

> Governing Documents & Registration Forms

Laying the Groundwork for your Nonprofit Organization

Why are governing documents important?



Governing Documents

Governing documents make your organization legitimate and legal in the eyes of the state and federal government, but they do so much more.



Governing Documents

- ◆ Governing documents lay the foundation for your organization. They are the roots from which your organization grows.
- ◆ Governing documents help ensure that your organization has clearly defined goals and policies, and that it will continue to adhere to these as it grows.



Governing Documents

- ◆ There are four essential governing documents and registration forms for nonprofit organizations operating programs or raising money in New York.
- ◆ We will visit each of these briefly.
- ◆ Additional information about each type can be found in the following subsections.

Articles of Incorporation

The Articles of Incorporation is the document that makes an organization legally recognized by the state of New York. It describes the basic purpose of the organization and provides crucial information about the organization and provisions for its governance.

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231
www.dos.state.ny.us

(This form must be printed or typed in black ink)

CERTIFICATE OF INCORPORATION
OF

(Insert corporate name)
Under Section 402 of the Business Corporation Law

FIRST: The name of the corporation is:

SECOND: This corporation is formed to engage in any lawful act or activity for which a corporation may be organized under the Business Corporation Law, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

THIRD: The county, within this state, in which the office of the corporation is to be located is:

FOURTH: The total number of shares which the corporation shall have authority to issue and a statement of the par value of each share or a statement that the shares are without par value are:

FIFTH: The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is:

Incorporator Information Required

X _____
(Signature)

(Type or print name)

(Address)

(City, State, Zip code)

CERTIFICATE OF INCORPORATION
OF

(Insert corporate name)
Under Section 402 of the Business Corporation Law



Articles of Incorporation

- ◆ A nonprofit organization officially becomes a corporation when the Articles of Incorporation document is submitted to the State Department.
- ◆ The Articles of Incorporation is referred to as the Certificate of Incorporation in New York State.
- ◆ The Articles of Incorporation must include basic information such as your nonprofit's name, your nonprofit's statement of purpose, certain provisions required for state and federal tax-exempt purposes, and the name and address of your registered agent (the person to whom legal notices should be sent).



Articles of Incorporation

- ◆ Essentially, the Articles of Incorporation document tells the state what your organization is, what its goals are, what its basic structure will be, and who they can contact regarding legal issues.
- ◆ If you cannot find your Articles of Incorporation and you are incorporated in New York State, you can request a copy from the Department of State website. <http://www.dos.ny.gov/>

Organizational Bylaws

Your organization also has a set of bylaws that governs your Board and members.

BYLAWS
of

ARTICLE I
Offices

1.1 **Registered Office and Registered Agent:** The registered office of the corporation shall be the same as listed on the articles of incorporation and at such place as may be fixed from time to time by the Board of Directors upon filing of such notices as may be required by law, and the registered agent shall have a business office identical with such registered office.

1.2 **Other Offices:** The Corporation may have other offices within or outside the State of incorporation at such place or places as the Board of Directors may from time to time determine.

ARTICLE 2
Shareholder's Meetings

2.1 **Meeting Place:** All meetings of the shareholders shall be held the registered office of the corporation, or at such place as shall be determined from time to time by the Board of Directors, and the place at which any such meeting shall be held shall be stated in the notice of the meeting.

2.2 **Annual Meeting Time:** The annual meeting of the shareholders for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held each year on _____, at the hour of _____, if not a legal holiday, and if a legal holiday, then on the day following, at the same hour, or January 31 of every year if no other meeting time is specifically appointed.

2.3 **Annual Meeting - Order of Business:** At the annual meeting of shareholders, the order of business shall be as follows:

- (a) Calling of the meeting to order.
- (b) Proof of notice of meeting (or filing of waiver).
- (c) Reading of minutes of last annual meeting.
- (d) Report of officers.
- (e) Reports of committees.
- (f) Election of directors.

Corporate Bylaws - 1 www.northwestregisteredagent.com



Organizational Bylaws

- ◆ All organizations should have a written set of bylaws.
- ◆ Bylaws contain the primary policies of an organization and define the role of board members.
- ◆ Bylaws should be reviewed from a legal perspective and should be consistent with both state laws and the Articles of Incorporation.



Organizational Bylaws

Bylaws have three major functions:

1. Determine the Organization's Structure
2. Determine the Roles and Responsibilities of Directors and Officers
3. Determine Policies and Procedures and other Corporate Governance Matters



Organizational Bylaws

- ◆ Each organization's bylaws are specific to their individual organization.
- ◆ It is necessary for boards to review their bylaws from time to time to ensure that they reflect the structure that will best serve the organization's purposes at the time.
- ◆ Bylaw amendments require a vote of the board and bylaw amendments may require vote of the members (if your organization is a membership corporation). Articles of Incorporation, by contrast, require, at minimum, a filing with the state (if your organization is incorporated in NYS).
- ◆ All board members should receive a copy of the organization's current bylaws and be familiar with their content.

IRS Determination Letter

Although not every organization obtains it, the majority of nonprofit organizations file for tax-exempt status from the IRS.

Following the drafting of your bylaws, your organization may attempt to obtain an IRS Determination Letter of tax-exempt status.

1023 Form (Rev. June 2006) Department of the Treasury Internal Revenue Service		Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code		OMB No. 1545-0046 Note: If exempt status is approved, this application will be open for public inspection.
<i>Use the instructions to complete this application and for a definition of all bold items. For additional help, call IRS Exempt Organizations Customer Account Services toll-free at 1-877-829-5500. Visit our website at www.irs.gov for forms and publications. If the required information and documents are not submitted with payment of the appropriate user fee, the application may be returned to you.</i>				
<i>Attach additional sheets to this application if you need more space to answer fully. Put your name and EIN on each sheet and identify each answer by Part and line number. Complete Parts I - XI of Form 1023 and submit only those Schedules (A through H) that apply to you.</i>				
Part I Identification of Applicant				
1 Full name of organization (exactly as it appears in your organizing document)	2 c/o Name (if applicable)			
3 Mailing address (number and street) (see instructions)	Room/Suite	4 Employer Identification Number (EIN)		
City or town, state or country, and ZIP + 4		5 Month the annual accounting period ends (1 - 12)		
6 Primary contact (officer, director, trustee, or authorized representative)		b Phone:		
a Name		c Fax: (optional)		
7 Are you represented by an authorized representative, such as an attorney or accountant? If "Yes," provide the authorized representative's name, and the name and address of the authorized representative's firm. Include a completed Form 2848, Power of Attorney and Declaration of Representative, with your application if you would like us to communicate with your representative. <input type="checkbox"/> Yes <input type="checkbox"/> No				
8 Was a person who is not one of your officers, directors, trustees, employees, or an authorized representative listed in line 7, paid, or promised payment, to help plan, manage, or advise you about the structure or activities of your organization, or about your financial or tax matters? If "Yes," provide the person's name, the name and address of the person's firm, the amounts paid or promised to be paid, and describe that person's role. <input type="checkbox"/> Yes <input type="checkbox"/> No				
9a Organization's website				
b Organization's email: (optional)				
10 Certain organizations are not required to file an information return (Form 990 or Form 990-EZ). If you are granted tax-exemption, are you claiming to be excused from filing Form 990 or Form 990-EZ? If "Yes," explain. See the instructions for a description of organizations not required to file Form 990 or Form 990-EZ. <input type="checkbox"/> Yes <input type="checkbox"/> No				
11 Date incorporated if a corporation, or formed, if other than a corporation. (MM/DD/YYYY) / /				
12 Were you formed under the laws of a foreign country? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," state the country.				
For Paperwork Reduction Act Notice, see page 24 of the instructions.		Doc. No. 17123K	Form 1023 (Rev. 6-2006)	



IRS Determination Letter

- ◆ If you want to obtain federal tax-exempt status for your nonprofit organization, you must submit the appropriate documents and obtain an IRS Determination Letter granting this status.
- ◆ The form you must submit to the IRS is IRS Form 1023 or 1024, depending on the type of status you are seeking.



IRS Determination Letter

- ◆ If the IRS grants you tax-exempt status, you will receive a letter of determination. Make sure you have a final determination letter.
- ◆ This form should be kept in your organization's records.



IRS Determination Letter

- ◆ As a charitable tax-exempt organization, you will be able to accept contributions and donations that are tax-deductible.
- ◆ Your organization may also be exempt from federal or state corporate income taxes, sales taxes, and property taxes. You must apply for sales tax exemption from the NYS Department of Taxation by submitting form ST119.

CHAR410

Finally, in order to receive charitable contributions and to operate nonprofit programs in New York, you need to submit a CHAR410 document with the Attorney General's Charities Bureau.

Form CHAR410		Registration Statement for Charitable Organizations New York State Department of Law (Office of the Attorney General) Charities Bureau - Registration Section 120 Broadway New York, NY 10271 www.oag.state.ny.us/charities/charities.html		Open to Public Inspection	
Part A - Identification of Registrant					
1. Full name of organization (exactly as it appears in your organizing document)			5. Fed. employer ID no. (EIN)		
2. c/o Name (if applicable)			6. Organization's website		
3. Mailing address (Number and street)		Room/suite	7. Primary contact		
City or town, state or country and ZIP+4		Title			
4. Principal NYS address (Number and street)		Room/suite	Phone	Fax	
City or town, state or country and ZIP+4		Email			
Part B - Certification - Two Signatures Required					
We certify under penalties for perjury that we reviewed this Registration Statement, including all schedules and attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this statement.					
1. President or Authorized Officer/Trustee		Signature	Printed Name	Title	Date
2. Chief Financial Officer or Treasurer		Signature	Printed Name	Title	Date
Part C - Fee Submitted					
If registering to solicit contributions, fee is \$25.		Check <input type="checkbox"/>	If you are submitting \$25 fee to register to solicit contributions.		Submit check or money order, payable to "NYS Department of Law."
If not registering to solicit contributions, no fee is owed.					
Part D - Attachments - All Documents Required					
Attach <u>all</u> of the following documents to this Registration Statement, even if you are claiming an exemption from registration:					
• Certificate of incorporation, trust agreement or other organizing document, and any amendments; and					
• Bylaws or other organizational rules, and any amendments; and					
• IRS Form 1023 or 1024 Application for Recognition of Exemption (if applicable); and					
• IRS tax exemption determination letter (if applicable)					
Part E - Request for Registration Exemption					
Is the organization requesting exemption from registration under either or both Article 7-A or the EPTL? <input type="checkbox"/> Yes <input type="checkbox"/> No					
• If "Yes", complete Schedule E.					
Page 1 of 3			Form CHAR410 (2004)		



CHAR410

- ◆ If you wish for your organization to be eligible to solicit funds and hold charitable assets, you are required to register with the Attorney General's Charities Bureau.
- ◆ The CHAR410 form is the registration form for the NY State Attorney General's Charities Bureau.



CHAR410

- ◆ When submitting this form, you must also submit your Articles of Incorporation, Bylaws and IRS Determination Letter (if you have one).
- ◆ For this reason, the CHAR410 should be the last of the major documents you complete when setting up your nonprofit organization.

End of Presentation

More Questions?

Consult the Sections Below