

A New Nonprofit?

Should You Create
One and the
'Determination'
Needed for
501(c)(3) Status

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Mission of Pro Bono Partnership of Atlanta

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Client Criteria

In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

Visit our website at www.pbpatl.org to apply.

PBPA Learning Center for Georgia Nonprofits

www.pbpatl.org/resources

ARTICLES

WORKSHOPS



WEBCASTS

PODCASTS

Legal Information

This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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More Legal Information

The opinions presented by Cara Mitchell during this presentation are my own, based on my own prior private practice of law, and may not reflect the views of my employer, Children's Healthcare of Atlanta, Inc.

The opinions presented by Felix Swierski during this presentation are my own, based on my own prior private practice of law, and may not reflect the views of my employer, Arnall Golden Gregory LLP.

A New Nonprofit?

- First Steps – Determining the Need
- Options
- Structure of a Nonprofit Entity
- Incorporating – State of Georgia Requirements
- 501(c)(3) Determination

Determine the Need

- What *exactly* is the **problem** you want to address?
- What **services** will address the problem (or the source of the problem)?
- Is anyone else providing the services?
- What could they be doing differently? How can *you* do it differently?
- What support is needed to take on this mission?
- What support is available?
- What are your options?

Options

- Local organizations
- National organizations that could use a local chapter, or a local champion
- Umbrella organizations
- Fiscal sponsorship
- Donor-advised fund
- Social entrepreneurship
- Giving circles
- New nonprofit organization

Structure of a Nonprofit Entity

- Generally, a corporation.
- Incorporated under the Georgia Nonprofit Corporation Code.
- Incorporated with GA Secretary of State.
- Does not have owners or shareholders.
- Has a board of directors and officers.
- Generally has an executive director, CEO or other administrative leader.
- May have employed staff.
- May have volunteers.

State of Georgia Requirements

- Articles of Incorporation
 - Bylaws
 - Board of Directors
 - Officers
-
- Georgia Nonprofit Corporations Code
 - Required provisions
 - Default provisions

Articles of Incorporation

State requirements

- Filed with Georgia Secretary of State
 - \$100 fee at time of incorporation; \$30 “annual registration” within 90 days
- Name of the corporation
- Name and address of the incorporator(s)
- Duration of the corporation (generally “perpetual”)
- Registered office and registered agent
 - Must be a physical address (not a PO Box)
 - Agent to be served with process in the event of legal proceedings
- Whether the corporation has members
- State that the corporation is organized pursuant to the Georgia Nonprofit Corporations Code

Articles of Incorporation

federal tax exemption (501(c)(3)) requirements

IRS has suggested language

- Purposes of the corporation
 - Must be charitable, religious, educational, or scientific
 - Should be broad enough to cover everything you want to do
- Exemption requirements
 - Earnings may not inure to the benefit of private persons
 - Activities may not include influencing legislation or elections
 - Activities may not include any other activities that are not allowed by a 501(c)(3) exempt organization or an organization to which contributions are deductible
- Dissolution requirements
 - When corporation is dissolved, remaining assets to be distributed for 501(c)(3) purposes, or to federal, state, or local government, or as determined by a court

Articles of Incorporation

optional provisions

- Amendment (recommended)
- Initial board of directors
- Mailing address if there is a different office from the registered office
- Waiver of personal liability of (members), officers and directors
- Provisions for indemnification of directors & officers (or may put in bylaws)

Board of Directors Composition

- Number: at least 5; 7-9 is better.
- Fewer may indicate insufficient support for the mission/organization.
- More may be unwieldy / difficult to convene.
- Odd numbers are useful for breaking ties.
- Should be *unrelated* to one another, at least mostly.
 - Family, business, other boards
- Think about competencies: dedication to mission, fundraising, accounting, legal, business, knowledge of community
- Consider diversity & inclusiveness of group

Board of Directors

- Prior to requesting recognition of tax exemption, will need to
 - Ratify Articles of Incorporation
 - Adopt Bylaws
 - Elect officers
 - Formally approve filing for recognition of tax exemption
 - Adopt budget
- Before or soon after filing Articles, hold a first meeting to do all of these things

Bylaws

IRS has samples to review and adapt

- The number and means of electing **directors**, & terms and term limits
- The **officers** of the corporation, their duties, & how they are appointed
- Rules and procedures for holding **meetings** (notice, quorum)
- Specify the fiscal year of the corporation
- Important to include
 - Procedures for appointing committees
 - Amendment requirements
 - Conflict of interest rules and procedures
 - Provisions for telephonic and electronic meetings

Exemption from Taxation

- Federal tax exemption governed by 26 U.S.C. § 501
- 501(a): "An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation...unless such exemption is denied under section 502 or 503"
- 501(c): [29 separate sections](#)
 - 501(c)(3): "**Corporations**, and any community chest, fund, or **foundation**, organized and operated exclusively for **religious, charitable, scientific, testing for public safety, literary, or educational** purposes..."
- 501(d): "Religious or apostolic associations or corporations..."
- 401(a): "A trust...forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries..."

501(c)(3) Organizations

- 501(c)(3) organizations further divided into two categories
 - Public Charities
 - Private Foundations
- A charity is deemed to be a private foundation for federal tax purposes **unless** it can show it is a public charity under 26 U.S.C. § 509(a)
 - (a)(1): churches, schools, hospitals, and other organizations financially supported by the general public
 - (a)(2): organizations supported gifts, grants, contributions, or membership fees (ex. museum or zoo)
 - (a)(3): organizations operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2) (known as "supporting organizations")
 - (a)(4): organization which is organized and operated exclusively for testing for public safety

Form 1023: Filing for 501(c)(3) status

Form 1023

- 12 pages long, minimum
- Filing fee of \$600
- "Past, Present, and Future" activities
- Detailed financial information of officers and directors
- Copies of formation documents
- Review Period: **5 to 8 months**

Form 1023-EZ

- 3 pages long
- Filing fee of \$275
- Filed online
- Minimal information required
- Review Period: **~90 days**

*Each form may be submitted within 27 months of the last day of the month of formation

Eligibility for Form 1023-EZ

Eligibility requirements for Form 1023-EZ:

- Gross receipts of less than \$50,000 in any of the next three years
- Gross receipts of less than \$50,000 for any of the past three years
- Total assets less than \$250,000
- Additional qualitative-type questions on formation and nature of activities

Instructions for Form 1023-EZ

(Rev. January 2018)

Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

Section references are to the Internal Revenue Code unless otherwise noted.

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Future Developments

For the latest information about developments related to Form 1023-EZ and its instructions, such as legislation enacted after they were published, go to irs.gov/Form1023-EZ.

Reminder

Don't include social security numbers on publicly disclosed forms. Because the IRS is required to disclose approved exemption applications and information returns, exempt organizations should not include social security numbers on these forms. Documents subject to disclosure include correspondence with the IRS about the filing.

Photographs of Missing Children

The Internal Revenue Service is a proud partner with the [National Center for Missing & Exploited Children® \(NCMEC\)](https://www.irs.gov/charities). Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Email Subscription

The IRS has established a subscription-based email service for tax professionals and representatives of tax-exempt organizations. Subscribers will receive periodic updates from the IRS regarding exempt organization tax law and regulations, available services, and other information. To subscribe, visit [IRS.gov/Charities](https://irs.gov/Charities).

General Instructions

"You" and "Us". Throughout these instructions and Form 1023-EZ, the terms "you" and "your" refer to the organization that is applying for tax-exempt status. The terms "us" and "we" refer to the Internal Revenue Service.

Purpose of Form

Form 1023-EZ is the streamlined version of Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. Any organization may file Form 1023 to apply for recognition of exemption from federal income tax under section 501(c)(3). Only certain organizations are eligible to file Form 1023-EZ (see [Who Can File This Form](https://irs.gov/Charities), below).

Note. Most organizations seeking exemption from federal income tax under section 501(c)(3) are required to complete and submit an application. However, the following types of organizations may be considered tax exempt under section 501(c)(3) even if they do not file Form 1023 or Form 1023-EZ.

- Churches, including synagogues, temples, and mosques.
- Integrated auxiliaries of churches and conventions or associations of churches.
- Any organization that has gross receipts in each taxable year of normally not more than \$5,000.

Who Can File This Form

Only certain organizations are eligible to apply for exemption under section 501(c)(3) using Form 1023-EZ. To determine if you are eligible to file Form 1023-EZ, you must complete the [Form 1023-EZ Eligibility Worksheet](https://irs.gov/Charities).

WARNING If you answer "Yes" to any of the worksheet questions, you are not eligible to apply for exemption under section 501(c)(3) using Form 1023-EZ. You must apply on Form 1023. If you answer "No" to all of the worksheet questions, you may apply using Form 1023-EZ.

TIP Before completing either Form 1023 or Form 1023-EZ, we recommend reading "Life Cycle of an Exempt Organization" at [IRS.gov/Charities](https://irs.gov/Charities).

How To File

Form 1023-EZ can only be filed electronically by going to [IRS.gov/Form1023-EZ](https://irs.gov/Form1023-EZ) or [Pay.gov](https://pay.gov) (enter the term "Form 1023-EZ" in the search box). We will not accept printed copy submissions of the application.

Annual Requirements

Form 990

- Provides the public with information about a public charity or private foundation
- An exempt organization must produce a Form 990 **annually**
- Different types of Form 990 depending on type of organization
- An exempt organization, other than a private foundation, need not disclose the name and address of any contributor
- Due on the 15th day of the 5th month following the end of the organization's taxable year

Form 990 **Return of Organization Exempt From Income Tax** OMB No. 1545-0047

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

2021 **Open to Public Inspection**

Department of the Treasury Internal Revenue Service

Do not enter social security numbers on this form as it may be made public.
Go to www.irs.gov/Form990 for instructions and the latest information.

A For the 2021 calendar year, or tax year beginning , 2021, and ending , 20

B Check if applicable:
☐ Address change
☐ Name change
☐ Initial return
☐ Final return/terminated
☐ Amended return
☐ Application pending

C Name of organization
 Doing business as:
 Number and street (or P.O. box if mail is not delivered to street address) Room/suite
 City or town, state or province, country, and ZIP or foreign postal code

D Employer identification number

E Telephone number

F Name and address of principal officer:
 If "No," attach a list. See instructions.

G Gross receipts \$

H Is this a group return for subordinates? ☐ Yes ☐ No
H(b) Are all subordinates included? ☐ Yes ☐ No
H(c) Group exemption number

I Tax-exempt status: ☐ 501(c)(3) ☐ 501(c) () (insert no.) ☐ 4947(a)(1) or ☐ 527

J Website: ▶

K Form of organization: ☐ Corporation ☐ Trust ☐ Association ☐ Other ▶ **L** Year of formation: **M** State of legal domicile:

Part I Summary

1 Briefly describe the organization's mission or most significant activities:

2 Check this box ☐ if the organization discontinued its operations or disposed of more than 25% of its net assets.

3 Number of voting members of the governing body (Part VII, line 1a) **3**

4 Number of independent voting members of the governing body (Part VI, line 1b) **4**

5 Total number of individuals employed in calendar year 2021 (Part V, line 2a) **5**

6 Total number of volunteers (estimate if necessary) **6**

7a Total unrelated business revenue from Part VIII, column (C), line 12 **7a**

b Net unrelated business taxable income from Form 990-T, Part I, line 11 **7b**

Revenue

8 Contributions and grants (Part VII, line 1h)

9 Program service revenue (Part VII, line 2g)

10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)

11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)

12 Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)

Expenses

13 Grants and similar amounts paid (Part IX, column (D), line 1-3)

14 Benefits paid to or for members (Part IX, column (A), line 4)

15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)

16a Professional fundraising fees (Part IX, column (A), line 11e)

b Total fundraising expenses (Part IX, column (D), line 25) ▶

17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)

18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)

19 Revenue less expenses. Subtract line 18 from line 12

Net Assets or Fund Balances

20 Total assets (Part X, line 16)

21 Total liabilities (Part X, line 26)

22 Net assets or fund balances. Subtract line 21 from line 20

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here

Signature of officer _____ Date _____

Type or print name and title _____

Paid Preparer Use Only

Print/Type preparer's name _____ Preparer's signature _____ Date _____ Check ☐ if PTIN self-employed

Firm's name _____ Firm's EIN _____

Firm's address _____ Phone no. _____

May the IRS discuss this return with the preparer shown above? See instructions ☐ Yes ☐ No

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 11282Y Form 990 (2021)

Additional Types of Form 990

- Form 990-EZ: Gross receipts less than \$200,000 and total assets at the end of the year less than \$500,000, with a few limited exceptions
- Form 990-N (the "Postcard"): Organization "normally" has annual gross receipts of \$50,000 or less, with a few limited exceptions
 - Normally \$50,000 or less if:
 - Existence for 1 year or less and received, or donors have pledged to give, \$75,000 or less during its first tax year
 - Existence between 1 and 3 years and averaged \$60,000 or less in gross receipts during each of its first two tax years
 - At least 3 years old and averaged \$50,000 or less in gross receipts for the immediately preceding 3 tax years
 - Georgia **does not** accept the Form 990N
- Form 990-PF: Filed by private foundations

Georgia Requirements

- Charitable Organization Registration
 - Charitable Solicitations Act of 1988 regulates the solicitation and collection of charitable contributions in Georgia
 - Organizations that solicit donations **must** register
 - "Solicit": the request or acceptance directly or indirectly of money, credit, property, financial assistance, or any other thing of value to be used for charitable purpose
 - Registration good for 2 years
 - Exceptions:
 - Educational Organizations
 - Named Individuals
 - \$25,000 Exemption (any organization without an agreement with a paid solicitor **and** whose total revenue is less than \$25,000 for preceding and current year)
 - Multi-Level Organizations
- Business License (potentially)

Resources

- Nonprofit startup assessment. DO THIS FIRST!!
<https://learning.candid.org/resources/nonprofit-startup-resources/>
- Guidestar.org - Look up existing nonprofits by name, mission, geography, and other features.
- Sample business plans - <https://www.councilofnonprofits.org/tools-resources/business-planning-nonprofits>
- Not specific to nonprofits, but useful - <https://www.sba.gov/business-guide/plan-your-business/write-your-business-plan>.
- Discussion of alternatives to starting your own nonprofit, with links to more information: <https://ingridkirst.com/eight-great-alternatives-to-starting-a-nonprofit/>
- Georgia Secretary of State Charities division:
<https://sos.ga.gov/charities-division-georgia-secretary-states-office>
- IRS Exempt Org page: <https://www.irs.gov/charities-non-profits/life-cycle-of-an-exempt-organization>

Questions?

Pro Bono Partnership of Atlanta

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Upcoming Webcasts &
Workshops Calendar

[Event Listings](#)

Nonprofit Notes Monthly
Newsletter & Legal Alerts

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