

How to Become a Charity

Starting and Maintaining A Charity In Oregon: The Legal Requirements

Welcome to the challenge and satisfaction of nonprofit management. Your interest indicates that you are undertaking a leadership role in an Oregon charity. I applaud your commitment to improving the lives of Oregonians.

The information that follows outlines the relationships between charitable organizations and the governmental agencies that regulate them. Whether you are involved in starting a charity, or are responsible for keeping it legal, the information contained herein will serve as a general introduction to registration and reporting requirements.

The Oregon Department of Justice encourages you to review this information and then seek professional legal and tax assistance. My staff is also available to provide information regarding the requirements of Oregon nonprofit law. Information can be obtained on our web site or by contacting the Charitable Activities Section at (971) 673-1880.

On behalf of all Oregonians, thank you for your dedicated service.

Hardy Myers
Attorney General

Introduction

Charities operating in Oregon will likely maintain relationships with at least three government entities: the Internal Revenue Service, the Corporation Division of the Oregon Secretary of State's Office, and the Charitable Activities Section of the Oregon Department of Justice. The Internal Revenue Service will provide an initial determination of tax exemption, and require the filing of informational returns each year. An organization's Articles of Incorporation will be filed with the Corporation Division and annual reports will be required to prevent involuntary dissolution. After registering with the Charitable Activities Section, financial reports are required on an annual basis. Additional licensing and reporting requirements may be imposed by the State or other jurisdictions depending upon the charitable purpose of the organization. The following information includes the basic requirements for most charities either beginning or sustaining operations within the State.

Becoming a Charity

Creating a Corporation — The Corporation Division of the Oregon Secretary of State's Office

When formulating a charity, a first step is to decide on a legal form for the organization. Nonprofit organizations typically take the legal form of a corporation, trust or association. The form chosen may have substantial implications including:

- The liability of organization members for acts of fellow members;
- The difficulty in creating the organization;
- The flexibility necessary to manage the organization;
- The nature and quantity of bookkeeping;
- The ability of the organization to obtain grants and other types of contributions.

Additional research and consultation with professional tax and legal advisors is highly recommended before determining the appropriate legal form for the organization. If the organization decides to incorporate, the necessary forms should be obtained from the Corporation Division, www.sos.state.or.us, or (503) 986-2200.

Please note that Oregon law recognizes three types of nonprofit corporations: Mutual Benefit, Public Benefit, and Religious nonprofit corporations. New corporations must declare the type in the Articles of Incorporation. If an organization does not choose the appropriate type for the corporation in light of its purpose and dissolution clause, the Oregon Department of Justice may require amendment of the Articles of Incorporation to the correct type. The Charitable Activities Section is available to assist with the determination. Please call (971) 673-1880 to request assistance.

- Public benefit nonprofit corporations include entities which hold tax-exempt status from the Internal Revenue Service under Section 501(c)(3) and other groups organized for a public or charitable purposes. Public benefit nonprofit corporations must include a clause in their articles of incorporation stipulating that on dissolution of the corporation, its assets will be distributed to another entity organized for a public or charitable purpose, to a religious corporation, to the United States, to a state, or to an organization which is tax exempt under Internal Revenue Code Section 501(c)(3). Examples of public benefit nonprofit corporations include charities, social service organizations, schools, foundations, and scientific and research organizations.
- Religious nonprofit corporations include those organized primarily or exclusively for religious purposes. Examples of religious nonprofit corporations include synagogues, churches and other places of worship.
- Mutual benefit nonprofit corporations include all other nonprofit corporations, which

are not classified as public benefit or religious corporations. Mutual benefit corporations are typically organized for the benefit of the organization's membership. Examples of mutual benefit nonprofit corporations include social clubs, business leagues, and veterans groups.

Obtaining Tax Exempt Status — The TE/GE Division of the Internal Revenue Service

In order to avoid the imposition of federal and state income taxes, nonprofit organizations must apply to obtain tax-exempt status from the Internal Revenue Service. (Tax-exempt status does not automatically result from nonprofit status.) Certain tax-exempt status determinations also allow donors to deduct the value of gifts to tax-exempt corporations on their tax returns. Whether to obtain tax-exempt status, and the type to pursue, are issues best decided upon consultation with a tax advisor. A fee (sometimes as much as \$900) must accompany applications for tax-exempt status. Additional information can be obtained from the Internal Revenue Service by visiting the IRS web site, www.irs.gov, and following the links to "Information for Tax-Exempt Organizations," or calling the IRS at 1-877-829-5500 (toll-free). Registering a Charity with the State of Oregon — The Charitable Activities Section of the Department of Justice

Oregon law charges the Attorney General with the duty and responsibility to represent the public's interest in connection with assets held for charitable purposes. The Attorney General carries out this responsibility by requiring organizations holding such assets and/or soliciting in Oregon to register and file periodic financial reports.

Generally, corporations or trusts which hold assets, solicit donations or conduct activities on behalf of a charitable purpose in the state of Oregon will be required to register with the Charitable Activities Section of the Department of Justice. A corporation or trust granted tax-exempt status by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code is presumed to be organized for a charitable purpose. More specifically, the following organizations must register:

- All corporations organized under the laws of the state of Oregon for charitable purposes must register. This includes, but is not limited to, any corporation registered with the Oregon Secretary of State as a nonprofit, public benefit corporation.
- All corporations organized under the laws of any state jurisdiction other than Oregon and doing business, holding assets or soliciting in the state of Oregon.
- All trustees which hold property or an interest in property in trust for a charitable purpose. Such trusts include charitable remainder trusts and lead trusts.

Information and registration forms may be obtained through the Department's web site or by calling the office at (971) 673-1880.

Keeping Current

Maintaining the Corporation — The Corporation Division of the Oregon Secretary of State's Office

In order to maintain the legal status of the charitable corporation, an annual report must be filed with the Secretary of State's office each year on the anniversary of the filing of the Articles of Incorporation. While the Corporation Division will send a form for this purpose to the address of record, it is the organization's responsibility to ensure that it is received and filed with the appropriate fee. Involuntary dissolution of the corporation will proceed if the forms are not filed within 45 days of the anniversary date. Major changes that occur after the annual report has been filed (e.g. officers, federal I.D. numbers, etc.) will require the filing of an amendment to the annual report. Also, it is possible to reinstate a corporation after it has been dissolved. Direct any questions regarding annual reports to the Corporation Division, www.sos.state.or.us, or (503) 986-2200.

Filing Informational Tax Returns — The TE/GE Division of the Internal Revenue Service

Organizations holding tax exemptions under IRS Code 501(c)(3) or other 501(c) provisions must file annual informational returns with the Internal Revenue Service. Organizations with gross receipts of less than \$25,000, many religious groups, state institutions and governmental agencies are exempt from filing. Other organizations should consult IRS instructions to determine whether to file Form 990, 990EZ or 990PF (for private foundations and trusts). Additional returns may be required for organizations with employees and/or unrelated business income. Returns are to be filed no later than the 15th day of the fifth month following the close of an organization's fiscal year. Penalties of \$20.00 per day are assessed for filing late returns.

Filing Annual Financial Reports — The Charitable Activities Section of the Oregon Department of Justice

All organizations registered with the Charitable Activities Section of the Oregon Department of Justice must file annual financial reports unless otherwise exempt from reporting requirements. Annual reports are due four months and fifteen days after the close of the organization's fiscal year. The Department may grant an extension of up to 90 days if requested on or before the due date. A sliding scale fee, based on the organization's assets and revenue, must accompany the annual report. Federal law requires organizations filing IRS Form 990-PF to file a copy of the form with the Charitable Activities Section even if the organization receives an exemption from Oregon reporting requirements. Other organizations must submit copies of their informational tax returns along with their annual reports. For annual report forms and instructions, please consult the Department's web site or call (971) 673-1880.

Resources

THE OREGON NONPROFIT CORPORATION HANDBOOK
HOW TO START & RUN A NONPROFIT CORPORATION
By Cynthia Cumfer and Kay Sohl
Available through Technical Assistance for Community Service
1001 SE Water Street, Suite 409
Portland, OR 97214
(503) 239-4001
website: www.tacs.org

Charitable Activities Section
Oregon Department of Justice
1515 SW Fifth Ave., Suite 410
Portland, OR 97201
(971) 673-1880
website: www.doj.state.or.us

Internal Revenue Service
TE/GE Division Customer Service
P.O. Box 2508
Cincinnati, OH 45201
(877) 829-5500 (toll-free)
website: www.irs.gov

Corporation Division
Oregon Secretary of State
Public Service Building
255 Capitol St., NE, Suite 151
Salem, OR 97310
(503) 986-2200
website: www.sos.state.or.us