

Steps to Create a Massachusetts Non-Profit Organization

Background

- This brief outline describes the basic steps to creating a nonprofit company and the continuing requirements for complying with Massachusetts law. This is not an exhaustive list and is not intended to provide legal advice. You are encouraged to seek professional legal advice before providing services to the public.
- The Internal Revenue Service (IRS) provides for a variety of tax-exempt organizations whose operations are not subject to federal income taxation. The most common is the 501(c)(3) corporation, the “public charity”.
- The states also recognize public charities, with each state having specific rules that govern organizational and reporting requirements for a company to operate without being subject to income and sales-and-use taxation. In Massachusetts, public charities are controlled by the Secretary of the Commonwealth and the Attorney General’s Office of Public Charities.
- Duly recognized nonprofits are permitted to solicit donations from individuals and companies. Such donations are tax-deductible for those donors who qualify.

Process

I. Select a Name

- a. Your company’s name should not only be easy to remember, but also readily searchable on-line. Confirm that the name is not already in use in Massachusetts by searching the Secretary’s website (<https://corp.sec.state.ma.us/corpweb/CorpSearch/CorpSearch.aspx>)
- b. Search for web domain name availability and register your preferred domain name using www.godaddy.com, www.wix.com, www.landl.com, www.squarespace.com.
- c. Since Massachusetts law generally requires that nonprofit businesses be “C” corporations, the name of your organization must end with “Incorporated,” “Corporation,” “Inc.” or similar designation that identifies it as a corporation. Except for special circumstances, a Massachusetts nonprofit may not be an “S” Corporation, LLC, sole proprietorship or partnership.

2. Select your Directors and Officers

- a. By law, your corporation must have at least three directors who are not related to each other.
- b. The corporation must have at least the following officers:
 - i. *President* (who must also be a director)
 - ii. *Clerk* (not necessarily a director)
 - iii. *Treasurer* (not necessarily a director)

3. Prepare the required documents

The state requires two formal documents:

- i. Bylaws, which describe the purpose, officers, operating rules and structure of your organization. For an example, see: <https://legalcenterfornonprofits.org/sample-massachusetts-nonprofit-bylaws/>
- ii. A conflict-of-interest policy, which lays out rules that ensure that decisions by directors and officers benefit the corporation and not individual members. See an example at: https://boardsource.org/wp-content/uploads/2017/04/M2H6-E-Policy-Sampler_Conflict-of-Interest.doc.

4. File Articles of Organization with the Secretary of the Commonwealth

Typical filing fee is \$275.

See: [Non-Profit Corporation Forms](#)

<https://www.mass.gov/info-details/online-charity-filing-portal>

<https://corp.sec.state.ma.us/corp/FilingForms/0300013.asp?stage=DataInput>

5. Apply for 501(c)(3) status with IRS

- a. Complete Form 1023 (see the following sites for guidance:

<https://www.irs.gov/forms-pubs/about-form-1023>

<https://www.irs.gov/forms-pubs/about-form-1023>

<https://www.stayexempt.irs.gov/home/resource-library/virtual-small-mid-size-tax-exempt-organization-workshop>

<https://www.irsvideos.gov/Business/Resources/FileError-FreeForm1023-EZWebinar?!=en-US>

[Publication 4220 \(Rev. 3-2018\) \(irs.gov\)](#)

- b. While an organization's application is waiting for processing by the IRS, the organization may operate as a tax-exempt organization. However, note the following language in the federal rules:

Although donors have no assurance that contributions are tax-deductible for federal income tax purposes until the application is approved, contributions made while an application is pending would qualify if the application is approved. However, if the application is disallowed, contributions would not qualify. Moreover, the organization would be liable for filing federal income tax returns unless its income is otherwise excluded from federal taxation

6. Apply for tax-exempt status with the Commonwealth

- a. This step is essential to be exempt from Massachusetts sales-and-use taxation.
- b. This step also permits you to solicit tax-exempt donations in Massachusetts.
- c. Two state agencies are involved:
 - i. The Attorney General's Office of Public Charities (filing fee, \$35)
<https://masscharities.my.site.com/CharityRegistration/s/>
 - ii. The Mass. Department of Revenue <https://www.mass.gov/administrative-procedure/ap-101-organizations-exempt-from-sales-tax#101-1-2-application-for-certification-501-c-3-organizations>
- d. Solicitation of donations in other states will require similar filings in those states.

7. Required annual filings

- a. IRS form 990 or 990-EZ
- b. Office of Public Charities Form PC
- c. Secretary of the Commonwealth Annual Corporate Report

8. Other steps

These steps are common to all start-up ventures:

- a. Register your business name at your City Hall
- b. Open a checking account
- c. Set up a bookkeeping system
- d. Prepare a business plan and financial statement
- e. Insurance – assess your potential liability and exposure to customer, vendors and employees with a small business insurance specialist
- f. Begin research for an accountant and lawyer.
- g. Use SCORE for continuing advice.