation. Foreign nonprofit corporations, which are incorporated under laws other than the laws of North Carolina, must apply for a Certificate of Authority in order to ñtransact businessö in this state.

Not all nonprofit corporations are tax-exempt. A nonprofit corporation may qualify for tax-exempt status for all or some of its income, for either federal or state tax purposes, or for both. Application for federal tax-exempt status must be made to the Internal Revenue Service. Application for state tax exempt status must be made to the North Carolina Department of Revenue.

This publication is designed to provide guidance to those interested in setting up a nonprofit corporation and should not be used as a substitute for competent legal counsel. It is important to consult an attorney before organizing a nonprofit corporation, because some of the legal issues that may arise are exceedingly complex.

Corporate Names

Part of the process of incorporating is choosing and reserving a name for your nonprofit corporation. Our office will approve or reject proposed corporate names according to North Carolina law, which requires that the name chosen must be distinguishable upon the record of the Secretary of State from the name of other nonprofit corporations, business corporations, limited liability companies, limited partnerships and limited liability partnerships operating in North Carolina. Proper name selection is important in your process of incorporating because other parties may sue for unfair competition or trade name infringement if the name chosen is so similar to another corporation's name as to deceive or confuse the public.

The steps involved in choosing a corporate name are the following:

1. Selecting a Name;
2. Determining whether it is feasible to use the name;
3. Putting the name in use; and
4. Deciding on a trademark or service mark (optional).

If you are seeking to obtain protection for a particular corporate name or to resolve a dispute over such a name, you should seek the advice of an attorney rather than contact this office.

Selecting a Name

In choosing the corporation's name there are certain legal requirements of which you should be aware:

- 1 A corporate name shall not contain language stating or implying that the corporation is organized for any purpose other than a purpose that is lawful and that is permitted by its Articles of Incorporation.
- 2 The corporate name must be distinguishable upon the record of the Secretary of State, from the name of any domestic corporation or the name of any foreign corporation authorized to transact business or conduct affairs in this state, a corporate name reserved or registered, or a name used, reserved, or registered by a limited liability company, or a limited partnership or a limited liability partnership.

The choice of a name depends on many factors, but there is one important rule to follow. Do not choose a name because you have seen it elsewhere and believe it will work well for your own corporation, unless you obtain written permission of the party already using the name. Also, examine N.C. Gen. Stat. § 55D-20 and 55D-21 for more details.

Feasibility of a Name

If you have chosen a corporate name, you may do the following in order to determine if the name chosen is available for use:

1. You can check the telephone books in your area for similar names.
2. You can check the Register of Deeds office in your county and surrounding counties for similar names listed as assumed names or partnership names.
3. You can check online or call the N.C. Department of the Secretary of State to determine if a proposed name would be available as a corporate name or if the name contains any words which are restricted.
4. You can check business directories, city directories, chamber of commerce lists, etc. in your locality for similar names.
5. For a fee, you can hire an attorney or a trademark search firm to conduct a trademark search through the U.S. Patent and Trademark Office for similar Federal trademark or service mark registrations.
6. You can check online or call the NC Department of the Secretary of State to determine if the words which make up your proposed name have been registered as a trademark or service mark under North Carolina law.
7. You can conduct searches similar to those outlined above in other states which you plan to operate by contacting the officials in those states which are in charge of similar types of registration. The appropriate offices and the details of registration may vary according to the laws of each state.

With regard to proposed corporate names, the N.C. Department of the Secretary of State makes the decision whether a name will be rejected or accepted only on the basis of whether it is distinguishable upon the record of the Secretary of State. It is your responsibility to decide how many of the searches outlined above are appropriate or necessary for your proposed corporate name.

Statutory Prohibitions

Please keep in mind when naming your corporation that there are certain words and phrases that you are prohibited by law from using in your corporate name unless you have received permission from the proper legal authority. Those words and phrases include:

Bank, Banker and Banking
Trust
Mutual
Cooperative, Co-op

The Department of the Secretary of State will also reject the following words in corporate names unless the applicant can provide documentation that proves his or her corporation is legally qualified to provide the service indicated:

Insurance

Engineer, Engineering

Architect, Architecture, Architectural

Surveyor, Survey, Surveying

Certified Public Accountant and abbreviations of such

Wholesale (unless a letter is submitted with the Articles of Incorporation stating that the corporation will comply with N.C. Gen. Stat. § 75-29 by engaging principally in wholesale rather than retail business.)

There are several other words which the Department of the Secretary of State could reject in your corporate name without adequate documentation that your business is legally qualified to provide the service implied in the corporate name. If you have any questions about whether or not you should provide documentation for your chosen name, call the Corporations Division at (919) 807-2225.

18 NCAC 04 .0502 Words Prohibited in Addition to Statutory Prohibitions

(a) The words "engineer" or "engineering" or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. Chapter 55B or, if it is a foreign corporation, unless it complies with G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than the practice of engineering as defined in G.S. 89C-3(b).

(b) The words "surveyor", "survey", "surveying", or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. 55B or, if it is a foreign corporation, unless it complies with G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than the practice of land surveying by registered land surveyors as defined in G.S. 89C-3(7).

(c) The words "architecture", "architectural", "architect", or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. 55B or, if it is a foreign corporation, unless it complies with G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than the practice of architecture as defined in G.S. 83A-1(7) or landscape architecture as defined in G.S. 89A-1(c).

(d) The word "co-op" shall not be included in a corporate name in which the use of the word "cooperative" is prohibited by G.S. 54-139.

(e) When a document is submitted conferring a corporate name containing the word "wholesale," unless the purpose clause of the document indicates clearly that the corporation shall not engage in retail sales, the Corporations Attorney shall not file the articles unless he finds, pursuant to written assurance by the principals or their attorney, that the corporation shall comply with G.S. 75-29.

(f) The corporate name for a business corporation shall not contain the word "realtor."

(g) The corporate name for a business corporation shall not contain the word "insurance" followed directly by a corporate ending or the word "insurance" followed directly by a geographical designation and a corporate ending.

18 NCAC 04 .0503 *Deceptively Similar and Distinguishable Names*

(a) Designations of entities, such as "company", "co.", "limited", "ltd.", "corporation", "corp.", "incorporated", "inc.", "professional association", "p.a.", "limited liability company", "L.L.C.", "professional limited liability company", and "limited partnership" shall be disregarded in determining if a proposed entity name is distinguishable upon the records of the Secretary of State, provided that such words appear at the end of the proposed entity name. Such words shall not be disregarded in such determination when they appear in the body, rather than at the ending, of the proposed entity name.

(b) Articles, conjunctions, prepositions, punctuation, spaces, and the substitution of an Arabic numeral for a word shall be disregarded in determining whether a proposed entity name is distinguishable upon the records of the Secretary of State or otherwise permissible for use in a proposed entity name.

Putting the Name in Use

Once you have gone through the necessary steps in determining the availability of your corporate name, you are ready to put it in use. By properly filing its Articles of Incorporation or Certificate of Authority, a nonprofit domestic or foreign corporation registers its name with our office. This filing means only that the chosen name is acceptable under the corporation laws. It does not guarantee that the use of that name will not be challenged by someone who has been using a similar name and who charges that the use of your chosen name constitutes unfair competition.

Articles of Incorporation

Articles of Incorporation are the legal documents which must be filed in order to form a corporation. The information required to be included is detailed below. It is suggested that any other information be contained in your bylaws. Bylaws are not filed with the Secretary of State. See N.C. G.S. § 55A-2-02 for more information.

Articles of Incorporation must include the following:

Corporate Name

The exact corporate name, including abbreviations, punctuation, etc. must be used consistently in all documents filed. For example, the corporate name stated in the caption of the documents filed must be identical to the name stated in the Articles of Incorporation. The name may also include a corporate ending (i.e., inc., incorporation, corp. corporation, etc.)

Designation as a Charitable or Religious Corporation

A corporation which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code is called a "charitable or religious corporation" in the North Carolina Nonprofit Corporation Act. This term also includes a corporation which is organized exclusively for one or more purposes specified in Section 501(c)(3) and which must distribute its assets upon its dissolution to another "charitable or religious corporation" or to the United States or another state.

If you intend to apply for IRS federal tax exemption as a charitable organization, your articles of incorporation must contain a required purpose clause and a dissolution of assets provision. Valuable information on 501(c)(3) qualification is on the IRS website (www.irs.gov.) It includes sample statements. Click the "Charities and Nonprofits" link and then the Life Cycle of a Public Charity link.

Registered Office and Agent

A nonprofit corporation is required to have a registered office and a registered agent (N.C. Gen. Stat. § 55D-30). The duty of the registered agent is to forward to the corporation at its last known address any notice, process, or demand that is served on the corporation. A registered agent must be:

1. An individual who resides in North Carolina and whose business address is identical to the registered office;
2. A domestic business corporation, nonprofit corporation, limited liability company whose business address is identical to the registered office; **or**
3. A foreign business corporation, nonprofit corporation, or limited liability company authorized to transact business in this state and whose business address is identical to the registered office.

If the Registered Agent is a business entity required to be filed with the Secretary of State's Office, the entity must be active upon the records of the Secretary of State's Office.

The Articles of Incorporation must set forth the street address (and the mailing address, if different from the street address) of the registered office, as well as the county in which the registered office is located, and the name of the initial registered agent. The registered office may, but need not be, the same as any of the corporation's places of business.

Incorporator

The person who signs and files the Articles of Incorporation is known as the incorporator. There must be at least one incorporator. The name and address of each incorporator must be indicated.

Members

Under North Carolina law, a non-profit corporation may or may not have members. If the corporation is to have members, this must be specified in the Articles of Incorporation. If the corporation is to have no members, there must be included a statement to that effect.

Provisions for Distribution of Assets

The NC Nonprofit Corporation Act requires that the Articles of Incorporation include provisions regarding the distribution of the corporation's assets upon its dissolution and termination of existence. Persons drafting the articles are allowed a great deal of flexibility in designing these provisions, but the provisions must not be inconsistent with law. You should consult N.C. Gen. Stat. § 55A-14-03 (Plan of Dissolution) for more specific information on distribution of a nonprofit corporation's assets upon its dissolution.

Principal Office

A nonprofit corporation is required to set forth its principal office address in its Articles of Incorporation (N.C.G.S. § 55A-2-02). The Articles of Incorporation must set forth the street address (and the mailing address, if different from the street address) of the principal office and the county in which the principal office is located.

Optional Provisions

The Articles of Incorporation are allowed, but not required, to set forth any provision that can be included in the bylaws of a nonprofit corporation. A complete set of the bylaws, however, will not be filed with the N.C. Department of the Secretary of State. The articles may also contain:

1. A statement of the purpose or purposes for which the corporation is organized;
2. The names and addresses of the initial directors;
3. Provisions relating to management and regulation of the corporation's affairs;
4. Provisions which define, limit, or regulate the powers of the corporation, its directors, and its members (or any class of members);
5. Provisions defining the qualifications, rights, and responsibilities of its members; and
6. Provisions limiting or eliminating the personal liability of any director for monetary damages for breach of any duty as a director.

Powers

N.C. Gen. Stat. § 55A-3-02 sets forth certain powers that all non-profit corporations have, unless the Articles of Incorporation state otherwise. Because these powers are statutory, they do not need to be listed in the Articles of Incorporation. Among these statutory powers are the following: to sue, and be sued; to complain and defend in the corporate name; to have and affix a corporate seal; to purchase, lease, acquire, hold, use, own, or otherwise deal in and with any real and personal property; to make contracts and incur liabilities; to elect or appoint officers; to make and alter bylaws; to lend money for corporate purposes; and to have and exercise all

powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

Period of Existence

Unless the Articles of Incorporation or the Non-profit Corporation Act provide otherwise, every non-profit corporation is presumed to have perpetual duration. Consequently, it is not necessary to set forth a period of duration in the articles.

Notarization Not Required

Notarization is not required for corporate documents to be filed with the N.C. Department of the Secretary of State. It is permissible for such documents to be notarized or verified. However, the notarization or verification must not be defective in any way or the document will be rejected.

Filing the Document

The Articles of Incorporation signed by the incorporator(s) must be submitted to the N.C. Department of the Secretary of State by mail or in person, along with a check, money order, or cash for the \$60 filing fee required by law.

The Office of the Secretary of State will examine the Articles of Incorporation, and if the articles satisfy the requirements of the NC Nonprofit Corporation Act, they will be filed by date and time-stamping. The signed original will be retained by the N.C. Department of the Secretary of State. A copy will be certified and returned to the person who submitted it for filing either electronically via e-mail or through regular mail. E-mailed certified documents provide notification as soon as the document is filed and an image of the document to be electronically retained in the corporate files of the business.

Articles of Incorporation are not required to be filed with the office of the Register of Deeds.

Certificate of Authority

A Certificate of Authority is a legal authorization which a foreign corporation must obtain in order to be able to conduct its affairs in this state (N.C.G.S. § 55A-15-01). In order to be qualified to conduct its affairs in North Carolina, the corporation must complete and submit one executed original application for a Certificate of Authority to the NC Department of the Secretary of State. All of the sections must be completed. The application must include the following (N.C. Gen. Stat. 55A-15-03):

Corporate Name

The corporate name, including abbreviations, punctuation, etc., should be exactly as it appears on file in the state of incorporation. If the name is not available for use in North Carolina because it is not distinguishable from another corporate name on the record of the Secretary of State's Office, the corporation is required to use a fictitious name which must be stated on the application.

State of Incorporation and Period of Duration

You must specify the state or country in which your corporation was originally incorporated along with a date of incorporation. Also, the period of duration must be included. This information must be consistent with the information found in the Articles of Incorporation.

Principal Office

You must state the street address, and mailing address, if different, of the principal office of the corporation in the state or country in which it is incorporated.

Registered Office/Agent

A foreign corporation is required to have a registered office and agent in North Carolina. The duty of the registered agent is to forward to the corporation at its last known address any notice, process, or demand that is served on the registered agent. A registered agent must be:

1. An individual who resides in North Carolina and whose business address is identical to the registered office;
2. A domestic business corporation, nonprofit corporation, limited liability company whose business address is identical to the registered office; **or**
3. A foreign business corporation, nonprofit corporation, or limited liability company authorized to transact business in this state and how business address is identical to the registered office.

You must specify the street address and the mailing address, if different from the street address, of the corporation's registered office in North Carolina, as well as the county in which such office is located. You must also identify the corporation's registered agent in North Carolina. The registered office may, but need not, be the same as any of the corporation's places of business.

Officers

The names and business addresses of the current officers of the corporation must be included.

Members

The application must state whether the corporation has members.

Certificate of Existence

The foreign corporation must include with the application a Certificate of Existence (or document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the country or state under whose law it is incorporated. This Certificate of Existence must be an original and not be more than 6 months old.

Filing the Document

One signed original copy of the application for the Certificate of Authority, along with a Certificate of Existence, duly authenticated by the Secretary of State (or the appropriate official) of the state of incorporation, are submitted to the N.C. Department of the Secretary of State by

mail or in person, along with a check, money order, or cash for the full filing fee required by law. The filing fee is \$125.

The N.C. Department of the Secretary of State will examine the application for the Certificate of Authority, and if the application satisfies the requirements of the NC Nonprofit Corporation Act, it will be filed by date and time-stamping. The signed original and the Certificate of Existence will be retained by the N.C. Department of the Secretary of State. A Certificate of Authority authorizing the corporation to conduct its affairs in this state and a copy of the application will be returned to the person who submitted it for filing either electronically via e-mail or through regular mail. E-mailed certified documents provide notification as soon as the document is filed and an image of the document to be electronically retained in the corporate files of the business.

Responsibilities of the Nonprofit Corporation

It is the responsibility of the nonprofit corporation to:

1. Have a current Registered Agent of record with the NC Department of the Secretary of State;
2. Notify the NC Secretary of State within 60 days of any change in the Registered Agent name or address; that its registered agent has resigned or that the registered agent office has been discontinued; and
3. Keep on record with the NC Secretary of State a designation of the nonprofit corporation's principal address and notify the NC Secretary of State within 60 days of any change in the principal office address.

Not providing the NC Secretary of State with the above listed information in a timely manner constitutes grounds for administrative dissolution. Grounds for administrative dissolution and the procedures for administrative dissolution can be found at N.C.G.S. §§55A-14-20; 55A-14-21; and 55A-14-22.

Board of Directors, Members, Officers and By-laws

All nonprofit corporations must have an organizational structure and rules or bylaws by which they are managed. The organizational structure is comprised of directors and officers, who handle the internal management of the corporation, and perhaps also of members, which may have the right to elect the directors of the corporation. The internal management of the corporation is regulated by the corporate bylaws and the Articles of Incorporation.

Members

A nonprofit corporation may or may not have members. The fact that a corporation has or does not have members must be stated in the Articles of Incorporation.

Members are those persons who have membership rights in the organization in accordance with the provisions of its Articles of Incorporation or bylaws. Members may or may not have a right to vote on corporate matters. They may hold meetings and may elect the board of directors and officers, if permitted by the Articles of Incorporation or by the bylaws.

Membership in a nonprofit corporation entails certain rights and responsibilities. These should be

stated in either the Articles of Incorporation or the bylaws. Other rights may be granted by statute.

Directors

Directors are those persons who are responsible for the management of the corporation. A nonprofit corporation is required to have at least one director, or it may have more. The Articles of Incorporation or the bylaws may contain provisions for electing the directors. If a corporation has members, the directors may be elected by the members, if the Articles of Incorporation or bylaws permit. If a corporation does not have members, the directors are elected or appointed in the manner and for the terms as provided in the Articles of Incorporation or bylaws.

Officers

The day-to-day management of the corporation is provided by the officers of the corporation. The officers are elected or appointed as prescribed in the bylaws and their performance is overseen by the directors. If there is no such provision for their election or appointment, the officers are usually elected or appointed annually by the board of directors. The officers usually consist of a president, one or more vice-presidents, a secretary, a treasurer, and any other officer deemed necessary.

Bylaws

In both membership and non-member corporations, a set of rules known as the bylaws governs the internal administration and regulation of the affairs of the corporation. The bylaws may contain any provisions not inconsistent with the law or the Articles of Incorporation. The initial bylaws must be adopted by the incorporators or board of directors. A complete set of the bylaws, however, will not be filed with the N.C. Department of the Secretary of State. (N.C. Gen. Stat. § 55A-2-06).

Tax Exempt Status

It is crucial to keep in mind that not all nonprofit corporations are **automatically tax-exempt**. Before commencing its operations, the corporation must decide whether it can qualify for tax-exempt status. This may be necessary in order for the corporation to avoid paying taxes on its income and in order for donors to claim tax deductions for contributions. Whether a corporation has obtained federal tax-exempt status is a relevant factor in the state's decision to also grant exempt status. Thus, the federal application should be made first. Often, this will have a substantial bearing on any subsequent grant of exemption by the state.

Federal Tax Exemption

Obtaining federal income tax exemption for a nonprofit corporation is a lengthy and complex process. To go into any great detail concerning it would be far beyond the scope of this publication. Therefore, only a brief and very general summary is included. To obtain further information, one should consult a competent tax attorney as well as the Internal Revenue Service and its publications listed in this section.

Federal income tax exemption for organizations is covered in Section 501 of the Internal

Revenue Code of 1986. To qualify for exemption under the code, the organization or corporation must be organized for one or more of the purposes designated in the code. The most common tax-exempt organizations are listed in Section 501(c)(3). These organizations may be established for the following purposes: religious, educational, charitable, scientific, literary, testing for public safety, fostering certain national or international amateur sports competitions, or prevention of cruelty to children or animals. For a nonprofit corporation to qualify for 501(c)(3) exemption status, it must include and abide by the requisite statement of purpose in its Articles of Incorporation. Also, the corporation must submit to the IRS Form 1023, entitled "Application for Recognition of Exemption." This is an approximately thirty page document and requires very detailed information regarding the corporation's activities and operations.

The following is a list of publications available from the IRS regarding federal income tax exemption that may be obtained by either calling or writing the IRS (800-829-1040). Phone calls and correspondence should be directed to the Exempt Organizations Division:

Publication 557

Tax-Exempt Status for Your Organization.

Publication 578

Tax Information for Private Foundations and Foundation Managers.

Publication 598

Tax on Unrelated Business Income of Exempt Organizations.

Publication 892

Exempt Organization Appeal Procedures for Un-agreed Issues.

Exempt Organizations Handbook

May be purchased by writing to:

Internal Revenue Service (IRS)

Attn: PM:S:DS:P:RR

1111 Constitution Avenue, N.W.

Washington, DC 20224

Information may also be obtained from the Internal Revenue Service internet address at:

<http://www.IRS.ustreas.gov/>

State Tax Exemption

When a corporation is incorporated or domesticated in this state, the N.C. Department of the Secretary of State will automatically notify the North Carolina Department of Revenue. Then the Department of Revenue will send a letter of notification to the corporation. Along with the letter there will be a six-part questionnaire (Form CD-345) to be used for determination of tax status. The corporation should submit, along with the questionnaire, a copy of its Articles of Incorporation (including, if applicable, any tax exempt organization provisions) and bylaws. The

Department of Revenue will then evaluate the documents and notify the corporation by mail as to whether it will be exempt from franchise and income taxes.

Fundraising Activities

Activities undertaken by a non-profit corporation in order to raise funds to finance its operations may be subject to regulation under one or more state statutes. Prior to the commencement of a fund-raising plan, you and your attorney should examine Chapter 131f of the North Carolina General Statutes to determine whether they apply to your activities.

Solicitation of Contributions

The primary purpose of the Charitable Solicitations Act is to protect the general public and public charity from unlawful solicitation and to provide for the establishment of basic standards for the solicitation and use of charitable funds in North Carolina. Under North Carolina law, any corporation or entity that solicits charitable contributions must apply for and obtain a license from the N.C. Department of the Secretary of State Solicitation Licensing Section on an annual basis. The licensure requirement also applies to professional fundraising counsel and professional solicitors. The specific exemptions from this licensure requirement listed in N.C.G.. § 131F are:

1. Any person who solicits for a religious institution;
2. Solicitation of charitable contributions by the federal, state or local government or any agency thereof;
3. Any person who receives less than \$25,000 in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fundraiser or professional solicitor;
4. Any educational institution, the curriculum of which, in whole or in part, is registered, approved, or accredited by the Southern Association of Colleges and Schools or an equivalent accrediting body;
5. Any educational institution in compliance with Article 39 of Chapter 115C of the North Carolina General Statutes (Nonpublic Schools);
6. Any foundation or department having an established identity with any of the educational institutions in subparagraphs 4 and 5 above;
7. Any hospital licensed pursuant to Article 5 Chapter 131E or Article 2 of Chapter 122C of the North Carolina General Statutes, and any foundation or department having an established identity with such hospital, provided that the governing board of the hospital authorizes the solicitation and receives an accounting of funds collected and expended;

8. Any noncommercial radio or television station;
9. A qualified community trust as provided in 1.170A9(e)(10) through (e)(14) of Title 26 of the Code of Federal Regulations;
10. A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor;
11. An attorney, investment counselor, or banker who advises a person to make a charitable contribution;
12. A volunteer fire department, rescue squad, or emergency medical service;
13. A Young Men's Christian Association or a Young Women's Christian Association; and
14. A nonprofit continuing care facility licensed under Article 64 of Chapter 58 of the North Carolina General Statutes.

The fees required to make an application are set forth in Article 2 of Chapter 131F of the North Carolina General Statutes and have a statutory limit of \$200 or \$400 for a parent organization filing on behalf of its chapters. There are other application and bond requirements and procedures as well as other provisions, requirements, prohibitions and powers listed in the act. These are beyond the scope of this publication and any specific inquiries concerning the act should be directed to the NC Department of the Secretary of State, Solicitation Licensing Section, PO Box 29622, Raleigh NC 27626-0622.

Bingo Licensing

If a nonprofit exempt organization seeks to conduct bingo games, it must obtain a license by making an application to the North Carolina Department of Crime Control & Public Safety, Bingo Licensing Section. The license is only valid for one year and can be renewed from year to year. A copy of the application and license shall be forwarded to the local law-enforcement agency in the county or municipality in which the licensee intends to operate before any games are conducted.

The number of sessions of bingo sponsored by a non-profit corporation is limited to two 5-hour sessions per week, and no two sessions may be held within a 48-hour period. The maximum prize that may be awarded at a single game is \$500, and the maximum aggregate amount of prizes that may be awarded at any one session of bingo is generally restricted to \$1,500. Any funds received in connection with a bingo game must be placed in a separate account. Disbursements may be made from this account only to pay the expenses of the bingo game and to further the charitable purposes of the corporation. See N.C.G.S. § 14-309.5 - 309-14 for more information.

Raffles

It is lawful for any nonprofit corporation which is recognized by the Department of Revenue as tax-exempt to conduct raffles, provided that the statutory limits set forth in N.C. Gen. Stat. § 14-309.15 are observed. This statute limits the number of raffles that may be held by such a corporation to two raffles per year, and limits maximum prize for any one raffle to \$5,000 in cash or \$25,000 in personal property. Not less than ninety percent (90%) of the net proceeds of the raffle must be used to further the charitable purposes of the corporation. No formal registration is required. See N.C.G.S. § 14-309.15 for more information.

Audit Requirements

A nonprofit institution which receives funds from either the State of North Carolina or the federal government may be required to submit audited financial statements to state and federal agencies.

State Audit Requirements

If your nonprofit organization has been issued state grant funds, you may have reporting requirements under N.C.G.S. § 143C-6-14. Contact the State Agency disbursing said funds for reporting requirements.

Federal Audit Requirements

Generally, any nonprofit institution which receives \$100,000 or more a year is required to obtain an audit in accordance with the U.S. Office of Management and Budget Circular No. A-133. This circular establishes the audit requirements for nonprofit institutions receiving federal awards. The purpose of this circular is to insure that federal funds are expended in accordance with federal rules and regulations. This requirement is applicable whether the federal funds are received directly from the federal government or are passed through another government (such as the State of North Carolina or a county or city) or through another nonprofit institution. Again, you need to discuss the reporting requirements with your independent auditor before the audit begins.

You may obtain a copy of the OMB Circular No. A-133 by writing the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA. 15250-7954.

Frequently Asked Questions (FAQs)

Q What is a corporation?

A A corporation is a legal entity having a legal status or existence separate from both the individuals who form it and its owners. A corporation can ordinarily acquire and deal with property and engage in certain activities in the same manner as an individual.

Q What are the advantages and disadvantages of a corporation?

A Advantages:

Limited liability: Generally, claims and liabilities arising out of the activities of a corporation are not ordinarily the legal responsibility of its members. In the event that a corporation gets into financial difficulty its creditors can, through court action, reach assets belonging to the corporation for payment of the debt, but not assets belonging separately to the members of the corporation.

There are exceptions to this general rule. In extending credit, lenders frequently require members of a corporation to co-sign or guarantee the corporation's obligation, in which case they become individually liable. Often a condition created by the negligence of an agent or employee of a corporation and arising out of the activities of the corporation gives rise to an accident and to legal liability for the resulting damages. The liability belongs to the corporation rather than to its members. However, in case of liability arising from an accident, a person whose own negligence caused the liability is not relieved of that liability merely because he happens to be a member of the corporation and was engaged in activity on behalf of the corporation.

Members of the corporation may also be its directors and officers. They have a duty to act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances. They must operate in a manner they reasonably believe to be in the best interests of the corporation when dealing with the funds and management of the corporation. These individuals can be held personally liable for damages resulting from their neglect or disregard of this obligation.

Corporate continuity: When one of the members of a corporation dies, the existence of the corporation is not automatically terminated. Instead, its existence continues, and its activities may be carried on by the remaining members and directors without interruption.

Disadvantages:

Organizational expenses: A fee must be paid for filing the Articles of Incorporation. Attorneys charge varying fees for preparing and filing incorporation documents. A seal, minutes book, and other records should also be acquired.

Complexity: The corporation keeps its books and records separate from the records of individual members, and separate corporation tax returns must be filed. Care must be exercised not to intermingle the funds and confuse the affairs of the corporation with those of its members. Certain formalities must be observed in organizing the corporation and in its operation. These

formalities are governed by detailed statutes and by the bylaws adopted for the corporation. A corporation functions through its officers, who in turn are subject to the ultimate control of the members and/or directors.

Licensing laws and other regulations may vary greatly in respect to requirements imposed on corporations and individuals. It is important to examine all regulatory requirements in the preliminary stages of planning so that unforeseen disadvantages do not surface after the corporation has been formed.

Q Should we incorporate our organization?

A Many organizations are not necessarily better off incorporating their organization, association or trust. Because of the nature of some organizations, there may be little risk of an accident or of financial difficulty and consequently personal liability. Other factors can be important for particular types of organizations. Before a decision is made you should consider the risk of liability and make a detailed projection of tax consequences. If you do not know how to do either, you should hire a competent attorney or accountant to do this for you.

Q Do I need an attorney?

A No, but you should consult an attorney if you have any legal questions concerning your incorporation, such as taxation, liability of the owners and other issues not directly related to filing the Articles of Incorporation. Please keep in mind that, while we will do everything we can to make the incorporation process as easy as we can, the Corporations Division can only act in an administrative capacity. We cannot offer you legal advice or opinion on your particular filing. We recommend that you consult with your own attorney and accountant during the incorporation process.

Our office recommends that you hire an attorney for the following reasons:

1. There are many cases where a corporation is not as advantageous as another form of organization;
2. There is an almost infinite number of ways to structure the membership and management of a corporation;
3. When a corporation is determined by a court to have been operated in disregard of the formalities imposed by law, it may be ruled that even though Articles of Incorporation have been properly filed with the Secretary of State, the corporation is a sham and the principle of limited liability will not be available to its members; and
4. The risks of not hiring an attorney may subsequently result in the loss of all of your personal assets.

A competent attorney should be able to ensure that all of the essential details have been addressed.

Q How long does it take to incorporate?

A The existence of the corporation dates from the time at which the Articles of Incorporation are filed by the N.C. Department of the Secretary of State. The staff of the Secretary of State must examine the document and determine if it satisfies the requirements of the North Carolina Nonprofit Corporation Act. If so, it is promptly date and time-stamped and a copy is certified and returned to the customer either via e-mail or through regular mail.

Q How many people are required to organize and operate a nonprofit corporation?

A You may have one or more incorporators. The incorporator is the individual who signs the Articles of Incorporation. You must have at least one director who may be the same as the incorporator.

The corporation also needs officers, usually a president, one or more vice-presidents, a secretary and a treasurer, although these specific titles are no longer required. One person may hold more than one office. One person may not, however, act in more than one capacity in a transaction which requires the action of more than one officer. Since various legal instruments, such as deeds, must be signed by both the president and the secretary, it is impractical for the same person to be named both president and secretary.

Q: Who is authorized to execute documents to be filed at the NC Department of the Secretary of State?

A: A document required by or permitted to be filed by the Corporations Division of the Secretary of State must be filed under Chapter 55D of the General Statutes.

A document submitted on behalf of a domestic or foreign nonprofit corporation must be executed:

1. By the chair of its board of directors, by its president or another of its officers;
2. If directors have not been selected or the corporation has not been formed, by an incorporator; or
3. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary. (N.C.G.S. §55A-1-20)

Q Do any documents of a nonprofit corporation other than the Articles of Incorporation need to be filed with the N.C. Department of the Secretary of State?

A Yes. Whenever the corporation's members or directors decide to amend its Articles of Incorporation, the corporation must file Articles of Amendment with the N.C. Department of the Secretary of State. Or, if the corporation's registered office, registered agent, or principal office is changed, the corporation must file a Statement of Change of Registered Office, Registered Agent or Principal Office with the Secretary of State's office.

Whenever a corporation's members or directors decide to dissolve the corporation, the Articles of Dissolution must be filed with the Secretary of State's office. A dissolved corporation continues its existence, but it is prohibited by law from carrying on any activities except those appropriate to winding up its affairs and liquidating its assets. Procedures for dissolution of a nonprofit corporation are set forth in Article 14 of the North Carolina NonProfit Corporation

Act.

Other corporate actions that require the filing of a document with the N.C. Department of the Secretary of State include: the reservation or transfer of a corporate name; the restatement of the corporation's Articles of Incorporation; the merger of two or more corporations; the registration of a corporate name by a foreign corporation not yet conducting affairs in North Carolina; the application by a foreign corporation for a Certificate of Authority to conduct affairs in North Carolina; and the application by a foreign corporation for permission to withdraw its presence from North Carolina.

Q Now that my nonprofit corporation is on file with the Secretary of State, am I ready to start business?

A There are several other steps you will need to take before you actually start operating as a corporation. The following list may help:

Hold an organizational meeting

If they have not already been specifically named in your Articles of Incorporation, you should elect directors for your corporation. You should then elect officers for your corporation and set their compensation. Next, you should adopt a set of corporate by-laws. Then, adopt banking resolutions for your corporation and fix dates for the start and end of each corporate fiscal year.

Approve any other agreements or contracts deemed desirable for your corporation

Obtain your corporation's tax identification numbers from the North Carolina Department of Revenue and the IRS

Check with Business Link North Carolina at the Department of Commerce to see if your corporation needs a license to operate.

Business Link North Carolina is a division of the Department of Commerce. Its mission is to help new businesses like yours identify and complete any governmental permitting processes prior to starting up corporate operations.

Call toll free 1-800-228-8443 for Business Link North Carolina assistance. The web address is: <http://www.blnc.gov>.

Purchase a company seal

You can order one from most stationery and office supply stores in your area.

Contact county and local agencies to see what regulations and restrictions may apply to your business.

Your attorney will usually be able to guide you through this process. You are not, however, required by law to hire one.

Set up an accurate bookkeeping system

Most corporations hire an accountant to oversee this part of the incorporation process and check the company's books on a regular basis. An accountant can also help prepare your company's tax filings.

Q: If a mistake has been made on a document that has already been filed, is there a way to correct it?

A: Yes. You may file Articles of Correction indicating:

- the name of the entity;
- the type of business entity;
- the day the document was filed;
- the type of document or an attachment of a copy of the document filed;
- statements as to what the errors were on the document; and
- how to correct those errors or an attachment of a corrected document.

The filing fee for Articles of Correction is \$10.

Q Are there any annual filing requirements for nonprofit corporations with other federal or state agencies?

A Yes. The Internal Revenue Service and the N.C. Department of Revenue may require annual filings to insure the corporation's tax-exempt status (assuming of course, the corporation is tax-exempt). Moreover, state licensing agencies may require annual filings and/or renewals. Be sure to check the appropriate agency's filing or reporting requirements. There may also be state or federal audit requirements when governmental assistance is received. This is discussed in this publication under Audit Requirements.

Q Can a foreign nonprofit corporation operate in North Carolina?

A Yes. In order to do so, the foreign nonprofit corporation must file an Application for a Certificate of Authority with the Secretary of State's office. The corporation must also include a Certificate of Existence (or document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or county in which the applicant corporation was incorporated. (N.C.G.S. § 55A-15-03).

Q Can the N.C. Department of the Secretary of State answer questions concerning the legitimacy of a particular nonprofit corporation?

A No. The Secretary of State's office only has on file the Articles of Incorporation, any Articles of Amendment and Dissolution filed by the corporation. Any information regarding the legality of the internal affairs of a nonprofit corporation is not required to be filed with this office and is therefore not available.

Q What is a Federal Employer Identification Number, and are nonprofit corporations required to have one?

A A Federal Employer Identification Number is a number which your corporation must obtain from the IRS for the purpose of identifying itself in correspondence involving tax matters. Every nonprofit corporation must have one, even if it has no employees. To obtain the number, one must submit Form SS-4 to the IRS. Instructions on how to obtain the number can be found in IRS Publication 334, entitled, Tax Guide For A Small Business. The N.C. Department of Revenue will use the federal number to identify your corporation.

Q Where can I get a copy of North Carolina Corporation Laws, Partnership Laws and Securities Act?

A For paper copies, contact Lexis Law Publishing Company, P. O. Box 7587, Charlottesville, VA 22906. You may also phone Lexis Law Publishing at (804) 295-6171 or toll-free at (800) 562-1197. Most public libraries in North Carolina have copies of the N.C. General Statutes available for public research. You may also access the N.C. General Statutes through the Secretary of State's home page www.sosnc.com and clicking on "NC General Statutes" at the bottom of the page.

Q I want to stop doing business, is there anything I need to file with the Secretary of State's Office?

A Yes, you will need to file Articles of Dissolution with the Secretary of State's Office. All forms are available from the website under "Print Corporation Forms" by entity type. There are a few documents used across entity types which are located under the Business Entity link.

Payment Policies

1. 18 NCAE 04 .0201 Tender of Payment

Filing of any document shall be accomplished only upon tender of applicable filing fee to the Division.

2. 18 NCAE 04 .0202 Form of Payment

Payment shall be by cash, check or money order. Check or money order shall be payable to Secretary of State, to the State of North Carolina, or to the State Treasurer.

3. 18 NCAE 04 .0204 Cancellation for Nonpayment

After the filing of any document, if the Division determines that the payment of fees and taxes tendered is for any reason insufficient; and, after notice and reasonable opportunity is given to the proper party to submit payment, it is determined that proper payment has not been made, the Secretary of State shall, by appropriate certificate, cancel such filing with a notation that the filing was an error.

4. Non-Sufficient Fund policy

Invoices are due and payable no later than 30 days from the invoice date. Failure to pay the entire invoice within the time described will result in an interest charge of **5% per year** until the invoice is paid, as mandated by G.S. 147-86.23. An additional 10% penalty for late payment shall also be due on invoices not paid within 30 days."

There will be a \$25.00 fee for all returned checks and the document filed may be subject to cancellation.

Administrative Rules can be viewed online at <http://ncrules.state.nc.us/ncac.asp?folderName=\Title%2018%20-%20Secretary%20of%20State>

Addresses

Annual Report Section (only)

PO Box 29525

Raleigh, NC 27626-0525

All other documents to be filed:

Corporations Division

PO Box 29622

Raleigh, NC 27626-0622

Registering Trademarks and Service Marks

A **trademark** is any word, name, symbol, graphic image or combination of words and graphic images that your company has formally adopted and uses to identify its products and distinguish them from the products of its competitors. A **service mark** identifies your company's services and distinguishes them from the services offered by your competitors. Registering a trademark or service mark serves as public notice that you are claiming ownership of that distinguishing mark. It may protect your corporation from having a competitor adopt a conflicting mark. Registering trademarks and service marks is voluntary.

While the Department of the Secretary of State does not require you to register any of the trademarks or service marks your corporation uses, we do strongly recommend that you protect those marks by registering them. The Trademark Registration Applications are available online for your trademark or service mark at <http://www.secretary.state.nc.us/trademark/>. Trade names can qualify for registration as service marks if they meet certain statutory requirements set by the State of North Carolina. Call the Trademark Registration Office at (919) 807-2162 for more information on the registration process. You may fax requests for information to (919) 807-2215 or send them via e-mail to **trademark@sosnc.com**.

Both trademarks and service marks must already be in use in North Carolina before they can be registered. Your company's goods must already be manufactured and distributed in this state or its services must already be rendered before you can apply for trademark or service mark registration. Simply advertising that your company's goods or services will be available in North Carolina in the future does not establish that they are currently in use here. When filing for trademark or service mark registration, you should also provide the Trademark Registration Office with actual specimens of the mark as it is used on your company's products or to advertise your company's services.

The NC Trademark Registration Act uses the International classification system. This classification system allows businesses in North Carolina to register similar names for unrelated products and services and prevents duplicate registration of marks that are so similar they could easily confuse consumers.

You can register trademarks and service marks at the Federal level as well as at the state level. While Federal registration will protect your mark throughout the entire United States, it is

usually a time-consuming process. Many corporations prefer to seek state mark registration in order to protect their marks until they receive Federal registration. State and Federal mark registrations are totally unrelated and the agencies on both levels which handle trademark and service mark registration do not cross-check other state or Federal records as part of the registration process. Requirements for state and Federal mark registration are not identical. Acquiring a Federal mark registration does not mean that your mark will be accepted at the state level. You must always meet the state requirements in order to obtain state trademark or service mark registration. For more information on Federal trademark and service mark registration, contact the Commissioner of Patents and Trademarks, Building Three, Crystal Plaza, Arlington, VA 20231 or call (703) 557-4636. You can view the Web page at *www.uspto.gov*.

For more information on State Trademark Registration, click the Trademark Office link from the NC Secretary of State's main webpage at www.sosnc.com.

Directory of State Agencies

State Operator(919) 733-1110

Department of the Secretary of State

P.O. Box 29622
Raleigh, NC 27626-0622
www.sosnc.com

Corporations Division(919) 807-2225
toll-free (888) 246-7636
fax (919) 807-2039

Lobbyist Registration Division.....(919) 807-2156

Notary Section(919) 807-2131

Securities Division(919) 733-3924

Solicitation Licensing Section(919) 807-2214
toll-free (800) 830-4949

Trademarks Division.....(919) 807-2162
fax(919) 807-2215

Uniform Commercial Code Section.....(919) 807-2111

Department of Commerce

301 N. Wilmington St.
Education Building, Fourth Floor
Raleigh, NC 27601
www.nccommerce.com

Main Number(919) 733-4151
Business & Industry Development Division(919) 733-4151
Business Link North Carolina(919) 807-4280
<http://www.blnc.gov> *toll free* (800) 228-8443

Small Business Administration.....(704) 334-6563
Small Business & Technology Development Center(919) 715-7272
Utilities Commission.....(919) 733-4249

Department of Revenue

P.O. Box 25000
Raleigh, NC 27640-0640
www.dornc.us

Corporate, Excise & Insurance Tax Division *toll free* (877) 252-3052
Sales & Usage Tax Division *toll free* (877) 252-3052
Privilege License Division (877) 308-9103
Suspension Notice..... (877) 252-4982

Internal Revenue Service

www.irs.gov

Downloadable Forms <http://www.irs.gov/formspubs/index.html>

Telephone Assistance for:

Business Organizations (800) 829-4933

Exempt Organizations, Retirement Plan Administrators & Government Entities. (877) 829-5500

People with hearing impairments..... (800) 829-4059 (TDD)

Department of Crime Control and Public Safety

4704 Mail Service Center
Raleigh, NC 27699-4704
www.ncale.org

Bingo Licensing (919) 733-3029

Corporations Division Fee Schedule

Domestic and Foreign Nonprofit Corporations

Articles of Incorporation	\$60
Application to Reserve a Business Entity Name	\$30
Notice of Transfer of Reserved Business Entity Name.....	\$10
Application for Registered Name	\$10
Application for Renewal of Registered Name	\$10
Statement of Change of Address of Registered Office <i>domestic and foreign</i>	\$5
Statement of Change of Address of Registered Office by Registered Agent <i>domestic and foreign</i>	\$5
Statement of Resignation of Registered Agent <i>domestic and foreign</i>	No Fee
Designation of Registered Agent or Registered Office or both	\$5
Articles of Amendment	\$25
Restated Articles of Incorporation	\$10 or \$25
Articles of Merger <i>domestic and foreign</i>	\$25
Articles of Dissolution	\$15
Articles of Revocation of Dissolution	\$10
Application for Certificate of Authority <i>foreign only</i>	\$125
Application for Amended Certificate of Authority <i>foreign only</i>	\$25
Application for Certificate of Withdrawal <i>foreign only</i>	\$10
Articles of Correction <i>domestic and foreign</i>	\$10
Application for Reinstatement following Administrative Dissolution	\$100
Advisory Review of a Document	\$200

Application for Certificate of Withdrawal by Reason of Merger	\$10
Statement of Change of Mailing Address of Surviving Entity	\$10
Corporation's Statement of Change of Principal Office.....	\$5
Designation of Principal Office Address	\$5
Application for Certificate of Existence or Authorization (paper).....	\$15
Application for Certificate of Existence or Authorization (electronic)	\$10
Any other document required or permitted to be filed by Chapter 55A or 55D.....	\$10
Copying and/or comparing a copy of any filed document.....	\$1 per page
Certifying a copy of any filed document (paper)	\$15
Certifying a copy of any filed document (electronic).....	\$10

domestic - a domestic or North Carolina corporation

foreign - a foreign or out of state corporation

Appendix - Forms

Articles of Incorporation

Nonprofit Corporation 501(c)(3) Supplement

Statement of Change of Registered Office and/or Registered Agent

Nonprofit Corporation's Statement of Change of Principal Office

Articles of Amendment

Nonprofit Corporation Application for Certificate of Authority

[Current copies of these forms and others are available from the Corporations Division's section of the North Carolina Department of the Secretary of State Web site, located at www.sosnc.com.]