



Do We Need to Incorporate?

By Carol Topp, CPA

Strong homeschool organizations are built on the foundations of establishing a board of directors, creating bylaws and planning a budget. Some organizations also find that nonprofit incorporation is beneficial.

What is nonprofit incorporation?

To incorporate an organization means that a separate legal entity has been formed. The mission and operation of the organization may stay the same, but a separate, legal corporation has been created.

A homeschool organization can exist in several types from a simple unincorporated informal organization all the way to a large, structured organization. It is helpful to think of an organization's structure in the form of a staircase. The bottom of the stairs is the least organized type of homeschool group, an informal unincorporated organization. Higher up the staircase are organizations with increased structure including as bylaws, a board, and nonprofit incorporation

Non Profit Corporation

Medium or large size, cash surplus,
board, by laws, Article of Incorporation

Unincorporated Organization-formal

Small or Medium-sized, board, bylaws, Articles of Association

Unincorporated Organization-informal

Small, may be no board, may be no bylaws

At all levels of the staircase homeschool organizations will be dealing with government agencies. At the state level, an organization will deal with the Secretary of State's office to become a nonprofit corporation. An organization will deal with the IRS to apply for tax exempt status.

Do we need to incorporate?

Organizations will seek corporation status for several reasons, but largely to for legal protection and as the initial step toward tax exempt status with the IRS.

Incorporating does not grant tax-exempt status with the federal government, but it is a good first step. Organizations should incorporate in their state before

applying for tax exempt status with the IRS. An organization can apply for tax exempt status as an unincorporated association, but if they wish to become a corporation in the future, they would have to go through the entire tax exempt application process with the IRS again because a new legal entity was formed when they became a corporation.

It's a bit like getting a driver's license after you get married. You changed your legal name and so you need a new driver's license. If an unincorporated association changes its legal status, the IRS says it needs to reapply for tax exempt status as the new corporation.

Incorporation allows legal protection for the organization's leaders. The corporation, not individuals, will become liable for any legal issues. The directors of a corporation have limited liability, meaning that if a corporation is found to be responsible for an injury or loss, the corporation is responsible for legal claims.

Other reasons to incorporate include a desire for the organization to exist beyond the current leadership and a desire for the organization to own property or hire employees. Any legal contacts such as purchasing land or real estate are entered into by the corporation and not individual leaders. Likewise, employment issues such as hiring and firing are done in the name of the corporation, not board members or leaders.

What does incorporating involve?

Incorporating as a nonprofit corporation usually involves some fees and filing paperwork with the Secretary of State. The paperwork is usually fairly simple. Most states require only a one-page form listing the legal name of the organization and the officers' names. Each state's Secretary of State's office will have information on incorporating as a nonprofit organization. The fees for incorporating may cost from \$10 to \$150 and the process may take 2-6 weeks.

Homeschool organizations may wish to consult a lawyer knowledgeable about nonprofit incorporation before incorporating. Make sure you understand all the benefits and expectations of nonprofit corporate status. Also ask about the process to dissolve a corporation.

WARNING: If your organization is incorporating as the first step toward becoming tax exempt with the IRS, then there is special language that the IRS requires to be included in your Articles of Incorporation. Most states do not tell you this and do not include this special language in their forms! I offer sample Articles of Incorporation on my website at <http://homeschoolcpa.com/leader-tools/sample-documents/>

After incorporation

Your state may require annual or other reporting. Ask your Secretary of State's Office what reports are required for nonprofit corporations.

Additionally, the IRS is now requiring all nonprofits to file an annual report, the Form 990/990-EZ or 990-N. This is a requirement even if your organization has not filed for tax exempt status. Failure to file the Form 990/990-EZ or 990-N for

three consecutive years will mean that IRS will automatically revoke your organizations tax exempt status.

To compare this to getting a driver's license, if you fail to renew your driver's license every few years, you cannot legally drive. This applies to you even if you don't own a car or wish to drive! You still need to go to the Bureau of Motor Vehicles and renew your license to keep it current.

Conclusion

Becoming a non-profit corporation has several benefits including establishing a separate legal identity and limited liability for leaders. There are fees and paperwork involved, and incorporation does not grant your organization tax-exempt status with the IRS, but it is a step that more and more homeschool organizations are pursuing. Homeschool leaders should read more about nonprofit incorporation and discuss its benefits with their group leaders.

My book *The IRS and Your Homeschool Organization* cover nonprofit incorporation and tax exempt status with the IRS in more detail. Order a copy at <http://homeschoolcpa.com/bookstore/501c3-tax-exempt-status/>



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