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[Home](#) > Forming a Bluegrass Association: Overview, Key Points & Practical Tips

[Forming a Bluegrass Association: Overview, Key Points & Practical Tips](#) ^[1]

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Getting together to pick? Looking to book bands? Interested in formalizing your bluegrass group? This paper gives an overview of the types of organizations that might best be formed to meet your needs, identifies key points and issues to address, and sets out some practical tips touching on the pro's and con's of incorporation, non-profit status and other important topics. This paper also provides references and resources that can be used to carry out the formation or reorganization process for your bluegrass association.

INTRODUCTION

There are three main types of organizations to consider: (1) the unincorporated association, (2) a for-profit corporation, and (3) a non-profit corporation. Because certain paper work and other requirements are common to all three types of organizations, we will go over those first. Then we will take a look at each of the three forms of organization individually, focusing on the non-profit corporation and briefly touching on unincorporated associations and for-profit corporations.

(1) Adopt a Mission Statement. Set out on paper what the mission and goals for your organization are. This will help your new association stay on track and will help prospective members and donors determine if they want to join or otherwise support your group. You need to have a good mission statement to ensure your members are all on the same page with regard to what the association is and what it will do. Also, a mission statement is important in applying for grants and in applying for non-profit status.

(2) Select a Name for Your Organization and do a Name Check. Your state's Department of Corporations can likely tell you if the name you select is already in use by another corporation. You can also check with your county clerk to see if there is already an organization in your county using that name. Most states have a service on the web where you can do an on-line name check. You must also make sure that your name does not infringe on an existing trademark. You can visit: [HTTP://WWW.NOLO.COM/RESOURCE.CFM/CATID/7037786D-4688-4C4E-947C609C7CCFE81A/111/228/195/](http://www.nolo.com/resource.cfm/catid/7037786D-4688-4C4E-947C609C7CCFE81A/111/228/195/) ^[2] to check on this issue. Often, for a small fee, you can reserve the name of your choice for a new corporation with your State Department of Corporations while your association undergoes the formation process.

(3) Select an Address (a P.O. Box is fine). This is the address that will be your official address on your state and federal filings so an address like a P.O. Box that will not change as officers and members come and go may be best.

PRACTICAL TIP: The city and/or county you select for your home address may become the jurisdiction in which you need a business license and the laws of which you will need to follow, so think through where you want your "home base" to be. For example, some jurisdictions have higher business license fees than others, and some may exempt a non-profit organization from paying fees while others may not.

(4) For a Corporation, Adopt Articles of Incorporation. Articles of Incorporation (sometimes called a "Charter") are required for all corporations, both for-profit and non-profit. Typically, the format is dictated by the laws of the state in which you are incorporating, so you should review your local state rules. The Articles of Incorporation must be filed with your state and you will receive a conformed copy. These Articles are typically short—a page or two—and set out in broad terms what the goals of your organization are.

PRACTICAL TIP: Keep your statement of purposes in your Articles broad, so that as you adapt and change over the years you will not have to amend your Articles to cover your activities every time you start something new.

PRACTICAL TIP: If you are not incorporating, you should still have a Mission Statement and Bylaws as your governing documents.

(5) Adopt Bylaws to Govern the Association. The Bylaws are, in effect, the working rules for your organization. The Bylaws will set out what the qualifications are for membership, how officers are elected, how often meetings will be held, what the dues structure will be, and other important matters concerning how the organization will be operated. You might want to review the Bylaws of one or more bluegrass associations already in existence and adapt your own Bylaws from there. Be sure to also check with your state to see if there are any particular requirements that must be included in Bylaws in your state. States vary on these rules. Typically, your Bylaws, in contrast to the Articles of Incorporation, are not filed with the state. And if you do not plan to incorporate, it is recommended that you adopt Bylaws for your unincorporated association as well.

(6) File a "Doing Business as" ("DBA") Statement with the Local City or County Clerk. Before filing your DBA statement, do the name check outlined above to make sure the name for your organization is not already in use by someone else. Typically, most states have a process for doing such name checks and you should be able to do a check on the internet. Once you file your DBA it will give you some protection, but not absolute protection, if someone else later tries to use your name.

(7) Get a Business License if Required. Depending on your local city or county, you may be required to have a business license from the jurisdiction in which you are "doing business." Check with your city or county clerk. Technically, you should have a business license in every jurisdiction where you "do business," which in the case of a bluegrass organization might be every jurisdiction where you sell CDs and t-shirts and the like, and every jurisdiction in which you put on a festival, jam session or concert.

PRACTICAL TIP: The fact that the rules requiring a business license in every jurisdiction where you "do business" are often not enforced doesn't mean they don't exist! To the extent you can, keep your address and your activities within the boundaries of one jurisdiction with favorable business license and other rules that will apply to your organization.

(8) Initial Meeting and Election of Officers to Manage the Organization. It is usually a good idea to hold an initial meeting to agree on the organizational name, structure, mission statement, to elect initial officers, to set the amount of dues, etc. This can be an informal meeting in a living room with as few as a handful of people who want to get the bluegrass organization started. Typically, you will want to elect at least a President/Chairperson, a Vice President/Vice Chairperson, a Treasurer to handle money and a Secretary.

PRACTICAL TIP: You may also create such other offices and elect officers to fill them as you deem best. For example, you may create a "Concert Chair," "Membership Chair," "Publicity Chair," etc.

(9) Select a Logo, Print Letterhead and Business Cards. Pick a logo that reflects something about your group that is simple but distinctive. Cluttered and busy logos do not work well. A good logo will be appealing in large print on a t-shirt and still be readable and pleasant printed small on a business card. Think of some of the great American logos and why they work well. Coca Cola and Exxon, for example, have logos that are simple, but distinctive, consisting of stylistic lettering and in the case of Exxon simple crossed x's.

PRACTICAL TIP: While it may be tempting to have a logo that "says it all" showing that guitar and banjo in the hands of two young players sitting on a hill with a sunset in the background, go with something simpler. Save your great artwork for t-shirts and posters where you can do them justice.

(10) Open a Bank Account in the Name of the Organization. Visit one of your local banks, explain what you are doing, and open an appropriate account or accounts in the name of your organization. Don't hesitate to ask the bank for financial or other support (such as a free meeting room) to support your new group, especially if your organization is non-profit.

(11) Start a Membership Roster to Keep Track of Your Members. Your members are those who have paid up dues. It is important to keep an up-to-date list of who these people are. When asked how many members you have, for example in a grant application, the answer is the number with paid up dues. Many organizations use a spread sheet to keep track of members and information about them such as their email addresses, their dues payment status, the instruments they play, if they are willing to volunteer, etc. This can be done on any of the spread sheet programs readily available.

PRACTICAL TIP: Think about the categories of membership you want to create: individual, family, band, annual, lifetime, etc. Again, the goal should be to maximize your membership in a way that best helps you meet the goals of your mission statement.

PRACTICAL TIP: Set your dues as low as possible to encourage membership. It will help in fund raising and in grant applications to have as large a membership as possible. Use other strategies to raise additional money.

PRACTICAL TIP: If you keep an up-to-date spread sheet of your members that includes their mailing and email addresses, you can use it to easily print mailing labels for newsletters and the like to be sent through the mail or electronically.

(12) Obtain an Employer Identification Number. An employer identification number can be obtained on line from the IRS. Visit:

[HTTP://WWW.IRS.GOV/BUSINESSES/SMALL/ARTICLE/0,,ID=97860,00.HTML](http://www.irs.gov/businesses/small/article/0,,id=97860,00.html)

[3], which explains how to apply on line, by mail or by fax. This is one of the numbers that various government agencies will require on reports you file and which they will use for tracking your activities.

(13) File an Application for Tax Exempt Status if Your New Organization is a Non-Profit Corporation. For a non-profit corporation, after you have filed and received a conformed copy of your Articles of Incorporation from your state, you must file an application for tax exempt status, IRS Form 8718 (review IRS Packet 1023). This filing also requires that you include a copy of your Articles that you filed with your state. You can obtain all the forms for free, along with instructions, from the IRS by calling 800-TAX-FORM or by downloading them from the IRS web site at WWW.IRS.GOV [4]. In some states you must also file copies of your IRS filings or other federal forms with your state, so be sure to check on local requirements as well.

PRACTICAL TIP: Read the IRS tax exemption requirements before preparing your Articles of Incorporation to insure the wording you put in your Articles will qualify. Consider consulting a lawyer, as the rules in this area are complex.

(14) **MEETINGS:** Specify in your bylaws that there will be an annual members' meeting and regular board meetings (typically once a month). Elect board members at your annual meeting and have the board elect its officers thereafter. Typical bylaws have provisions for giving notice of meetings, for calling special meetings, setting a quorum and related procedural matters.

(15) **WEB SITE:** Set up a nice web page announcing your existence as a non-profit and establish an easy way to be contacted. You should be able to obtain a web hosting service for \$10 or so per month or less, and with luck you will be able to recruit a member from among your ranks to set up and run your website.

PRACTICAL TIP: Remember that you are a non-profit organization. Be careful about what you put on your web page, including links that refer to or promote for-profit activities. The IRS has been getting stricter about these matters. For example, you may have issues if you have links on your web site to for-profit concerts, music stores, sponsors, radio stations, etc. If not sure, check with a lawyer or the IRS before placing a particular item on your web site.

Selecting the Type of Organization

Selecting the type of organization you will form is a key decision. If you are just starting out, you may want to form an unincorporated association to avoid the paperwork and filing requirements required to establish a for-profit or non-profit corporation. If your organization grows and is successful, you can always incorporate later. The main disadvantage to becoming an unincorporated association is that you do not get the favorable tax treatment and liability protections given to corporations and you may have more difficulty in fund raising and qualifying for grants. Here is a quick look at the three options:

THE UNINCORPORATED ASSOCIATION

An unincorporated association can be formed by any two or more people who get together and decide to start the organization. Typically no formal filings are required, but you should check with your state and local government. Many labor unions and community groups, for example, are unincorporated associations. You will still need to select a name, adopt a Mission Statement and Bylaws, open a bank account, etc. as outlined above.

PRACTICAL TIP: Make sure that monies coming into your association come in the name of the association and are deposited only in a bank account in the name of the association. Otherwise, if funds are put in the personal account of a member he/she may be charged income tax thereon. Also, recognize that your unincorporated association may have to file for an employer identification number, file a tax return, and may have to pay taxes.

THE FOR-PROFIT CORPORATION

A Corporation can be formed, depending on the state, by as few as one person (Tennessee) or sometimes more, for example in California three incorporators are required. As noted above, generally, the Articles of Incorporation (Charter) are brief and set out the general purposes of the organization, leaving the meat of how the corporation will be run to be set out in the Bylaws. In addition, a new for-profit corporation determines how many shares are authorized and how many are to be issued, designates an agent for service of process and fixes an address. A new corporation must also pay your state's corporate filing fee.

In a for-profit corporation people who donate to the corporation cannot take a tax deduction, and the shareholders can take profits out in the form of salary and/or dividends, paying tax on their earnings. For profit corporations must also file their own tax returns and pay tax on earnings. If you are looking to run a bluegrass association primarily to operate a festival or to operate a concert series where you hope to be compensated and turn a profit, a for-profit corporation may be your best bet. It will give you liability protections and other corporate benefits, while allowing for profit making.

PRACTICAL TIP: A disadvantage to the for-profit corporation is the possibility of double taxation—once when the corporation pays tax on its earnings and a second time when shareholders receive profits in the form of taxable dividends.

THE NON-PROFIT CORPORATION

There are several types of non-profit corporations. For our purposes we are focusing on the 501(c)(3) and 501(c)(4) corporations (these numbers are references to the Internal Revenue Code Sections that govern these types of non-profit corporations). A (c)(3) nonprofit can be formed for charitable, scientific, religious, educational, literary or public safety testing purposes. The charitable and educational purposes are what most likely apply to your bluegrass organization.

To qualify, you must show that your organization is formed to benefit the public interest. Preserving and promoting bluegrass music as part of America's history and musical legacy can qualify for this purpose. Conducting school outreach programs like "Bluegrass in the Schools," presenting concerts for the public benefit, offering instructional activities, providing scholarships, etc. can all qualify as legitimate, charitable purposes under these provisions.

In reviewing your application for 501(c)(3) or (c)(4) non-profit status, the IRS is looking to see that your organization is proposing to do something legitimately in the public interest. Even if you are doing things in the public interest, the IRS may qualify your organization as a "Private Foundation" instead of as a 501(c)(3). Private Foundations are subject to different rules and regulations, generally less desirable for the typical bluegrass organization. For example, Private Foundations are required to distribute a certain percent of their revenues for charitable purposes each year. To learn more about Private Foundations visit <http://www.irs.gov/charities/charitable/article/0,,id=96114,00.html> [5].

In fact, the IRS will presume in reviewing your application that your new group is a Private Foundation and not a 501(c)(3) charitable organization unless your filing papers show you fall in one of three exceptions to the Private Foundation rule. The exception most likely to apply to your bluegrass organization is that if at least 1/3 of your revenues are derived from public support (such as donations and dues and not from sale of products, investments, disqualified persons or other specified activities), then you can qualify for 501(c)(3) status. The rules in this area are complex, and it is best to consult a lawyer. You can also review the rules at the IRS web page at www.irs.gov [6]. Look for publication No 557.

A (c)(4) non-profit is for organizations engaged in civic or public welfare purposes. All the revenues of such corporations must be devoted to charitable, educational or recreational purposes. A (c)(4) typically supports actions that help individuals or groups—programs for the homeless, for the unemployed, etc. Importantly, while a (c)(3) cannot engage in political activity (supporting candidates for office or ballot measures, or lobbying) except to an insignificant extent, a (c)(4) can lobby and engage in political activities without restriction. So, while it is possible your bluegrass organization might fit as a (c)(4), (if for example your main purpose is to elect Ralph Stanley as president), it is more likely that it fits best as a (c)(3).

The benefits of forming a non-profit corporation include:

- **Deductible Donations.** Donations to a non-profit corporation are deductible to the donor as a charitable gift. This can be an important factor in soliciting support for the organization, as the donor can write off the contribution on his/her tax return.
- **Exemption from Income Taxes.** Non-profit corporations do not pay income tax on income they earn, except on unrelated income which is subject to tax. Unrelated income is income earned on some activity unrelated to your corporate charter. For example, if someone donates a rental apartment to your group, the rent earnings are likely unrelated to your bluegrass purposes and your organization will need to pay tax on those earnings. Remember your organization will still owe sales tax on t-shirts, CDs or other products sold. You will need to get a resale permit from your state so you can buy these goods at wholesale without paying sales tax and only pay sales tax on your re-sales at retail.
- **Limited Liability.** Normally the corporation is liable for its own debts, and the directors and officers who acted in good faith are not liable. But, this liability protection only lasts so long as the corporation is maintained in good standing by keeping it adequately capitalized and by keeping the minutes and other paperwork up to date. Many states have special state laws limiting the liability of the directors and officers of non-profit corporations in at least some circumstances, and at the federal level there is the Federal Volunteer Protection Act found at United States Code Section 14501 which provides certain immunities to directors, officers and volunteers in non-profit organizations. All these statutory protections are intended to encourage the good works done by non profits by encouraging people to volunteer without undue fear of liability.

PRACTICAL TIP: Notwithstanding state and federal liability protections, directors and officers insurance should be considered. Generally, it is not that expensive and will pay not only any judgments rendered against your organization or its officers, directors and volunteers, but it will also cover attorney fees incurred in defending against a claim or suit, even if the suit is frivolous. The presence of such insurance may also be important in recruiting top individuals to join your board of directors, as some people will not join the board without such insurance.

Hopefully, your new group may have an insurance agent as a member who can help.

- Access to Facilities and goods at Reduced Rates. Non-profit corporations can often access community centers and other venues at better rates, and they can often buy and rent musical equipment, acquire computer programs and acquire access to other valuable things and services at reduced rates.
- Grants and Donations. Non-profit corporations can apply for many grants available only to non-profits. Be sure to investigate these opportunities. When accepting donations to your non-profit prepare and give donors a simple form documenting their donation. The content of such forms is governed by IRS rules which you can find in the ?Resource? materials referenced above.
- Reduced Rate Mailing. Non-profit corporations can qualify for reduced rate mailing privileges.

The disadvantages of forming a non-profit corporation include:

- Fees and Paperwork. Payment of filing fees, completion of paperwork and other requirements to set up and maintain the corporation in good standing
- Filing the Informational Tax Return. Filing the annual form 990 or 990 EZ informational tax return with the IRS (this is required only for non-profit corporations whose gross revenues for the year are expected to be \$25,000 or greater; for others it is optional, although if you opt not to file you must send a form postcard to the IRS to that effect) and filing with your state any required annual documents.
- Charitable Activities. Maintaining enough ongoing truly charitable activities that further your non-profit purposes so as to maintain your non-profit status, and filing the annual reports verifying the same
- Qualifying for Non Profit Status. Preparing and filing the detailed paperwork to prove up to the IRS that you qualify for non-profit status.
- Public Support. Raising enough public support money through donations and the like to meet the 1/3rd public support test to avoid being reclassified as a Private Foundation.

Is a non-profit corporation best for your organization? Consider the activities you want to carry out. If you plan to exist for a long time and to raise money, support a music in the schools program, do instrument giveaways or loan programs, provide music scholarships, run non-profit music events and the like, a non-profit corporation is probably the best bet for your group. On the other hand, if all you want to do is get together and have jam sessions and put on an occasional concert where you charge admission, and are not concerned with the long term, you probably do not need and do not qualify for non-profit status.

TO LEARN MORE

State Department of Corporations: Contact your state's Department of Corporations. Often they will send you a packet of documents for setting up a nonprofit corporation, including sample bylaws, filing fees, and other forms.

NOLO PRESS: Nolo Press has an excellent web site with FAQs and other resources along with books on forming non-profit organizations. Visit them at www.nolo.com [7].

IRS: The IRS also has an excellent web site with extensive resources and information about non-profits, including downloadable forms. Visit them at www.irs.gov/charities [8].

IBMA: IBMA can provide information and assistance to IBMA members.

Whatever form of organization you ultimately choose to form, remember to keep your paperwork up to date and to follow the formalities required for that type of organization.

Tags:

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