

I'm on a Nonprofit Board - **Now What?**

The Legal Governance Lowdown for Nonprofit Board Members and Leaders



Checking the Boxes: State and Federal Compliance

This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

If you are a nonprofit board member, you have a legal fiduciary duty to ensure the nonprofit is adhering to its governing documents and stated mission, **and** that it is obeying any laws and requirements that relate to the nonprofit and its operations.

Compliance with a nonprofit's mission and governing documents lays the foundation for your nonprofit's success and builds trust with the public and with potential donors.

Compliance with laws, such as state and federal filing requirements, ensures an organization is legally permitted to operate as a tax-exempt nonprofit in Ohio. It is the **bare minimum** your nonprofit must do to continue operating legally.

Government entities use the information submitted in the filings to assess the nonprofit and its eligibility to remain tax-exempt and to operate in the state. Failure to comply can be costly in terms of fines, penalties, loss of tax-exemption, and loss of ability to conduct business.

Additionally, the public and potential donors can use the information to check a nonprofit's history of compliance (and noncompliance) with federal and state laws. A pattern of noncompliance gives the impression that the nonprofit is unaware, unconcerned, or too unorganized to comply. On the other hand, timely filings can help your nonprofit demonstrate that it is well-organized, well-run, and deserves public support.

Compliance with Federal Filings: IRS Form 990

If a nonprofit has received tax-exempt status from the Internal Revenue Service (IRS), it must allow the IRS and the public to "peek behind the curtains" of the nonprofit. This is done with Form 990, an informational tax return that is filed annually. The Form 990 provides a snapshot of a nonprofit's financial health, governance practices, and how well it is fulfilling its mission.

Because the public can see the Form 990, it is a useful tool for individuals **and donors** to evaluate your nonprofit when considering whether they want to commit resources or time to your nonprofit.

The specific form to use depends on gross income and total assets, and ranges from a long form to an electronic postcard.

TIP: You can see your nonprofit's past Form 990 filings and its eligibility to receive tax-deductible charitable contributions on the [IRS website](#).

If a nonprofit fails to file a Form 990 in a timely manner every year the IRS may assess penalties. If a nonprofit fails to file a Form 990 for **3 consecutive years**, the IRS will **automatically** revoke its tax-exempt status. This means that it is no longer exempt from federal income taxes and is no longer eligible to receive tax-deductible contributions.

The IRS cannot reverse an automatic revocation and there is no appeal process. An automatically revoked organization must apply to have its status reinstated.

Compliance with State Filings: Ohio Secretary of State

Articles of Incorporation

When a nonprofit first incorporates in Ohio, it files initial articles of incorporation with the Ohio Secretary of State. The articles state the name, principal office, and most important, the purpose for which the nonprofit is formed.

For the most part, articles are filed and then put on a shelf as the nonprofit gets its legs, grows, and adapts over time. The most common reasons a nonprofit may need to amend its articles are when it changes its name and when it changes its mission. Any changes to your articles of incorporation must be filed with the Ohio Secretary of State.

Statement of Continued Existence

When the Ohio Secretary of State accepts a nonprofit's initial articles of incorporation and grants the nonprofit the right to do business in Ohio, this right does not last indefinitely. An Ohio nonprofit must periodically verify that it continues to exist by filing a Statement of Continued Existence with the Ohio Secretary of State every 5 years.

If your nonprofit fails to file this Statement, the Secretary of State will **cancel your charter** and your organization will no longer have permission to conduct business in Ohio. While the charter can be reinstated, it is best not to let this happen in the first place. If you are unsure when your nonprofit's next filing is due, you can always check the [Ohio Secretary of State's website](#). The Secretary of State will send filing reminders to your nonprofit's designated statutory agent.

Statutory Agent

When your nonprofit was first incorporated in Ohio, it had to provide the name and address of a statutory agent to the Ohio Secretary of State. The statutory agent is the person or entity responsible for receiving and sharing with the nonprofit notification of any legal action filed against the nonprofit, other legal notices, and state correspondence.

Over time, the leaders and board members of your nonprofit may move or change, and you will likely find the need to change the statutory agent. It is important to make note to update the statutory agent's name or address any time the current agent leaves the nonprofit or changes addresses. Not maintaining a current statutory agent could result in failing to respond to litigation, missing an important filing date, or cancellation of the nonprofit's right to conduct business in Ohio.

TIP: You can see your nonprofit's articles of incorporation, current statutory agent, and other state filings and correspondence on the [Ohio Secretary of State's website](#).

An Ohio statutory agent can be a person who is an Ohio resident or an entity that can do business in Ohio. As a best practice, choose a person who is reliable and will still be associated with the organization and not likely to move in the next 5 years.

Compliance with State Filings: Ohio Attorney General

Charitable Solicitation Registration

Ohio nonprofits are also required to file a one-time registration and then submit annual reports to the Ohio Attorney General. The Ohio Attorney General regulates nonprofits and aims to increase accountability and transparency within the charitable sector.

Nonprofits that intend to solicit donations in Ohio must register on the Ohio Attorney General's online portal prior to engaging in these activities, and annually thereafter. This requirement applies whether or not the nonprofit actually receives any donations.

Visit the [Ohio Attorney General's website](https://www.ohioattorneygeneral.gov) to register your organization and to confirm that your organization is listed as compliant. It is a misdemeanor in Ohio for soliciting prior to registration, and a nonprofit will face financial penalties for failing to comply with registration requirements.

The deadline for the annual report is the 15th day of the 5th month from the end of the nonprofit's fiscal year. If your nonprofit fiscal year ends December 31, the annual report is due on May 15.

TIP: You can check whether your nonprofit is compliant and see its most recent annual report on the [Ohio Attorney General's website](https://www.ohioattorneygeneral.gov).

TIP: Your nonprofit may be required to register in other states if it solicits donations in those states. For more information, see this [PBPO article](#).

Conclusion

To recap, these are the basic things your Ohio nonprofit must do to stay compliant with state and federal law:

- File a Form 990 with the IRS annually;
- File a Statement of Continued Existence with the Ohio Secretary of State every 5 years;
- Keep your statutory agent up to date with the Ohio Secretary of State;
- Register for charitable solicitation with the Ohio Attorney General annually; and
- If revisions are made to your articles of incorporation, file with the Ohio Secretary of State.

The filings in this article are the minimum and most common federal and state requirements. Your nonprofit may have others depending on how you carry out your mission.

It is a good idea to review governing documents from time to time and to keep a calendar of deadlines with several people in your nonprofit so due dates are not missed. Keep in mind that a nonprofit is considered a business, just like any other corporation – so it is important for nonprofit leaders to understand and remain compliant with applicable laws. In fact, nonprofits face special scrutiny because of their position of trust within the community and especially if they have tax-exempt status.

TIP: It is a good idea to keep a calendar of deadlines with several people in your nonprofit so due dates are not missed.

Additional Resources

This article is part of the series [I'm On a Nonprofit Board - Now What? The Legal Governance Lowdown for Nonprofit Board Members and Leaders So You Can Come to the Table Ready to Lead](#). Published by Pro Bono Partnership of Ohio, this series includes a 6-part webinar series and corresponding articles on important topics that will help you confidently take your seat at the board table and continue to make a positive impact in our community.

Need Legal Advice?

Pro Bono Partnership of Ohio is here to help. We regularly help nonprofits stay compliant by reviewing or amending articles of incorporation, updating statutory agents, and advising on charitable solicitation registration – and our legal help is free.

If you are a PBPO client and have questions regarding the content of this article or need legal assistance, please contact us at info@pbpohio.org or (513) 977-0304.

Not a Client? Apply to become a client by submitting a [Request for Legal Assistance](#) online or contact us at info@pbpohio.org.