

## *Becoming a Nonprofit Organization: Incorporating and Filing for Tax-Exempt Status*

Parent groups form for many reasons; most of them form initially to provide support to their members. When a parent support group begins to talk about how it might provide services to the community, its members usually become aware of their need to find new sources of revenue. It is at this time that many parent groups consider taking the necessary steps to incorporate their group and become a nonprofit organization. When a group becomes a nonprofit organization, it obtains tax-exempt status. With this status—under section 501(c)(3) of the Internal Revenue Code—the group can legally apply for grants from foundations and accept tax-deductible donations from individuals and organizations.

This fact sheet is meant to clarify the process for becoming a nonprofit tax-exempt organization. The information included here is by no means intended as legal advice.

### **The benefits of incorporating and obtaining federal tax-exempt status are:**

- The organization may accept tax-deductible donations from individuals and organizations. Donors to groups that have 501(c)(3) status can claim tax deductions on their gifts, which encourages them to make those contributions.
- The organization can apply for foundation grants.
- The organization is given increased credibility and taken more seriously by foundations and donors.
- The organization can obtain nonprofit mailing privileges.
- Depending on the state, there may be exemptions from certain state taxes or sales taxes.
- Incorporating decreases the liability of individual members and officers.
- Incorporated groups can purchase insurance for members and officers.

There are three basic steps you need to take to become a nonprofit organization:

1. Write and file your group's articles of incorporation to become incorporated in your state.
2. Write your group's bylaws.
3. Complete and file IRS Form 1023 along with your group's articles of incorporation, bylaws, and the filing fee. This step should be completed within 15 months of becoming incorporated in your state.

Incorporating will formalize your group but will not allow it to receive tax-deductible donations. Donations won't be tax-deductible until you obtain 501(c)(3) status. Incorporating is a necessary step prior to filing the required paperwork to obtain 501(c)(3) status. NACAC recommends that you incorporate and obtain 501(c)(3) status if your group wishes to apply for grants from foundations and receive tax-deductible donations from private organizations and individuals.

## *Making the Decision*

There is no right or wrong answer to the question of whether your group should become a nonprofit organization; it depends solely on the group's goals. If your group wishes to keep it simple—remaining a place where members talk out problems and help each other with parenting concerns—you may not need the benefits that nonprofit status offers. On the other hand, if your group is ready and eager to offer classes, set up a web page, publish a newsletter, or host a conference, you will most likely want to secure more revenue. Incorporating and obtaining 501(c)(3) status will open doors for greater funding to accomplish these goals.

## *How to Begin*

To get started, your group will need the following information to write the articles of incorporation and the bylaws:

- group name
- mission statement
- officers—president, vice president, secretary, treasurer
- board of directors
- group goals: a plan of the activities or programs your group wants to do and a written narrative describing that plan
- financial information from the current year and the three preceding years; if the group has only been in existence for the past year—the current year plus projected finances for the next two years

Taking time to clarify who you are as a group, what your goals are, and how you want to accomplish those goals will help prepare your group for the paperwork required by your state and the Internal Revenue Services (IRS). When your group completes and records the six points listed above, you will have brought together the information you need for the articles of incorporation and bylaws, as well as information you will use to file for 501(c)(3) status. You will be prepared to insert information—specific to your group—into the appropriate spots of a sample copy of articles of incorporation and bylaws.

Sample articles and bylaws with the proper legal language and cues for where to insert your group's information can be found on the Internet at [www.nonprofitlaw.com](http://www.nonprofitlaw.com) or [www.irs.org](http://www.irs.org), or from NACAC at 651-644-3036 or [info@nacac.org](mailto:info@nacac.org).

Groups should decide whether they want to hire a lawyer to complete all the paperwork for incorporation and 501(c)(3) status. Some groups have an attorney member or one on their board who can help them, and some groups find a lawyer who is willing to do the work pro bono (free). After looking at their limited budgets, many group leaders decide to prepare the paperwork themselves. It can be done—many leaders have successfully completed the process without assistance from a lawyer.

If you choose not to seek legal help but want more information, the following suggestions should help get you started:

- Go to your local law library (located at the county court house or in a law school) and ask the law librarian to help you find the state statute that governs the incorporation process.
- Call the general information number for your state government to determine which agency handles incorporation. In Minnesota, for example, it is the Secretary of State. Clerks can tell you where to get blank forms as well as examples of completed documents prepared for fictional organizations so that you can see how a finished product might look.
- If you have access to the Internet you can go to your state department's web site to find information on incorporation and bylaws. You can also get the federal guidelines at [www.irs.gov](http://www.irs.gov) and see examples of finished documents. Similar information is available at [www.nonprofitlaw.com](http://www.nonprofitlaw.com) and from NACAC.

If you have questions during the process, don't hesitate to ask another group leader who has been through the process or contact NACAC.

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## Naming Your Group

To incorporate, your group needs a name. Names such as *Dayton Area Minority Adoptive Parents, Inc.*, *Northwest Foster Parent Association*, and *Midwest Foster and Adoption Association* describe the group and the area it serves. *Adoptive Families Together* is a name that implies a community-building effort without geographical boundaries. Think about how outsiders will interpret your name. For example, if you choose a name like *Park Avenue Parent Group* and you want to serve the community beyond Park Avenue, your name limits your intent. Think about what the name will communicate to potential members or future funders and keep it simple and clear.

Once your group chooses a name you will need to call the agency in charge of incorporating to make sure that no other organization has the name you are considering. When you call, the clerk will only let you investigate a few names at a time, but other group members can call if you need to check multiple names.

## Mission Statement

A mission statement should be a simple, clear, accurate sentence or paragraph that explains what your group stands for, what it believes and what it wants to accomplish. For example, Adoption Option, in Alberta, Canada, has the following mission statement:

*To serve as a forum for everyone in the adoption constellation of Alberta, promote the option of adoption, and strive to recruit families for special needs children.*

Adoptive Families Together in Boston, Massachusetts, has the following mission statement:

*The mission of Adoptive Families Together is to form a supportive network of adoptive parents, who can combine experiences and information to strengthen our families and our adoptions.*

The statement should be concise, easy to understand, and reflect the goals of the group. Take a look at mission statements from organizations you respect for ideas to help you get started.

## Activities and Services

Once your group has a mission statement, begin to generate a list of the group's goals: the programs, training, and services the group might want to provide.

Maybe you want to write a newsletter or provide post-adoption training and workshops in your area. Think of the content of the workshops and the audience you want to reach or how often you might publish a newsletter and how many pages it will be. There are some restrictions on the activities that a nonprofit tax-exempt organization may engage in, as outlined by the IRS. (see p. 5)

When you submit your application to the IRS, you will be required to provide a narrative describing the activities and the programs your group wants to provide with a brief analysis of how those activities fit the qualifications for tax-exemption. It is important to be as specific as possible. If your group is planning to include lobbying as one of your significant activities, see the section on lobbying on page 5 for more information.

## Choosing Officers

You will need officers who will carry out the duties to run your organization. Even if there are only three members in your group, decide who will be the president, vice president, secretary, and treasurer. A president or vice president needs strong leadership qualities, while a successful secretary has good organizational and communication skills. The ideal treasurer would be adept at setting up a system for recording financial transactions and tracking income and expenditures.

## Board of Directors

Your group will need to select individuals willing to serve on the board of directors for your organization. The board of directors oversees the operation of your group. According to the Minnesota Council of Nonprofits, it is "the board's responsibility to ensure the organization's effectiveness, manage resources, and assess its own performance." Determine the number of board members you will need (NACAC suggests a minimum of five—always use an odd number to prevent ties), the election process, the number of board meetings per year, the length of a term (the IRS says no more than 10 years), and the number of terms allowed.

Officers are usually included as board members. When you begin to generate names of other possible board candidates, think of people from your community who have interest in your mission, have talents to offer, and would be willing to serve. Clearly spell out to candidates the roles and responsibilities of serving on the board when you ask them to become a board member.

## *Financial Information*

Many parent groups hear the word budget and think, “What budget? We don’t have a budget.” Look back over the past three years and think of the activities your group has done. Almost anything a group does costs money, even providing treats or child care for a meeting. Determine what your expenditures were and where the money came from to pay those bills. Gather this financial data and be ready to show your receipts for expenses. If members currently pay for the bulk of your bills, this money is still considered part of the group’s income. Include donations made by friends or family. Membership dues are another source of income for the group.

If your group has only been in existence for one year, then identify expenditures for that year and projected financial information for the next two years.

## *Drafting and Filing the Articles of Incorporation*

When you have completed the above-mentioned steps, you will be ready to write the articles of incorporation and file them with your state. The legal language requirements and specific information that should be included in the articles varies from state to state. Fees can vary as well (about \$25 to \$100). In Minnesota, for example, the current filing fee is \$70 and the articles of incorporation are sent to the Secretary of State’s office for approval. You should be able to find out where and how to incorporate by calling the general information number for your state offices or going to the state’s web site.

The following information is usually found in articles of incorporation:

- name of the organization
- purpose for becoming a nonprofit—the group’s goals, actual programs, training, services, and the demographics of who will be served
- name of the principal agent and at least two others willing to be incorporators—president, vice president, secretary, or treasurer
- address, county, and state where the president resides
- number of members of board of directors, including names and addresses
- dated signature of the principal agent or registered agent

When drafting your articles of incorporation, you want to be sure to include the legal language that meets both

your state’s and the federal requirements if your group is also going to apply for 501(c)(3) status. Federal language guidelines for articles of incorporation as well as links to most states can be obtained on [www.nonprofit-law.com](http://www.nonprofit-law.com) or from NACAC.

## *Drafting Bylaws*

The bylaws serve as a formal set of rules that govern a group’s members and regulate the affairs of the organization. Most states have rules for how a nonprofit organization must operate and you should check out your state’s guidelines. Bylaws are filed with the IRS as a part of the 501(c)(3) application process. When writing the bylaws, your group inserts the appropriate information about your organization within the legal language of the document. Bylaws include information on the following:

- **Membership:** Describe the composition of your membership.
- **Meeting Requirements:** Include when and how meetings occur, notice required for meetings, process for calling special meetings, quorum, or voting.
- **Board of Directors:** Include how many members are on the board of directors, the election process, number of meetings per year, length of term, number of terms allowed, vacancies, quorum, officers, resignation, termination, and standing committees.
- **Fiscal Management:** State when the fiscal year ends, name the officer or committee responsible for fiscal management, and policies governing the use of funds. You will also need to include any documents, books, and banking information that reflect your finances.
- **Amendments:** List your group’s guidelines for amending the bylaws.

Sample bylaws and articles of incorporation can be found at [www.nonprofitlaw.com](http://www.nonprofitlaw.com), or from NACAC.

## *Filing for Tax-Exempt Status*

This final step—completing the IRS forms for tax-exempt status—is probably the most difficult part of the process. There are many questions to answer in the application form and it can seem overwhelming. Remember, however, that you will be considered a new organization and the IRS will understand that some of what you write will be your best guess, especially in terms of funding and budget. To file for tax-exempt status you will need the following items from the IRS.

- Publication 557—*Tax-exempt Status for your Organization* explains rulings, regulations, and how to apply for 501(c)(3) status. This booklet explains how to fill out application Form 1023.
- Form 1023—*Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* is the actual application form. The form is 29 pages, but the application that you fill out is only 9 pages.
- Form 872-C—*Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code*. This form needs to be filled out in duplicate, signed, and sent in with form 1023. It allows the IRS to give new groups five years to prove they will be publicly supported. Two copies of this form are contained within the 1023 application booklet, immediately following page 9.
- Form 8718—*User Fee for Exempt Organization Determination Letter Request* is a one-page form that determines your filing fee and provides space to attach your check. If your group's annual gross receipts are less than \$10,000, your fee is \$150, and if these receipts are more than \$10,000, your fee is \$500. This form is also sent to the IRS along with 1023 and 872-C.
- Form SS-4—*Application for Employer Identification Number* can be filed as soon as your group is incorporated. The Employee Identification Number (EIN) is a nine-digit number that the IRS assigns to your organization. Information you provide on the form establishes your business tax account. If you haven't previously applied for the number, write "applying for" in line 2 of Part I of Form 1023, and the IRS will assign your group a number and send you the form. Do not apply for an EIN more than once. Processing an EIN takes about 10 days. Banks require this number before an organizational account can be opened.

You can get a copy of Form 1023, along with hints for how to fill out each section of the application from [www.nonprofitlaw.com](http://www.nonprofitlaw.com) or [www.irs.gov](http://www.irs.gov) or from NACAC.

The above forms should be filed within 15 months of incorporation. The average processing time for Form 1023 is 100 days. Applicants who state in their description of activities that they publish a newsletter or brochures might be asked later to send examples. To avoid any processing delay, it would be easier to include samples with your application.

Final suggestions once you have completed, but before you have submitted, the application are:

- Use the checklist provided with the application to make sure all required information is included.
- Make photocopies of the completed forms because the IRS will not return your originals.
- Make sure you have attached the appropriate fee to your application or it will be considered incomplete and returned to you without being processed.
- The most common reasons applications are delayed are because applicants forget to send the fee, send the wrong fee, fail to attach their state-approved articles of incorporation or bylaws, or forget to have their principal officer (such as the president) sign page one of Form 1023.

## Future Steps

After you have sent in the federal forms and you have your EIN, there are some additional things you can do through your state while you wait for your tax-exempt status to be approved. Depending on your state, you may be able to apply for a sales tax exemption. Start by calling your state's Department of Revenue.

Before you do any individual solicitation of funds, you should check to see if you need to register as a charity

### Lobbying as a Nonprofit Activity

If lobbying is one of your group's goals, it is important to note that there are restrictions on the amount of time and money a nonprofit can spend on lobbying. According to the IRS, an organization seeking 501(c)(3) status "may not attempt to influence legislation as a substantial part of its activities and it may not participate at all in campaign activity for or against political candidates." Legally, the organization can only be involved in a minimal amount of lobbying that uses a small percentage of the group's budget. The law, however, is vague about exactly what constitutes a small percentage.

A nonprofit group that wants to avoid the vagueness of the law or to spend more time and money on lobbying can elect to come under the provisions of the 1976 lobbying law and file IRS Form 5768—*Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation* at the same time the group files for 501(c)(3) status. Your group will be subject to tax on your lobbying activities. If you have further questions about lobbying you can read about lobbying issues for tax-exempt charitable organizations at [www.irs.gov](http://www.irs.gov) or seek the advice of a lawyer.

in your state (some states require it) and how it might benefit your group. Check to see if there is a “charities division” in your state Attorney General’s Office or look for an organization that oversees charities in your state. If you find you do need to register as a charity within your state, there may be a registration fee.

If your group will have paid employees, your organization can file for workers’ compensation insurance and unemployment insurance. Check with the economic security department in your state for information on how to apply. You will also want to call the US Postal Service in your state for information on how to apply for a bulk mail permit. Finally, all 501(c)(3) organizations must annually file *Federal Form 990 Return of Organization Exempt From Income Tax* with the IRS

and the Attorney General’s Office 5 1/2 months after the end of the organization’s fiscal year.

## Conclusion

Incorporating and obtaining tax-exempt status takes planning and hard work on the part of a parent support group, but it is a process that any group is capable of completing. The benefits of obtaining nonprofit tax-exempt status are certainly worth the effort for many groups. When you are able to receive grants and charitable donations, your outreach possibilities can grow beyond serving your own group’s basic needs, to serving the needs of a broader community. ✧

## Nonprofit Status in Canada

### Incorporation

Parent groups in Canada can incorporate at the provincial or federal level. Although most groups incorporate provincially, the Adoption Council of Canada, which serves all of Canada, incorporated federally. The advantages of incorporating are:

- to create an organization
- structure to guide internal decision-making
- ability to enter into contracts
- protection of individual members from liability
- potential access to more funding
- access to loans through use of corporation’s assets
- bylaws set guidelines to help keep membership active and effective

Total fees for incorporating, whether you incorporate provincially or federally, usually do not exceed \$300.

### Charitable Status

Parent groups need to decide whether registering for charitable status will be beneficial to them. The benefits of becoming a registered charity are:

- exemption from paying income tax
- the right to issue official donation receipts to donors
- greater ability to obtain grants from private foundations, the government, and others

To apply for charitable status under the Income Tax Act, groups must register with Revenue Canada. There

are four categories the courts have defined as a charitable purpose:

- relief of poverty
- advancement of religion
- advancement of education
- of a charitable nature (similar to above categories) but beneficial to the community as a whole.

Advocacy groups in support of controversial issues are not considered charitable by law.

An organization can apply to become a charity whether it is incorporated or not. If the organization is not incorporated, it must operate under the guidelines of a constitution that explains its structure and purpose.

Some organizations are considered a charity under provincial law, even if they are not registered with Revenue Canada. These organizations are subject to the provincial laws governing their activities, and are entitled to certain legal and tax privileges. These provincial laws also impose certain filing requirements and record-keeping obligations. Check to see if your group would be considered a charity under the laws of your province.

For information on how to incorporate provincially (except for Nunavut) or federally, or how to register as a charity go to:

<http://cap.ic.gc.ca/english/8910.htm>

If you are without Internet access or want Nunavut guidelines, contact the Adoption Council of Canada at 888-54ADOPT or NACAC.