

A STEP-BY-STEP GUIDE

# *The Art of Forming a New Nonprofit*

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BY LAUREL CANNON ALDER



**2016 Edition**  
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In 2008, the Utah Arts Council granted rights to the handbook to the Utah Nonprofits Association in recognition of UNA's role in assisting emerging nonprofits of all types throughout the state of Utah. UNA appreciates the spirit of collaboration exhibited by the Utah Arts Council in this gesture.

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For an electronic/pdf version of this document, please visit the Utah Nonprofits Association website: [www.utahnonprofits.org](http://www.utahnonprofits.org).

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This guide is a supplement to, not a replacement for, the instructions provided by the government entities overseeing nonprofit corporations. Under no circumstances will the Utah Nonprofits Association or the authors of any materials provided be responsible or liable to any person or organization who disregards this warning.

**UTAH ARTS COUNCIL  
COMMUNITY STATE PARTNERSHIP**

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### **Frequently Asked Questions**

Look for boxes or pages with a large question mark throughout the manual for answers to frequently asked questions.

## Where to begin...

*Use this step-by-step guide to simplify the task of creating a nonprofit.*

**F**or nearly two decades, the Utah Arts Council’s Community/State Partnership Program and the Utah Nonprofits Association have assisted organizations in the process of becoming nonprofit. This handbook is intended to be a step-by-step guide to forming a nonprofit, covering the most basic questions. The handbook does not provide legal counsel and is not a substitute for legal or risk management advice. Additionally, it is a supplement to, not a replacement for, the instructions provided by the government entities overseeing nonprofit corporations. These materials are intended to help guide you through the basic elements of incorporation and make the process simpler. If you have further questions or concerns, you are encouraged to seek professional advice. Under no circumstances will the author, the Utah Arts Council, or the Utah Nonprofits Association be responsible or liable to any person who disregards this warning.

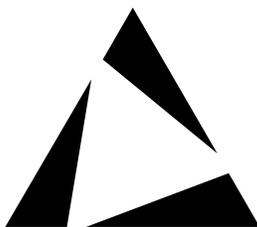
## What is a nonprofit?

An organization that has a mission to serve the public interest and has filed incorporation papers with the state and receives federal and state tax exemption.

**Note:** The Utah Nonprofits Association presumes that in addition to formalizing your organization by registering it as a nonprofit in the State of Utah, you will also seek and receive tax-exempt status from the Internal Revenue Service by way of being designated as a 501(c)(3) organization. There are over 25 different types of tax-exempt organizations under the Internal Revenue Code, most of which cannot receive tax-deductible donations. In general, when this guide refers to “nonprofits,” it is referring to organizations approved by the IRS as 501(c)(3) organizations.

## Why form a nonprofit?

There are many valid reasons for creating nonprofit organizations. Nonprofits form the backbone of social, cultural, environmental and community services. Nonprofit organizations fill a void left by government agencies and businesses. Generally, the people who become involved in nonprofit causes do so for altruistic reasons. People who desire to form a nonprofit organization are dedicated to improving their communities. Thanks, in part to the federal government’s increased reliance on the services nonprofits can provide, nonprofits are growing at an unprecedented rate. According to the August 2015 IRS Business Master File, there are 6,094 registered 501(c)(3) nonprofits in Utah. In 2014, these charities accounted for over \$8 billion in revenues which represents 6% of Utah’s gross domestic product.



In order to understand why nonprofits exist, it is helpful to know where nonprofits fit into the larger picture. Visualize a triangle where one corner is the government and services provided by the government such as schools, road maintenance, city parks, national forest areas, public golf courses, etc. The second corner represents the for-profit

arena, including private businesses, professional services, Wall Street, and the production of many goods and services. Nonprofits fill the third corner and provide services that the other two sectors cannot or do not provide. The name the “third sector” originates from this concept of three different kinds service providers (government, business and nonprofit) working together to provide all the elements needed to sustain a good quality of life.

Why form a nonprofit? Because you are passionate about a cause; because you need to obtain grant monies or donations to support that cause; and because you need to formalize the concept you believe in, in order to be recognized by other businesses and individuals. There are also financial incentives for becoming a nonprofit beyond the ability to receive grants or donations. Nonprofits can make use of lower postal rates, receive discounts or exemption from property, sales and excise taxes, and may receive in-kind services from corporations. The limited liability that directors, officers and employees may enjoy is another benefit of nonprofit status.

If you have a group that has operated informally without financial records or an organizational structure, the main disadvantages to you are the paperwork and fees required to form the organization. With the help of this handbook, the paperwork should be simply a matter of customizing the samples and following the instructions in this handbook.



### **Can we make a profit?**

Yes. In some ways, the title “nonprofit” is misleading. A nonprofit organization can have more income than expenditure. In fact, it is healthy for an organization to have a fiscal reserve to provide insulation against changes in funding, requests for services, or changes in operation. Some nonprofits are fortunate enough to manage an endowment, from which it either spends or reinvests the interest gained on the money.

What distinguishes a nonprofit from a for-profit is not whether the organization makes money but what happens to the profit. Any money that is raised by a nonprofit organization must eventually be used to fulfill the mission of the organization.

In terms of operations, nonprofit organizations should be treated as a business with business interests and needs, remembering, that it is because of the nature of their missions, that nonprofits enjoy the benefits of tax exemption.

## **Reasons NOT to form a nonprofit**

There are instances when it is more appropriate to form a for-profit organization, function informally without 501(c)(3) exempt status, or partner with an existing nonprofit. The reason to become a for-profit organization is to maintain freedom and autonomy. Founders can create an organization and invest a great deal of time and energy in their vision, only to see the organization changed over time by a volunteer board of directors. If it is important to you as the founder of an organization to always maintain control over the mission and vision of your

organization, you should strongly consider forming a for-profit company. The purpose of a *nonprofit* is to *serve the community*, not a limited number of individuals. This is one reason that the government requires nonprofits to have a volunteer board of directors. Volunteer directors promote community ownership of the organization.



### **How long does it take to get nonprofit status?**

Plan that it will take a minimum of three to six months to prepare and process the paperwork. Using the sample documents contained in this handbook, the process of applying for 501(c)(3) status is not as difficult as some people fear. The first step, incorporating with the State of Utah, is simply a matter of preparing the Articles of Incorporation and submitting them to the Division of Corporations. The IRS *Form 1023* and the Bylaws take a bit longer, but are still straightforward. Plan that *each* interaction with the IRS takes approximately three months.

### **Are there organizations that are not required to file Form 1023, Application of Recognition of Exemption?**

Yes. The I.R.S. gives automatic exemption to two types of organizations:

1. Churches, conventions or associations of churches, or church-affiliated auxiliaries of a church, religious schools, etc.
2. Any organization (other than a private foundation) normally having annual gross receipts of not more than \$5,000.

The I.R.S. considers these organizations as exempt automatically if they meet the requirements of section 501(c)(3).

### **What are the requirements once annual gross receipts are over \$5,000?**

Once annual gross receipts are over \$5,000 the organization has 90 days after the end of the tax year to file Form 1023 See *pages 23 and 24 of IRS publication 557 for more details on the calculation of gross receipts and filing requirements* ([www.irs.gov/pub/irs-pdf/p557.pdf](http://www.irs.gov/pub/irs-pdf/p557.pdf)).

### **Should I file Form 1023 even when it's not required?**

"*A Nonprofit Organization Operating Manual*" published by *The Foundation Center* states that some organizations may choose to file Form 1023 even though they are not required to do so for the following reasons:

1. In order to receive a determination letter that recognizes your section 501(c)(3) status and specifies whether contributions to them are tax deductible.
2. To reassure potential contributors and foundation grant officers that you are indeed tax exempt under 501(c)(3). The IRS publishes a list of tax-exempt organizations on their website so contributors can check on-line.
3. To protect your organization. If down the road the IRS does not agree your group qualifies for tax-exemption your group might end up paying income taxes on its revenues.

**Note:** Even though an organization may be exempt from filing Form 1023, it is still required to file 990-N (e-postcard). This is the type of tax return required for nonprofit organizations that normally have gross receipts of less than \$50,000 per year.

### **Can a nonprofit begin operation before it receives the 501(c)(3)-determination letter?**

Yes. A nonprofit organization, meeting the requirements of section 501(c)(3), can operate on a limited basis as an exempt organization before it receives its determination letter from the I.R.S. It's important not to put off filing for your exemption. If you file within 27 months of the time your organization was founded (date of incorporation), your effective date of exemption will be retroactive to your founding date. Donations made prior to the ruling can be accepted and are retroactively tax deductible. If you procrastinate in your filing, your effective date of exemption may be considered the date the I.R.S. receives your Form 1023, in which case prior contributions or income will not be deductible for the donor. In addition your organization may be liable for corporate income taxes. Organizations may apply for a 12-month extension if they meet specific requirements.

### **When can we set up a bank account?**

To set up a bank account, an organization generally needs to present the following two documents:

- The Tax Identification Number (T.I.N.). The T.I.N. number (sometimes called an EIN or Employer Identification Number) comes from the I.R.S. and is obtained by applying for an Employer Identification Number using the Form SS-4 (see [www.irs.gov/pub/irs-pdf/iss4.pdf](http://www.irs.gov/pub/irs-pdf/iss4.pdf) for instructions).
- Proof of registration with the state of Utah, such as the stamped Articles of Incorporation.

Often if there are associated fees, the bank will waive them for a nonprofit organization.

### **Can nonprofits lobby?**

The I.R.S. limits the amount and kind of lobbying nonprofits are allowed to do. Charities are allowed to lobby provided the activity is not a substantial part of the organization's overall activities. Any direct lobbying expenditure must be reported to the I.R.S. As long as you exercise care in the political activities engaged in, and keep the activities limited, you can lobby and keep your organizational status in good standing. Lobbying should be distinguished from advocating for specific candidates for office. Nonprofits are not permitted to campaign or advocate for or against individual political candidates.

### **How can you form a for-profit/nonprofit combination?**

As a legal entity, a nonprofit can enter into a business activity with a for-profit corporation or other nonprofit corporations. These partnerships can serve all entities well but require extra bookkeeping. You may want to form a partnership with another organization to benefit from some of the for-profit proceeds, such as creating a restaurant that gives its profits to the nonprofit. Or, you may create a for-profit and nonprofit dance studio, the nonprofit side of the equation would typically include the outreach and educational programming and the for-profit would be the studio classes. If you are interested in this type of arrangement, you should seek further advice from a professional.

# Steps to Organizing a Nonprofit

1. Choose a name for the organization. Check the availability of the name on the Utah Department of Commerce website <https://secure.utah.gov/bes/action> .
2. Prepare and file an application for Reservation of Business Name (optional). **(\$22)**
3. Prepare and file two copies with original signature of the Articles of Incorporation with the Utah Division of Corporations. Find sample articles at <http://corporations.utah.gov/index.html> . **(\$30)**
4. Prepare and file I.R.S. Form SS-4 Application for Employer Identification Number <http://bit.ly/2caUDv0> .
5. Prepare Bylaws. Find resources on the UNA wwebsite for more information.
6. Draft a conflict of interest policy. The I.R.S. has a sample conflict of interest policy here: <https://www.irs.gov/instructions/i1023/ar03.html>
7. Prepare and file the appropriate I.R.S. Form, either Form 1023 or Form 1023-EZ, and related I.R.S. forms. Instructions for both Form 1023 and Form 1023-EZ can be found on the I.R.S. website. <http://bit.ly/2cikfbQ> **(\$275/\$400/\$850)**
8. Apply for Appropriate Exemptions.
  - Utah State Income Tax Exemption;
  - Utah Sales Tax Exemption;
  - Investigate other nonprofit benefits that may apply to your organization.  
\*for more details, visit the Utah State Tax Commission Web site.
9. Prepare and file a Charitable Solicitations Permit Application with the Division of Consumer Protection. <https://secure.utah.gov/charities/start.html> **(\$75)**
10. Prepare and file an Annual Report with the Utah Division of Corporations <http://corporations.utah.gov/> .**(\$15)**
11. Prepare and file annually one of the following IRS forms: <http://www.irs.gov/charities/index.html> :
  - Form 990-N Electronic Filing System (e-postcard)
  - Form 990-EZ
  - Form 990

Some organizations such as churches are exempt from filing a 990.



## 1. Choose a Name for the Organization

The steps of incorporating a nonprofit are fairly simple and straightforward, but the decisions you make now will set the tone for the organization for years to come, so it is wise to take time on each step. Think through decisions you are making not only for this year, but for five and ten years hence when the organization will likely be larger and will have more of a community impact. This applies not only to the selection of a name, but also to board size and structure. When choosing a name, think about the acronym the letters form as well as what the name suggests. Avoid trademark conflicts; check the following resources:

- The Utah Department of Commerce website (<https://secure.utah.gov/bes/action>)
- The Web: search for the name you want and for similar names; also check to see whether the name you want is being used as a domain name which is also a trademark conflict
- Federal trademark database: <http://www.uspto.gov/trademarks/process/search/>



## 2. Reserve the Business Name

*You are not required* to reserve your name in advance of filing the Articles of Incorporation. Once the Articles of Incorporation are filed with the State, the name you have chosen will be yours. The State of Utah *does* allow organizations wishing to reserve their name for a 120 day period to register the name with the Utah Department of Commerce for \$22. This temporarily holds your name until the filing of the Articles of Incorporation completes the process.

The Utah Department of Commerce website is: <http://commerce.utah.gov/> .  
Or you can download the application at:  
<http://corporations.utah.gov/business/nameinfo.html> .



### 3. Prepare and file Articles of Incorporation

Although a nonprofit organization can take other forms, most nonprofit organizations are corporations. Corporations are formed under state law. To form a Utah nonprofit corporation, the persons forming the organization must file Articles of Incorporation with the Utah Department of Commerce. The Articles of Incorporation is the only document required by the State for forming a nonprofit. In addition to the general information it provides, the Articles of Incorporation establish evidence of an agency's nonprofit nature. Utah's Department of Commerce on their web page <http://corporations.utah.gov/business/dnp.html> provides Articles of Incorporation forms, guide sheets, informational packets, and answers to frequently asked questions. A step-by-step manual "Preparing Articles of Incorporation" is available at: <http://corporations.utah.gov/pdf/nonprofitarticles.pdf>. The manual includes a sample Articles of Incorporation. It is important to note that the I.R.S. will require additional terms in the Articles of Incorporation above and beyond what the State of Utah will require. In particular, your Articles of Incorporation must include a provision limiting the organization's activities to charitable purposes. An example is included in the sample Articles of Incorporation on page 24. When filing your articles, you must submit two signed original copies to the Utah Department of Commerce with a filing fee payable to the State of Utah. Additional information is available by phoning (801) 530-4849 or on the Division of Corporations website, [www.commerce.utah.gov](http://www.commerce.utah.gov).

**To satisfy the State of Utah, the Articles of Incorporation must contain the following information:<sup>1</sup>**

Section A:

1. Name of Corporation
2. Purpose or purposes for which the corporation is being formed
3. Registered Agent
4. Incorporators- name, signature and address of each incorporators
5. Voting Members
6. Shares
7. Assets: a dissolution policy -*see further details on next page*

Section B:

1. Principal Address
2. Directors - name and address of each director

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<sup>1</sup> <http://corporations.utah.gov/pdf/incnonprofitinst.pdf>, May 2009

	<p><b>Dissolution of Assets?</b></p> <p>Both the State and the IRS requires your Articles of Incorporation to include a dissolution clause. This means that if you dissolve your organization in the future, your assets must be distributed for exempt purposes described in section 501(c)(3). A sample clause is included in IRS instructions for Form 1023, page 7: "Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose."</p>
	<p><b>Declaration of Distributions?</b></p> <p>Although the state does not require a Declaration of Distribution in your Articles of Incorporation, this is an important issue for the IRS. In evaluating a nonprofit's exempt status, the IRS is looking for assurance that the nonprofit is organized and operating exclusively for their exempt purpose and that assets are being distributed in a fiduciary manner toward charitable purposes. See page 32 for a sample of this clause.</p>
	<p><b>Does Incorporation Limit My Liability?</b></p> <p>One of the benefits of incorporation is that the corporation is a separate entity from the individuals responsible for its creation. In most cases the corporation protects individuals from personal liability if board members exercise their duties in a responsible prudent way and the assets of the organization are not comingled with those of the people running the organization. It is important to understand legal responsibilities and duties of each board member and make reasonable review of their performance to ensure they are carrying out their duties diligently. We encourage you to consult an attorney to ensure appropriate consideration of all legal implications of incorporating.</p> <p>The <b>Utah Nonprofits Association (UNA)</b> recommends that all Utah nonprofit organizations adopt core values and standards of ethics. We recommend that you print out and work towards Standards of Ethics for Nonprofit Organization in Utah available from UNA's website at:  <a href="https://utahnonprofits.org/membership/standardsofethics">https://utahnonprofits.org/membership/standardsofethics</a></p>



### **How Can We Amend the Articles of Incorporation?**

Most changes in the organization can be handled through the annual report that an organization must file each year with the State of Utah. However, if the organization has a change in purpose or to the Articles of Incorporation, there is a form available through the Division of Corporations for doing so. That form is available here:

<http://corporations.utah.gov/pdf/incamendnp.pdf>. Follow the instructions on the form to draft and file your amendment.



## 4. Prepare and file I.R.S. form SS-4

This form is simple to complete and is required. The Employee Identification Number (E.I.N.) becomes the number by which the organization is tracked federally. The E.I.N. for an organization is similar to an individual's Social Security number.

<p>?</p>	<p><b>What date should we use for the date of Incorporation?</b></p> <p>This question usually arises when completing the Federal Forms SS-4 and Form 1023. The I.R.S. considers the date of incorporation to be the date that the Articles of Incorporation were approved by the Utah Division of Corporations.</p>
<p>?</p>	<p><b>Where can I obtain Form SS-4?</b></p> <p>IRS Forms and Publications are available at: <a href="http://www.irs.gov/formspubs/index.html">http://www.irs.gov/formspubs/index.html</a></p>
<p>?</p>	<p><b>Can I apply online?</b></p> <p>Apply and get your number instantly online: <a href="https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online">https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online</a></p>



## 5. Prepare Bylaws

The Bylaws are like your organization's Constitution. They contain the operating rules and provide a framework for the organization's management procedures. They are the tools of internal accountability. The State of Utah does not require nonprofit corporations to have bylaws but it is advisable to have these important internal operating rules. Although the IRS requests a copy of your bylaws to be included in Form 1023 Application for Recognition of Exemption, federal tax law does not require specific language in the bylaws of most organizations.

The power to adopt, amend or repeal Bylaws is vested in the Board of Directors unless otherwise provided in the Articles of Incorporation or in the Bylaws. The Bylaws establish the normal working rules for the regulation and management of the affairs of the organization and, therefore, should be simple and flexible. Particular care should be taken in defining the voting members if the organization elects to be a member organization and in all the proceedings for the election of the governing board.

This handbook is created to give you two options for creating your own Bylaws. First, you will find a list of the basic elements that must be contained in the Bylaws. You may use this list to create your own Bylaws or you can adapt the Sample Bylaws in this section (pg 29) to fit your organization. Additional sample bylaws for both member and nonmember organizations are available from GrantSpace here: <http://grantspace.org/tools/knowledge-base/Nonprofit-Management/Establishment/nonprofit-bylaws>

At a minimum, Bylaws should contain the following information:

- **Purpose:** The name, purpose and goals of the organization (may also contain the organizational mission.)
- **Directors:** The number, qualifications, terms of office, definition of a quorum, dates of annual meeting, and procedure for filling board vacancies.
- **Required Officers:** Each board is required to have officers such as President, Vice-President, Secretary and Treasurer. The Bylaws should define basic number and roles of officers. One person may hold more than one office simultaneously, except for the offices of President/Chair and Secretary.

- **Executive Committee:** A majority of the board may designate two or more board members as an executive committee to act on behalf of the board in the interest of the organization, except to approve or recommend items requiring oversight of the full board, fill vacancies on the board, or amend Articles or Bylaws. **Other committees** and committee responsibilities may be outlined in the Bylaws as well.
- **Members:** If the organization has members, the Bylaws should outline their qualifications, rights and duties. Bylaws should also contain any pertinent information about regularly scheduled meetings and member responsibilities.
  - a. **Indemnification:** Bylaws should contain provisions for indemnification by the corporation of its directors, officers and employees with respect to claims brought against them for actions taken in good faith, which the person reasonably believed to be in the best interest of the organization.
  - b. **Amendments:** Provide instruction on the process of amending the Bylaws. As a fluid document, the Bylaws of a nonprofit should be amended to reflect the current needs of the organization. All amendments must be authorized by the Directors as outlined in the Bylaws. As a matter of good practice, amendments should be noted on the copy of the Bylaws contained in the minute book. Because of the various legal requirements involved, the organization’s attorney should be consulted prior to making any significant amendments to either the Articles or the Bylaws.
  - c. **Miscellaneous:** The Bylaws may include information about other records kept by the organization including: minutes, fiscal year, a Conflict of Interest Statement, contracts with the organization, basic financial requirements, and any other issues that may be important to the organization.



**How Can We Amend the Bylaws?**

If there is a change in purpose or activities, you must file an amendment with the I.R.S. Submit a copy of the amended Bylaws along with signatures of at least two members of the board to the I.R.S. Cincinnati office at the following address:

I.R.S.  
 TE-GE Room 4024  
 P.O. Box 2508  
 Cincinnati, OH 45201  
 Attention: TE-GE Correspondence Unit  
 Fax number: 513-263-4330

## What about our Board?



### **How should we structure the Board?**

The size of the board should reflect the nature of the organization. Boards may be structured in many different ways and comprised of many different kinds of individuals. Governing, advisory and working boards are three typical types of board structures. Working boards usually run new organizations. This means that each board member plays a distinct and important role in the day-to-day operations of the organization. On a working board, the board members not only create the policies, vision and goals for the organization, they also carry out most of the work. Choosing the Board of Directors is among the most important decisions you can make. When looking for directors, look for a variety of people, including members who are willing and able to work, those who are power brokers and connected in the community, visionary leaders who are passionate about the cause, and either affluent members or people who have a connection to financial resources.

### **How big should the board be?**

Typically, a manageable size board for a new organization is somewhere between five and nine members. Utah state law requires at least 3 board members before the Articles of Incorporation may be filed. Too few members can place a tremendous burden on a few people and too many members can be unwieldy to manage. However, each organization must decide the best number based on the roles of the board members, the tasks to be accomplished, and the mission of the organization. Board service can be made more effective and efficient with the use of committees. Committees should support the board activities and can be made up of non-board members. By dividing board activities into committees, you can involve more people in the organization (even find potential board members) and shorten board meetings by taking care of specific details in committee meetings.

### **How long should a board member serve?**

Although there are different thoughts about length of service, a two or three year term is standard. That length of time allows board members to learn the workings of the organization without burning out. Additionally, you may want to provide opportunities for board members to serve multiple terms. Remember, however, that Bylaws not only provide guidance to the board, they also provide protection if a problem occurs. If a problem arises with a board member, the best, and sometimes the only *kind* way to remove that board member is through board term limits. By enforcing term limits, the board remains fresh, and over the life of the organization, more people can be involved in the organization.

### **What constitutes a quorum?**

The Bylaws should define the number required to make a quorum. Most often, it is either a majority or two-thirds of the board.

### **Why are we required to have at least three board members?**

According to the Utah Code, nonprofit organizations are required to have a minimum of three board members. The three member minimum requirement helps the start-up organization to expand beyond the incorporator and better protects the public interest in the nonprofit. Remember that 501(c)(3) organizations exist to benefit the general public.

### **Can a board member receive payment for service on the board? Or, can a board member receive payment for services to the organization which are separate from their role on the board?**

One of the key restrictions that the I.R.S. places on a nonprofit organization is that the board members be volunteer representatives of the community. A board member may not be paid for his or her service on the board. He/she may, however, be compensated for gas, mileage, and expenses associated with their service on the board. Although it is best to separate the activities of the board and the activities of staff and/or contract people, there are occasions when a board member may provide services that are separate from their board service. For example, a dance company may have a member of the board who is also an instructor for the company. If this occurs, be careful to keep clear records of the board member's service and his or her paid work.

### **How often should the board meet?**

As often as needed, but not so many times that board members do not feel their time is well spent. A lot will depend on which type of board you have. A governing board may only need to meet on a quarterly basis to approve the budget or set new policy. On the other hand, a working board may need to meet monthly to ensure the health of the organization with regard to ongoing decisions that need to have prompt attention. Try to limit the number of meetings or limit the length of meetings by using time-savers such as separate ad hoc committees or consent agendas.

One way to maintain efficient board meetings is to use committees. Assign board members to committees as directed by your mission and strategic plan. At the board meeting, each committee should make a report and ask for approval on specific items decided by their committee at a separate meeting. Using this format can empower board members and encourage efficiency at full-board meetings.



## **6. Prepare and file I.R.S. Form 1023 or Form 1023-EZ, Application for Recognition of Exemption**

Organizations that meet the requirements of Internal Revenue Code section 501(c) 3 are exempt from federal income tax and charitable contributions made by individuals and corporations are tax deductible. To receive this benefit, organizations must apply to the I.R.S. by filing Form 1023 or Form 1023-EZ, Application for Recognition of Exemption.

Before you start on the process of applying for a tax exemption, you should determine whether your organization qualifies to apply using the streamlined application, known as Form 1023-EZ. There is a list of questions at the end of the instructions for Form 1023-EZ which will help you determine whether you qualify to use the streamlined application and pay a smaller application fee.

For many people, completing Form 1023 is the most intimidating and time consuming part of the process of becoming a tax-exempt organization. However, the Form is usually less difficult than it appears. The purpose of Form 1023 is to prove to the I.R.S. three basic issues:

1. The organization is organized and operated exclusively for one or more exempt purposes.
2. The organization will not be organized or operated for the benefit of private interests.
3. The organization will not substantially attempt to influence legislation (unless it elects under allowable provisions) or participate in any extent in a political campaign for or against any candidate for public office.

*Find both forms and instructions on the IRS website: [https://www.irs.gov/uac/about-form-1023?\\_ga=1.97862815.1826247339.1431459704](https://www.irs.gov/uac/about-form-1023?_ga=1.97862815.1826247339.1431459704)*

*For more information, review Publication 557 Tax-Exempt Status for your Organization: <https://www.irs.gov/pub/irs-pdf/p557.pdf>.*

Understanding the three above issues will make filling out Form 1023 much easier. The instructions that accompany Form 1023 are detailed and much of the Form is self-explanatory. There are a few areas that tend to be harder to complete than others. The areas are as follows:

- **Part IV: Narrative Description of Your Past, Present and Planned Activities**

This may be the most important section for determining your exempt status, so write it carefully. Remember successful applications become public documents and may be used in the future by a variety of users to evaluate your organization, most importantly potential donors. In addition to listing the what, who, when, and where of your activities, explain how each activity furthers your exempt purpose and how it will be funded. Support the details of your narrative by attaching newsletters, brochures, or similar documents. This may be one of the most important public relations materials that you write. Having someone less close to your organization review your application may help clarify important points and speed up the processing time of your application.

- **Part VIII: Your Specific Activities**

Questions 1 and 2 relate to lobbying. It is important to the I.R.S. to confirm that the organization is not going to spend a substantial percentage of its resources on lobbying. For more information see Frequently Asked Questions on page four. Question 3 asks about gaming activities. Note that raffles are considered gaming as they are games of chance. "Opportunity drawings" are not considered gaming.

- **Part IX: Financial Data**

Provide the most accurate budgetary history or projection you can. It is acceptable to indicate no/zero income where appropriate.

- **Part X: Public Charity Status**

Questions 1-5: Public charity or private foundation? The difference is significant. All 501(c)(3) organizations are classified either as a public charity or a private foundation. The difference between the two can have an impact on the tax deductibility of donations, donors and the organization. Typically, a private foundation is established for the purpose of giving money under the auspices of a family name (for example: James L. Knight Family Foundation).

The determination between private foundation and public charity depends on where your money comes from. If a "substantial" portion (typically 1/3) of your money comes from a variety of individual donors, foundations and government grants then the organization is a public charity. If most of your money comes from one source then the organization would be considered a private foundation. Please note that the IRS assumes the organization is a private foundation unless proven otherwise. **It is in the best interest of most nonprofits to prove that the organization is a public charity.** Both private foundations and public charities are required to file a 990 tax return.

Question 6a: Advanced Ruling. Do not complete this question, this is no longer an option.

### Application Package

To assist in the processing of your application, the I.R.S. requests that documents should be submitted in a specific order. Assemble your application package per the checklist located at the end of your Form 1023. The I.R.S. offers a “fillable” form 1023, we recommend using this form if you can, it makes navigating changes to the process easier. Remember to retain a copy of your completed Form 1023 and all supporting documents in your permanent records.

### Action Item

Beginning with the organization's sixth taxable year, it must establish that it meets the public support test by showing that it is publicly supported on its Schedule A to Form 990, Return of Organization Exempt from Income Tax.

	<b>Where do I obtain I.R.S. Forms?</b>  The form is available either through the I.R.S. website, <a href="http://www.irs.gov">http://www.irs.gov</a> . In addition to Form 1023, Form 1023EZ and instructions the I.R.S. provides Publication 557 with more detailed information about Tax-Exempt Status.
	<b>Where do I find more information?</b>  The I.R.S. has an extensive website at <a href="https://www.irs.gov/charities-non-profits/charitable-organizations">https://www.irs.gov/charities-non-profits/charitable-organizations</a> dedicated to all aspect of nonprofit organizations.
	<b>Is it possible to expedite the ruling process?</b>  The I.R.S. will only approve expedited processing of an application where a request is made in writing and contains a compelling reason for processing the application ahead of others. See Form 1023 instructions for additional information.
	<b>Can we accept donations prior to receiving the exempt designation from the I.R.S. and the state income exemption?</b>  Because the tax exempt status is retroactive to the date of incorporation (up to 27 months), donations given prior to receipt of the determination letter may be exempt. Because you should take special care of your donors, be aware of the window of time in which the status is retroactive. Be aware that many donors and grantmaking organizations have regulations that require that you have the exempt status prior to applying.



## 7. Prepare and File I.R.S. Form 8718

**Form 8718: User Fee for Exempt Organization** is submitted with your Form 1023 as part of your application package. The law requires a user fee with each application for determination letter request.

The user fees change over time, and you should double check on the I.R.S. website to make sure you are sending in the appropriate amount. As of August 2016, the user fee is \$400 for organizations that had or anticipate gross receipts averaging less than \$10,000 during preceding or the next four years. The user fee for organizations exceeding that amount is \$850. As of August 2016, the user fee for Form 1023-EZ is \$275.00.

See **Form 1023 checklist** for instructions on where to include Form 8718 in your application package.



**Form 8718: What happens if we estimate incorrectly and make more than an estimated \$10,000/year in the first four years?**

The I.R.S. will not bill you retroactively. You are expected to make a best-faith estimate in your initial application.



## 8. Apply for appropriate exemptions

### Exemption from Sales Tax

In order to obtain exemption from sales tax in Utah, you must first be recognized as an exempt organization by the I.R.S. [i.e., a 501(c)(3) organization]. Once you have received the determination letter from the I.R.S., mail it along with Form TC-160 to the Utah State Tax Commission.

### Exemption from Income Tax

In order to obtain exemption from income tax, send a copy of your 501(c)(3)-determination letter along with Form TC-161 Utah Registration for Exemption from Corporate Franchise or Income Tax to the Utah State Tax Commission. Some activities and sales of a nonprofit organization do not merit nonprofit exemption.

?	<b>Where do I obtain a Form TC-160?</b> Download a form from the Utah State Tax Commission's Website at: <a href="http://tax.utah.gov/forms/current/tc-160.pdf">http://tax.utah.gov/forms/current/tc-160.pdf</a>
?	<b>Where do I obtain a Form TC-161?</b> Download a form from the Utah State Tax Commission's Website at: <a href="http://tax.utah.gov/forms/current/tc-161.pdf">http://tax.utah.gov/forms/current/tc-161.pdf</a>
?	<b>Is Utah tax exempt status retroactive?</b> Although an organization may not receive tax and income exemption until it receives the determination letter from the I.R.S., the exemption may be retroactive: Income tax exemption is generally retroactive to the day of inception. Sales tax exemption is generally retroactive to the day of inception or three years, whichever is less.

### Tax on Unrelated Business Income of Exempt Organizations

The I.R.S. grants exemption from the payment of income tax on income directly related to the purpose of the organization. However, if an exempt organization regularly carries on a trade or business that is not substantially related to its exempt purpose, it may be subject to tax on its income. All income is subject to taxation and the I.R.S. has the right to grant or deny an exemption depending on the nature of the requested exemption.

Because unrelated business income is often made through sale of incidental items or through activities not related to the organization, the income may be taxed. For example, churches which host bazaars where they sell used clothing, cakes or other goods, may be subject to I.R.S. taxes because the items being sold do not substantially relate to the activity and focus of the church.

To be considered unrelated business income, the product or service in question must satisfy all three of the following tests:

- The income is derived from a trade or business;
- The trade or business is regularly carried on; and
- The trade or business is not substantially related to the organization's exempt purpose.

There are some exemptions to Unrelated Business Income Tax including passive income such as interest payments, royalties, annuities and certain rents. Organizations run by volunteers for the convenience of their members may also be exempt. Exemptions, as with taxes, are the domain of the I.R.S. Review I.R.S. Publication 598 for additional details.

### **Qualifications for Nonprofit Mail Rate**

Most 501(c)(3) organizations qualify for a Nonprofit Standard Mail Rates Permit from the U.S. Post Office. This permit entitles nonprofits to lower rates on mailings. To obtain a permit, you must complete a simple application, PS Form 3624. The form is available on the U.S. Post Office web page, [www.usps.gov](http://www.usps.gov) or may be obtained from your local post office. In addition to the form, you will need the following documents:

- A copy of the tax-exempt determination letter from the I.R.S.
- Documents describing the organization's primary purpose, such as the Articles of Incorporation and/or Bylaws.
- Supporting materials showing how the organizations actually operated during the previous 6-12 months and how it will operate in the future. Bulletins, financial statements, membership forms, publications produced by the organization, minutes of meetings or a list of its activities may be used.

Application is available at: <http://about.usps.com/forms/ps3624.pdf>

Keep in mind that the completed Form 3624 must be submitted to the post office where bulk mailings will be deposited. If the application is approved, the authorization will apply only at that post office.

### **Other exemptions**

There are other exemptions that nonprofit organizations may qualify for. You may want to investigate other options, such as property tax exemption, that are applicable to your organization.



## 9. Prepare and File a Charitable Solicitation Permit

According to Utah Code Annotated, §§13-22-1 to 23, any organization seeking donations must obtain a Charitable Solicitation Permit from the Utah Division of Consumer Protection. The Utah Charitable Solicitations Act was enacted to protect both consumers and legitimate charities. This law requires charities to register annually with the Department of Commerce, Division of Consumer Protection. Unless you are granted exemption under the law, you must file an application each year and pay an annual fee of \$75 per year. You can contact the Division of Consumer protection at (801) 530-6601 or [www.commerce.utah.gov](http://www.commerce.utah.gov).

The importance of obtaining a Charitable Solicitations Permit should not be understated. If you intend to request donations of any type, have a “donate now” button on your website, conduct fundraising through social media, ask for people to donate to a crowd sourcing campaign, host a fundraiser, or apply for any grants whatsoever, you are required to have a Charitable Solicitations Permit.

Furthermore, applications are not automatic, and can take up to 20 business (not calendar) days to be processed. The consequences for soliciting contributions without a permit can be steep. Soliciting without a permit is a Class B misdemeanor, and can carry a financial penalty of up to \$10,000.00 per series of violations.

You can apply for a permit online and find other resources here:  
<http://consumerprotection.utah.gov/registrations/charities.html>

A large, bold, black question mark icon centered within a white square.	<p><b>What kind of information do we need to provide to our donors to comply with I.R.S. standards?</b></p> <p>A charitable organization must give a donor a disclosure statement for a quid pro quo contribution over \$75. A quid pro quo contribution is a payment a donor makes to a charity partly as a contribution and partly for goods or services (for example, a donor gives \$100 and receives two complimentary tickets in return, valued at \$40). The receipt must state the value of the gift. You should provide written receipts for all donations to the organization. If no goods or services are received for the services, the receipt should indicate, “No goods or services were given in return for this donation.”</p> <p>For any single gift of \$250 or more, a taxpayer must have a written acknowledgement from the charitable organization in order to take a tax deduction.</p>
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## 10. Prepare and file Appropriate Reports

### Utah Annual Reporting Requirements

Annual reports must be filed during the month of the anniversary date of incorporation, on a form provided by the Utah Division of Corporations. Filing fee is \$10.

- *Get form:* <http://corporations.utah.gov/pdf/renewal.pdf>
- *File online:* <http://corporations.utah.gov/onlinechangeforms.html>

### I.R.S. Form 990

An organization must file one of the following IRS Forms on an annual basis:

Opt	IRS Form	If annual gross receipts are:	And if total assets are:
1	Form 990-N electronic notice (E-postcard)	Normally \$50,000 or less	
2	Form 990-EZ	< \$200,000	< \$500,000
3	Form 990	Exceeds EZ requirements	

**NOTE:** Form 990 is a key source of information about nonprofits. It is a document of public record available through libraries and found on the internet. GuideStar, [guidestar.org](http://guidestar.org) has a database of 1.8 million IRS-recognized U.S. nonprofits in which it publicizes 990's along with organization's mission, goals, accomplishments and board members. Another good site is the Foundation Center under the tab *Find Funding*, [www.fdncenter.org](http://www.fdncenter.org). The 990 summarizes an organization's finances, including listing salaries of the top paid officials, names of the board of directors, and financial gifts from private foundations. Remember that private foundations are also nonprofit organizations. It is possible to learn a fair amount about the giving practices of a nonprofit organization by looking at the Form 990.



#### **What do we do if the organization has been inactive for some time?**

*Utah:* If the board has failed to file the Annual Report or for some other reason has lost its recognition by the State of Utah, then the organization must file an Application for Reinstatement. The application is available from the State of Utah Division of Corporations. The cost to reinstate is \$30.

*I.R.S.:* If your organization fails to file its tax return for three years in a row, its tax exempt status may be automatically revoked. If your tax exempt status is automatically revoked, there are instructions on the I.R.S.'s website for reinstating your tax exempt status, <https://www.irs.gov/charities-non-profits/charitable-organizations/automatic-revocation-how-to-have-your-tax-exempt-status-retroactively-reinstated>

**ARTICLES OF INCORPORATION  
of a  
SAMPLE ARTS ORGANIZATION**

**SAMPLE  
SAMPLE**

*Information about the incorporation process and answers to frequently asked questions are noted in italics in the body of the text.*

For the purpose of example, “Sample Arts Organization” is used as the organization title.

The undersigned adult natural persons, acting as incorporators, hereby establish a nonprofit corporation pursuant to the Utah Nonprofit Corporation and Co-operative Association Act and adopt the following articles of incorporation:

**Article I**

**NAME:** The name of the Corporation is *SAMPLE ARTS ORGANIZATION*.

**Article II**

**DURATION:** The Corporation shall have perpetual existence.

*Existence is generally perpetual but is not required to be. You can state a fixed number of years.*

**Article III**

**PURPOSES:** The specific purposes and objectives of the Corporation shall include but not be limited to the following:

*Define your purpose of existence according to IRS regulations. Note that the language in section a) i, ii, and iii is mandatory.*

(a) The Corporation is organized as a nonprofit corporation and shall be operated exclusively for educational and charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

(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 by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (or the corresponding provision of any future United States Internal Revenue law).

(b) To act and operate exclusively as a nonprofit corporation pursuant to the laws of the State of Utah. *(Insert information that is pertinent to your organization here. Add any additional information as necessary in c, d, e, etc.)*

(c)

(d)

(e)

(f) 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 purposes, and to engage in any activity “in furtherance of, incidental to, or connected with any of the other purposes.”

(g) Such other powers as may be exercised by nonprofit organizations under the applicable laws of the State of Utah and are consistent with those powers described in the Utah Nonprofit Corporation and Cooperation Association Act, as amended and supplemented.

#### **Article IV**

##### **MEMBERSHIP:**

*An organization may have one or more classes of members or no members. If the organization chooses to have members, this section should define the terms of membership. Or, you may wish to describe membership details in your bylaws in order to avoid having to file amendments each time you make a change to the Articles of Incorporation. Members are not individually or personally liable for the debts or obligations of the corporation.*

**(Option A)** *SAMPLE ARTS ORGANIZATION* shall not have any class of members or stock.

**(Option B)** *SAMPLE ARTS ORGANIZATION* shall have members as prescribed by its bylaws. Their terms of membership, rights, powers, privileges and immunities shall be as from time to time stated in the bylaws. The corporation shall have no capital stock. However, the corporation may issue certificates evidencing membership therein.

#### **Article V**

**BYLAWS:** The initial bylaws of the Corporation shall be as adopted by the board of trustees. Such trustees shall have power to alter, amend or repeal the bylaws and from time to time enforce

and adopt new bylaws. Such bylaws may contain any provisions for the regulation or management of the affairs of the Corporation that are not inconsistent with the law or these Articles of Incorporation, as the same may from time to time be amended. However, no bylaw at any time in effect, and no amendment to these articles shall have the effect of giving any trustee or officer of this Corporation any proprietary interest in the Corporation's property or assets, whether during the term of the Corporation's existence or as an incident to its dissolution.

#### **Article VI**

##### **BOARD OF DIRECTORS:**

*You are required to have a minimum of three people on your board. Even as a new organization, it is generally recommended that you have more than three members.*

The number of members on the Board of Directors of *SAMPLE ARTS ORGANIZATION* shall be three, or more than three, as fixed from time to time by the bylaws of the corporation. The number of trustees constituting the present Board of Directors of the corporation is (*minimum of three*), and the names and addresses of the persons who are to serve as trustees are:

<u>Name</u>	<u>Address</u>
1. Samuel Clemens	647 Canyon Road, Brigham City, UT 84314
2. Jane Eyre	1581 South 750 West, Bountiful, UT 84152
3. William Shakespeare	753 Tragedy Lane, Cedar City, UT 84606

#### **Article VII**

**INCORPORATORS:** The names and addresses of the incorporators are:

*Include the names as well as the addresses of the Incorporators*

Samuel Clemens	William Shakespeare
647 Canyon Road	753 Tragedy Lane
Brigham City, UT 84314	Cedar City, UT 84606

Jane Eyre  
1581 South 750 West  
Bountiful, UT 84152

#### **Article VIII**

**REGISTERED OFFICE AND AGENT:** The address of the Corporation's initial registered office shall be:

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

*SAMPLE ARTS ORGANIZATION*  
647 Canyon Road  
Brigham City, UT 84314

Such office may be changed at any time by the Board of Trustees without amendment of these Articles of Incorporation. The Corporation's initial registered agent at such address shall be:

Samuel Clemens

I hereby acknowledge and accept appointment as corporate registered agent:

Signature: \_\_\_\_\_

#### **Article IX**

**PRINCIPAL PLACE OF BUSINESS:** The Principal Place of Business of this Corporation shall be *647 Canyon Road, Brigham City, UT 84314*. 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**

*Nonprofit organizations that are tax-exempt must provide a declaration of distribution of corporate assets. The specific suggested language is as follows:*

**DISTRIBUTIONS:** 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**

*This language is required by the Federal Government for tax-exempt status.*

**DISSOLUTION:** 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 purpose 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, Samuel Clemens, Jane Eyre and William Shakespeare have executed these Articles of Incorporation in duplicate this 24<sup>th</sup> day of January, 2000 and say:

That we are all incorporators herein; that we 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, expecting as to matters herein alleged upon information and belief and as to those matters we believe to be true.

Samuel Clemens

William Shakespeare

Jane Eyre (*It is recommended that you have the signatures notarized.*)

**SAMPLE**

**SAMPLE**

**BYLAWS**  
**of a**  
***SAMPLE ARTS ORGANIZATION***

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ARTICLE I  
OFFICES

**Section 1.1 Business Offices.** The principal office of the corporation shall be located in the city of \_\_\_\_\_ and the county of \_\_\_\_\_. The corporation may have other offices either within or outside Utah, as designated by the Board of Directors or as the affairs of the corporation may require from time to time.

**Section 1.2 Registered Office.** If a registered office of the corporation is required to be maintained in Utah, it may be, but need not be, the same as the principal office, if in Utah, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II  
PURPOSES

**Section 2.1 Purposes.** This corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code.

**Section 2.2 Specific Objectives and Purposes.** The specific objectives and purposes of this corporation shall be: *(this can be a bulleted list of organizational objectives or paragraph narrative. If you desire, the organization's mission statement can also be included in this section. Section 2.2 may also simply be the organizational Mission.)*

ARTICLE III  
BOARD OF DIRECTORS

**Section 3.1 General Powers.** The Board is responsible for overall policy and direction of the Council and *(if applicable)* delegates responsibility for day-to-day operations to the *SAMPLE ARTS ORGANIZATION* executive director, staff and board committees as assigned. All corporate powers shall be exercised by or under the direction of the Board of Directors.

**Section 3.2 Number, Election, and Qualifications.** The number of Directors of the Corporation shall be fixed by the Board of Directors, but in no event shall be less than three and no more than #. Any action of the Board of Directors to increase or decrease the number of Directors, whether expressly by resolution or by implication through the election of additional Directors, shall constitute an amendment of these bylaws effecting such increase or decrease. Directors shall be elected or re-elected by the existing Board of Directors at each annual meeting of the board, and each trustee shall hold office until the next annual meeting.

**Section 3.3 Tenure.** Trustees are elected for *a specified length of time such as two years. The language that follows should designate the rotation schedule as well as number of terms an individual may serve. You may use language such as: Term cycles are staggered so that approximately one-third of the trustees' terms*

*expire each year. Initially, one-third of the board members will be asked to serve shortened terms to provide opportunity for rotation. Trustees are limited to two consecutive three-year terms. The Board may extend such limits for one year. Former trustees may be nominated and re-elected after one year's absence.*

**Section 3.4 Duties.** Directors must be participating members. *Write the instructions for attendance at functions, board meetings, etc. Sample phrasing: Board Members are expected to attend the annual meeting and at least six board meetings per year, to serve on at least one standing committee and to attend committee meetings. After two consecutive absences, the Board Chair or a member of the Executive Committee will contact the board member in question to confirm his or her interest in remaining on the board. After three consecutive absences, unless proven otherwise, it will be assumed that said board member desires to resign.*

**Section 3.5 Vacancies.** Any trustee may resign at any time by giving written notice to the chair of the *SAMPLE ARTS ORGANIZATION*. Such resignation shall take effect at the time specified therein, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum. A trustee elected to fill a vacancy shall be elected for the un-expired term of his predecessor in office.

**Section 3.6 Annual and Regular Meetings.**

*Annual Meeting.* The date of the regular annual meeting shall be set by the Board of Directors who shall also set the time and place.

*Regular Meetings.* Regular meetings of the Board shall be held at places and times determined by resolution of the Board and noted in the minutes.

**Section 3.7 Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the Chair or any two Directors. The person or persons authorized to call special meetings of the Board of Directors will provide proper notice and may fix any place, date and time for holding any special meeting of the Board called by them.

**Section 3.8 Notice.** Notice of each meeting of the Board of Directors stating the place, day and hour of the meeting shall be given to each trustee at his business or home address at least five days prior thereto by mailing a written notice by first class, certified or registered mail, or at least two days prior thereto by personal delivery of written notice or by telephone notice or by email (and the method of notice need not be the same to each trustee). If mailed, such notice shall be deemed to be given when deposited in the United States mail, with prepaid postage. If emailed, such notice shall be deemed to be given when the email is sent. Any trustee may waive notice of any meeting before, at or after such meeting. The attendance of a trustee at a meeting shall constitute a waiver of notice of such meeting, except where a trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting unless otherwise required by statute.

**Section 3.9 Quorum and Voting.** A majority of the number of Directors fixed by section 2 of this Article III shall constitute a quorum, but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting without further notice than an announcement at the meeting, until a quorum shall be present. No trustee may vote or act by proxy at any meeting of Directors.

**Section 3.10 Meetings by Telephone.** Members of the Board of Directors or any other committee thereof may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment. Such participation shall constitute presence in person at the meeting.

**Section 3.11 Action Without a Meeting.** Any action that may be taken by the Board of Directors at a meeting may take place without a meeting if consent in writing, setting forth the action to be taken, shall be signed before such action by a two-thirds majority of the board. Such consent (which may be signed in counterparts) shall have the same force and effect as a unanimous vote of the Directors or committee members.

**Section 3.12 Presumption of Assent.** A trustee of the *SAMPLE ARTS ORGANIZATION* who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting, or unless he files his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a trustee who voted in favor of such action.

**Section 3.13 Compensation.** Directors shall not receive compensation for their services as such, although the reasonable expenses of attendance at board meetings may be paid or reimbursed by the corporation. Directors shall not be disqualified to receive reasonable compensation for services rendered to or for the benefit of the *SAMPLE ARTS ORGANIZATION* in any other capacity, provided that other members of the board are aware of the agreement between the board member or company of the board member and the *SAMPLE ARTS ORGANIZATION*.

**Section 3.14 Executive and Other Committees.** By one or more resolutions, the Board of Directors may designate from among its members an executive committee and one or more other committees, each of which, to the extent provided in the resolution establishing such committee, shall have and may exercise all of the authority of the Board of Directors, except as prohibited by statute. The delegation of authority to any committee shall not operate to relieve the Board of Directors or any member of the board from any responsibility imposed by law. Rules governing procedures for meetings of any committee of the board shall be as established by the Board of Directors, or in the absence thereof, by the committee itself.

#### ARTICLE IV OFFICERS AND AGENTS

**Section 4.1 Executive Committee Defined.** The officers of the *SAMPLE ARTS ORGANIZATION* shall include Chair, Vice-Chair, Secretary and Treasurer. The Board of Directors may also elect or appoint such other officers, assistant officers and agents, including an Executive Director, one or more vice-chairs, a controller, assistant secretaries and assistant treasurers, as it may consider necessary. One person may hold more than one office at a time, except that no person may simultaneously hold the offices of Chair and Secretary. Officers need not be Directors of the corporation. All officers must be at least eighteen years old. *(Optional language: you may choose to have one or more youth representatives as in accordance with the mission.)*

**Section 4.2 Election and Term of Office.** The Executive Committee or officers of the *SAMPLE ARTS ORGANIZATION* shall be elected by the Board of Directors at each regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon as convenient thereafter. Officers shall hold office for # year terms, as specified.

**Section 4.3 Removal.** Any officer or agent may be removed by a majority vote of the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby.

**Section 4.4 Vacancies.** Any officer may resign at any time, subject to any rights or obligations under any existing contracts between the officer and the corporation, by giving written notice to the chair or the Board of Directors. An officer's resignation shall take effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office, however occurring, may be filled by the Board of Directors for the unexpired portion of the term.

**Section 4.5 Authority and Duties of Officers.** The officers of the corporation shall have the authority and shall exercise the powers and perform the duties specified below and as may be additionally specified by the chair, the Board of Directors or these bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

*Customize this section to the needs of the organization.*

(a) **Chair.** The chair shall, subject to the direction and supervision of the Board of Directors: (i) be the chief executive officer of the *SAMPLE ARTS ORGANIZATION* and have general and active control of its affairs and business and general supervision of its officers, agents and employees; (ii) preside at all meetings of the Board of Directors; (iii) see that all orders and resolutions of the Board of Directors are carried into effect; and (iv) perform all other duties incident to the office of chair and as from time to time may be assigned to her/him by the Board of Directors. *Term is limited to two years.*

(b) **Vice-Chairs.** The vice-chair or vice-chairs shall assist the chair and shall perform such duties as may be assigned to them by the chair or by the Board of Directors. The vice-chair (or if there is more than one, then the vice chair designated by the Board of Directors, or if there be no such designation, then the vice-chairs in order of their election) shall, at the request of the chair, or in his absence or inability or refusal to act, perform the duties of the chair and when so acting shall

have all the powers of and be subject to all the restrictions upon the chair. *Term is limited to two years.*

(c) Secretary. The secretary shall: (i) keep the minutes of the proceedings of the Board of Directors and any committees of the board; (ii) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (iii) be custodian of the corporate records and of the seal of the corporation; and (iv) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him/her by the chair or by the Board of Directors. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary. *Term is limited to two years.*

(d) Treasurer. The treasurer shall: (i) be the principal financial officer of the corporation and have the care and custody of all its funds, securities, evidences of indebtedness and other personal property and deposit the same in accordance with the instructions of the Board of Directors; (ii) receive and give receipts and a quittance for moneys paid on account of the corporation, and pay out of the funds on hand all bills, payrolls and other just debts of the *SAMPLE ARTS ORGANIZATION* of whatever nature upon maturity; (iii) unless there is a controller, be the principal accounting officer of the corporation and as such prescribe and maintain the methods and systems of accounting to be followed, keep complete books and records of account, prepare and file all local, state and federal tax returns and related documents, prescribe and maintain an adequate system of internal audit, and prepare and furnish to the chair and the Board of Directors statements of account showing the financial position of the *SAMPLE ARTS ORGANIZATION* and the results of its operations; (iv) upon request of the board, make such reports to it as may be required at any time; and (v) perform all other duties incident to the office of treasurer and other such duties as from time to time may be assigned to him/her by the chair or the Board of Directors. Assistant treasurers, if any, shall have the same powers and duties, subject to supervision by the treasurer. *Term is limited to two years.*

## ARTICLE V MEMBERSHIP

***(Option A)*** Section 5.1 Members. The corporation shall have no members.

***(Option B)*** Section 5.1 Classification, Qualification, Privileges and Election of Members. The corporation shall have *(for example: one class of nonvoting members. New members may be elected to membership at any time by the vote of a majority of the Board of Directors, or selected in such other manner as may be designated by the board.)* Membership is not restricted to manner. *(for example: the membership is not restricted to individuals who reside in the State of Utah).*

**Section 5.2 Dues**. The Board of Directors may establish such membership initiation fees, periodic dues and other assessments and such rules and procedures for the manner and method of payment, the collection of delinquent dues and assessments and the proration or refund of dues and assessments in appropriate class as the Board of Directors shall deem necessary or appropriate.

**Section 5.3 Suspension and Termination of Membership.** A member who fails to pay any dues or other assessment within # days after written notice of such failure to pay is delivered to such member shall be automatically suspended from membership until all such dues and assessments are fully paid, at which time such member shall be automatically reinstated. The Board of Directors, by vote of a majority of all members of the board, may suspend or expel any member for cause. Any member who is suspended by a vote of the Board of Directors shall remain so until reinstated by the vote of a majority of all members of the Board of Directors entitled to a vote thereon. During any period of suspension a member shall not be entitled to exercise the rights and privileges of membership.

**Section 5.4 Transfer of Membership.** Membership in the corporation is (*or is not*) transferable. Members shall have no ownership rights or beneficial interests of any kind in the assets of the corporation.

**Section 5.5 Annual Meeting of Members.** An annual meeting of the members shall be held at the time and place, either within or outside Utah, as determined by the Board of Directors, for the transaction of such business as may come before the meeting. Failure to hold an annual meeting as required by these bylaws shall not work a forfeiture or dissolution of the corporation or invalidate any action taken by the Board of Directors or officers of the corporation.

**Section 5.6 Special Meetings.** Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the president or the Board of Directors, and shall be called by the president at the request of a majority of the Board of Directors.

**Section 5.7 Place of Meeting.** The Board of Directors may designate any place, either within or without the state of Utah as the meeting for any annual meeting or for any special meeting. If no place is designated in the notice, the place of meeting shall be at the principle office of the corporation.

**Section 5.8 Notice of Meeting.** Except as otherwise prescribed by statute, written notice of each meeting of the members stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than # nor more than # days before the date of the meeting, either personally, by publication in a newsletter or other printed material, or by first class, certified or registered mail, by or at the direction of the president, or the secretary, or the other officer or person calling the meeting, to each member entitled to attend such meeting. If mailed, such notice shall be deemed delivered when deposited in the United States mail, addressed to each member at his address as it appears in the records of the corporation with postage thereon prepaid. Any member may waive notice of any meeting before, at, or after such meeting. The attendance in person or by proxy of

a member at a meeting shall constitute a waiver of notice of such a meeting, except where a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**Section 5.9 Committees.** The Board of Directors at any time and from time to time may establish one or more committees of members for any appropriate purposes and may dissolve any such committee. The members of any such committee shall elect a chairperson who shall preside at all meetings of the committee and generally supervise the conduct of the committee's affairs. Rules governing procedures for meetings of any such committee and for the conduct of such committee's affairs shall be as established by the committee.

## ARTICLE VI INDEMNIFICATION

**Section 6.1 Indemnification of Directors, Officers, etc.** To the full extent permitted by law, the Association shall indemnify any trustee or officer, including the executive director (*if applicable*) for purposes of this Section 9.1, or former trustee or officer of the Association, or any person who may have served at its request as a trustee or officer of another corporation against expenses actually and reasonably incurred by them, in connection with the defense of any action, suit or proceeding, civil or criminal, in which they are made a party by reason of being or having been such trustee or officer, except in relation to matters as to which they shall be adjudged in such action, suit or proceeding to be liable for gross negligence in the performance of duty; and to make such other indemnification (including advanced payment of indemnification) as shall be authorized by the Board.

**Section 6.2 Insurance.** By action of the Board of Directors, notwithstanding any interest of the Directors in such action, the *SAMPLE ARTS ORGANIZATION* may, subject to Section 5.8, purchase and maintain insurance, in such amounts as the board may deem appropriate, on behalf of any person indemnified hereunder against any liability asserted against him/her and incurred by him/her in the capacity of or arising out of his/her status as an agent of the corporation, whether or not the corporation would have the power to indemnify him/her against such liability under applicable provisions of law. The corporation may also purchase and maintain insurance, in such amounts as the board may deem appropriate, to insure the *SAMPLE ARTS ORGANIZATION* against any liability, including without limitation, any liability for the indemnifications provided in this Article.

**Section 6.3 Limitation on Indemnification.** Notwithstanding any other provision of these bylaws, the *SAMPLE ARTS ORGANIZATION* shall neither indemnify any person nor purchase any insurance in any manner or to any extent that would jeopardize or be inconsistent with qualification of the corporation as an organization described in section 501(c)(3) of the Internal Revenue Code or would result in liability under section 4941 of the Internal Revenue Code.

ARTICLE VII  
MISCELLANEOUS

**Section 7.1 Account Books, Minutes, Etc.** The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees and business meetings of officers. Any trustee or his accredited agent or attorney may inspect all books and records of the corporation, for any proper purpose at any reasonable time.

**Section 7.2 Fiscal Year.** The fiscal year of the corporation shall operate on the calendar year: January 1 to December 31.

**Section 7.3 Conveyances and Encumbrances.** Property of the corporation may be assigned, conveyed or encumbered by such officers of the corporation as may be authorized to do so by the Board of Directors, and such authorized persons shall have power to execute and deliver any and all instruments of assignment, conveyance and encumbrance; however, the sale, exchange, lease or other disposition of all or substantially all of the property and assets of the corporation shall be authorized only in the manner prescribed by applicable statute.

**Section 7.4 Designated Contributions.** The corporation may accept any designated contribution, grant, bequest or devise consistent with its general tax-exempt purposes, as set forth in the articles of incorporation. As so limited, donor-designated contributions will be accepted for special funds, purposes or uses, and such designations generally will be honored. However, the corporation shall reserve all right, title and interest in and to and control of such contributions, as well as full discretion as to the ultimate expenditure or distribution thereof in connection with any special fund, purpose or use. Further, the corporation shall retain sufficient control over all donated funds (including designated contributions) to assure that such funds will be used to carry out the corporation's tax-exempt purposes.

**Section 7.5 Conflicts of Interest.** If any person who is a trustee or officer of the corporation is aware that the corporation is about to enter into any business transaction directly or indirectly with himself, any member of his family, or any entity in which he has any legal, equitable or fiduciary interest or position, including without limitation as a trustee, officer, shareholder, partner, beneficiary or trustee, such person shall (a) immediately inform those charged with approving the transaction on behalf of the corporation of his interest or position, (b) aid the persons charged with making the decision by disclosing any material facts within his knowledge that bear on the advisability of such transaction from the standpoint of the corporation, and (c) not be entitled to vote on the decision to enter into such transaction.

**Section 7.6 Loans to Directors and Officers Prohibited.** No loans shall be made by the corporation to any of its Directors or officers. Any trustee or officer who assents to or participates in the making of such loan shall be liable to the corporation for the amount of such loan until it is repaid.

**Section 7.7 Amendments.** The power to alter, amend or repeal these bylaws and adopt new bylaws shall be vested in the Board of Directors.

**Section 7.8 Severability.** The invalidity of any provisions of these bylaws shall not affect the other provisions hereof, and in such event these bylaws shall be construed in all respects as if such invalid provision were omitted.

## BOOK RESOURCES

**BOOKS**

**BOOKS**

### Nonprofit Sector Overview

J. Steven Ott, Lisa A. Dicke, *The Nature of the Nonprofit Sector* (2<sup>nd</sup> ed.). Boulder, CO: Westview Press. (2011).

Lester Salamon, *America's Nonprofit Sector* (3<sup>rd</sup> ed.). New York: Foundation Center. (2012).

### Management/Leadership Of Nonprofit Organizations

David O. Renz & Associates, *The Jossey-Bass Handbook of Nonprofit Leadership and Management* (3<sup>rd</sup> ed.). San Francisco: Jossey-Bass. (2010).

J. Steven Ott, Lisa A Dicke, *Understanding Nonprofit Organizations: Governance, Leadership and Management* (3<sup>rd</sup> ed.). Boulder CO: Westview Press. (2015).

Joan E. Pynes, Alan Shrader, *Human Resources Management for Public and Nonprofit Organizations* . San Francisco: Jossey-Bass. (2013).

Mary Tschirhart, *Artful Leadership: Managing Stakeholder Problems in Nonprofit Arts Organizations*. Bloomington, IN: Indiana University Press. (1997).

Thomas Wolf, *Managing a Nonprofit Organization in the Twenty-first Century*. New York: Free Press. (2012).

### Boards Of Trustees; Boards-Staff

Boardsource, *Nonprofit Board Answer Book: A Practical Guide for Board Members and Chief Executives* . San Francisco: Jossey-Bass. (2012).

John Carver, *Boards that Make a Difference* (3<sup>rd</sup> ed.). San Francisco: Jossey-Bass. (2006).

Cyril O. Houle, *Governing Boards*. San Francisco: Jossey-Bass. (1997).

### Nonprofit Law

James J. Fishman and Stephen Schwarz, *Nonprofit Organizations: Cases and Materials* (5<sup>th</sup> ed.). New York: Foundation Press. (2015).

James J. Fishman and Stephen Schwarz, *Nonprofit Organizations: Cases and Materials: Statutes, Regulations and Forms* (4<sup>th</sup> ed.). New York: Foundation Press. (2010).

### Managing Strategically

John M. Bryson, *Strategic Planning for Public and Nonprofit Organizations: a Guide to Strengthening and Sustaining Organizational Achievement*. (4<sup>th</sup> ed.). San Francisco: Jossey-Bass Publishers. (2011).

# RESOURCES

# RESOURCES

## State and Federal Offices

Utah Department of Commerce  
Division of Corporations  
Heber Wells Building  
160 East 300 South  
Salt Lake City, UT 84111  
(801) 530-6701  
<http://www.commerce.utah.gov>

Utah State Tax Commission  
210 North 1950 West  
Salt Lake City, UT 84134  
<http://tax.utah.gov/>

Internal Revenue Service  
324 25<sup>th</sup> Street  
Ogden, UT 84401  
Refer to the website for current forms. Send forms to appropriate offices as instructed on individual forms.  
<http://www.irs.gov>

## Helpful Websites

Utah Nonprofits Association  
Salt Lake City, UT 84111  
Phone (801) 596-1800; Toll-free (888) 596-1801  
[www.utahnonprofits.org](http://www.utahnonprofits.org)

Membership organization supporting Utah's nonprofit organizations. Provides technical assistance, training, networking opportunities and advocacy for the sector. Membership dues are assessed according to an organization's annual budget.

National Council of Nonprofits  
<https://www.councilofnonprofits.org/>

A trusted resource and advocate for America's charitable nonprofits. This website provides great resources for many areas of nonprofit operations.

BoardSource: Building Effective Nonprofit Boards  
<http://www.boardsource.org/>

BoardSource is dedicated to advancing the public good by building exceptional nonprofit boards and inspiring board service. This website provides useful answers to many questions about nonprofit organizations such as how to form a board, providing sample job descriptions for the president, vice-president and secretary, questions about board structure, etc.

Idealist  
<http://www.idealists.org/>

Idealist is a project of Action Without Borders, a nonprofit organization founded in 1995 with offices in the United States and Argentina. Idealist is an interactive site where people and organizations can exchange resources and ideas, locate opportunities and supporters, and take steps toward building a world where all people can lead free and dignified lives.

The Foundation Center  
[www.fdncenter.org](http://www.fdncenter.org)

Find copies of Form 990, information about funders, tips of fund raising, and much more.

Nonprofit Legal Services of Utah  
177 East 900 South, Suite 202  
Salt Lake City, Utah 84111  
Tel: (385) 419-4111  
[contact@nonprofitlegalservices.com](mailto:contact@nonprofitlegalservices.com)  
[www.nonprofitlegalservices.com](http://www.nonprofitlegalservices.com)

Nonprofit Legal Services of Utah is a 501(c)(3) organization and law firm specializing in the legal needs of nonprofit organizations.

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