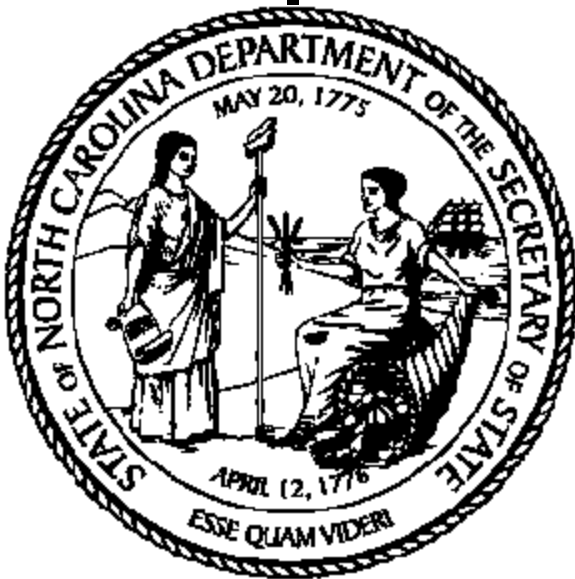


NORTH CAROLINA DEPARTMENT OF THE SECRETARY OF STATE

Incorporating Your Non-Profit in North Carolina



Elaine F. Marshall
Secretary of State

CORPORATIONS DIVISION

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A Message from The Secretary of State of North Carolina

Non-profit 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 non-profit entities. Non-profit 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.

Non-profits have a long and very distinguished history in North Carolina. The N.C. Department of the Secretary of State recognizes how important non-profit 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 non-profit corporations grow as well. North Carolinians prize good relations between neighbors. Non-profits 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 manual is designed to help guide you through the process of establishing a non-profit corporation and operating it 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 non-profit corporation. This manual is not intended nor is it designed to replace legal counsel of your own choice when it comes to establishing and operating a non-profit corporation. If you have any question or concerns about the process of establishing and running a non-profit 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 non-profits 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 non-profit corporation for many years to come.

Elaine F. Marshall
NC Secretary of State



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Introduction

“Non-profit corporation” means 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. Gen. Stat. § 55A-1-40(17)

Non-profit 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, non-profit 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 purposes. This list is not exclusive, however, since many other types of corporations can be categorized as non-profit if they satisfy the statutory requirements. A homeowner’s association would be one such example. The creation, operation and dissolution of non-profit corporations are governed by the provisions of Chapter 55A of the North Carolina General Statutes.

Non-profit corporations are created by filing the appropriate documents with the Office of the Secretary of State. Domestic non-profit corporations, which are those incorporated under the laws of the state of North Carolina, are created by filing Articles of Incorporation. Foreign non-profit corporations, which are incorporated under laws other than the laws of North Carolina, must apply for a Certificate of Authority in order to conduct their affairs in this state.

Not all non-profit corporations are tax-exempt. A non-profit 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 anyone interested in setting up a non-profit corporation with some guidance. This information should not be used as a substitute for competent legal counsel. It is important to consult an attorney before organizing a non-profit corporation, because some of the legal issues that may arise are exceedingly complex.

These guidelines address the following subjects:

Corporate Names

- 1 Choice of Name
- 2 Trademark and Service Mark Registration

Articles of Incorporation

Certificate of Authority

Directors, Members, Officers, and Bylaws

Tax-Exempt Status

- 1 Federal Tax Exemption
- 2 State Tax Exemption

Fundraising Activities

- 1 The Charitable Solicitations Act
- 2 Bingo Licensing
- 3 Raffles

Audit Requirements

Frequently-Asked Questions

Where questions still exist, you should contact an attorney and/or the appropriate federal or state agency (including this office) to assist you.

Corporate Names

Part of the process of incorporating is choosing and reserving a name for your non-profit 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 records of the Secretary of State from the name of other non-profit 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.

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 records 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 write or call the N.C. Department of the Secretary of State to determine if a proposed name would be available as a corporate name.
- 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 have an attorney or a trademark search firm conduct a trademark search through the U.S. Patent and Trademark Office for similar federal trademark or service mark registrations.
- 6 You can write the Office 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 in 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 records 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.

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 non-profit 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.

Trademark and Service Mark Registration

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 Trademarks Division can provide you with registration forms for your trademark or service mark. Trade names can qualify for registration as service marks if they meet certain statutory requirements set by the State of North Carolina. Call the Trademarks Division at (919) 807-2162 for more information on the registration process or for registration forms. You may fax request for information to (919) 807-2215.

Both trademarks and service marks must already be in use in North Carolina before they can be registered here. Your company's goods must already be manufactured and distributed in this state or its services must be rendered here 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 Division with actual specimens of the mark as it is used on your company's products or to advertise your company's services.

The Trademark Registration Act uses a classification system that divides trademarks and service marks into classes based on the type of product or nature of the service each company provides its customers. 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 the same. Acquiring a federal mark registra-

tion 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 commission's Web page at www.uspto.gov.

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. Gen. Stat. § 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 article one.

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 Non-profit 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 your corporation fits this description, the articles must include a statement to the effect that it is a "charitable or religious corporation." *N.C. Gen. Stat. § 55A-2-02(a)(2)*.

Registered Office and Agent:

A non-profit 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 office is identical with the registered office;
- 2 a domestic business corporation, a nonprofit corporation or a limited liability company whose business office is identical with the registered office;

or

- 3 a foreign business corporation, nonprofit corporation or limited liability company authorized to transact business in this state whose business office is identical with the registered 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 North Carolina Non-profit 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 non-profit corporation's assets upon its dissolution.

Principal Office:

A non-profit corporation is required to set forth its principal office address in its Articles of Incorporation (*N.C. Gen. Stat. § 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 non-profit 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 no longer required for documents filed with the N.C. Department of the Secretary of State. It is permissible for such documents to be notarized or verified, but 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 filing fee required by law. The filing fee is \$60.

The Office of the Secretary of State will examine the Articles of Incorporation, and if the articles satisfy the requirements of the Non-Profit Corporation Act, they will be filed by time-stamping and dating. The signed original will be retained by the N.C. Department of the Secretary of State. The copy will be certified and returned to the person who submitted it for filing.

Articles of Incorporation are no longer required to be filed with the office of the Register of Deeds, as was the case under prior non-profit corporation law.

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. Gen. Stat. § 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 records of the Corporations Division, 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 and 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 office is identical with the registered office;
- 2 A domestic business corporation, nonprofit corporation or limited liability company whose business office is identical with the registered office;

or

- 3 A foreign business corporation, nonprofit corporation or limited lia-

bility company authorized to transact business in this state whose business office is identical with 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 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 Non-Profit Corporation Act, it will be filed by time-stamping and dating. 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.

Board of Directors, Members, Officers, and Bylaws

All non-profit corporations must have an organizational structure and rules or bylaws by which they are managed. The organizational structure is comprised of directors and officers, which 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 non-profit 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 charter or by the bylaws.

Membership in a non-profit 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 non-profit 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 non-profit 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 non-profit 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 non-profit 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 Unagreed Issues.

Exempt Organizations Handbook

which may be purchased by writing to

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. Gen. Stat. § 131F-3* are:

Any person who solicits for a religious institution;

Solicitation of charitable contributions by the federal, state or local government or any agency thereof;

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;

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;

Any educational institution in compliance with Article 39 of Chapter 115C of the North Carolina General Statutes (Nonpublic Schools);

Any foundation or department having an established identity with any of the educational institutions in subparagraphs 4 and 5 above;

Any hospital licensed pursuant to Article 5 of 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;

Any noncommercial radio or television station;

A qualified community trust as provided in 1.170A-9(e)(10) through (e)(14) of Title 26 of the Code of Federal Regulations;

A bona fide volunteer or bona fide employee or salaried officer of a charitable organization or sponsor;

An attorney, investment counselor, or banker who advises a person to make a charitable contribution;

A volunteer fire department, rescue squad, or emergency medical service;

A Young Men's Christian Association or a Young Women's Christian Association; and

A non-profit 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 non-profit 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. Gen. Stat. § 14-309.5 - 309-14* for more information.

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Raffles

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It is lawful for any non-profit 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 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. Gen. Stat. § 14-309.15* for more information.

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Audit Requirements

A non-profit 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 non-profit organization uses or expends between \$15,000 and \$100,000 in state funds each year, you must file annually a sworn accounting of receipts and expenditures of those state funds with the state agency that provided the funds. The only exception to this rule is when the funds are compensation for goods and services. This accounting must be attested to by the treasurer of the institution and one other authorizing officer of the institution. The accounting must be filed within six months after the end of the grantee's fiscal year in which the state funds were received. The accounting shall be in the form required by the disbursing state agency.

Each non-profit institution that uses or expends state funds in the amount of \$100,000 or more must file annually with the State Auditor a financial statement in the form and on the schedule prescribed by the State Auditor, except when the funds are compensation for goods and services.

The primary purpose of *N.C. Gen. Stat. § 143-6.1* is to insure that state funds are used or expended for the purposes for which they were appropriated by the General Assembly.

You may obtain a copy of the audit report format by writing the North Carolina Office of the State Auditor, 20601 Mail Service Center, Raleigh, NC 27699-0601.

Federal Audit Requirements

Generally, any non-profit 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 non-profit 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 non-profit 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

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, minute 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 it for you.*

Q Do I need an attorney?

A *North Carolina law does not prohibit the preparation or filing of Articles of Incorporation by a non-attorney who is acting on his or her own behalf and who will be a member or director of the corporation, as long as that person does not collect payment for his service. A non-attorney cannot perform this service when acting wholly on behalf of third parties, whether or not a fee is charged.*

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

There are many cases where a corporation is not as advantageous as another form of organization. There is also an almost infinite number of ways to structure the membership and management of a corporation. Many

attorneys are competent in these matters and their advice can help you to avoid costly mistakes;

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.

A competent attorney should be able to ensure that all of the essential details have been addressed. One of the risks of not hiring an attorney is that saving a few hundred dollars in fees may subsequently result in the loss of all of your personal assets.

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 Non-Profit Corporation Act. If so, it is promptly time-stamped and dated and a copy is certified and returned to the customer.

Q How many people are required to organize and operate a non-profit 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 Do any documents of a non-profit corporation other than the Articles of Incorporation need to be filed with the N.C. Department of the Secretary of State?

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 non-profit corporation are set forth in Article 14 of the North Carolina Non-Profit 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 non-profit 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 a Board of Directors meeting to elect officers.

Obtain your tax I.D. number from the I.R.S. An application can be obtained from the Business License Information Office or the N.C. Department of Revenue.

Check with the Business License Information Office of the N.C. Department of Commerce to see if your corporation needs a license to operate.

Take whatever steps are required to obtain tax-exempt status from the IRS and the North Carolina Department of Revenue.

Choose a corporate seal (It can be purchased at stationery and office supply stores).

Contact county and local agencies to see what requirements and restrictions apply to your proposed activities.

Adopt a set of bylaws (It is usually best to get an attorney's assistance in this process, but you are not required by law to do so).

Set up an accurate bookkeeping system.

Q Are there any annual filing requirements for non-profit 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 Section 7 on Audit Requirements.

Q Can a foreign non-profit corporation operate in North Carolina?

A *Yes. In order to do so, the foreign non-profit 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. Gen. Stat. § 55A-15-03).*

Q Can the N.C. Department of the Secretary of State answer questions concerning the legitimacy of a particular non-profit 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 non-profit corporation is not required to be filed with this office and is therefore not available from it.*

Q What is a Federal Employer Identification Number, and are non-profit 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 non-profit 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 for state tax purposes.

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.sos.nc and clicking on NC General Statues.*

Directory

North Carolina State Government

The Corporations Division, Lobbyist Registrar Section, and Trademark Section of the N.C. Secretary of State are located in the Old Revenue Building, 2 South Salisbury St. The Uniform Commercial Code Division of the N.C. Secretary of State is located at 1 Exchange Plaza. The Securities Division of the N.C. Secretary of State is located at 300 N. Salisbury St. When sending mail to any of the divisions, sections or offices of the N.C. Department of the Secretary of State, please use the mailing address exactly as it is printed below. Failure to do so may result in processing delays of your paperwork.

Department of Commerce

Business Licensing Information Office
301 N. Wilmington St.
Raleigh, NC 27601
800 228-8443
919 715-2864
www.nccommerce.com/servicenter/blio/

Department of the Secretary of State

Corporations Division
PO Box 29622
Raleigh, NC 27626-0622
919 807-2225
www.sosnc.com

Department of the Secretary of State

Lobbyist Registrar Section
PO Box 29622
Raleigh, NC 27626-0622
919 807-2156
www.sosnc.com

Department of the Secretary of State

Trademark Section
PO Box 29622
Raleigh, NC 27626-0622
919 807-2162
www.sosnc.com

Department of the Secretary of State

Securities Division

PO Box 29622
Raleigh, NC 27626-0622
(919) 733-3924
www.sosnc.com

Department of the Secretary of State

Solicitation Licensing Section
PO Box 29622
Raleigh, NC 27626-0622
(919) 807-2214
1-800-830-4989
www.sosnc.com

Department of the Secretary of State

Uniform Commercial Code Division
PO Box 29622
Raleigh, NC 27626-0622
919 807-2111
www.sosnc.com

Department of the Secretary of State

Notary Section
PO Box 29622
Raleigh, NC 27626-0622
919 807-2131
www.sosnc.com

Department of Revenue

Corporate Income and Franchise Tax Division
Revenue Building
PO Box 25000
Raleigh, NC 27640-0640
877 252-3052
www.dor.state.nc.us

Department of Revenue

Sales and Use Tax Division
Revenue Building
PO Box 25000
Raleigh, NC 27640-0640
877 252-3052

Department of Revenue

Privilege License Division
Revenue Building
PO Box 25000
Raleigh, NC 27640-0640
919 733-3673 or 877 308-9103

Department of Crime Control & Public Safety

Bingo Licensing
4704 Mail Service Center
Raleigh, NC 27699-4704
919 733-3029

Federal Government

Internal Revenue Service - Forms and Publications

Caller No. 848
Atlanta, GA 30370
www.irs.ustreas.gov/prod/forms_pubs/index.html

Internal Revenue Service - Phone Numbers

800 829-3676 (Forms only)
800 829-1040 (Federal Tax Information & Assistance)
800 829-1040 (Problem Resolution Office)
<http://www.irs.ustreas.gov/>

Appendix

Non-Profit 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