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The 501(c)(3) Acquisition Process

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Matthew 25:31-46 (NIV)

³¹ “When the Son of Man comes in his glory, and all the angels with him, he will sit on his glorious throne. ³² All the nations will be gathered before him, and he will separate the people one from another as a shepherd separates the sheep from the goats. ³³ He will put the sheep on his right and the goats on his left.

³⁴ “Then the King will say to those on his right, ‘Come, you who are blessed by my Father; take your inheritance, the kingdom prepared for you since the creation of the world. ³⁵ For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, ³⁶ I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.’

³⁷ “Then the righteous will answer him, ‘Lord, when did we see you hungry and feed you, or thirsty and give you something to drink?’ ³⁸ When did we see you a stranger and invite you in, or needing clothes and clothe you?’ ³⁹ When did we see you sick or in prison and go to visit you?’ ⁴⁰ “The King will reply, ‘Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.’”

Turning A Great Idea Into A Community Enhancing Enterprise

Creating a nonprofit organization is no easy endeavor. Not only does the organization need to be community and culturally relevant to an existing adverse social condition, but there must also be an agreement by some majority community contingent about the issue(s) the new organization will address, as well as the methods by which it will operate. Then the fun begins! Once there is enough agreement to move forward, the formal process of incorporating and developing its fundability can begin.

The Nonprofit Incorporation Code

Most states have some form of legislated Business Incorporation Code governing the formation and administration of Nonprofit organizations. Georgia Nonprofit activities, for example, are governed by O.C.G.A. §14-3-101, et seq. The statute, governs the formation, operation and dissolution of nonprofit corporations within the state. A nonprofit corporation in Georgia, as in most other states, is managed by its board of directors and operated by its officers and employees. Instead of shareholders, a nonprofit corporation may, but is not required to, have members. Nonprofit corporations are specifically organized not to earn profits. Moreover, no part of the income or surplus of a Georgia nonprofit corporation may be distributed to its members, directors or officers; however, reasonable compensation may be paid to employees or consultants for services rendered.

Articles of Incorporation

The Articles of Incorporation are the most fundamental, as well as the beginning, part of the business creation process. This document specifically enumerates the basics under which the organization will operate and it provides the foundational standard under which the business is ultimately held accountable for its corporate actions and operating processes. Nonprofit corporations must be organized exclusively for charitable, educational, social/human service, and/or community economic development purposes.

Organizational By-Laws

By-Laws are a bit more specific. They “zero-in” on Membership, Board of Director activities, and Policy creation and enforcement within the organization. Board Officers and Duties are often set forth within the By-Laws, as well as the Amendment procedures for making organizational policy changes. All Board officers should sign the By-Laws at or around the time of the organizational meeting to demonstrate organizational cohesiveness at its inception.



Board of Directors

Board responsibilities can be enormous, depending on the complexity and mission of the organization being created. Moreover, there may be liability for Board Officers for which an insurance policy should be obtained. Board Member **Terms of Office** should also be addressed with all other initial considerations, and these terms should be enumerated within the organization’s By-Laws to eliminate any potential confusion or disagreements following program implementation.

A **Schedule of Board Meetings** should be set forth in the By-Laws, and a Board Manual should be created and distributed to each Board Member so that scheduling and expectations are clear to everyone and advance notice is provided as early in the life of the program as possible.

Program Staff

Specific personnel need not be named prior to the submittal of the 501(c)(3) application, however **Specific Positions** must be set forth in the application. In addition, **Salaries, Tax Rates and Benefit Costs** must also be included.

And don’t forget that bonuses and additional compensation items such as profit sharing, and other such incentives commonly used as private-sector motivational techniques, should not be offered to nonprofit staff members. The bulk of the monies taken in through donations, grants, etc. should be used for Service Delivery, Capacity Building, Community Collaboration, Administration and Services, and other Pre-Approved Items and Services.

Conflict of Interest Policy

The purpose of the Conflicts policy is to protect the organization’s interest when entering into any arrangement that could potentially or directly benefit a private interest of an officer or director, or result in an “excess benefit” transaction. Such transactions are specifically prohibited by State and Federal statutes.

The Program(s) Narrative

The Program Narrative is perhaps the most challenging part of the 501(c)(3) process. It sets forth in great detail precisely how the program will operate, including both background for its existence as well as day-to-day operations and procedures. The more clearly and specific this section of the application is developed, the greater the likelihood of unhindered approval at the federal level.

Program and Organizational Budget

A great Program Budget will match and support all aspects of the Program Narrative and the activities set forth in the narrative. It must be painstakingly developed, and it must be carried out to the letter in order to avoid even an appearance of impropriety at the Corporate level. Ideally, once developed, the Program Budget should be reviewed by a finance expert, such as an Attorney or CPA for both approval and also to initiate the basis for annual financial audits, which will greatly enhance the organizations ability to attract ongoing and re-occurring funding.

IRS Form 1023 –The Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

The Application for Exemption itself is not overly complicated, however the responses to particular questions, and the financial projections that must be disclosed must be accurate. They must also agree with and support the activities set forth in the Program Narrative and Budget sections. Moreover, there are generally twelve (12) relevant pages with questions that must be meticulously addressed, and, depending upon the type of organization being created and exempted, there are specific Schedules that may have to be completed as well.

Planned Fundraising Activities

Finally, it's important that you disclose all of your intended methods for raising funds. Below is a partial, but by no means exhaustive, list of fundraising activities that most nonprofits and churches engage in on a regular basis.

Planned Fundraising activities should always include, but by no means be limited to, the following:

Government Grant Writing; Foundation Grant Development; Website Donation Solicitations; Events; E-Mail Solicitations (where permitted); Mail solicitations (where permitted); and Other solicitations as planned periodically.

Application Costs †

Application fees for the 501(c)(3) application are calculated by using a two-pronged test for determining how much to submit to the IRS along with the application:

If you believe that contributions to your organization will average more than \$10,000 per year over its initial four-year period, the processing fee is currently \$850.00 US;

If, on the other hand, you believe your organization will average less than \$10,000 in annual donations during its initial four-year program cycle, the processing fee is currently \$400.00 US.

† These rates are subject to change with limited notice.

Caveat: In the event plan 2 is submitted and approved, and subsequent donations average more than \$10,000 annually within the first four years, corporate income is taxed at the prevailing corporate rate without consideration for the exemption, making it an extremely costly and punitive mistake to make. Accuracy, therefore is a must, even if it creates a greater initial processing fee.

Seeking Professional Help and Advice Can Shave Months Off Processing Time

Processing a 501(c)(3) application can take several months, and in some cases, more than a year. Generally speaking, however, the greater the effort at the inception of the program, the less likely there will be delays in successfully processing the application once the process has been initiated.

For these reasons, it is strongly recommended and advised that you seek the help and advice of a professional when processing your 501(c)(3) application. Doing so should not only insure a successful application, it can also greatly minimize the time it will take to get the application processed and approved.

Always feel welcome to contact me directly with any questions, comments, or great ideas!

Jack Johnson

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*Do Not Follow Where the Path May Lead...
Go Instead Where There is No Path... And Leave A Trail!*

The Nonprofit Advisors Group

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