

Library Foundations: How to Start One for Your Library



Legal Disclaimer

- Legal information
- **Not** legal advice!

Agenda

1. Starting a Library Foundation
2. State Requirements
3. Federal Tax Exempt Status
4. Ongoing Legal Requirements and Liabilities
5. Friends and Others

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1. Start a Library Foundation?



- Goals and objectives
- Community support

Legal Structure – know your type

- Public charities (best tax treatment) and private foundations
 - Most library foundations are public charities. Must have broad public support.
 - (Roughly one-third of dollars must come from general public or govt.)
 - See IRS Publication 557 (Nov. 2010) p. 29 <http://www.irs.gov/pub/irs-pdf/p557.pdf>
 - Since 2008, easier to establish public charity status. IRS Form 1023 Part X; 990 Sch. A
- Trust or incorporation
 - Trust: fewer requirements (meetings, filings) but not as adaptable as circumstances change
 - Articles of incorporation, bylaws, meetings, greater protection from personal liability, greater adaptability (amend bylaws)
- Community Foundation
 - less work, less control

... don't forget contributions directly to library are tax-deductible I.R.C. Sect. 170

Foundation: Find Library Foundations



Search 990s


"library foundation" CA
Fewer than 5% were
private foundations

<http://tfcny.fdncenter.org/990s/990search/esearch.php/>

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IRS Suggested Language for Trusts, Corporations



<http://www.irs.gov/charities/article/0,,id=96110,00.html> <http://www.irs.gov/charities/article/0,,id=96117,00.html>

2. California State Requirements

Name <http://www.sos.ca.gov/business/be/name-availability.htm>

Articles of Incorporation

Bylaws – officers
membership v non-membership


State tax exemption

Insurance

Forms



May 2011, 14th Edition



Forming a Nonprofit Corporation in California

Thorough California checklist with links

<http://www.citmedialaw.org/legal-guide/california/forming-nonprofit-corporation-california>

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Attorney General

- Referrals to
- legal services
 - nonprofit assns



<http://ag.ca.gov/charities/resources.php>



http://www.ftb.ca.gov/businesses/bus_structures/Filing_Requirements_Form_199N.shtml

Other States

State or Territory	Website URL	Comments	Phone Number
Alabama	http://www.al.gov/charities		205-353-2222
Arizona	http://www.az.gov/charities		602-974-2222
California	http://www.ftb.ca.gov		916-445-2222
Colorado	http://www.colorado.gov		303-861-2222
Connecticut	http://www.ct.gov		860-424-2222
Delaware	http://www.delaware.gov		302-426-2222
Florida	http://www.fl.gov		850-488-2222
Georgia	http://www.ga.gov		404-657-2222
Illinois	http://www.illinois.gov		618-243-2222
Indiana	http://www.in.gov		317-496-2222
Iowa	http://www.iowa.gov		515-281-2222
Kansas	http://www.kansas.gov		785-241-2222
Kentucky	http://www.ky.gov		502-562-2222
Louisiana	http://www.louisiana.gov		504-389-2222
Maine	http://www.maine.gov		603-225-2222
Maryland	http://www.maryland.gov		410-326-2222
Massachusetts	http://www.mass.gov		617-725-2222
Michigan	http://www.mi.gov		313-373-2222
Minnesota	http://www.mn.gov		612-297-2222
Mississippi	http://www.ms.gov		601-359-2222
Missouri	http://www.mo.gov		816-426-2222
Montana	http://www.mt.gov		406-455-2222
Nebraska	http://www.ne.gov		402-471-2222
Nevada	http://www.nv.gov		702-486-2222
New Hampshire	http://www.nh.gov		603-271-2222
New Jersey	http://www.nj.gov		908-462-2222
New Mexico	http://www.nm.gov		505-326-2222
New York	http://www.ny.gov		518-474-2222
North Carolina	http://www.nc.gov		919-733-2222
North Dakota	http://www.nd.gov		701-785-2222
Ohio	http://www.ohio.gov		614-466-2222
Oklahoma	http://www.ok.gov		405-505-2222
Oregon	http://www.oregon.gov		503-325-2222
Pennsylvania	http://www.pa.gov		717-781-2222
Rhode Island	http://www.ri.gov		401-263-2222
South Carolina	http://www.sc.gov		803-735-2222
South Dakota	http://www.sd.gov		605-773-2222
Tennessee	http://www.tn.gov		615-251-2222
Texas	http://www.texas.gov		512-477-2222
Utah	http://www.utah.gov		801-536-2222
Vermont	http://www.vermont.gov		802-244-2222
Virginia	http://www.va.gov		703-793-2222
Washington	http://www.wa.gov		206-463-2222
West Virginia	http://www.wv.gov		304-540-2222
Wisconsin	http://www.wisconsin.gov		608-261-2222
Wyoming	http://www.wy.gov		307-477-2222

<http://www.irs.gov/charities/article/0,,id=167760,00.html>

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3. Federal Tax Exempt Status



<http://www.irs.gov/pub/irs-pdf/p557.pdf>



Get Employer Identification Number (EIN) even if no employees (800) 829-4933

Then Form 1023

Application for Recognition of Exemption

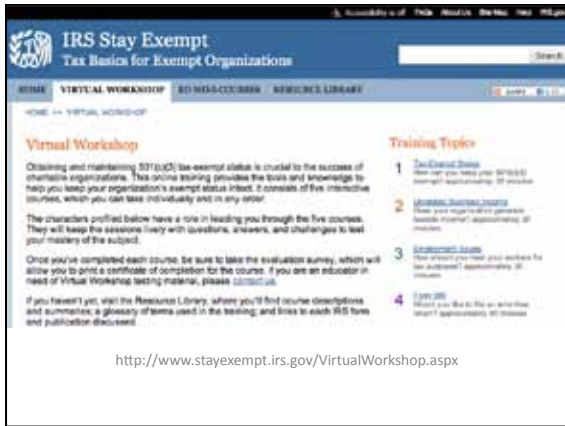
<http://www.irs.gov/pub/irs-pdf/f1023.pdf>

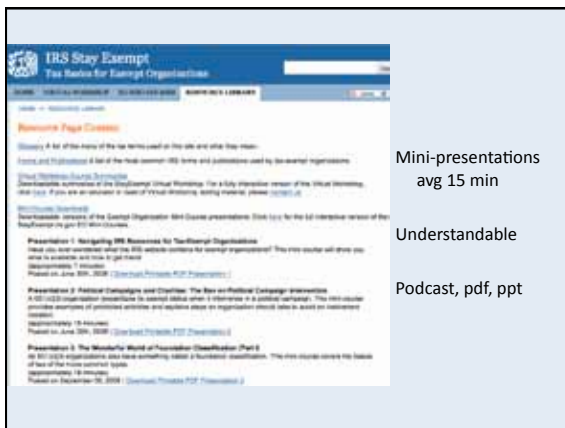


<http://www.stayexempt.irs.gov/>

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Mini-presentations
avg 15 min
Understandable
Podcast, pdf, ppt



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4. Ongoing Requirements and Liabilities



- recordkeeping
- reporting
- disclosure
- activities that could jeopardize status:
 - private benefit
 - *political candidates*

<http://www.irs.gov/pub/irs-pdf/p4221pc.pdf>

Annual Filing 990, 990-EZ or 990-N

<http://www.irs.gov/charities/article/0,,id=169250,00.html>

<http://www.irs.gov/charities/article/0,,id=214269,00.html>

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Campaign and Lobbying Activities



Absolute prohibition campaigning for political candidates

but leeway with lobbying to influence federal, state, local legislation

<http://www.irs.gov/pub/irs-pdf/f990sc.pdf>

Substantial Part Test

Based on variety of factors – time devoted (by both compensated and volunteer workers) and expenditures

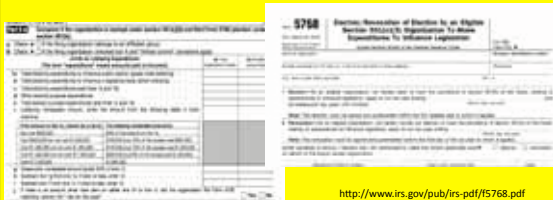
Penalty: lose tax exempt status for taxable year plus excise tax of 5 percent of lobbying expenditures may be imposed against officers or directors who authorized

Expenditure Test (much better!)

Also known as 501(h) election

Form 990 Schedule C

Form 5768



<http://www.irs.gov/pub/irs-pdf/f5768.pdf>

http://www.irs.gov/pub/irs-access/f990sc_accessible.pdf

Penalty: 25% excise tax on obbying expenditures that exceed limits
May lose tax exemption for four years if 150% of the limit

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Direct and Grass Roots Lobbying

Direct lobbying
- attempts to influence
a legislator

Grass roots lobbying
- encourage the public
to take action with
respect to legislation





Lobbying v Advocacy

Conversation with
legislator could be
either

Advocacy (UNRESTRICTED \$)
includes educating
policymakers and public
about broad issues and
candidate positions

<http://apps.americanbar.org/buslaw/blt/2009-03-04/mehta.shtml>

“EXPRESSLY ADVOCATES”

Words such as
'vote for'
'elect'
'support'
'cast your ballot'
'vote against'
'defeat'
'reject'
'sign petitions for'

or otherwise refers to
clearly identified
candidate or measure

... communication, taken
as a whole *unambiguously*
urges particular result in
election

Cal. Code of Regs., tit. 2, § 18225(b);
Vargas v. City of Salinas, 135 Cal. App. 4th 361 (2005); reh. den. Jan. 26, 2006

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Directors and Officers Liability Insurance

No personal liability for volunteer directors due to negligence if:

- 1) within scope of duties
- 2) good faith
- 3) not reckless, intentional, grossly negligent
- 4) liability insurance (general liability, director's and officer's liability policy or personal insurance) OR made all reasonable efforts in good faith to obtain*

*if less than \$25K annual budget and tax-exempt, satisfied by making one inquiry/year for less than 5% of annual budget

California Corporations Code Sect. 5239

5. Friends and Others

Relationship with
Friends
Library Commissioners or Trustees
Library Administration
City, County or other Officials



Questions?

Thanks for making it to the end!



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