

Preparing Articles of Incorporation

FOR A NONPROFIT CORPORATION IN UTAH

a Step-by-step summary



Prepared by the Utah Division of Corporations and Commercial Code

INTRODUCTION

Incorporating a not-for-profit corporation is an important legal process with many hidden benefits and risks. **You are always encouraged to consult an attorney to ensure appropriate consideration of all the legal implications of incorporating.**

Many nonprofit corporations are very simple. We refer to them as "generic format" corporations. That is, they meet the minimum statutory requirements and involve a very few number of people. This booklet is intended to assist those seeking to form a "generic format" nonprofit corporation.

Again, we stress that this booklet is not intended to substitute nor replace the advice of legal counsel. The information contained herein is not legal advice. It is merely a re-articulation of the provisions of Utah statutes and their application to administrative processes of this office. Section 16-6

A word about non-profit corporations. . .

Nonprofit corporations are for people, to help them achieve some common purpose. They provide a useful and inexpensive structure for the enterprise of groups of all sizes, from neighborhood or community campaigns or events to perpetual and diverse activities by hundreds and thousands of people.

A nonprofit corporation may be formed in Utah for any lawful purpose, but not for financial profit. It is an organizing structure useful to small and large-scale activities, involving only a few people or many hundreds of people. It does not require large sums of money and it can be prepared initially by following the steps in this guide.

Here is a partial list of the purposes for which nonprofit corporations are formed:

- Charitable
- Religious
- Cultural
- Agricultural
- Industrial
- Service Organization
- Benevolent
- Fraternal
- Athletic
- Fire Protection
- Employee Organization
- Emergency Medical and Rescue
- Social
- Literary
- Scientific
- Professional
- Cooperative

Special Rules and Limits

Nonprofit corporations may or may not have members or pay dividends. They may, however, compensate (in reasonable amounts) for services rendered by members, officers, and directors.

They may also:

- pay interest on credit advances or loans;
- confer benefits on members in conformity with the organization's purposes; and
- distribute assets to members, if and when the corporation is dissolved, unless tax exempt.

***Special Note:** the nonprofit incorporation status does not guarantee that your organization will be granted tax-exempt status, nor does it ensure that your contributors can deduct their gifts from reported personal income. But non-profit incorporation is generally a pre-requisite to applying to the Internal Revenue Service for preferential tax status. To apply for tax-exemption for your corporations, and tax deduction privileges for your supporters, call or write to the nearest Internal Revenue Service office for the necessary forms.*

Reasons For Forming a Nonprofit Corporation

Nonprofit corporations enjoy certain benefits and privileges:

Organization and Permanence

Incorporation provides a formal and perpetual means for sustaining programs undertaken initially by individuals. It creates formal procedures by which people can continue to carry out the purposes and to accomplish the goals of the founders.

Protection for Individuals

An individual's liability is limited. The corporation, not its members, is the entity responsible for debts. Also, the corporation, not its members, has the right to sue and to be sued, to hold property, and to enter into transactions.

Possibility of tax-exempt status

Nonprofit corporations may be eligible for exemption from federal taxes, if they meet the requirements of the Internal Revenue Code {most will qualify under Section 501(c)}. Not all nonprofit's will be eligible. For example, a condominium association may be a nonprofit corporation but it would not qualify for federal tax exemption.

Potential Incentive for Contributors

If your nonprofit is granted tax-exempt status and can meet additional criteria, your donors and supporters may also be able to deduct their contributions to your organization from their personal income for federal tax purposes. Acquiring tax exempt status has proven helpful in creating incentives and in attracting support for nonprofit corporation activities.

State Sales Tax Exemption

If you are granted federal tax-exempt status, or if you fall into the categories eligible under Utah law, you may also file for an exemption from the Utah state sales tax.

For information on a Utah Sales Tax Exemption and other tax questions, please contact the Utah Tax Commission at (801)297-2200.

Reasons For Not Forming A Nonprofit Corporation

Limits on your ability to borrow or obtain credit

If your corporation has no assets or sources of regular income, you will generally be required to find a personal guarantor of any debts incurred, in order to ensure payment.

Unwanted constraints on your activities

If you are granted tax-exempt status, you must follow certain rules on lobbying and political activity, as directed by the Internal Revenue Service. You may wish to consult these rules before applying for tax-exempt status, to decide whether these constraints are acceptable and compatible with your organization's purposes and activities.

Limits on your organization's purposes and activities

IRS rules also limit the purposes and activities of an organization if it wishes to retain its preferential tax status. The IRS must approve any changes from the original certificate of incorporation as a condition for continuing to grant the exemption.

Imposition of management and record-keeping obligations

Nonprofit's are required to maintain certain records, conduct regular meetings and submit reports to federal and state agencies. These tasks may be more than your group wants to undertake.

The nonprofit requirements are easily managed, however, and you may wish to consider these two questions as you decide whether to proceed:

- Do I want my personal liability limited?
- How much of an organization's financial burden would I be willing to pay personally if the organization failed to meet its obligations?

If you favor limiting personal liability and protecting your own financial resources, nonprofit incorporation may well be worth it. If you are soliciting funds, you must contact the Division of Consumer Protection (801) 530-6601.

An Overview to Incorporating

A nonprofit corporation is formed when the Division of Corporations approves your articles of incorporation for filing or if a delayed effective date is specified pursuant to U.C.A. Section 16-6a-108(2). At that time your articles are stamped with an agency seal and with a corporate file number. There is no application form for filing articles of incorporation.

Articles of Incorporation must be type written or computer generated are required to include the following elements (U.C.A. Section 16-6a-202:)

1. The name of the corporation.
2. The business purpose or purposes of organizing the corporations, including important language required by the IRS for federal tax exemption.
3. The number of shares the corporation is authorized to issue. If more than one class of shares is authorized, each class must be designated along with a description of the preferences, limitations and relative rights of each class. For additional information, see 16-6a-202 of the Utah Code.
4. A statement declaring whether or not the corporation will have "voting members".
5. The number of directors constituting the initial governing board (at least three (3)) and may list the name of each of those directors (optional with Articles until first annual report).
6. For Non-Commercial Registered Agents: The Utah street address of the business entity's initial registered office and the name of its initial registered agent at such address.
For Commercial Registered Agents: The name of the commercial registered agent and the registration number.
7. The name, street addresses and verified signatures of each incorporators.
8. The street address for the principle office (optional with Articles until first annual report).

When filing your articles a non refundable processing fee of \$30.00 payable to the State of Utah to:

Mail In:	PO Box 146705 Salt Lake City, UT 84114-6705
Walk In:	160 East 300 South, Main Floor
Information Center:	(801) 530-4849
Toll Free:	(877) 526-3994 (within Utah)
Fax:	(801) 530-6438

Sample Articles of Incorporation

This sample is not intended to substitute nor replace the advice of legal counsel. You may review the following Articles of Incorporation as a sample. The **bold** print is the wording that would actually appear in the articles of incorporation. All other print is merely explanatory or instructional assistance. (U.C.A. Section 16-6a-202)

ARTICLES OF INCORPORATION OF FOUNDATION FOR UTAH 2000

The Articles will then proceed with a statement such as:

We, the undersigned natural persons all being of the age of eighteen years or more, acting as incorporators under the Utah Nonprofit Corporation and Cooperative Association Act, adopt the following Articles of Incorporation for such Corporation:

The articles are then generally numbered and delineated as follows:

Article I NAME

The name of the corporation is stated.

The name of the corporation is Foundation For Utah 2000.

Article II DURATION

The period of duration of the corporation is stated. (A fixed number of years may be stated.)

The period of duration of this corporation is perpetual.

Article III PURPOSE

The specific purposes, but not limited to, for which the corporation has been formed are enumerated.

- (a) To act and operate exclusively as a nonprofit corporation pursuant to the laws of the State of Utah, and to act and operate as a charitable organization in lessening the burdens of government, providing relief of the poor and distressed or under-privileged, and promoting social welfare by reducing unemployment through economic development.**
- (b) To engage in any and all activities and pursuits, and to support or assist such other organizations, as may be reasonably related to the foregoing and following purposes.**

- (c) To engage in any and all other lawful purposes, activities and pursuits, which are substantially similar to the foregoing and which are or may hereafter be authorized by Section 501(c)(3) of the Internal Revenue Code and are consistent with those powers described in the Utah Nonprofit Corporation and Cooperation Association Act, as amended and supplemented.**
- (d) To solicit and receive contributions, purchase, own and sell real and personal property, to make contracts, to invest corporate funds, to spend corporate funds for corporate purposes, and to engage in any activity "in furtherance of, incidental to, or connected with any of the other purposes."**

Special Note: If you plan to apply for exemption from federal income tax, you must include the following three points in your list of organization purposes:

- (i) No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered to the corporation and to make payments and distributions in furtherance of the purposes set forth herein;**
- (ii) no substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in , or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office except as authorized under the Internal Revenue Code of 1954, as amended;**
- (iii) the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under 501(c)(3) of the Internal Revenue Code of 1954, as amended (or the corresponding provision of any future United States Internal Revenue law).**

Article IV MEMBERS/STOCK

A nonprofit corporation may have one or more classes of members, or may have no members. If the corporation has one or more classes of members, the designation of such classes, the manner of election or appointment, the qualifications and rights of the members of each class and any provisions for termination or forfeiture of membership must be set forth in the articles of incorporation or the bylaws. The articles of incorporation or the by-laws may contain provisions relating to the imposition of dues, assessments or other charges on members and provisions restricting the transfer of memberships.

Members are not individually or personally liable for the debts or obligations of the corporation.

The corporation shall not have any class of members or stock.

Special Note on "Membership":

Corporations are not required to have members. But if they do, the types and qualifications of membership must be described in the certificate of incorporation or in the by-laws. Some non-profit corporations have only trustees, who determine their own terms of office.

You may wish to describe all membership information in your by-laws instead of in the certificate of incorporation. By so doing, you avoid the need to file with the Division of Corporations any changes that you may make in membership criteria. (If membership criteria are part of the certificate of incorporation, and you change the criteria, you have to file all such changes with the Division of Corporations. Amendments to by-laws need not be filed with the State.)

Article V BY-LAWS

The articles may provide that regulations and rules for governing the internal affairs of the corporation will be set forth in the "By-Laws."

Provisions for the regulation of the internal affairs of the corporation shall be set forth in the By-Laws. (U.C.A. Section 16-6a-206)

Special Note on By-Laws:

1. *Information You Need In Your By-Laws*

By-laws define the operations and procedures of the corporation, its officers, members and others participating in its activities.

2. *The bylaws of a nonprofit corporation may contain any provision for managing the business and regulating the affairs of the nonprofit corporation that is not inconsistent with the law or the articles of incorporation, including management and regulation of the nonprofit corporation in the event of an emergency.*

Article VI DIRECTORS

A statement declaring whether or not the corporation will have "voting members." The number of directors constituting the initial governing board (at least three (3)) and may list the name of each of those directors.

The number of directors of this Corporation shall be three (3), or more than three, as fixed from time to time by the By-Laws of the Corporation. The number of directors constituting the present Board of Directors of the Corporation is three, and the names and addresses of the persons who are to serve as directors until their successors are elected and shall qualify are:

**John Doe
123 South North Temple
Salt Lake City, UT 84222**

**Bill Doe
321 North South Temple
Salt Lake City, UT 84222**

Mary Doe
123 South North Temple
Salt Lake City, UT 84222

Article VII
INCORPORATORS

The identity as well as the addresses of each of the incorporators is listed.

The names and addresses of the incorporators are:

John Doe
123 South North Temple
Salt Lake City, UT 84222

Bill Doe
321 North South Temple
Salt Lake City, UT 84222

Mary Doe
123 North South Temple
Salt Lake City, UT 84222

Article VIII
REGISTERED OFFICE AND AGENT

The address of the corporation's initial registered office, the name of the registered agent acknowledging acceptance as such must be included. The address must be a street address. A Post Office Box is not permitted.

The address of the corporation's initial registered office shall be:

321 South North Temple
Salt Lake City, UT 84222

Such office may be changed at any time by the Board of Trustees without amendment of these Articles of Incorporation.

The corporations initial registered agent at such address shall be:

John Doe

I hereby acknowledge and accept appointment as corporate registered agent.

Article IX
PRINCIPAL PLACE OF BUSINESS

The principal place of business is specified.

The principal place of business of this Corporation shall be 321 South North Temple, Salt Lake City, Utah 84222. The business of this Corporation may be conducted in all counties of the State of Utah and in all states of the United States, and in all territories thereof, and in all foreign countries as the Board of Trustees shall determine.

Article X
DISTRIBUTIONS

Non-profit corporations that are tax-exempt must provide a declaration of distribution of corporate assets. The specific suggested language is as follows:

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended or supplemented, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, as amended or supplemented.

Article XI
DISSOLUTION

It is required that tax-exempt corporations provide in the articles of incorporation for the distribution of assets upon dissolution. The specific suggested language is as follows:

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended or supplemented, or shall be distributed to the federal government or to a state or local government for a public purpose. Any such assets not so disposed of shall be disposed of by the District Court of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

This section of your articles is MANDATORY and should closely follow the format shown here:

In Witness Whereof, We, John Doe, Mary Doe, Bill Doe, have executed these Articles of Incorporation in duplicate this _____ day of _____, 20_____, and say: That they are all incorporators herein; that they have read the above and foregoing Articles of Incorporation; know the contents thereof and that the same is true to the best of their knowledge and belief, excepting as to matters herein alleged upon information and belief and as to those matters they believe to be true.

John Doe

Mary Doe

Bill D