

**How to Start a
Community Benefit
Public Charity**

(otherwise known as a
Nonprofit Organization)

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Presented by
Gayle L. Gifford, ACFRE
President

CAUSE & EFFECT[®]
INC.

ABOUT THE PRESENTER

Gayle L. Gifford, ACFRE
President, Cause & Effect Inc.
178 Ninth Street
Providence, RI 02906
401.331-2272
gayle@ceffect.com
www.ceffect.com

A respected consultant, provocative writer, and creative strategist, Gayle believes in the power of charitable nonprofits to transform their communities and the world.

For over 30 years, Gayle has been helping nonprofits make a difference in the world by creating the internal change that strengthens their governance and management, improves their programming, builds stronger relationships with their constituents, or boosts their revenues. Her clients have included, among others, WaterFire Providence, The Diaper Bank, John H. Chafee Blackstone River Valley National Heritage Corridor Commission, the House of the Seven Gables Settlement Association, and The Trust for Public Land New England Regional Office.

A regular columnist for *Contributions Magazine*, Gayle is also the author of *How are we Doing? A 1-hour guide to evaluating your performance as a nonprofit board*, *Meaningful Participation, an activist's guide to collaborative policy making*, and co-author of *Bringing a Development Director on Board*, #3 in the AFP Ready Reference Series. She is a past President of the RI AFP Chapter and one of fewer than 100 individuals worldwide holding the advanced fundraising certification of ACFRE.

Gayle received an M.S. in organization and management from Antioch University New England. Gayle is an adjunct instructor on organization development and communications in the Masters in Communications Management program at Simmons College and the Masters in Public Humanities Program at Brown University.

Gayle serves on the board of Blackstone Academy Charter School (www.blackstoneacademy.org) and on the Advisory Council of Latino Dollars for Scholars Foundation of RI (www.ladori.org). She was a past chair of the Rhode Island Council for the Humanities.

Quick facts:

- In 2009, there were approximately **1.5 million** nonprofits in the **USA** (all types) recognized by the IRS, more if you include houses of worship/churches that have not sought federal recognition (National Center for Charitable Statistic NCCS)
- Of those 889,000 file Form 990, required for organizations with annual revenue over \$25,000 (NCCS)
- About 71% of nonprofits are 501(c)3s, private foundations or public charities. (More about this to come)
- About 90% of all US nonprofits have revenues below \$500,000; 78% below \$100,000 (NCCS)
- About 8.7 million workers, 5.9% of US workforce in nonprofit sector (2007, Bureau of Labor Statistics)
- Average hourly wages of nonprofit employees is \$21.68 vs. \$21.08 in the private sector (BLS; 2007)

A community benefit (nonprofit) organization is very different from a for-profit enterprise:

- Serves the public good
- Moral ownership
- No private inurement
- Philanthropic values, not monetary values
- Financial rules are **VERY** different for a public charity
 - Not all cash is liquid
 - Price usually does not cover cost
 - Philanthropy or government support are essential components of virtually all nonprofit financial models
 - Cost increases usually cannot be passed onto the people you serve
 - The “payers” are usually not the people who directly benefit from the services
 - Overhead is expected to be limited

There are different levels of “nonprofit” recognition

- State:
 - Most nonprofits are chartered under state law.
 - This usually provides exemption from state income tax. It may provide some exemption from state sales tax or municipal property taxes.
 - Nonprofits can be corporations, unincorporated associations, trusts and limited liability companies, depending on what is recognized by your state.
- Federal:
 - To receive federal-tax exemption status (i.e. free of paying most federal income taxes), you have to be recognized by the IRS as a tax-exempt organization,.
 - There are approximately 64 categories of federally recognized nonprofits, most come under section 501(c) of the IRS Code but also sections 521 and 526-529.

The special status of the 501(c)3 nonprofit organization

- The only “charitable” 501(c), must be either
 - Charitable
 - Educational
 - Scientific
 - Religious
 - A few other special categories e.g. those that foster national or international amateur sports competition, prevent cruelty to children or animals, test for public safety, etc.
- Two types: private foundation or public charity
 - Public charities can be 1)institutions (churches, colleges, hospitals, etc), 2) publicly supported organizations (broad base of public support) or 3) supporting organizations
 - Private foundations have a more closed nature of their funding and governance; private foundations will not make grants to other private foundations, contributions may be less deductible, additional federal tax rules
- Charitable privileges
 - Possibility that gifts to the 501(c)3 may be tax-deductible to the donor
 - Exemption from federal estate taxes for bequests
 - Some lower postal rates
 - Use of volunteer labor
- Must be recognized by the IRS to have this status with the exception of churches (i.e. houses of worship) and organizations that have gross receipts of less than \$5,000 annually

Limitations of 501(c)3 Nonprofit

- Required paperwork with state and federal entities
- Many rules and regulations unique to foundations and public charities
- Special rules at the municipal, state and federal level apply to fundraising
- Limitations on lobbying
- Absolute prohibition on electioneering, political activity
- Limits on the amount of unrelated business activity, which is also subject to taxation
- Financial records open to public inspection
- No private entity owns the assets of the nonprofit – must transfer to another nonprofit at dissolution

Questions to ask yourself before you start on this path:

- What is my reason for starting this organization?
- Am I really interested in making change for my community and in serving the public good above all else, or am I doing something for my own benefit?
- Why can't this be done by a for-profit?
- Am I ready to share control with other people who are affected by or care about this issue?
- Why hasn't anyone else addressed this issue before? Is there really no other organization working on this?
- Does anyone else care enough about this issue to support it with resources: goods, services or cash? Who? Why?
- Will creating an organization get in the way of accomplishing the outcomes I am concerned with?

Steps to becoming a viable nonprofit (before you start the paperwork):

- Compete a community scan – gather data and talk to everyone you can
- Build community commitment and “get the right people on the bus” – Board of Directors, volunteers, etc.
- Determine what good/ what change you are trying to create in the world & what the best practices are to ensure that change comes about
- Clarify and codify your values as an organization
- Learn everything you need to know about running a nonprofit:
- Laws and regulations
- Voluntary standards of excellence e.g. Council of Better Business Bureaus www.bbb.org, Standards for Excellence Institute wwwstandardsforexcellenceinstitute.org
- Codes of ethics for fundraising
- Develop a business plan that shows how you will achieve your desired outcomes and how you will sustain your organization financially
- Determine how you will keep your community informed, connected and supportive of your work
- Determine how you will know if you are making a difference

Steps to becoming a legal nonprofit entity (the paperwork)

See: Knowledge Center at Board Source (www.boardsource.org) “How do we form a nonprofit organization: A Checklist” at <http://tinyurl.com/4f2aam>

- Determine your mission/purpose (social benefit you will create)
- Decide what organizational “form” is most advantageous: corporate, unincorporated association, limited liability company/partnership (LLC/LLP), trust.
- Assuming corporate form, File *Articles of Incorporation* with your state. Decisions to make:
 - Name (check state and federal availability) and register)
 - Purpose
 - Directors (the minimum number is established by state law)
 - Registered agent
 - Incorporators (who sign the Articles)
 - Yes/no to a governing Membership
- Pay filing fee, Secretary of State
- Obtain directors’ and officers’ liability insurance
- Write bylaws

- Establish record keeping and accounting systems
- Apply for 501(c)3 status (as a public charity vs. a private foundation if with the IRS using form 1023. Type your application or use the IRS online fill-in... it makes it easier for the IRS and your application is available for the world to see.
- Apply for state and local tax exemptions
- Comply with charitable solicitation requirements of state, county or municipality
- Obtain EIN number from the IRS
- Apply for nonprofit mailing permit from USPS

Have an attorney with expertise in exempt organizations review your documents before filing

An alternative: work under another 501(c)3's sponsorship

- Until you receive federal 501(c) 3 recognition, donations to you are not tax deductible. You may need a Fiscal Sponsor.
- Fiscal sponsorship may be the right alternative for your work, especially if you are really only interested in program work, or your activities are short term

Nothing posted here shall constitute the rendering of legal, accounting, or other professional advice, nor is an attorney-client, accountant-client, or other professional relationship created by this document. Always seek the professional advice of a qualified attorney on important questions or law.

Helpful Resources

- Internal Revenue Service, www.irs.gov
- Secretary of State in your state
- *How to form a nonprofit organization in all 50 states*; Anthony Mancuso; Nolo.com
- *650 Essential Nonprofit Law Questions Answered*; Bruce R. Hopkins, Wiley
- “The Looking Glass World of Nonprofit Money,” Clara Miller, www.nonprofitfinancefund.org
- BoardSource www.boardsource.org
- Alliance for Nonprofit Management www.allianceonline.org
- Better Business Bureau Wise Giving Alliance www.bbb.org
- Charity Channel www.charitychannel.com
- National Center for Charitable Statistics Table Wizard <http://tinyurl.com/yw5yzy>