



Forming a California Non-Profit Public Benefit Corporation

In California, a non-profit organization that is incorporated to serve religious or charitable purposes is referred to as a “nonprofit public benefit corporation.” The legal requirements pertaining to these organizations are set forth in the California Corporations Code, beginning with § 5110. This article details the steps necessary to establish a California nonprofit public benefit corporation.

Laying the Groundwork

The philosopher Edmund Burke once said, “Good order is the foundation of all things.” In the spirit of Burke’s sage advice, we urge you to take your time with these preliminary steps, to ensure your new organization gets off to a good start with a solid foundation.

Direct your attention to your organization’s mission, funding sources, and annual budget. This is not the time to cut corners. Taking the time to write a mission statement that clearly identifies the needs your nonprofit corporation will address will assist you throughout the organization’s developmental stages, and will help you attract volunteers and donors.

Incorporate Your Nonprofit Organization

If you haven’t done so already, now is the time to choose name for the corporation and check the name availability with the California Secretary of State. Your organization’s name cannot be the same as, or deceptively similar to, other corporate names already on file (limited exceptions may apply).

You may also need to recruit directors to serve on your organization’s board. A California nonprofit public benefit corporation must have at least one director, and the number of directors must be stated in either the Articles of Incorporation or the corporate bylaws.*

Your Articles of Incorporation must be filed with the California Secretary of State. A filing fee is required; as of this writing that fee is \$30. Current fees can be found on the Secretary of State’s website.

The Articles of Incorporation must contain specific language in order to qualify for tax-exempt status at the federal and state levels. Information about drafting the Articles of Incorporations, please consult California Corporations Code § 5130.

Once the Articles have been filed,

you have 90 days to file a Statement of Information with the Secretary of State. This Statement is a public disclosure of information including a description of what the organization does, where it is located, and the names and addresses of its officers. After the original Statement is filed, you must file a new Statement of Information every two years. This Statement may be filed electronically via the Secretary of State’s website, or in paper format.

Draft Your Bylaws

The law requires that your organization adopt Bylaws, which are the internal governing document for your nonprofit corporation. The Bylaws establish the internal rules and procedures, including details about how

You Have Enough to Do!

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Our Complete Nonprofit Package Includes:

- Articles of Incorporation
- Bylaws
- Organizational Meeting Minutes
- Employer ID Numbers
- Federal and State Tax Exemption Applications
- Embossed Leather Corporate Record Book
- Corporate Seal

7290 Navajo Road, Suite 113 • San Diego, CA 92119
(619) 567-5176 • www.redskylegal.com

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Non-Profit Public Benefit Corporation, continued

business will be conducted, who has decision-making authority, and even the process by which the Bylaws can later be amended.

The Bylaws are not filed with any governmental entity, but must be kept with the organization's corporate records at its principal place of business.

Hold an Organizational Meeting of the Board of Directors

The minutes from your Organizational Meeting of the Board of Directors will document the many of the remaining steps required to get your nonprofit organization up and running.

At this meeting, the incorporators and/or initial directors of the corporation will typically conduct the following business:

- Appoint additional directors
- Appoint or elect officers
- Adopt the corporate Bylaws
- Establish a budget
- Designate a bank for the corporate account
- Adopt a corporate seal

Set up a Corporate Record Book

Your corporate record book contains the important documents concerning the formation, management and due diligence of your nonprofit organization. Detailed information regarding recordkeeping requirements a nonprofit public benefit corporation must follow can be found in California Corporations Code §§ 6320-6325.

Get Your Employer Identification Numbers

Your nonprofit corporation must get a federal Employer Identification Number (EIN) from the Internal Revenue Service (IRS). This can be obtained by phone, fax, mail or online application.

A California EIN is also required if your organization will be paying at least \$100 in wages in a quarter. This EIN can be obtained online.

Apply for Tax Exempt Status

You will most likely want to apply for tax-exempt status with both the IRS and the California Franchise Tax Board (FTB). Without these exemptions, your organization may

be obligated to pay *at least* the minimum federal and state corporate income tax.

The federal tax exemption under section IRC § 501(c)(3) is requested using IRS Form 1023, *Application for Recognition of Exemption*. This form may not be required, however, if your organization was established with a 501(c)(3) purpose and your annual gross receipts are normally less than \$5,000.

California state tax exemption is requested on FTB Form 3500, *Exemption Application*. If you have already obtained a letter of determination from the IRS, you can apply to the FTB using the shorter Form 3500A, *Submission of Exemption Request*, and attaching a copy of the federal letter. These forms can be downloaded from the FTB's website.

Register with the California Attorney General

Once your nonprofit public benefit corporation begins receiving donations, you must file the Initial Registration Form CT-1. This form must be filed with the Registry of Charitable Trusts within 30 days.

** Note: Under California law, no more than 49 percent of a board of directors may be interested persons. An **interested person** is a director who provides nondirector services to the nonprofit public benefit corporation and is paid for the services rendered. The law also extends to cover any close relative of the director. For more information, see California Corporations Code § 5227*