

Starting a Small Iowa Charitable Nonprofit Corporation

A Line-by-Line Walk
Through the Legal Documents

by Richard Koontz, LAWINRC Director



**The Larned A. Waterman Iowa Nonprofit
Resource Center Monograph Series**

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Introduction

This monograph is a guideline to starting a charitable nonprofit in the state of Iowa. More specifically, this monograph sets forth the steps to create a nonprofit corporation with INTERNAL REVENUE CODE § 501(c)(3) tax exempt status that functions in the state of Iowa.

The focus is on small, start-up nonprofits, that is, nonprofits with gross receipts of \$50,000 or less each fiscal year. Among the issues that are not covered in this monograph are governance-level voting memberships, creation of a charitable trust or LLC, and exemption under tax code sections other than 501(c)(3). None of the issues particular to establishing a private foundation are addressed. Other issues on the Form 1023-EZ beyond the scope of this monograph are noted in the text. This monograph attempts to provide guidance for non-lawyers on legal issues; legal sources are noted in footnotes for those who want more detailed legal guidance.

1. Things to Consider Before Formation

Starting a nonprofit is like starting a for-profit business in many ways. Thinking through the process of starting the nonprofit operations and gathering the resources to make it successful are essential to getting your nonprofit from a two-week-old legal entity to a successful venture in its third year. Here are some of the operational issues to think about and include in your business plan:

A. Who puts this all together and does the work to keep it going?

There should be several people who will do all the work required to get a nonprofit up and running. Each of them needs to be able to commit a minimum of ten (10) hours per week. The process of beginning a nonprofit requires commitment and regular use of your time and resources. Even before there is a Board of Directors officially established, the people putting a nonprofit together should have regular meetings and assigned tasks to get the organization up and running. After the Board of Directors is in operation, the board members need to be committed to persistent efforts to make the nonprofit succeed.

B. Governance

A nonprofit corporation must have a Board of Directors. The initial board should be described in the Articles of Incorporation. A minimum number necessary to be viable is five board members. Who should be on a board? There are a number of factors to consider, including community connections of board members, their professional skills, and a commitment to fundraising. For a more thorough list of skills to consider

for board membership, see the *Iowa Principles and Practices for Charitable Nonprofit Excellence*, section V.B.¹

The process of finding a good Board of Directors takes time and is one of the most important elements in creating a successful nonprofit.

C. Funding

The people putting together a charitable nonprofit in Iowa need to think through what the nonprofit's programs are and what the costs of running them are. Even a nonprofit run by volunteers with no paid employees has costs of operation. For instance, how will you fundraise? If you send letters to potential donors, you need paper, envelopes, and the cost of postage. If you fundraise online, you need to pay the cost of having a website. Your Board of Directors, even if not compensated for their time, will need reimbursement for the use of their personal resources, such as mileage for travel related to the nonprofit's mission in accomplishing the nonprofit's ends.

Legal costs are another funding issue. Even if all of the legal forms are filled out by you, rather than with the aid of a lawyer, there is still a cost of filing fees for a nonprofit start-up. It costs \$20 to file the Articles of Incorporation with the Iowa Secretary of State. It costs \$275 to file for tax-exempt status with I.R.S. Form 1023-EZ.

Funding is an essential issue for nonprofits. A nonprofit board must regularly project as best it can what the costs are for the nonprofit to move forward and then develop a plan for bringing in the revenue to cover those costs.

D. Who is your community?

Don't duplicate. Does your community already have a nonprofit with a similar mission? Does it make sense to start a new nonprofit rather than working to make an existing nonprofit succeed? You should do research on this issue before you start a nonprofit.

Critical to the success of a nonprofit is the constant building of relationships with the community. Who are the people your nonprofit serves, and how will you let them know you exist? What contribution does the nonprofit make to the community, and how will that be communicated to the community? What individuals and businesses in the community will want to fund your organization through donations, and what process will you use to reach them? Is there a group of professionals and other nonprofits that will be interested in the success of your nonprofit? How will you sell the volunteer experience at your nonprofit to potential volunteers?

¹ For the *Iowa Principles and Practices for Charitable Nonprofit Excellence*, go to the Larned A. Waterman Iowa Nonprofit Resource Center web site at <https://inrc.law.uiowa.edu/>

Building relationships between your nonprofit and the community is a process that begins on day one and is ongoing.

Four Legal Steps to Form a Nonprofit

There are four legal steps needed to become an Iowa nonprofit corporation with tax-exempt status that this publication addresses:

- 1. Incorporation.** Incorporate as a nonprofit corporation by mailing in Articles of Incorporation, along with a \$20 filing fee, to the Secretary of State, Business Services Division, Lucas Building, First Floor, Des Moines, Iowa 50319. (Check payable to Secretary of State.)
- 2. Employer Identification Number.** After getting the certificate back from Iowa's Secretary of State, go on the IRS web site (www.irs.gov) and get an E.I.N., an "Employer Identification Number" (no filing fee).
- 3. Bylaws.** Hold your first board meeting and adopt bylaws. Bylaws are not filed with any government entity in Iowa.
- 4. Form 1023-EZ.** File the application for 501(c)(3) tax exemption, Form 1023-EZ, with the I.R.S. (a \$275 filing fee). You must file and pay electronically on the IRS website. You must register for an account on Pay.gov. For steps required to submit Form 1023-EZ, go to <https://www.irs.gov/uac/about-form-1023EZ>

The Form 1023-EZ consists of 3 pages.

The details of filling out these various forms are the subject of this monograph. The monograph provides guidelines and samples of the various documents so they can be filled out and filed by you. However, it is recommended that your documents be at least reviewed by an attorney before filing. As with so many things in life, if you spend the time thinking through the issues raised in filling out these documents, the end product will be more useful to you. If little time is spent getting the documents to work for your organization, then it is likely problems will eventually arise.

Some of the sample forms included in the monograph are filled out. **The answers indicated on the sample pages are only possible answers to give you a sense of what the filled out form would look like. They are not necessarily the answers appropriate for your organization.**

There is a significant amount of information that needs to be collected to fill out the forms needed to create your nonprofit. It is important to think this through. If there are several people working on this, all should come to agreement on the information that will be entered on the forms. The following is an overview of the significant information needed for the legal forms.

Nonprofit Identification Information

Nonprofit's name
Nonprofit's address (cannot be a P.O. Box)
Registered agent (i.e., the official contact person)
Nonprofit's phone number
Nonprofit's fax number
Nonprofit's fiscal year (usually the calendar year, but can be different)
Nonprofit's web site (if any)

Purpose and Program

What is the nonprofit's charitable purpose?
Who is served by the nonprofit's mission?
Is there or will there be a membership program for your nonprofit? If so, what benefits are given to members?
Will the nonprofit be engaged in political campaign activity?
Will the nonprofit be engaged in lobbying for legislation?
Will the nonprofit operate at all in foreign countries?

Board of Directors and Personnel

The incorporator(s) (Who is doing the work of putting this organization's Articles of Incorporation together?)
If and when employees will be hired
The initial Board of Directors' and officers' names and addresses, and whether each holds a board officer position (President, Vice President, etc.)
How often per year will the board meet?
How long a term does a board member serve?
Are any board members related to each other? If so, how?
Are any board members part of the same business interest (other than the nonprofit)? If so, how?

Nonprofit's Finance

Will the nonprofit have more than \$50,000 gross receipts in the first three years?
Does the nonprofit hold bingo or other gaming events?

1. Nonprofit Incorporation

Overview: *Articles of Incorporation must state the nonprofit's name, registered address, registered agent, purpose, the incorporators, whether or not it has a voting membership, and what happens when it dissolves. They are signed by the incorporators.*

The first legal step in beginning an Iowa charitable nonprofit is to create an Iowa nonprofit corporation. There are other kinds of legal entities that can be created for nonprofits in Iowa which are not discussed in this monograph. These would be trusts, limited liability companies ("LLC") and unincorporated associations. For more information on these forms, see the *Iowa Principles and Practices for Charitable Nonprofit Excellence*, sections II. A. and B. Two kinds of legal business entities that can be created, partnerships and sole proprietorships, cannot obtain 501(c)(3) tax-exempt status.

There are advantages to becoming a nonprofit corporation in Iowa. One of these is that incorporation reduces liability for those working for it. The general rule is that the nonprofit corporation is liable for its debts, but the board, staff, volunteers, and others involved with it are not. Reduction of liability through incorporation is one of the easier risk management techniques available to nonprofits.

To create an Iowa nonprofit corporation, Articles of Incorporation must be drafted and then filed with the Iowa Secretary of State. They may be mailed to the Iowa Secretary of State, Business Services Division, Lucas Building, First Floor, Des Moines, Iowa 50319. The filing fee is \$20. The check should be made payable to Secretary of State. To file the Articles of Incorporation electronically, go to the Iowa Secretary of State website at <https://sos.iowa.gov>. From the top menu choose Online Filing then Business Entity Filings. Of the file type options listed, choose Articles of Incorporation and your payment method, then complete the form and upload your Articles of Incorporation.

A model set of Articles of Incorporation is included at the end of this chapter. The following outline discusses each section of that document.

I. Contents of Articles of Incorporation

The IOWA NONPROFIT CORPORATION ACT requires a number of provisions to be included in the Articles of Incorporation. Iowa Code 504.202(1) These are:

- Corporate name
- Registered office and registered agent
- Incorporators
- Members
- Dissolution