# A Guide For Organizing Not-for-Profit Corporations

JESSE WHITE
SECRETARY OF STATE

My office provides this booklet to assist you in the process of forming your own Not-for-Profit Corporation, a procedure that sometimes can be complicated. The booklet provides detailed guidelines for filing the Articles of Incorporation, as well as information on filing fees, government agencies you must contact, and legal obligations you will assume after incorporation.

Because some of the terminology used in this booklet may be new and confusing, I encourage you to consult with an attorney to determine your exact legal obligations at each stage of the process.

If you have further questions about organizing your Not-for-Profit Corporation, please contact my office's Department of Business Services, Corporations Division, at 217-782-6961.

Jesse White

Jesse White
Illinois Secretary of State

# A GUIDE FOR ORGANIZING NOT-FOR-PROFIT CORPORATIONS

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**Illinois General Not-For-Profit Act of 1986,**
**Illinois Compiled Statutes, 1992, Chapter 805, Act 105.**

# ARTICLES OF INCORPORATION

The Articles of Incorporation is a legal document through which a corporation is formed. This document is sometimes referred to as the ''charter.'' Regardless of your future tax-exempt status, **you must complete and submit two (2) identical copies of the Articles of Incorporation, Form NP-102.10, with at least one copy being the original**. All the interrogatories must be answered. Please type or print all responses.

# TAX-EXEMPT STATUS

**NOT ALL NOT-FOR-PROFIT CORPORATIONS ARE TAX EXEMPT.** Before you take any action, you should decide whether you wish to apply for federal income tax-exempt status (e.g., *501(c) (3) status)*. Only certain kinds of charities, schools, churches, research institutes, clubs, etc. fall into that category. The words "athletic,'' "benevolent,'' "eleemosynary,'' and "social" are not acceptable as purposes if a corporation is going to apply for 501(c) (3) status.

To find out if your corporation may qualify for a tax break, obtain and read IRS Publication 557 — How to Apply for and Retain Exempt Status for Your Organization. An organization does not have to be incorporated to apply for exempt status.

Should you decide to apply you will use either Form 1023 or Form 1024. However, you must be incorporated before the IRS will consider your application as a Not-for-Profit Corporation. Incorporation does not guarantee federal tax exemption, but if you wish to apply for that status your Articles of Incorporation may have to be written with the IRS regulations in mind.

# ARTICLES OF INCORPORATION REQUIREMENTS

**Corporate Name**

(a) **Restrictions**

( 1 ) You may choose any name as long as it is distinguishable from the name of an existing Illinois corporation, a foreign corporation authorized to conduct affairs in Illinois, an existing Illinois Limited Liability Company (LLC) or a foreign LLC registered in Illinois or a name the exclusive right to which is currently reserved.

(2) No name shall contain the words *"regular democrat," "regular democratic," "regular republican," "democrat," "democratic," "republican,"* or the name of any other established political party, unless consent is given by the State Central Committee of such established political party.

(3) The name must end with the letters NFP if the corporate name contains any word or phrase that indicates or implies that the corporation is organized for any purpose other than a purpose for which corporations may be organized under this Act.

(b) **Name Check**
You may find out if a name is available by writing or calling the Secretary of State's office in Springfield at 217-782-9520. A preliminary check also may be done on the Secretary of State's website at *www.cyberdriveillinois.com*. Include a brief description of the corporate purpose and be prepared with alternate choices of names.

(c) **Name Reservation**
You may reserve a name, if available, for a period of 90 days for a $25 fee. You must make a written request, listing the name and a brief description of the corporate purpose. You may also use Form NFP-104.10. Name reservations are renewable by repeating this procedure.

**Registered Agent and Office**

(a) **Purpose**
The purpose of requiring each corporation to maintain a registered agent and a registered office in Illinois is to provide a public record of the name of a person upon whom service of process against the corporation may be made, and of the place where such person may be found. This person also is the one to whom official correspondence from the Secretary of State is sent.

(b) **Qualifications**
(1) The registered agent must be:
(i) A natural person, resident in Illinois
OR
(ii) A corporation with a purpose clause that permits it to be the agent for other corporations, with an office in Illinois;

(2) The registered office must be in Illinois and must be a street or road address, not just a P.O. Box number.

(c) **Changes**
Any change in either the agent or the office must be reported as soon as you know of the change. Prompt reporting of changes is important so that correspondence will not be delayed or lost. Form NFP-105.10 is used to report changes.

**Duration**

The duration is the period of time you plan to be incorporated. The duration is perpetual, unless otherwise stated in the Articles of Incorporation.

**Purpose**

(a) **Generally**
The purpose is a statement of the type of function or character for which the corporation is formed. Illinois requires this statement to be a narrow or specific purpose and will not accept a purpose that is too broad, general or vague.

(b) **Allowable Purposes**

Not-for-profit corporations may be organized for any one or more of the following or similar purposes:

| | | | |
|---|---|---|---|
| 1) | Charitable | 10) | Literary |
| 2) | Benevolent | 11) | Athletic |
| 3) | Eleemosynary | 12) | Scientific |
| 4) | Educational | 13) | Research |
| 5) | Civic | 14) | Agricultural |
| 6) | Patriotic | 15) | Horticultural |
| 7) | Political | 16) | Soil improvement |
| 8) | Religious | 17) | Crop improvement |
| 9) | Social | 18) | Livestock or poultry improvement |

19) Professional, commercial, industrial or trade association
20) Promoting the development, establishment or expansion of industries
21) Electrification on a cooperative basis
22) Telephone service on a mutual or cooperative basis
23) Ownership and operation of water supply facilities for drinking and general domestic use on a mutual or cooperative basis
24) Ownership or administration of residential property on a cooperative basis
25) Administration and operation of property owned on a condominium basis or by a homeowner association
26) Administration and operation of an organization on a cooperative basis producing or providing goods, services or facilities primarily for the benefit of members who are consumers of such goods, services or facilities
27) Operation of a community mental health board or center organized pursuant to the Community Mental Health Act for the purpose of providing direct patient services
28) Provision of debt management services as authorized by the Debt Management Service Act
29) Promotion, operation and administration of a ridesharing arrangement as defined in Section 1-176.1 of the *Illinois Vehicle Code*
30) Administration and operation of an organization for the purpose of assisting low-income consumers in the acquisition of utility and telephone services
31) Any purpose permitted to be exempt from taxation under Section 501(c) or 501(d) of the U.S. Internal Revenue Code, as now in or hereafter amended
32) Any purpose that would qualify for tax-deductible gifts under the Section 170(c) of the U.S. Internal Revenue Code, as now or hereafter amended (Any such purpose is deemed to be charitable under subsection (a)(1) of this Section.)
33) Furnishing natural gas on a cooperative basis.

(c) **Specifics**

After prefacing or confining the purpose, a more detailed or specific purpose may be listed. Simple, everyday language can be used. For example: “To find homes for stray dogs and cats,” “To send needy inner city children to summer camp,’’ or “To form a neighborhood block club.’’ DO NOT use any language that may indicate or imply a business purpose as such is not a proper not-for-profit purpose.

A corporation that is to function as a club, as defined in Section 1-3-24 of the Liquor Control Act of 1934, must insert in its purpose clause the following statement: **the corporation will comply with the state and local laws and ordinances relating to alcoholic liquors**. State whether the corporation is a condominium association as established under the Condominium Property Act, a cooperative housing corporation defined in Section 216 of the Internal Revenue Code of 1954, or a homeowner association, which administers a common-interest community as defined in subsection (c) of Section 9-102 of the Code of Civil Procedures.

(d) **Tax-Exempt Status**

If you intend to apply for federal tax-exempt status, you must elaborate on the purposes set forth in this section under a separate section for Other Provisions.

(e) **Powers**

All Not-for-Profit Corporations are granted many powers by statute. Because these powers are statutory, they do not need to be listed and should not be listed in the purpose clause either as purposes or as powers. Among the granted, statutory powers are the powers to sue and be sued, complain and defend, in the corporate name; to have and affix a corporate seal; to purchase, lease, acquire, hold, use, own, or otherwise deal in and with any real and personal property; to make contracts and incur liabilities; to elect or appoint officers; to make and alter by-laws; to loan money for its corporate purposes; to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

**Directors**

There must be at least three (3) directors. They do not have to be Illinois residents or corporation members, but you may require these restrictions or impose any other qualifications you choose. Restrictions and qualifications may be set forth on the Articles of Incorporation under the Other Provisions section, or you may leave restrictions and qualifications to be set forth in the corporate by-laws.

**Incorporators**

One or more incorporators may organize a corporation under this Act. An incorporator may be either a natural person age 18 or older or a corporation, domestic or foreign, whether not-for-profit or otherwise.

**Other Provisions**

Below or following the purpose clause, you may list any other provisions regarding the internal affairs of the corporation you wish to have included as part of the Articles of Incorporation. These may include:

(a) **Tax-Exempt Status**
If you intend to apply to the IRS for tax-exempt status and the section of the Internal Revenue Code under which your corporation will fall requires an elaboration of purposes, the means for achieving them, procedures for dissolution, etc., this is the place to make those statements. This section must be written in language and format that conforms to the specifications of the IRS Code. These statements will play a large part in the determination of your tax status by the IRS. *(Note — In certain cases, this information may be included in your by-laws instead of placed in the Articles of Incorporation. Check Publication 557, ask the IRS, or consult an attorney if you are uncertain about this.)*

(b) **Restrictions and Qualifications**
List who can be a member, an officer, or a director and what duties each must perform. This information need not be a part of the Articles of Incorporation, but if it is not, such information should be a part of the by-laws.

(c) **Other Regulations**
List any other regulation for the governing of the internal affairs of the corporation or leave these for the by-laws.

## COST AND EXPEDITED SERVICE

To become a Not-for-Profit Corporation, submit two (2) identical copies of the Articles of Incorporation, with at least one copy being the original, and the $50 filing fee in the form of a certified check, cashiers check or money order payable to Secretary of State. All Articles of Incorporation, including the filing fee, must be mailed to the Department of Business Services office in Springfield for review.

The department offers the review and, if approved, the filing of Articles of Incorporation on an expedited basis within 24 hours of receipt in either the Springfield or Chicago office. Pursuant to the provisions of the Illinois General Not For Profit Corporation Act, all such requests for expedited service must be made **in person** either in the Springfield or Chicago office and accompanied by a separate expedited service fee of $25, payable to Secretary of State, in addition to the $50 filing fee. Any Articles of Incorporation hand-delivered to either the Springfield or Chicago office not requesting expedited service will be reviewed on a routine (non-expedited) basis in the Springfield office.

When approved, the Secretary of State will stamp the date of filing on both copies and return one copy to the incorporators or their representative.

# FILINGS AFTER INCORPORATING

**Federal Income Tax**

Should you decide to apply for federal income tax exemption, you must do so after you have been incorporated and have received the filed Articles of Incorporation from the Secretary of State. Obtain the proper application form from the IRS, and complete and submit the application, along with photocopies of your Articles of Incorporation and your by-laws, to the IRS. The IRS will notify you of their determination, and the annual reports that will be required in the future, after receiving your documents.

If you do not apply for or do not receive a federal tax exemption, you must file federal income tax returns and pay the appropriate tax. Consult the IRS for the time to file and the forms to use.

**Illinois Income Tax**

If your corporation receives a federal tax exemption, it is exempt from Illinois income tax. No reports need to be filed and no tax is due.

If you do not apply for or do not receive a federal tax exemption, you must file Illinois income tax returns and pay the appropriate tax. Consult the Illinois Department of Revenue, Income Tax Division, for the time to file and forms to use.

**Illinois Sales Tax**

Some not-for-profit corporations may qualify for an exemption from paying sales tax on goods purchased for the use of the organization if they are formed for exclusively charitable, religious or educational purposes or for senior citizens. To find out if you qualify, write a letter of request to the Illinois Department of Revenue, Sales Tax Division, and enclose photocopies of your Articles of Incorporation, by-laws, constitution, IRS exemption letter, or any other document that may help in determining your status. The Department of Business Services will notify you of your status.

If you qualify for sales tax exemption, you will be issued a letter ruling to that effect. You may not use your not-for-profit registration number or IRS number to claim exemption from Illinois sales tax.

**Illinois Attorney General Registration**

Certain charitable organizations must register with the Attorney General, Division of Charitable Trust and Solicitations, under either or both the Illinois Charitable Trust Act or the Illinois Solicitation Act. Information and forms may be obtained from the Office of the Illinois Attorney General.

# REPORTING REQUIREMENTS

**Annual Reports to the Secretary of State**

ALL Not-for-Profit Corporations must file an annual report of officers and directors with the Secretary of State. The due date depends upon when the corporation was formed. The annual report is due before the first day of the corporation's anniversary month each year. The anniversary month is the month in which the corporation was formed. For example, if the date of incorporation was Sept. 15, the anniversary month is September and each annual report is due before the first day of September each year. Forms will be sent to the registered agent approximately 60 days before the due date. **Failure to file an annual report may result in involuntary dissolution of the corporation.**

**Annual Reports to Other Government Agencies**

The Internal Revenue Service, the Illinois Department of Revenue and the Illinois Attorney General may require other annual returns. Whether you must file a return and which return you will use depends in part on your status as a tax-exempt or non-tax-exempt corporation. To be sure of your obligations, please consult the proper agency.

**Other Reports to the Secretary of State**

Any change in the corporate name, duration or purpose will require that the Articles of Incorporation be amended, using the proper form. Also, should the corporation need to report a merger, dissolution or reinstatement, it should use the proper form. All forms for these reports are available from the Secretary of State and should be filed upon the occurrence of the particular event.

The government agencies listed in this guide are not intended to be a complete list, but merely those agencies most frequently required to be consulted. Some local governments also may require filings or reports.

# CONTACT INFORMATION

## SECRETARY OF STATE

Secretary of State
Department of Business Services
Corporations Division
350 Howlett Building
Springfield, IL 62756
217-782-6961

Secretary of State
Department of Business Services
Corporations Division
69 W. Washington, Ste. 1240
Chicago, IL 60602
312-793-3380

www.cyberdriveillinois.com

## DEPARTMENT OF REVENUE

Department of Revenue
Income Tax Division
101 W. Jefferson
Springfield, IL 62708
800-732-8866

Department of Revenue
Income Tax Division
100 W. Randolph
Chicago, IL 60601
800-732-8866

Department of Revenue
Sales Tax Division
101 W. Jefferson
Springfield, IL 62708
800-732-8866

Department of Revenue
Sales Tax Division
100 W. Randolph
Chicago, IL 60601
800-732-8866

www.revenue.state.il.us/

## ATTORNEY GENERAL

Illinois Attorney General
Division of Charitable Trust and Solicitations
100 W. Randolph,11th Fl.
Chicago, IL 60601
312-814-2595

## INTERNAL REVENUE SERVICE (Form pick-up only)

Internal Revenue Service
320 W. Washington, Rm. 611
Springfield, IL 62703

Internal Revenue Service
230 S. Dearborn
Chicago, IL 60609
Attn: Forms Services
800-829-3676

All places in Illinois not listed above, call: 800-829-1040

All IRS forms and publications may be obtained from:

Internal Revenue Service
Forms
P.O. Box 24672
Kansas City, MO 64131
www.irs.ustreas.gov/proc/

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SECRETARY OF STATE

WWW.CYBERDRIVEILLINOIS.COM

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