NONPROFIT 101
PRESENTED BY JONATHAN JAGER, ESQ., LEGAL AID FOUNDATION OF LOS ANGELES
WORKSHOP OVERVIEW

1. Addressing Community Needs
2. Organizational Structure
3. Legal Structure
4. The Board of Directors
5. Starting the Corporation
6. Tax Exemption
7. Ongoing Compliance
Addressing Community Needs
MISSION STATEMENT

- Reflects vision & long-term goals
- Provides focus & attracts funders
- Ideally all in 2-3 sentences
- Works for all audiences
  - Internal
  - External
MISSION STATEMENT

- What: Services provided to meet goal
- Who: Persons or population served
- Where: Geographic community
- Why: Goal or community need
- How: Means of providing service
Legal Aid Foundation of Los Angeles seeks to achieve equal justice for poor and low-income people in greater Los Angeles. We change lives through direct representation, systems change and community education.
ANATOMY OF AN ORGANIZATION

- Advisory Board
- Members
- Governing Body or Board
- Staff
- Volunteers
DECISION-MAKING STRUCTURE

- Directors
  - Required by law
  - Determine and implement the mission, goals, and objectives

- Members
  - Some decision-making authority and responsibility

- Advisory Board
  - Makes recommendations, but has no authority
MEMBERS

- Optional
- Limits “ownership” of the organization to a select group
- Things to determine
  - Qualifications
  - Process of joining
  - Scope of authority
- Different from membership programs
Legal Structure
For Profit

- One or more owners
- Profits distributed to owners
- Formed for any lawful purpose

- Sole proprietorship
- Partnership (General, Limited, Limited Liability)
- Corporation (C, S, or Cooperative)
- Limited Liability Company

Nonprofit

- No owners
- Profits reinvested
- Formed for charitable, mutual, public, or religious purpose

- Charitable trust
- Nonprofit corporation
- Unincorporated association
WHAT IS INCORPORATION?

- The legal process of forming a company
- We are only focusing on California nonprofit corporations
  - Governed by CA law
- Separate from 501(c)(3) tax exemption
INCORPORATION

Advantages

- Separate legal entity
- Easier access to funding
- Unlimited existence
- Limited liability

Disadvantages

- Cost
- Structural formality
- Reporting requirements
ALTERNATIVES TO INCORPORATION

- Join an existing organization
  - Partner with a group with a similar mission
  - Avoid legal/structural issues and decisions

- Fiscal Sponsorship
  - Operate as a “project” of an existing nonprofit
  - Tax and financing by sponsor
  - Less control over own organization
  - Typically require a percentage of revenue as payment
  - [www.fiscalsponsordirectory.org](http://www.fiscalsponsordirectory.org)
The Board of Directors
IMPORTANT SKILLS FOR YOUR BOARD OF DIRECTORS

- Experience in accounting or financial management
- Connections or access to funding
- Political, media, or other connections
- Organization and recordkeeping skills
- Communication skills
- Ability to follow legal formalities
- Ability to facilitate a meeting or group discussion
- Ability to keep a group focused and moving
- Ability to inspire, motivate, and mobilize a group
- Ability to keep others informed
GENERAL BOARD RESPONSIBILITIES

- Board governance
- Finance and accounting
- Planning
- Policy
- Personnel
- Resource development

Can be delegated to staff
BOARD COMPOSITION RULES

- Minimum of 1 director
- Single term maximum of 6 years
- 49% Rule: No more than 49% of the board can be “interested” persons:
  - Someone who is paid compensation for services (other than for serving on the board)
  - Any close relative of someone who is paid compensation
- Required for California Public Benefit Corporations
- Best practice for other organizations
STANDARD OF CONDUCT

- Duty of Care
  - Make informed decisions
  - Act in good faith
  - Ask questions when necessary

- Duty of Loyalty
  - Act in the best interest of the corporation
  - Avoid self-dealing transactions
  - Avoid conflicts of interest
DIRECTORS ARE PERSONALLY LIABLE WHEN

- Not performing their duties in **good faith**
- Not acting in the organization’s **best interest**
- Not exercising **reasonable care** under the circumstances
Starting the Corporation
# TYPES OF NONPROFIT CORPORATIONS

<table>
<thead>
<tr>
<th>Public Benefit</th>
<th>Mutual Benefit</th>
<th>Religious Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charitable or Public Purpose</td>
<td>Any Lawful Purpose</td>
<td>Religious Purpose</td>
</tr>
<tr>
<td>No Assets to Members</td>
<td>Assets to Members on Dissolution</td>
<td>No Assets to Members</td>
</tr>
<tr>
<td>Most Government Regulation</td>
<td>Moderate Amount of Government Regulation</td>
<td>Least Government Regulation</td>
</tr>
</tbody>
</table>
ARTICLES OF INCORPORATION & BYLAWS

- Creation documents for your organization
ARTICLES OF INCORPORATION

- Name of corporation
- Purpose statements
  - General purpose
    - “This corporation is a nonprofit public benefit (or mutual benefit or religious benefit) corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public (or Mutual or Religious) Benefit Corporation Law for public [501(c)(4)] or charitable [501(c)(3)] purposes.”
  - Specific purpose
    - Can be taken from mission statement
- Agent for service of process
- If applying for tax exemptions:
  - Dedication of assets upon dissolution
  - Restriction on political activity & lobbying
ARTICLES OF INCORPORATION

- $30 filing fee – check payable to Secretary of State
- 1 plain copy will be returned after filing. For a certified copy, include $5 certification fee
- For additional copies, include $1 for the first page, $0.50 for each additional page, and $5 certification fee (optional)
- Expedited service available for an additional fee
  - Current processing time: ~ 1 week
BYLAWS

- Name of corporation and principle office location
- Purpose statement
- Board size and authority
- Qualifications/terms for directors, officers, & members
- Meeting and election procedures
- Voting requirements
- Conflict of interest and liability provisions
- Other corporate governance matters
STATEMENT OF INFORMATION (FORM SI-100)

- Must file with CA Secretary of State within 90 days of filing your Articles of Incorporation
- $20 filing fee
- For copies, include $1 for the first page, $0.50 for each additional page, and $5 certification fee (optional)
- Can e-file online at https://businessfilings.sos.ca.gov/
- Must re-file every two years
INITIAL REGISTRATION FORM (FORM CT-1)

- Must file with CA Attorney General within 30 days of receiving assets in/from California
- $25 filing fee – check made payable to the Department of Justice
- Include Articles of Incorporation, Bylaws, and Federal Tax-Exemption Application and Determination Letter (if applicable)
- Must be filed by mail
EMPLOYER ID NUMBER (FORM SS-4)

- Must file with the IRS
  - Wait until after you are legally formed
  - Can risk automatic revocation of tax-exempt status
- Applicant must have a TIN, EIN, or SSN
- Mail/Fax: Form SS-4
- No cost
Tax Exemption
WHAT IS TAX EXEMPTION?

- Separate process from incorporation
- Income tax exemption
  - Both federal and state exemption from income tax
  - Must still file annual returns
- Property tax exemption
  - County property tax exemption for real property used for charitable purposes
- Sales and use tax exemption
  - State sales and use tax exemptions under specific circumstances
## Different Types of Federal Tax Exemption

<table>
<thead>
<tr>
<th></th>
<th>501(c)(3)</th>
<th>501(c)(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose</strong></td>
<td>Charitable, educational, literary, religious, scientific, or cruelty prevention</td>
<td>Social Welfare</td>
</tr>
<tr>
<td><strong>Donations</strong></td>
<td>Deductible to donor</td>
<td>Not deductible</td>
</tr>
<tr>
<td><strong>Lobbying</strong></td>
<td>Limited ability</td>
<td>Unlimited ability</td>
</tr>
<tr>
<td><strong>Campaigning</strong></td>
<td>Prohibited</td>
<td>Limited, but taxed</td>
</tr>
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POLITICAL ACTIVITY

Lobbying
- An attempt to influence specific legislation
- Direct lobbying
  - Communicating with a member or employee of a legislative body
- Grassroots lobbying
  - Communicating with the general public

Campaigning
- Advocating on behalf of or in opposition to a candidate for public office
501(C)(3) LIMITED LOBBYING

- Must keep lobbying activity less than “substantial”
  - IRS has not defined what is less than substantial

OR

- Make 501(h) election
  - Sets a specific dollar limit on amount of lobbying a 501(c)(3) can do
    - Up to $1,000,000 in direct lobbying
    - Up to 25% of direct lobbying amount for grassroots lobbying
  - Calculation based on certain annual expenditures
ALTERNATIVE TO TAX EXEMPTION

- Fiscal Sponsorship
  - Operate as a “project” of an existing nonprofit
  - Tax and financing by sponsor
  - Less control over own organization
  - Typically require a percentage of revenue as payment
  - [www.fiscalsponsordirectory.org](http://www.fiscalsponsordirectory.org)
APPLYING FOR FEDERAL TAX EXEMPTION

Complete Form 1023 or 1023-EZ and send to IRS

- Include activity statement
- Attach copy of Articles of Incorporation and approved bylaws
- Attach detailed financial statements
  - If organization is 1-5 years old:
    - Budget for 4 years, including current year
  - If organization is less than 1 year old:
    - Budget for current year + proposed budget for next 2 years
- $275 or $600 fee
**APPLYING FOR STATE TAX EXEMPTION**

- Complete Form 3500A and send to the CA Franchise Tax Board
  - Include copy of IRS Determination Letter
  - No filing fee

**OR**

- Complete Form 3500 and send to CA Franchise Tax Board
  - Include Articles of Incorporation, Bylaws, and financial data
  - $25 filing fee
Ongoing Compliance
**TAX-EXEMPT TAX RETURNS**

- **FTB Forms 199/199N**
  - $10 fee + penalties for late filing or late payment
- **IRS Forms 990/990-N/990-EZ**
  - No fee, but penalties for late filing
- **Due 4 months + 15 days after end of fiscal year**

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<tr>
<th>Gross Annual Revenue</th>
<th>Federal Forms (IRS)</th>
<th>CA Forms (FTB)</th>
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<tbody>
<tr>
<td>Receipts ≤ $50,000</td>
<td>990-N (e-file)</td>
<td>199N (e-file)</td>
</tr>
<tr>
<td>Receipts &lt; $200,000 &amp; Total Assets &lt; $500,000</td>
<td>990-EZ or 990</td>
<td></td>
</tr>
<tr>
<td>Receipts ≥ $200,000 or Total Assets ≥ $500,000</td>
<td>990</td>
<td>199</td>
</tr>
</tbody>
</table>
File Form RRF-1 annually with the CA Attorney General’s Registry of Charitable Trusts

Must include copy of your federal return (Form 990/990-EZ/990N/990PF)

Due 5 months + 15 days after end of fiscal year

Fee ($0-$300) based on gross annual revenue

Additional Form CT-694 financial disclosures for very large organizations
Statement of Information

- File Form SI-100 every two years with the CA Secretary of State
- Due on the last day of the anniversary month of incorporation
- $20 filling fee
OTHER REPORTING RESPONSIBILITIES

- Provide an Annual Report to directors and members within 120 days of fiscal year end
- Notify appropriate agencies of charges to
  - Articles of Incorporation
  - Principal business address
  - Gain or loss of tax exemption
CONTACT LAFLA FOR FREE LEGAL SERVICES

APPLY ONLINE AT http://lafla.org/help

CALL US AT (800) 399-4529 Monday-Friday from 9am to 12pm

ATTEND A LAFLA CLINIC http://lafla.org/self-help/calendar

VISIT A LAFLA OFFICE http://lafla.org/about-us/locations