



Nonprofit Corporation Nuts & Bolts: Background & Considerations for Corporation-Building

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Considerations in forming a nonprofit corporation / consortium

Why form a corporation?

- Corporation is enduring despite changes in personnel – might be more likely that activities will continue
- Protect the group from personal liability, including debts and lawsuits
- Business is conducted as a distinct legal entity
- Corporate documents provide structure and process

Advantages of forming a nonprofit corporation

- Exempt from state and federal taxes on income
- Increased ability to attract & receive grants & donations
- Donors (corporations, foundations, individuals) can claim deduction for contribution of cash, property, travel expenses
- Corporations are established in a state; an EPSCoR state may be advantageous to a nonprofit scientific corporation.

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Disadvantages

- Requires legal transactions and lawyer fees both initially & ongoing
- (incorporation fees ~ \$1,200 plus lawyer fees)
- Requires carefully designed process to create and maintain a qualified Board of Directors each willing to donate significant effort
- Organization may not participate in legislative or grassroots political activities

Considerations in forming a nonprofit corporation / consortium

Incorporators, Directors (BoD), Officers, Members, Employees
- **who does what?**

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Incorporators (N.H. requires at least 5):

- Role is promoter of the organization, and may be the initial BoDs
- Must act in the best interest of the corporation
- Legal role of incorporator ends once the corporation is formed

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Directors (N.H. requires at least 5)

- Directors are collectively known as the Board of Directors
- Legally, financially, and morally responsible for the management and operation of the corporation
- Directors are crucial links between the corporation and its benefactors
- BoD develops and oversees organizational policies & goals, budgeting, fundraising, and disbursing funds
- BoD hires an Executive Director to run the corporation and supervise staff
- Need BoD with experience in fundraising, managing money, and useful practical skills (legal, public relations, marketing,...)
- Need appropriate training for nonprofit BoD, initially and periodically
- Need reasonable number on BoD (max ~ 10)
- Initial Directors identified in articles of incorporation serve until the first meeting to re-elect Directors, if it is a membership corporation

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Officers (President, Secretary, Treasurer)

- Powers, duties, and responsibilities of officers are identified in the articles of incorporation
- Officers are in charge of supervising and implementing the business of the corporation
- Actions of officers are legally binding on the corporation
- Officers can receive reasonable compensation for their services
- (In very small nonprofits, officers and directors can also assume staff positions and be paid for their service)

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Members:

- Nonprofits can have a formal membership structure or not
- Formal membership structure is defined in bylaws or articles of incorp.
- Formal members have power to vote on major corporate decisions
- Many smaller nonprofits do not have a formal membership structure
- Can have supporters, patrons, contributors, advisors, etc who have an interest and help the organization but are not formal members
- If have formal members, can have clearly-defined classes of members with different rights and privileges
- There should be significant contribution to the corporation by formal members, in exchange for power to impact corporate decisions

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Employees:

- Employees work for and under the supervision of the corporation and are paid a salary plus corporate benefits
- Employees do not set policy, they implement written Board policy

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What's in a name?

- The name of the corporation is the most commonly visible impression of the corporation
- Must be unique in the state of incorporation
- Practical suggestions:
 - choose a descriptive name that reflects the purposes or activities
 - could use common nonprofit terms in the name (e.g. Association, Center, Coalition, Community, Institute, Program, Resource, Scientific,..)
 - avoid names that make it hard for people to understand what the corporation does

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Articles of Incorporation

- File with the state, before applying for 501c3 status
- Need to identify an “Agent” who is a person authorized to receive legal papers on behalf of the corporation, and must use a street address not a PO Box.
- Registered office may be different from the principal office of the corporation but in the same state
- Statement of purpose should satisfy 501c3 tax exemption requirements

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Bylaws

- First step is to decide whether to have a membership or non-membership corporation
- Describe requirements central to the organization and operation of the corporation
- Bylaws restate the most significant provisions applicable to tax-exempt nonprofit corporations, necessary for IRS
- Bylaws provide formal and practical rules for orderly operation of the corporation
- Bylaws should be carefully created; they are the roots of a sustainable nonprofit corporation

Questions for discussion

- Should the community start moving toward a nonprofit corporation?
- Do the benefits of operating as a nonprofit corporation outweigh the disadvantages?
- Would the community form its own corporation, or be folded into a larger existing one?
- Does a membership corporation make sense if the community decides to form a small nonprofit?
- Is the pool of expertise to tap for a Board of Directors large enough to be sustainable over the long term?
- Who among you are willing to donate significant time/effort into corporation building in the coming year?