



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 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 nonprofit organization can exist in several types from a simple unincorporated informal organization all the way to a large, structured tax exempt organization. Most homeschool organizations start out as “unincorporated organizations.” Organizations can exist in this form as long as they wish and only progress to another level as their program and membership demands increase.

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 such as bylaws, a board, nonprofit incorporation and ultimately tax exempt status.

501(c)(3) Tax Exempt Status

Usually large, board, bylaws, budget, nonprofit corporation

Non Profit Corporation

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

Unincorporated Organization-formal

Small or Medium-sized, board, bylaws

Unincorporated Organization-informal

Small, may be no board, may be no bylaws

It is at the top two levels of the staircase, that homeschool organizations start dealing with government agencies. At the state level an organization will deal with the Secretary of State’s office to become a nonprofit corporation. At the top

of the stairs an organization will deal with the IRS to file for 501c3 tax exempt status.

Do we need to Incorporate?

Organizations will seek corporation status for several reasons, but largely to establish nonprofit status and for legal protection. Organizations that have a financial surplus at year-end may consider incorporating as a nonprofit corporation to clarify their nonprofit status and avoid paying corporate income tax. Federal, state and local governments usually consider an organization a profit-seeking venture until proven otherwise. Incorporating as a nonprofit will establish an organization as a nonprofit venture. Frequently this avoids income tax assessments.

Incorporating does not grant special tax status with the federal government, though. Incorporation is not the same as “tax-exempt status,” a term the IRS uses to exempt certain organizations from federal corporate income tax. Nor does incorporation as a nonprofit grant 501(c)(3) status as a qualified charitable organization. 501(c)(3) tax exempt status allows donations to be tax-deductible to the donor. This “qualified charity” status is granted by the IRS after a laborious and costly application process.

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 \$50 to \$400 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.

Becoming a non-profit corporation has several benefits including establishing a separate legal identity, limited liability for leaders and tax avoidance. 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.

*Carol L. Topp, CPA (www.HomeschoolCPA.com) is the author of **Homeschool Co-ops: How to Start Them, Run Them and Not Burn Out**. She is a home schooling mother of two daughters and uses her accounting skills to help nonprofit organizations. She and her family live in Cincinnati, Ohio.*

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Does my organization need to incorporate?
7 Benefits of Incorporating as a Non Profit Organization

1. Incorporate as a not-for-profit corporation so your state or the IRS does not try to tax your "profit" or end-of-year surplus.
2. Incorporate as a not-for-profit so you can purchase Director & Officer insurance and protect your leaders from lawsuits.
3. Incorporate so your organization has a legal identity of its own. It will exist even after current leadership leaves.
4. Incorporate so the organization pays employees or owns property, not individuals.
5. Incorporate because nonprofit corporations are usually exempt from paying property taxes on real estate and other property.
6. Incorporate as a not-for-profit and then pursue the 501(c)3 charitable status with the IRS so donors' gifts can be tax deductible.
7. Incorporate as a not-for-profit and then pursue the 501(c)3 charitable status so you can receive private and public grants