

THINKING OF FORMING A NON-PROFIT?

What to Consider Before You Begin

A publication of



Made possible by:
The J. P. Morgan Chase Foundation

TABLE OF CONTENTS

- 1 So, You're Thinking About Starting a Nonprofit...
- 3 What is a Non-Profit, Anyway?
- 6 First Steps for Building a Strong Base
- 9 To Be or Not to Be? The Legal Questions
- 15 Forming a Religious Institution: Legal Options
- 17 Spinning Off a New Non-Profit:
The Advantages and Risks for Houses of Worship
- 23 Introduction to the Non-Profit Board
- 25 The Changing Face of the Non-Profit Sector and
the Challenges that Lie Ahead
- 28 Resources

Thinking of Forming a Non-Profit? What to Consider Before You Begin is published by the Center for Non-Profits. The Center is a charitable non-profit umbrella organization providing advocacy, services, research and membership benefits to New Jersey's charitable groups. Copyright © 2004, 2006, 2008, 2010, 2013, 2014 Center for Non-Profit Corporations, Inc.

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The information contained in this publication is for informational purposes and should not be construed as legal advice. For answers to specific questions concerning your situation, you should consult a knowledgeable attorney who can advise you regarding your particular circumstances.

SO, YOU'RE THINKING ABOUT STARTING A NON-PROFIT...

You've identified a need in the community. You want to give something back to society. You've talked to a few people and they think you have a great idea. You need to be able to receive tax-deductible donations or solicit grants from corporations and foundations. You've had experience in other organizations and want to form a new one to fill an unmet need.

These are only a few of the many possible reasons for forming a non-profit, charitable organization. You may have even started the process, only to hit a few bumps in the road or come up with questions that need answering. Or maybe the whole idea seems daunting: Which state government agency do you need to talk to? Can't you go straight to the IRS? What forms and reports have to be filed every year? And above all:

Will forming a new organization be the most effective way to reach your goal?

Now is the perfect time to take a step back. Remember that what first energized you was a specific need, problem to solve, or issue that you felt needed attention. You are looking for the best way to work on this issue. That is really your goal—and the foundation for moving ahead.

This publication covers some important issues to keep in mind as you decide what the most effective medium will be to reach your goal. You'll read about what a non-profit is, some of the legal advantages and disadvantages of forming a non-profit, some of the requirements for forming and sustaining a non-profit, and alternatives to forming

a new organization. We also discuss a few questions specific to houses of worship and faith-based organizations. Although this book focuses primarily on 501(c)(3) organizations, there is information relevant to other types of non-profits as well.

Our goal in preparing this publication is to answer basic questions about what a non-profit is and how to form one as well as portray a realistic picture of what is involved in getting a new non-profit up and running. Consider this your first step in determining if a new charitable non-profit corporation is the best way for your group to reach its goal. The second step is your own further research into your community, the need, and the legal and administrative issues discussed in this publication. Always consult with the appropriate professional to review your own particular circumstances.

WHAT IS A NON-PROFIT, ANYWAY?

Most people use the term “non-profit” loosely to refer to organizations such as charities or those working for the public good. They may assume that all non-profits have the same tax benefits, such as the ability to collect tax-deductible contributions. However, there are actually many types of non-profits. Trying to describe a “non-profit” is a bit like playing “twenty questions,” where everyone tries to guess the answer by process of elimination. In the definitional sense, non-profits are creatures of federal and state law, based in large part on what they do not or cannot do.

To make matters more confusing, the term “non-profit” does not have a legal meaning on the federal level. On the state level, it is used to describe corporations that are organized to advance a public or community interest rather than for individual personal or financial gain. Therefore, non-profits may not distribute earnings or pay dividends; any surplus must be used to further the organization’s mission/goals. However, all non-profits are permitted to hire paid staff to conduct their organization’s activities. In New Jersey, non-profit status exempts a corporation from State corporate income taxes.

Depending upon their purposes, many—but not all—non-profit corporations can qualify for exemption from federal corporate income taxes. The U.S. Internal Revenue Code contains more than 25 different classifications of tax-exempt groups, including professional associations, charitable organizations, civic leagues, labor unions, fraternal organizations and social clubs, to name just a few. Depending on the category of the exemption, such groups are entitled to certain privileges and subject to

COMPARISON OF TAX EXEMPTION UNDER SECTION 501(c)(3) VS. 501(c)(4)

501(c)(3)—charitable, religious, educational, and similar purposes

- Donations are tax-deductible
- Eligible for sales tax exemption
- Eligible for non-profit mailing rates
- Limits on lobbying; partisan political activity prohibited

501(c)(4)—civic leagues, social welfare organizations

- Donations are **not** tax-deductible
- **Not** eligible for sales tax exemption, special mailing rates
- More allowable lobbying than (c)(3); political activity is limited, but not completely prohibited

certain reporting and disclosure requirements and limitations on their activities. In certain instances, contributions to non-profit organizations are deductible from federal income taxes.

Following is a much-simplified description of a few of the most common types of tax-exempt organizations. All of them are accurately described as “non-profit,” but there are critical differences among them.

Charitable Organization or Charity—refers generally to organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

Although the word “charity” is often used as a “catch-all” for simplicity’s sake, Section 501(c)(3) describes groups organized and operated for one or more of the following purposes: charitable, religious, educational, scientific, literary, testing for the public safety, fostering national or international amateur sports competition, or the prevention of cruelty to children or animals. Day care centers, food banks, low-income housing organizations, mental health organizations, United Ways, museums, theatre groups, colleges and environmental groups are just some examples of the many types of charities.

In general, 501(c)(3) organizations are divided into two categories, “public charities” or “private foundations.” Public charities are 501(c)(3) organizations that can demonstrate that a certain part of their support (usually 1/3 on average) comes from the general public or a unit of government; or organizations formed to raise money for a specific school, hospital, governmental unit or publicly supported charity. Charities are permitted to charge fees for their services; in fact, many public charities rely on fees for a substantial part of their revenues. Contributions to public charities are usually tax-deductible, a significant privilege not granted to most other types of organizations. Public charities are prohibited from engaging in any activities to support or oppose political candidates, but are permitted to influence legislation within legal limits.

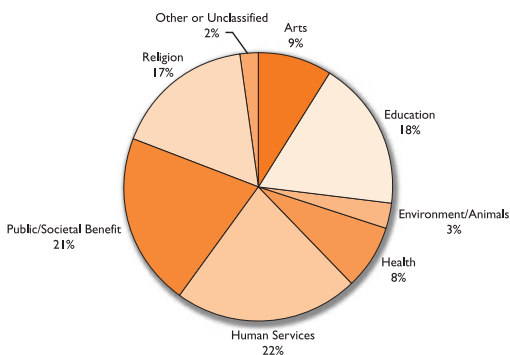
Private foundations are 501(c)(3) organizations that distribute money to fulfill a public purpose. Foundations are subject to different laws and regulations than public

charities. Foundations must distribute a certain portion of their income for charitable purposes and must pay an excise tax on investment income. There are strict rules and penalties to prevent personal or financial gain by certain people, including trustees and substantial contributors. Under most circumstances, contributions to private foundations are tax-deductible. Private foundations are prohibited from engaging in lobbying activities, but may contribute to charities that lobby as long as the funds are not earmarked for lobbying purposes.

Civic Leagues and Social Welfare Organizations, as described in Section 501(c)(4) of the Internal Revenue Code, are organizations that are created to further the common good and general welfare of the people of the community. Examples can include civic groups, downtown improvement associations and social action organizations. Because

the purposes of 501(c)(3) and 501(c)(4) organizations can be very similar, some organizations could potentially qualify for either classification. There are pros and cons to each structure. For example, contributions to 501(c)(4) groups are usually not tax-deductible, but lobbying activities of 501(c)(4) organizations are not limited by law, and partisan political activities are subject to different restrictions.

New Jersey 501(c)(3) Charities



Source: The Urban Institute, National Center for Charitable Statistics, Core File, circa 2005 (N=28,968). NCCS core files are derived from information in the IRS Business Master Files.

Trade and Professional Associations, business leagues, and the like are described in Section 501(c)(6) of the

Internal Revenue Code. Chambers of commerce, retail merchants associations and real estate boards are examples of 501(c)(6) organizations. Contributions to trade associations are not tax-deductible as such, but may be deductible as business expenses within certain limits (membership dues used for lobbying purposes, for example, are not tax-deductible). Trade associations are not subject to legal limitations on lobbying and political activity beyond normally applicable election laws.

Social and Recreational Clubs, described in Section 501(c)(7) of the Internal Revenue Code, include hobby clubs, country clubs, garden and variety clubs, amateur hunting, fishing or other sport clubs and similar groups organized primarily for recreation or pleasure and not for profit. Social clubs may not discriminate against any person on the basis of race or color.

In short, non-profit corporations are for people, to help them achieve some common purpose. Non-profit and charitable organizations play a vital role in the economic and social well being of our communities, state and nation. They provide a means for people to contribute time, resources and expertise for a greater good. The answer to the “twenty questions” may be hard to come by, but the pursuit is well worth the effort.

FIRST STEPS FOR BUILDING A STRONG BASE

As you consider starting a new organization, it's often helpful to start with a broad view and work toward the specifics. However, you may also find that the process is somewhat circular, requiring repeated thought and attention to many issues. This section covers some tips and initial steps, large and small, that you should take to help determine whether you want to move ahead. For additional detail regarding government requirements, refer to the next section, "To Be or Not to Be: The Legal Questions," on page 9.

★Keep your charitable mission in the front of your mind at all times.★

This may sound obvious, but it can be easy to lose sight of your overall mission amidst the details of forming a new organization, legal questions and funding issues. Always be sure that your discussions, plans and actions are mission-driven.

Engage a group of interested people

Gathering a group of interested people with the knowledge and skills you need is an ongoing process. Consider people in the community or with a stake in the issue, those with knowledge or expertise about the issue, those with experience in non-profits, budgets, marketing, etc., and also those with connections to resources.

If you decide to incorporate and file for tax-exempt status, you will need to form a board of trustees (also called a board of directors, although "trustee" is the term used

in New Jersey law). As a public benefit organization, a non-profit organization is not “owned” or controlled by the founder, executive director or anyone else, but it is accountable to many different constituencies. The board will govern the organization: set the vision, mission and strategic plan, and hire an executive director if necessary. A founding board often does a lot of hands-on work and the board has important legal responsibilities (see “Introduction to the Non-Profit Board,” page 23), so keep this in mind as your organization evolves.

Draft (and Redraft!) a Program or Business Plan

This process and the document you produce will help you reach your goal by clarifying your objectives, activities and resources; helping to market your idea to possible volunteers, board members, staff and funders; laying out the steps you will take; and answering many of the questions you’ll be asked by potential funders and during the incorporation and tax-exempt processes.

Do some real research into your issue, the community’s needs and resources, successful approaches, funding resources, others working on your (or a similar) issue, and more. Discuss everything thoroughly with your founding group and write:

- Vision and mission statements
- Problem statement—remember your research, don’t just say “there are homeless in our streets”
- Methods or activities to reach your mission and vision
- Budget
- Timeline
- Resources needed—financial, material, and people with specific skills
- Possible resource opportunities—research and start relationships with funding and other resources that are interested in working with your group

Also, look for possible partners and potential competitors—entities whose services you may be duplicating.

MISSION STATEMENT

Use a journalist’s 6 Ws,—Who, What, Where, When, Why, and hoW—to explain the purpose of the organization as clearly and concisely as possible:

- Why does the organization exist? For what greater purpose or larger good?
- What do you plan to accomplish, affect, change?
- Whom does the organization serve?
- Where does the organization serve?
- How will you accomplish this? (specify the services or activities)
- When will services be provided, or goal reached?

For example:

The ABC Agency provides art and music instruction and activities to all children aged 3 to 18 in greater Anytown, in order to encourage their intellectual and creative development.

BEFORE YOU START...

- Focus your thoughts/ create a business plan
- What services will your organization provide and what needs will it fill?
- Are you duplicating services already being provided by someone else? If so, justify why.
- Who will provide the proposed services?
- Who are your potential consumers/constituents and how will you reach them?
- Where will you get the financial resources to start and sustain your organization?
(Be sure sources are consistent with your desired structure, such as 501(c)(3).)

Be prepared to answer some questions:

- Is a new organization needed? Or can you work with an existing organization? (Are the methods different? Is the geographical reach or the target population different?)
- Are there resources (especially funders) that are interested in, better yet, committed to your organization?
- Do your proposed organization's purposes and activities qualify for non-profit and for tax-exempt, 501(c)(3) status? If not, what form is best for your organization? (A for-profit? Unincorporated group? A different classification of tax exemption, such as 501(c)(4)?)
- Does your group have all the skills and expertise needed? For your particular cause? To manage an organization? To run a non-profit corporation?
- How long do you think it will take before the organization is running well? How will this be evaluated? What will you do if the organization never takes off as planned?

Your mission

If you decide that a charitable non-profit corporation is the best way to achieve your goal, you will have a lot of work ahead of you—however, if you've done your homework and keep your mission at the forefront of your planning, you will have built a strong base for your new organization.

TO BE OR NOT TO BE? THE LEGAL QUESTIONS

Editor's note: For further discussion of the different types of non-profit organizations, please see "What is a Non-Profit, Anyway?" on page 3; this section focuses on organizations that are considering 501(c)(3) status.

The Center for Non-Profits frequently fields the following questions, "Can I form a non-profit corporation?" and "Should I form a non-profit corporation?" The first question can usually be answered objectively, while the second requires a more in-depth discussion of the organization's objectives balanced against the advantages and disadvantages of forming a non-profit corporation.

In New Jersey, "Can I" simply requires any lawful purpose other than financial profit. There is a laundry list of organizations that meet that definition, some of which are cited in the New Jersey statutes. Other requirements include not issuing stock, having at least 3 trustees over the age of 18 and having a registered agent in New Jersey. For organizations contemplating 501(c)(3) status, the primary purpose should be religious, charitable, educational, literary, scientific testing, public safety, fostering national or international sports competition, or prevention of cruelty to children or animals. The organization must benefit the broad public or a broad class of individuals to be eligible for 501(c)(3) status.

The "Should I" question starts with a more in-depth discussion of the organization's purposes, objectives and proposed operations. Every once in a while something is divulged which discourages non-profit incorporation, or requires changes to ensure that the organization is for public, rather than private, benefit. A somewhat extreme example is, "One of the trustees will draw a salary and the organization will purchase all supplies from that trustee's for-profit business, who also happens to be the person

the organization will rent space from. It won't be a problem with the other two trustees because they are passive and will never show up for meetings anyway." Such a structure would be inappropriate because a 501(c)(3) organization is set up to benefit the public or a class of people, and NOT to benefit one individual with various advantages and profits (such as rent, increased business or unreasonable salary) that are unrelated to the organization's charitable purpose.

Assuming, however, that there is a valid charitable purpose, what are the advantages of forming a non-profit corporation? an exempt 501(c)(3) organization? Note that forming a *non-profit* corporation (state level) does not automatically mean the organization is 501(c)(3) for Federal tax purposes. Organizations with gross receipts of \$5,000 or more must apply to the Internal Revenue Service for recognition of tax-exempt status.

Advantages

- As a separate legal entity, incorporation inserts a legal buffer between the corporation and the trustees, officers, members, or other individuals. The assets at risk in a lawsuit or claims of creditors are the corporation's, not the personal assets of the individual trustees, officers, volunteers, etc.
- New Jersey non-profits are exempt from New Jersey corporate income tax.
- Non-profit organizations may be exempt from property taxes on all or part of their real property.

**Non-Profit ≠ "can't make a profit."
Surpluses are permitted and
desirable, but they must be used to
further the organization's activities**

- Incorporation frequently elevates an organization's status in the eyes of potential donors and the public.
- Non-profit 501(c)(3) organizations are exempt from federal income taxes on income related to the organization's exempt purposes.
- Non-profit 501(c)(3) organizations are exempt from federal unemployment taxes.
- Non-profit 501(c)(3) organizations may collect tax deductible contributions, which may greatly facilitate fundraising. Non-profit 501(c)(3) status is often required to receive grants from private foundations as well as government grants and contracts.
- Non-profit 501(c)(3) organizations and certain others may file for a New Jersey state sales tax exemption certificate.
- Non-profit 501(c)(3) organizations may be eligible for reduced postal rates.

Disadvantages

- If individual control and autonomy over the corporation are important, non-profit status is not for you. Non-profits are not “owned” by individuals or stockholders, and the CEO’s employment is subject to the pleasure of the board.
- Apart from the time and energy you’ll expend in planning your new organization, it costs time and money to incorporate and meet the subsequent filing requirements.

At the state level:

- The incorporation filing fee is currently \$75.00 (you should budget \$115.00, which includes expedited service and a certified copy).
- Most organizations are subject to registration and annual reporting requirements with the New Jersey Department of the Treasury, Division of Revenue, and the New Jersey Office of Charities Registration (certain religious organizations qualify for a \$5.00 incorporation fee and exemption from annual reports and charities registration; organizations that raise less than \$10,000 in annual contributions are exempt from mandatory charities registration filing if they do not use a professional fund raiser, although they may file voluntarily).
- New Jersey requires a certified audit when gross revenues exceed a certain amount (currently \$500,000). This requirement may necessitate budgeting for attorney or accountant fees.
- There may be additional state filing requirements if soliciting contributions or doing business outside of New Jersey

Nobody owns a non-profit and no single person controls it.

At the federal level:

- Organizations filing for 501(c)(3) status are required to complete a Form 1023 or 1023-EZ. To determine if you are eligible to file Form 1023-EZ, you must complete the [Form 1023-EZ Eligibility Worksheet](#). If you answer “yes” to any of the worksheet questions, you are eligible to apply for exemption under section 501(c)(3) using this form.

The IRS requires that Form 1023 be completed and submitted electronically through [Pay.gov](#).

As of January 1, 2020 the **application fee** for **Form 1023-EZ** is **\$275**, while **Form 1023** is **\$600**.

- Since 2008, the IRS has required some form of annual filing from **all** organizations regardless of size. If your organization’s gross receipts are normally less than \$50,000, you will need to file an “e-postcard” (Form 990-N) online; organizations with larger budgets will file either the Form 990 or Form 990-EZ (or, for private foundations, Form 990-PF).

**FILING FOR
501(c)(3) TAX-
EXEMPT STATUS
MAY NOT BE
NECESSARY IF:**

- Organization's gross receipts are not normally more than \$5,000 **and** its purposes are consistent with Section 501(c)(3). Keep in mind that other filing or reporting requirements may apply.
- Organization is church or church-affiliated (see "Forming a Religious Institution: Legal Options," page 15)

However, you may need actual proof of exemption to access some of the 501(c)(3) benefits such as eligibility for grants, raffle licenses, non-profit mailing rates, and others. Additionally, proof of tax exemption can increase your credibility with donors and the public, so it may be worthwhile to apply.

- Although non-profits may hire staff, pay reasonable compensation, end the fiscal year with a surplus, and retain reasonable cash reserves, organization surpluses or assets must be used to further the group's mission and may not be used for the personal, private benefit of any individual. If realizing private profit is a priority and if fundraising and/or taxes are not an issue, then for-profit incorporation may be an alternative (note the increasing number of for-profit hospitals and schools).
- Influencing legislation is limited for public charities and prohibited for private foundations. For all 501(c)(3) organizations, partisan political activity is strictly forbidden.
- It can be difficult to sustain an organization over the long term. Funding can be unpredictable, sporadic, or in worse cases, a dry well. A newer or less established organization may need to spend more time and resources on fund raising rather than on program-related activities. A more established organization may experience a loss of momentum.
- There may be competition for limited resources, especially in hard economic times.
- You need to be sure that you aren't duplicating what an existing group is already doing, or that there is strong justification for the duplication.
- It is not uncommon for non-profits to experience "growing pains" as the organization becomes more established. Consequently, early board turnover is not uncommon.
- Transparency is expected and often legally required for non-profits. Most financial information is a public record, for anyone to see.
- There are a variety of administrative requirements, such as by-laws, advance meeting notices, minutes, and board election procedures. However, these may not be a net disadvantage because they may force the organization to adhere to good record keeping and internal management.

Next Steps

After considering the advantages and disadvantages, your next steps depend on what structure you've determined is right for your organization. If you decide that incorporating a new non-profit organization is not the best way to reach your goals, there are a variety of options you can consider (see sidebar, "Alternatives to Forming a New Organization").

If your group decides to work on its own and does not pursue a separate legal existence, the status would be akin to an unincorporated association. Many small organizations retain this distinction, as it may not be worthwhile to incorporate.

You may want to consider forming a for-profit organization, perhaps even extending that to include a non-profit subsidiary. If you are a person who prefers to be "in control," a for-profit proprietorship may be amenable to carrying out your mission. Profits could then benefit you personally.

If you have found that forming a new 501(c)(3) organization is appropriate for your purpose and activities and is the best way for your group to reach your goals, you'll find the "Incorporation/Tax-Exemption Checklist for New Jersey 501(c)(3) Organizations" on page 14 to be a helpful summary of the steps needed to incorporate and apply for tax-exempt status. The resources listed on page 28 and the other articles in this booklet will also provide you with a wealth of information to get off to a good start and comply with the many requirements.

ALTERNATIVES TO FORMING A NEW ORGANIZATION

- Join an existing effort
- Create a special program for an existing effort
- Start a local chapter of a national or regional organization
- Maintain an informal organization
- Find a fiscal sponsor for your organization
- Find an established organization to sponsor your project if the activities will be short-term (such as an emergency fund or a specific event)
- Start a for-profit organization

Incorporation/Tax-Exemption Checklist for New Jersey 501(c)(3) Organizations

- Conduct internal/external assessment (determine that incorporation/tax exemption really is necessary, appropriate and feasible)
 - Recruit board members (in New Jersey, need at least three; must be age 18 or older)
 - Order materials from:
 - New Jersey Department of Treasury, Division of Revenue, 609-292-9292 or www.state.nj.us/treasury/revenue/gettingregistered.shtml
Download or request the New Jersey Business Registration Packet, NJ-REG. You will need to fill out Public Records Filing for New Entity, which is part of the NJ-REG packet, OR file a narrative Certificate of Incorporation*
 - www.irs.gov
Download SS-4, Form 1023, and Publication 557. Review requirements at www.stayexempt.org
 - Choose a corporate name
 - Check name availability (You can search for name availability at www.state.nj.us/treasury/revenue/checkbusiness.htm or call NJ Division of Revenue at 609-292-9292. Reserve corporate name for a fee, if desired.)
 - Choose a membership or non-membership structure
 - Prepare and file Certificate of Incorporation with New Jersey Department of Treasury, Division of Revenue*
 - File Form SS-4 with the IRS (Employer ID #) (Form is available online at www.irs.gov and may be filed online—if you are comfortable sending your social security number over the internet—by phone or fax)
 - Prepare by-laws (to be adopted at first organizational meeting of board of trustees)
 - Hold initial organization meeting (to elect officers, adopt by-laws, etc.)
 - Prepare and file Application for Recognition of Exemption (Form 1023 or Form 1023-EZ) with IRS. Use caution if using Form 1023-EZ, as many safeguards and reviews are bypassed when this version is used.
 - Register with New Jersey Office of Charities Registration before soliciting donations (www.state.nj.us/lps/ca/ocp.htm#charity; if exempt from mandatory NJ charities registration, decide whether voluntary registration is desired. If applicable, research registration requirements in other states where fundraising may take place)
 - Send letter to New Jersey Department of Treasury, Division of Taxation requesting determination letter recognizing organization as a New Jersey corporation, exempt from income tax (recommended)
 - File for State Sales Tax Exemption Certificate (Form ST-5) with New Jersey Department of Treasury, Division of Taxation (Form REG-1E, online at www.state.nj.us/treasury/taxation)
 - Set up a corporate records book (for minutes, board resolutions, etc.)
 - Record minutes of first meeting of board of trustees
 - If desired, apply for Federal Nonprofit Mailing Permit from U.S. Postal Service (USPS Form 3624, available online at www.usps.com, click “Find a Form”)
 - If desired, apply for gaming license with New Jersey Legalized Games of Chance Control Commission (if raffles/games of chance are desired/anticipated; www.state.nj.us/lps/ca/lgcc.htm or call 973-273-8000)
 - Comply with all reporting requirements (Members of the Center for Non-Profits can contact the Center for a list of “Common Filing/Reporting Requirements for New Jersey Non-Profits”)
- * *If you intend to seek recognition of tax-exempt status from the IRS, use caution completing Public Records Filing for New Entity form (part of the State of New Jersey Business Registration Packet, NJ-REG) to incorporate your non-profit, as the state’s forms do not contain all of the provisions the IRS will be looking for. The New Jersey Division of Taxation makes available instructions regarding how to modify the form for organizations that intend to seek federal tax-exemption. As an alternative to using the state’s form, you may choose to file a narrative Certificate of Incorporation, including the provisions necessary for the IRS. The fee is the same regardless of which method you choose. Samples of a Certificate of Incorporation are available to members of the Center for Non-Profits and from other sources.*

FORMING A RELIGIOUS INSTITUTION: LEGAL OPTIONS

If the organization you're considering starting is a house of worship, there are a couple of options to explore at the state level (incorporation) and at the federal level (IRS-tax-exempt status). If you are thinking of spinning off a separate faith-based organization from your existing house of worship (e.g., for community development work), see the next article, "Spinning Off a New Non-Profit: The Advantages and Risks for Houses of Worship."

Incorporation: Title 15A or 16?

At the state level, incorporation may be possible under Title 15A or Title 16. If the organization meets the requirements of Title 16, then there is no requirement to use Title 15A. It's best to look at both statutes before deciding.

Here are some points to keep in mind about incorporating under Title 16:

- File at the county level and then state level
- Filing fee is \$5 under Title 16 (\$75 under Title 15A)
- Don't have to use "Inc." or "A New Jersey Non-Profit Corporation" in the official name
- Not subject to the provisions (including restrictions) of Title 15A
- May pick and choose any sections of Title 15A and incorporate them by reference into the Title 16 incorporation
- Includes some specific provisions for specific denominations

IRS—To file or not to file Form 1023:

Churches and church-affiliated organizations do not have to file Form 1023 to be exempt under 501(c)(3) as long as they are organized and operated as a 501(c)(3) organization. However, there are reasons to file even when it is not necessary to file (see page 9, “To Be or Not to Be? The Legal Questions;” note that churches are **not** eligible to file IRS Form 1023-EZ).

The IRS doesn’t specifically define a church. However it does provide a few guidelines:

- A distinct legal existence.
- A recognized creed and form of worship.
- A definite and distinct ecclesiastical government.
- A formal code of doctrine and discipline.
- A distinct religious history.
- A membership not associated with any other church or denomination.
- A complete organization of ordained ministers ministering to their congregations.
- Ordained ministers selected after completing prescribed courses of study.
- A literature of its own.
- An established place of worship.
- Regular congregation.
- Regular religious services.
- Sunday School for the religious instruction of the young.
- School for the preparation of its ministers.

If the church is structured and functioning according to the above, it is more likely that the IRS will consider it a church. It’s a facts and circumstances question, so not all the tests have to be met, but the more that are, the better. Filing Form 1023 and obtaining an IRS determination letter is one way to be assured that the organization is exempt under 501(c)(3).

For further information, read IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*, available by calling the IRS forms line (1-800-829-3676) or in PDF on the IRS website: www.irs.gov/pub/irs-pdf/p1828.pdf

SPINNING OFF A NEW NON-PROFIT:

The Advantages and Risks for Houses of Worship

Houses of worship face a particular set of circumstances when considering whether or not to spin off a new organization. The following article, excerpted and adapted from Starting a Nonprofit at Your Church by Joy Skjegstad, presents some of the factors to take into account. Although the term “church” is used, the information in this article is intended to be broadly applicable to many different houses of worship. Note also that the IRS uses “church” broadly to include synagogues, mosques, temples, and any other organization that has “church-type” characteristics.

Thorough planning before you form your nonprofit can make all the difference in the success of it. Clarify your mission, your structure, and your program plans early on. If you are not intentional as you move forward, you will be creating unnecessary challenges for yourself. Before you begin to set up your nonprofit, consider the advantages and the risks of this structure.

Advantages: A Structure That Can Make Your Ministry Dream Come True

Setting up a nonprofit at your church can bring together the very best aspects of the church with the outside resources that a nonprofit can draw. Churches frequently have the trust of the broader community in ways that few other institutions do.

Churches also have “captive audiences.” A congregation is a readymade group of workers, donors, and supporters who can exponentially increase the power of your nonprofit ministry.

The nonprofit part of the structure adds to the organization’s effectiveness too. You will be able to attract resources from funders who would not support a church directly. New collaborative partners will become interested in what you are doing, and there will be opportunities to recruit volunteers from new sources. One of the most important advantages is the ability to attract the skills you need through new staff and board members from outside your church.

New financial resources can be secured.

Securing new financial resources for ministry is the most common reason that congregations choose to set up a nonprofit. Many foundations, corporations, and government entities will not make grants to congregations directly—with some, it is a stated policy. A separate legal entity with its own set of books, governance structure, and board members from outside the church will make many funders much more comfortable about giving to a program connected with a church.

New volunteers can be drawn into the ministry.

Having a separate nonprofit allows you to recruit new volunteers from organizations—other churches, local businesses, corporations, or service clubs—that might be reluctant to send people out to a church. Having more organizations to recruit from will also allow you to draw in a greater diversity of volunteers—men and women, and people of different ethnic backgrounds and ages, for example. This diversity of involvement can make your planning processes more representative of the community and therefore more attractive to funders.

People with the needed expertise can be recruited.

A new nonprofit with its own staff members and board can help you draw in people with the particular skills that are needed by the ministry. Depending on the ministries your nonprofit decides to pursue, it may need social workers, fundraisers, housing and day care specialists, or chemical dependency counselors, for example. You may also decide to hire an executive director for the nonprofit. Even if you want to hire people of faith for all positions, you may need to go outside your own congregation to find the best candidates.

New collaborative partnerships will become possible.

Having a separate nonprofit will help you collaborate with some organizations that would be reluctant to partner directly with a church. Some people automatically assume that the hidden agenda behind any congregational involvement is recruiting new church members. If your separate nonprofit has the mission of “alleviating sub-standard housing in the central neighborhood,” for example, it makes your purpose

clear and shows others that you are willing to devote time and resources to a community issue that others care about as well.

Decisions can be made more rapidly.

Take an honest look at your congregation's decision-making processes. If they are so lengthy and complex that they derail ministry ideas, setting up a nonprofit may be a way to help new ministry "hatch" more quickly. This will be particularly important if you are considering new ministry in which decisions are time sensitive. Housing ministries frequently need to buy property quickly when the opportunity arises, for example. Opportunities to apply for large grants or to pursue a new collaboration may require you to make decisions in a much shorter time frame as well.

The nonprofit can be insulated from the politics and personalities of the church.

The political culture that evolves in some churches can hinder ministry rather than help it. If you are in a church setting in which a small handful of people have gained considerable power and use it to manipulate people and situations, creating a separate nonprofit could give you the chance to start over with new people who will create a new culture. A separate organization can help insulate ministry from some of the political aspects of the church.

The nonprofit can better pursue potentially controversial ministries.

Some churches set up nonprofits to pursue potentially controversial ministries that the church would be more reluctant to develop. An example would be a justice ministry that "takes on city hall" using a confrontational approach to bring about positive community change. Bringing in more controversial or "on the edge" speakers for special events might also be easier for the nonprofit to do.

Insulate the church from legal liability or financial responsibility for ministry under the nonprofit.

If you set up your nonprofit as an entirely separate entity (with the church exercising very little if any control over it), it can help insulate the church from legal claims arising out of the programs under the nonprofit's umbrella. The bylaws, articles of incorporation, board structure, and staffing for the nonprofit must all be set up so that the church has very limited control. This insulation from liability will be particularly beneficial if the nonprofit is pursuing new ministry in which there is greater risk of lawsuits. Having the nonprofit will not eliminate the need for risk management procedures or adequate planning, however. All ministry leaders have the duty to ensure that volunteers and participants are as safe as can be at all times.

Having a nonprofit can also help insulate the church from being entirely responsible for the financial state of programs under the nonprofit umbrella. This can be a real benefit if you are pursuing a ministry dream with some significant financial risks.

The Risks of Having a Nonprofit

Compared with other nonprofit structures, setting up a nonprofit at a church has added complexity. You are founding a group with a new vision and drawing in new people and resources to move that vision forward. At the same time, you do not want the people of the church to feel disconnected from the nonprofit, so you will need to work to help them feel a sense of ownership for it. Depending on your denomination, you may also need to develop this new organization within a framework of existing rules and expectations. It is possible to keep this all in balance, but it can be difficult. Keep investing time in communicating with people regularly and respectfully, and it will pay off in the short-term and the long-term.

SPECIAL RISKS

Now might not be the right time to set up a nonprofit if any of the following is true for your church:

Significant Church Staff or Board Transitions

Churches that are undergoing significant transitions on their staff or boards may want to delay setting up a nonprofit. If your senior pastor or another key staff member is moving on, or if there has been significant turnover on your church board, you may not have the strong support among key leaders that you need to move forward.

A Recent Breach of Trust within the Church

People who are working together to spin off a whole new organization have to trust each other. If there has recently been a split in your church, or if something has happened that makes the congregation suspicious of new ideas or new people, you may need to wait for some healing to take place before you move ahead.

Significant Factions or Conflict in the Congregation

If your church usually breaks into “us and them” factions around key ministry issues, this could hinder your ability to develop a nonprofit. If you decide to go ahead, you will need a strong facilitator and some ground rules for how people who disagree will be expected to interact with each other.

OTHER RISKS

The nonprofit may become disconnected from the mission of the church.

It is possible that the nonprofit could veer off in a different direction than the church, particularly if the church decides not to exercise much control over the new organization’s mission or governance. The difference might be about the type of ministry that is being pursued or the way in which it is implemented.

The ministry can lose its faith focus.

Forming a nonprofit could diminish the faith focus of the ministries under its umbrella. Sometimes this occurs because the nonprofit draws in people and funders

who share the vision for the community but not necessarily the faith aspect of it. Of course, if your congregation wants to launch a nonprofit that has a very limited faith focus or none at all, this is not a risk you need to worry about.

The church may assume less ownership for the ministry.

If church members see that the nonprofit is successful at securing outside funding or bringing in outside volunteers, they might assume that their help is not needed. Though it might be possible for you to secure enough outside resources to run the nonprofit, you can probably do more and higher quality ministry when you add the people and financial resources of the church to the mix. A communication plan that keeps the work of the nonprofit constantly before the congregation will help.

Having a nonprofit costs more than not having one.

Having a nonprofit costs more than not having one, regardless of how you set it up. If you pursue new staff members to manage the organization and its programs, it will cost more for salaries and benefits. Program supplies and transportation costs will likely be higher. Even if staff time, facility use, and a number of other expenses are donated by the church, it will still cost you more to have a nonprofit; for example, there are filing fees to maintain your nonprofit status, letterhead and brochures to print, more postage, and additional insurance expenses. Consider these additional expenses as you decide whether to set up the nonprofit.

Tension could develop between the nonprofit and church leaders and staff.

Setting up a separate nonprofit may make church staff and lay leaders feel suspicious —as though a separate group of people is going off to do their “own thing” apart from the church. Of course, the “us and them” view of the process can be mitigated if you develop the nonprofit with the strong input of church staff and leaders.

The nonprofit will create more administrative work.

Once your nonprofit is formed, there will simply be more to do administratively. There will be more paperwork, more programs to be overseen, more meetings to be planned and held, and potentially more staff to be supervised. If you secure funding from foundation or government sources, there will be grants and reports to be written on a regular basis.

You will have to raise funds.

Once you form your nonprofit, the organization will need to devote energy and time to the task of fundraising. Writing grants and building relationships with funders takes a great deal of time, and these fundraising tasks may pull you away from developing programs or other aspects of your organization. Keep in mind that it almost always takes longer than you think it will to secure your first grants, particularly if you are starting from scratch with a new nonprofit and a new program vision (most funders like to see a track record).

One way to build your nonprofit's fundraising capacity from the outset is for the church to provide some "seed money" for start-up fundraising costs. A fundraising consultant or grant writer could be hired to seek funds while other aspects of the organization are being put into place.

ADDRESSING THE RISKS

Even if one or more of the risks listed above applies to you, it does not mean that your congregation should never pursue setting up a nonprofit. It may simply mean that you need to wait until the congregation has come out of a transition time, or that you need to do more planning around some issues.

Planning the process of forming your nonprofit will help you realize the advantages of this structure and avoid pitfalls along the way.

The preceding information was excerpted from Starting a Nonprofit at Your Church by Joy Skjegstad, with permission of the author.

INTRODUCTION TO THE NON-PROFIT BOARD

The ultimate responsibility for the financial health and programmatic effectiveness of a non-profit corporation rests with its board. The Board of Trustees oversees the non-profit corporation by defining and re-defining the mission statement, purpose, and goals, preparing the strategic plan and evaluating the effectiveness of the organization—as well as that of the board itself. In fact, the board is legally accountable for the organization’s operations—board members should take their role seriously and be knowledgeable about their role and responsibilities, both legal and financial.

Although each member of the board is individually responsible and legally accountable to the corporation, no single person, whether board member, founder or executive director, controls the organization. The members of the board *work together as a team*, with key staff (if the organization has employees) to pursue the organization’s mission. Trustees can represent the various constituencies and stakeholders of the organization or the community, and should include people with a variety of needed talents (marketing, financial management experience, etc.). Board members need to be not only committed to the mission of the organization, but also need to understand fully—and have enough time to fulfill—their various duties and responsibilities.

Duties of Care, Loyalty and Obedience

Trustees must keep in mind the duties of care, loyalty and obedience. The duty of *care* means that they must be careful in their work: be informed, participate in discussions, exercise their own judgment, and make decisions in a prudent manner. During board business, one’s *loyalty* will be to the organization, staff and board and refers to working for the organization’s mission and not one’s own benefit. On an occasion

when a board member stands to benefit personally from a decision to be made, the duty of loyalty requires the trustee to disclose his or her connection (or ‘conflict of interest’) and not take part in that vote. The duty of *obedience* means ensuring that the organization obeys the laws, including tax laws, regulations, employment laws, filing requirements and more.

Responsibilities

The board oversees the operation of the non-profit corporation to ensure that it is working towards its mission efficiently, successfully and within the legal regulations. Where there are staff (paid or unpaid), it is the staff that performs the organization’s activities on day-to-day terms. Among other things, it is the board’s responsibility to:

- Prepare the strategic plan, goals, and objectives—and evaluate the progress made
- Hire the executive director (when necessary), set compensation and evaluate the executive director’s work
- Approve procedures, for example: confidentiality, working conditions
- Ensure that the organization is in compliance with all laws and regulations
- Represent the organization well to the public
- Select and orient new board members
- Raise funds for the organization: set fundraising strategy, donate funds, find likely donors, and open doors to funding
- Approve a realistic budget and regularly monitor the organization’s financial performance

It is essential that sufficient investment be made in building and sustaining an effective board that understands and fulfills its roles and responsibilities. There is a wealth of information available in print, on the Internet and from knowledgeable consultants and management support organizations regarding non-profit boards. Two good places to start are Board Source, www.boardsource.org and the Management Assistance Program for Nonprofits’ Free Management Library, www.managementhelp.org. Contact the Center for Non-Profits for further resources, including articles and lists of consultants.

THE CHANGING FACE OF THE NON-PROFIT SECTOR AND THE CHALLENGES THAT LIE AHEAD

Throughout its history, the non-profit sector has improved our society in countless ways. Significant social change legislation, treatments or cures for serious illnesses, revitalization of distressed neighborhoods and communities, education, housing, food, counseling and employment training, preservation of our environment and heritage, and thriving artistic and cultural centers—all of these are the result of the leadership and hard work of non-profits and those who care about them. Through disasters, wars, recessions and even periods of relative calm, non-profits have always been there for the long haul, providing caring, comfort, economic relief, spiritual fulfillment, a forum for debate, a catalyst for change, and an emotional and creative outlet for grief and hope.

Differing Views of the Non-Profit Sector

In 1983, the New Jersey non-profit sector consisted of an estimated 4,000 501(c)(3) organizations. Today, that number is close to 30,000. However, despite its rapid growth and increased prominence, the non-profit sector is not well understood by policy makers, business leaders and the general public. Even the question of what to call this community of public benefit organizations—the non-profit sector, civic sector, independent sector, “people’s sector,” and so on—has been debated within our sector for years without resolution. Furthermore, non-profits are grappling with conflicting expectations of those within and outside our sector—a disconnect between traditional views of charity (e.g., volunteers providing free services to the poor, funded solely by donations) and the realities of today (employers of nearly 10% of the state’s private workforce, sub-

stantial income from fees, dues and government contracts, and with real and legitimate costs for salaries, overhead and other expenses to operate safely and effectively). As non-profits face growing competition for limited funds, develop new relationships with business and government and look more to business models of program delivery, the lines distinguishing the sectors will likely continue to blur. The need for the sector to define itself and what it stands for will be essential to securing its position as a unique, and necessary, component of society.

Accountability and Ethics

Although recent studies show that people still have more confidence in non-profits than in government or for-profit institutions, the non-profit community is being viewed by the public and government leaders with more jaded eyes now than was the case 30 years ago. Non-profits are being called upon to demonstrate that they are adhering to high ethical standards and putting funds to use effectively and efficiently. A steady series of laws and regulations has been enacted to address abuses and make non-profit operations more transparent, while efforts to adopt uniform standards of conduct and practice are increasing. In recent years, it has also become increasingly common for donors to become more actively involved in the charities they favor. Concepts like “outcomes” and “performance-based” have become common among funder and non-profit discussions. The call for non-profits to measure and articulate the impact of their programs is stronger now than ever.

As non-profits, we must establish practices to ensure the highest levels of ethics and integrity, and we must take steps to document and communicate the quantitative and qualitative value of our work. We must support laws and regulations that preserve accountability without imposing excessive administrative burdens and costs. We must speak out vigorously against abuses when they occur. And we must make our good work as visible and understandable as possible by making evaluation, accountability and communications higher priorities for our organizations.

Rising to the Challenges

To consider forming a new organization or linking up with an existing one requires recognizing the challenges—increased public scrutiny, heightened competition for funds, increasingly complicated regulatory requirements—along with the potential. In the face of these challenges, logical questions might be, “So why bother? Why become part of the non-profit sector? Why stay involved in non-profits?”

The answer is simple: despite the extraordinary strides, there is still much more to be done. New Jersey’s cost of living is among the highest in the nation. The gap between the richest and poorest among us is persistent and widening. Our natural resources continue to be endangered. Our children need nurturing and education, our elderly special care. We need artistic and cultural outlets for our emotions and creativity.

Promising research into cancer, heart disease, diabetes and other health concerns must continue. The need for dialogue, understanding and tolerance among people of differing backgrounds and appearances is more acute now than ever.

At its best, the non-profit sector represents and demonstrates the qualities and values that are central to our society. Time and again, the people who work in and with non-profits have weathered crises through perseverance, creativity, commitment to mission, adapting to changing times, and working together to achieve a common purpose. We can draw inspiration and strength from our colleagues' achievements and share ideas and resources to solve problems collectively and constructively to help make our vision of a better society a reality.

RESOURCES

The following is a small selection of the many resources covering general topics, as well as the resources referred to in the articles in this publication. Please consider this list as a starting point. While we have chosen some of our favorites for finding information on a variety of topics, inclusion does not imply complete endorsement of the resource by the Center for Non-Profits, nor should any value judgment be inferred from an entity's omission from this list. If you would like further resources about a specific topic, visit the Center for Non-Profits Web site at www.njnonprofits.org, or contact the Center for Non-Profits at 732-227-0800 or center@njnonprofits.org.

FEDERAL GOVERNMENT

U.S. Internal Revenue Service

www.irs.gov

Web site includes taxpayer information, including exempt organizations section with downloadable publications and forms. Also operates toll-free exempt organization information hotline at 1-877-829-5500. Look for: Publication 557, "Tax-Exempt Status for Your Organization," Publication 4220, "Applying for 501(c)(3) Tax-Exempt Status," Publication 1828, "Tax Guide for Churches and Religious Organizations." Also see www.stayexempt.org, the IRS' interactive website for 501(c)(3) organizations.

USA.gov for Nonprofits

www.nonprofit.gov

Portal to numerous federal departments and government information of interest to non-profits.

NEW JERSEY STATE GOVERNMENT

State of New Jersey Home Page

www.nj.gov

Official state site includes links to state departments/agencies, the Legislature, judiciary and much more. To access the Legislature directly including information about NJ legislators, New Jersey statutes, pending legislation and legislative calendars, go to www.njleg.state.nj.us.

Charities Registration Section, NJ Division of Consumer Affairs— 973-504-6215

www.state.nj.us/lps/ca/ocp.htm#charity

Most New Jersey charities are required to register with this office, which is part of the Department of Law and Public Safety. Site includes a searchable database of registered charities and downloadable registration forms (Adobe Acrobat Reader required).

NJ Division of Taxation— 609-292-5994

www.state.nj.us/treasury/taxation/

Handles state sales tax exemption and other tax-related matters; part of the Department of Treasury.

NJ Division of Revenue— 609-292-9292

www.state.nj.us/treasury/revenue/

Handles business registration (incorporation), corporate filings (including non-profits) in New Jersey, part of the Department of Treasury.

Office of Faith Based Initiatives (OFBI), NJ Department of State— 609-292-8286

[www.state.nj.us/state/programs/
dos_program_faith_based.html](http://www.state.nj.us/state/programs/dos_program_faith_based.html)

The mission of OFBI is to develop relationships and strengthen partnerships with federal and state agencies, corporations, foundations, institutions of higher learning, and capacity building training organizations in an effort to create greater access to funding and other resource opportunities for Faith Based and Community Based Organizations. Information on how to join the Faith Based Loop—a free e-mail service of information about funding and other resource opportunities that may assist Faith Based and Community Based Organizations; links to federal faith based sites; upcoming events.

GENERAL

Center for Non-Profits— 732-227-0800

www.njnonprofits.org

Producer of this publication; charitable umbrella organization serving New Jersey's non-profit sector through advocacy, public education, management and compliance assistance, research and membership programs. Producer of *Hiring, Firing & Risk Management: Employment Law for New Jersey Nonprofits* and other publications. Advocates for sound public policy for non-profits; conducts workshops/discussion forums; maintains extensive resource/consultant database; provides cost-saving opportunities for members; other services.

National Council of Nonprofits

www.councilofnonprofits.org

The country's largest network of non-profits, including state and regional associations that each work to support the non-profit sector in their area. If your organization will be located outside of New Jersey, check this Web site for a helpful state association near you.

American Philanthropy Review's CharityChannel

<http://charitychannel.com>

Web site hosting variety of non-profit discussion forums on fundraising, marketing, academic research, legal issues and more; also has booklists, consultant registers, events listings, job listings and numerous links.

BoardSource

www.boardsource.org

National membership organization offering comprehensive support and training for non-profits and their boards of trustees; Web site includes useful "Frequently Asked Questions" area about board roles and responsibilities.

Free Management Library for Non-Profits

www.managementhelp.org

Hosted by the Management Assistance Program for Non-Profits in St. Paul, MN. Contains an extensive collection of articles and resource links on all aspects of non-profit operations—fund raising, evaluation, business planning, human resources, communications and much more.

The Foundation Center

www.foundationcenter.org

Extensive source of information on foundation and corporate giving, as well as other areas of interest to non-profits; publishes wide array of reference books, directories, analyses; web site includes electronic reference desk, online librarians, donor databases, articles, news services and more. Has cooperating collections at several sites in New Jersey.

GuideStar

www.guidestar.org

Clearinghouse of financial and programmatic information on 600,000 501(c)(3) organizations nationwide.

Independent Sector (IS) - Resource Center for Good Governance and Ethical Practice

www.independentsector.org/governance_ethics_resource_center

Independent Sector (IS) is a national organization working to strengthen and partner with non-profits and philanthropic organizations through research, networking, and encouraging high ethical standards. This page of the IS Web site has information about various aspects of governance and accountability.

Pro Bono Partnership

www.probonopartnership.org

Charitable organization that provides legal resources and free business legal services to community-based non-profits via volunteer corporate and private-sector attorneys.

NOTES

About the Center for Non-Profits

The Center for Non-Profits is a 501(c)(3) an umbrella organization that strengthens New Jersey's charitable community through advocacy, public education, legal and management assistance, and member services. Founded in 1982, the Center exists to build the power of New Jersey's non-profit community by serving as the premier voice and comprehensive resource for and about our sector. The Center's programs include:

- Management and compliance assistance for non-profits;
- Newsletters and other publications;
- Workshops, roundtables and issues briefings
- Advocacy on state and federal issues of importance to the non-profit community;
- Education and research regarding the role of the non-profit sector in society; and
- Access for members to discounts on publications and services, and cost-saving programs such as directors and officers liability insurance and volunteer insurance.

Center membership is a sound investment in your organization and in New Jersey's non-profit community. As a Center member, you can tap into a treasure trove of programs and benefits to make your organization stronger.

Call us at **732-227-0800**, e-mail center@njnonprofits.org or visit us on the web at www.njnonprofits.org for more information, current activities and membership dues.

Membership

Fax to: 732-227-0087 or

Mail to: Center for Non-Profits, 3635 Quakerbridge Road, Suite 35, Mercerville, NJ 08619

Online enrollment is available at www.njnonprofits.org

Organization _____

Organization Head _____ Title _____

Contact Person _____ Title _____

Address _____

City _____ County _____ State _____ Zip _____

Phone _____ Fax _____

E-mail _____ Web site _____

Non-Profit Organizational Membership

Annual Operating Budget	Annual Dues*
\$0 – \$49,999	\$99
\$50,000 – \$199,999	\$210
\$200,000 – \$499,999	\$315
\$500,000 – \$99,999	\$500
\$1 – \$2.49 Million	\$685
\$2.5 – \$4.9 Million	\$815
\$5 – \$4.9 Million	\$970
\$10 – \$4.9 Million	\$1155
Over \$20 Million	\$1365

Associate Membership

Individual - Ally or Sole Proprietorship	\$225
Business/Partnership/Agency	\$450

*Dues levels are subject to change. Contact the Center or visit www.njnonprofits.org for current dues

Payment Information

Check enclosed (made payable to The Center for Non-Profits)

Credit Card

Visa MasterCard Discover American Express

Total amount to charge _____

Expiration Date _____

Credit card number _____

Zip code of billing address _____



3635 Quakerbridge Road, Suite 35 ■ Mercerville, NJ 08619
732-227-0800 ■ Fax 732-227-0087 ■ center@njnonprofits.org ■ www.njnonprofits.org