

## insights

TYPES NOT MAPPED YET August 30, 2019 | TTR not mapped yet | Gregory M. Mennerick, Jesse K. Daggendorf

# Three key considerations when forming a nonprofit corporation in Missouri

Every day, individuals are inspired to start a nonprofit and serve the Missouri community. However, forming and maintaining a nonprofit corporation in Missouri presents an array of action items that many neglect or ignore all together. Here is a brief overview of key considerations to help get your nonprofit off the ground.

### 1. Governance

Select how the nonprofit will be structured and identify your board of directors:

- **Members:** A nonprofit may have members (like shareholders of a for-profit corporation), which elect the board of directors of the nonprofit and are entitled to other voting rights. If the nonprofit does not have members, the board of directors will be self-perpetuating (meaning, existing board members re-elect themselves and elect new board members).
- **Board of directors:** A nonprofit must have at least three directors who collectively manage the nonprofit's affairs. The ideal board size will vary for each nonprofit based on such factors as the nonprofit's age, size, scope of its mission, nature of its activities and funding needs or objectives. It is important to select a dedicated group of individuals invested in the nonprofit's success. In order to meet IRS Code section 501(c)(3) requirements, the nonprofit must also have three individual members of the board that are not affiliates or employees of the nonprofit.

### 2. Governing Documents

Prepare appropriate governing documents for the nonprofit:

- **Articles of incorporation:** A nonprofit is formed by filing articles of incorporation with the Missouri Secretary of State. Provisions addressing IRS Code section 501(c)(3) requirements must be included in the articles for those nonprofits seeking tax-exempt status under IRS Code section 501(c)(3).
- **Bylaws:** Each nonprofit must adopt bylaws to formalize the internal rules and procedures of the organization, including those related to meetings, notice of meetings, elections of officers and directors, roles and duties of each officer. The bylaws are not filed with Missouri.
- **Conflict of interest and other policies:** A nonprofit should have a conflict of interest policy to assist the nonprofit's directors and officers identify a conflict of interest, as well as situations that may result in an actual, potential or perceived conflict of interest, and appropriately manage a conflict of interest in accordance with applicable law. While not required, it is best practice for a nonprofit to adopt other policies, such as a gift policy, record retention policy and confidentiality policy.

### 3. Tax Considerations

Remember that the formation of a Missouri nonprofit does not make the nonprofit tax-exempt for federal and Missouri income tax purposes. A nonprofit seeking federal and Missouri tax-exempt status under IRS Code section 501(c)(3) must file an application for tax-exempt status with the IRS (IRS Form 1023). A nonprofit that is determined by the IRS to be tax-exempt under IRS Code section 501(c)(3) is also exempt from Missouri corporate income and franchise taxes.

Nonprofits may also seek an exemption from Missouri sales tax and/or property tax depending upon the nature of their operations and activities. Separate applications must be filed with the Missouri Department of Revenue for



sales tax exemptions and the applicable county assessor for property tax exemptions. In addition, nonprofits that conduct fundraising activities in Missouri and other states may be required to register with those states in order to solicit charitable contributions.

Given the nuances in the Missouri Nonprofit Corporation Law and complexities with preparing legal documents for nonprofits, be sure to consult an attorney early in your formation process.

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