

DISCUSSION POINTS FOR PERSONS PROPOSING NONPROFIT VENTURES©

Forming a Kansas nonprofit (nonstock) corporation is the easiest step in the process of forming a charitable corporation. Once formed and registered in the Kansas Secretary of State's office, it is a legal entity that exists separate and apart from the incorporator, trustees and members. Before forming a Kansas nonprofit corporation with the intention of qualifying for federal tax exempt recognition, I recommend you discuss the following questions and your answers with your professional advisors, community supporters and the members of your family who will be affected by a decision to invest your energy, time and funds in an entity that will not belong to you.

Describe why you are motivated to create a nonprofit, tax-exempt organization?

Is the proposed organization an outgrowth of an idea or recognition of an unmet community or charitable need?

Describe how you know that the community needs or will be helped by the proposed organization?

Have you identified at least ten resources available to you and the new organization?

Identify and describe those resources within the following categories:

FINANCIAL

PROFESSIONAL

GOVERNMENT

EXPERIENCE/BACKGROUND

EDUCATIONAL

MANAGEMENT

COMMUNITY SUPPORT

ROLE MODELS/ MENTORS

NETWORK CONNECTIONS

OTHER RESOURCES

How will the organization be funded?

How much money must be available to operate the organization for the first five years?

Who will pay for the start up of the proposed organization?

Has anyone conducted any funding or marketing research for the proposed organization?

If so, please describe.

Has a name been selected for the proposed organization?

If so, what is the name, why was it selected and who selected it?

Describe the activities and programs to be offered by the proposed organization.

Who will be selected to participate in the organization's programs?

How will the proposed organization determine or define a qualified beneficiary (or participant) of the activities?

Who will conduct the activities?

Why do you believe the proposed organization should be a nonprofit, tax-exempt organization instead of a business?

Describe how the organization will be promoted?

Describe your long term vision for the organization, including annual revenue and expenses?

Describe the role you envision for yourself, including number of years you hope to be involved and whether or not you hope to donate or be compensated for your time and services.

Describe the persons who will serve as the first board of directors, including how many and any relationship between those persons (family, employees, friends, etc.)

Will the proposed organization utilize volunteers? If so, how will those volunteers be recruited and trained?

Describe the amount of involvement that will be required of board members, of staff and others to develop and maintain the proposed organization during the first five years of existence.

Nonprofit Incorporation Questionnaire
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Steps to Becoming an IRS Recognized Nonprofit Organization

1. Identify a qualified tax-exempt purpose; develop a mission statement and primary activities to carry out the tax-exempt purpose of the organization. Choose a name (with “Inc.”, “Association”, etc.).
2. Select the initial members of the organization’s governing board. These people will serve until the first annual meeting and election of board members. These are the persons who are to be identified in the Articles of Incorporation as the members of the board to serve until the first annual election of directors and officers. The members of the initial or interim board are the persons who will help write bylaws and develop your IRS application. Once the bylaws are developed, these individuals may be elected as members of the Board of Directors.
3. Choose a registered office address for the corporation. It must be a physical location although a post office box number may be used for mailing purposes.
4. Write the Articles of Incorporation (see sample) and submit ONE ORIGINAL signed BY THE INCORPORATOR(S) witnessed by a notary public, with a \$20 check made out to the Secretary of State (785-296-4564) to:

Honorable Ron Thornburgh
 Secretary of State
 First Floor, Memorial Hall
 120 SW 10th Ave.
 Topeka, KS 66612-1594

You should receive a certified copy of your articles within 10 days. The certified copy will specify a Kansas Corporate ID number and the date the Articles of Incorporation were filed and the corporation came into existence. Please place that certified copy with the organization’s other corporate records.

5. Write and adopt the organization’s bylaws (see sample). All board members should become familiar with the bylaws because they specify the governing procedures and rules. Keep a copy of the bylaws with the corporate records.
6. Go to the IRS website irs.gov and print the following forms. You may also call the IRS at 1-800-829-3676 for the following forms to become a nonprofit organization:
 - SS-4
 - 1023
 - 2848
7. Fill out and sign the SS-4 form in order to receive your Federal Employee Identification Number (FEIN) and fax to Entity Control to 215-516-3990 (or you may do this by phone at **1-800-829-4933**). You will need this number on other IRS forms you will be submitting and to open a bank account.
8. Fill out the above IRS forms (SS-4, 1023, and 2848) referring to publication 556 and instructions for form 1023. It is important to have an experienced attorney (with nonprofits) review your bylaws and IRS application in advance of submittal to IRS. It is recommended that this attorney be given power of attorney status using the IRS 2848 form. This will allow him or her to check on the status of the application and answer any questions IRS representatives may have. Send ALL the IRS forms with signatures, signed bylaws, and a copy of the filed, stamped articles of incorporation along with a copy of the initial articles, with a check (\$750 if income will be greater than \$10,000 or \$300 if income will be less than \$10,000) made out to the United States Treasury to:

Internal Revenue Service
 P.O. Box 192
 Covington, KY 41012-0192

BEYOND ACHIEVING TAX-EXEMPT RECOGNITION© SOME ADVICE FOR NEW NONPROFIT ORGANIZATIONS

Founders of tax-exempt organizations are usually focused on obtaining and maintaining tax-exempt recognition, but often overlook the application of other federal and state laws. Sometimes founders are unaware of legal issues and sometimes even though aware of those issues, forget the need to obtain ongoing legal advice as part of the organization's risk management practices.

When emergencies arise, requests for emergency legal services are made to lawyers serving on the Board or at random in the community. Sometimes, but not always, a lawyer will be able to help on an emergency basis. More frequently, the organization will find that the only option is to employ an attorney to represent its interests. Being unfamiliar with the organization and often also unfamiliar with the complex structure of tax-exempts, the emergency lawyer must invest a lot of billable hours in order to provide the specific legal services. Sadly, many legal emergencies could have been avoided and resources preserved through ongoing consultation with an attorney during development of projects and activities, especially in the initial years of an organization's existence.

WHY A KANSAS NONPROFIT, TAX-EXEMPT CORPORATION NEEDS TO INCLUDE A LAWYER IN ITS MANAGEMENT TEAM:

**TO AVOID PREVENTABLE LEGAL PROBLEMS AND
UNCONTROLLABLE COSTS OF LEGAL EMERGENCIES,**

**TO PROTECT THE CORPORATION, ITS RESOURCES, DONORS &
ITS PROGRAMS, and**

**TO MAINTAIN COMPLIANCE WITH STATE & FEDERAL LAWS
AND REGULATIONS APPLICABLE TO TAX-EXEMPT
CORPORATIONS.**

**WHY CAN'T THE LAWYER ON THE ORGANIZATION'S BOARD HANDLE
THE ORGANIZATION'S LEGAL NEEDS? IF THE LAWYER** works with nonprofit and tax-exempt organizations and their legal matters as a significant portion of her/his practice, then that lawyer is certainly likely to be able to provide advice and assistance. If the lawyer board member practices in some other area then it is unlikely that he or she will be familiar with the laws and regulations that govern nonprofits and tax-exempt organizations. Whether or not your lawyer board member practices in the exempt organization area, he or she may not be wish to provide legal advice since **many governance experts believe that it is a conflict of interest for a board member to provide advice to the board on which he or she serves.**

WHAT LAWS APPLY TO KANSAS NONPROFIT, TAX-EXEMPT CORPORATIONS AND OTHER NONPROFIT ORGANIZATIONS? Although there may be some exclusions within laws and regulations, all the laws that apply to any Kansas corporation may have some application to nonprofit, tax-exempt corporations. Here is a **partial** listing of some of those laws:

- KANSAS CORPORATION LAWS
- FEDERAL TAX CODE
- KANSAS TAX LAWS; INCOME, SALES, EMPLOYMENT
- FEDERAL LABOR STATUTES & REGULATIONS
- KANSAS LABOR & EMPLOYMENT LAWS
- KANSAS CHARITABLE SOLICITATION LAWS
- KANSAS CONSUMER PROTECTION LAWS
- FEDERAL AND KANSAS VOLUNTEER IMMUNITY LAWS
- FEDERAL PRIVACY LAWS, INCLUDING HIPPA
- FEDERAL INTELLECTUAL PROPERTY STATUTES; COPYRIGHT, TRADEMARK & PATENTS
- KANSAS TRADEMARK LAW
- KANSAS REAL ESTATE LAWS
- KANSAS MUSEUM PROPERTY ACT
- FEDERAL IMMIGRATION LAWS
- FEDERAL PATRIOT ACT
- INTERSTATE COMMERCE LAWS AND REGULATIONS
- KANSAS AND FEDERAL HEALTH , SAFETY & ENVIRONMENTAL LAWS AND REGULATIONS
- UNIFORM COMMERCIAL CODE

HOW CAN AN ORGANIZATION KNOW IT NEEDS LEGAL ADVICE?

EMERGENCIES - If an organization receives notification (in any form) of a complaint against it or any of its representatives, contact a lawyer **immediately**. Do not discuss the matter or make any agreements, offers or admissions until the matter has been discussed with the lawyer and legal advice has been received.

PREVENTATIVE - To avoid legal emergencies and consequences such as lawsuits, judgments, penalties, etc, seek preventative legal services. Some of the most common (but not only) needs for legal services arise in the following situations:

- **Making changes in governance documents, including bylaws;**
- **Reviewing and/or preparing contracts, leases, insurance policies, meeting minutes & financial statements;**
- **Development and implementation of management and operational policies;**
- **Decisions about gifts, large purchases or sales of assets;**
- **Adoption of appropriate risk management practices and policies;**
- **Transactions involving Board members and other insiders;**
- **Decisions on employment matters including employee policies and procedures;**
- **Development of new projects & activities, including websites;**
- **Formalizing collaborations with other nonprofits or for profit businesses;**
- **Release of publicity and promotional materials;**
- **Responding to requests for Opinion letters;**
- **Board member disputes;**
- **Understanding liability issues;**
- **Training on legal duties for Board and staff members;**
- **Creating and implementing fund-raising projects and Development Strategies;**
- **Creating and distributing publications;**
- **Protecting and using Intellectual Property (Copyrights, Trademarks & Patents); and**
- **Advice on how to comply with federal and state laws applicable to your organization.**

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