

Are You in Legal Compliance?

Use this checklist to be sure you're complying with selected laws that govern 501(c)(3) nonprofits in North Carolina. For more information, check with the administering agency, your accountant, or an attorney. Members of the N.C. Center for Nonprofits receive an updated checklist each summer in their *Common Ground* newsletter. ■

Have you... Who has to do it? How and when to do it.

<p>Filed your articles of incorporation?</p>	<ul style="list-style-type: none"> • All nonprofits must file articles of incorporation with the Secretary of State to exist legally. • Any individual (incorporator) can file the articles. 	<ul style="list-style-type: none"> • File with Secretary of State Corporations Division, 919-807-2225, www.secretary.state.nc.us/corporations. • Then adopt bylaws at your initial board meeting.
<p>Filed IRS Form 1023 to apply for tax exemption and made it available to the public?</p>	<ul style="list-style-type: none"> • All nonprofits with gross receipts of \$5,000 or more that want to receive tax-deductible grants or contributions. • Churches, their integrated auxiliaries, and conventions or associations of churches don't have to apply. See IRS Publication 1828 (www.irs.gov/pub/irs-pdf/p1828.pdf) for more information. 	<ul style="list-style-type: none"> • Make your form available for review by anyone who requests it. • Download the form at www.irs.gov/pub/irs-pdf/f1023.pdf and the instructions at www.irs.gov/pub/irs-pdf/i1023.pdf. Or get both at 800-829-3676. • File within 27 months of incorporation for retroactive recognition.
<p>Filed Form 990, 990EZ, 990-PF (for private foundations), or an e-Postcard and made your forms for the past three years publicly available?</p>	<ul style="list-style-type: none"> • Nonprofits with less than \$50,000 in annual gross receipts must file an e-Postcard in the 2010 tax year. (Before 2010, the filing threshold was \$25,000.) • Nonprofits with annual gross receipts of \$50,000 or with an average of \$50,000 or more over the past three years must file a 990 or 990-EZ. • For the 2010 tax year, nonprofits with annual gross receipts under \$200,000 and total assets under \$500,000 can file Form 990-EZ. • All private foundations must file Form 990-PF. • All supporting or controlling organizations must file Form 990 or 990-EZ. • Nonprofits that fail to file their 990, e-Postcard, or 990-EZ for three consecutive years will automatically lose their tax-exempt status. • Churches, their integrated auxiliaries, and conventions or associations of churches don't have to file. 	<ul style="list-style-type: none"> • File the form each year by the 15th day of the 5th month after your fiscal year ends (e.g., Nov. 15 if your year ends June 30). • Large nonprofits (over \$10 million in assets) and private foundations must file electronically. • Get forms at www.irs.gov/charities/article/0,,id=185561,00.html and http://epostcard.form990.org. • You must make these forms available for review by anyone who requests them. Copies must be provided immediately for in-person requests, and within 30 days for written requests. You may charge a reasonable copying fee and postage, if any. • For full information on the forms you need to file for the 2007-2010 tax years: www.irs.gov/charities/article/0,,id=184445,00.html. • Ask the IRS (877-829-5500) or your CPA for details.
<p>Reported and paid tax on Unrelated Business Income (UBIT) and made your Form 990-T publicly available?</p>	<ul style="list-style-type: none"> • Any nonprofit with unrelated business income of \$1,000 or more. • See IRS Publication 598, "Tax on Unrelated Business Income of Exempt Organizations" (www.irs.gov/pub/irs-pdf/p598.pdf). Ask the IRS (1-877-829-5500, www.irs.gov/charities/article/0,,id=96104,00.html) or your CPA for details. 	<ul style="list-style-type: none"> • File IRS Form 990-T (www.irs.gov/pub/irs-pdf/f990t.pdf) each year by the 15th day of the 5th month after your fiscal year ends (e.g., Nov. 15 if your year ends June 30).

Have you...

Who has to do it?

How and when to do it.

<p>Applied for a state charitable solicitation license, renewed it every year, and included the required disclosure statement on all your fundraising materials?</p>	<ul style="list-style-type: none"> • Every nonprofit must contact the Secretary of State each year. Any nonprofit that receives \$25,000 or more a year in grants and contributions is required to have a charitable solicitation license. • If you receive less than that amount, you still need to apply to become exempt from requiring the license. Government grants and contracts, fees for services, and other earned or investment revenues are not included. • Nonprofit churches and schools are generally exempt. For other statutory exemptions to this requirement, contact the Charitable Solicitation Licensing Section or see www.ncnonprofits.org/advocacy/csquestions.asp. 	<ul style="list-style-type: none"> • Apply at any time, and renew annually within 4.5 months after your fiscal year ends. Contact the Charitable Solicitation Licensing Section, N.C. Dept. of the Secretary of State, 919-807-2214, 888-830-4989, www.secretary.state.nc.us/csl. • A Unified Registration Statement (URS) is okay if you also complete the N.C. Addendum (www.multistatefiling.org). • Check requirements in other states where you solicit funds. • Conspicuously display (in at least 9-point bold type) this disclosure statement on every printed solicitation, written confirmation, receipt or contribution reminder: Financial information about this organization and a copy of its license are available from the Charitable Solicitation Licensing Section at 888-830-4989. The license is not an endorsement by the State.
<p>Confirmed that any contract fundraisers or fundraising consultants are licensed?</p>	<ul style="list-style-type: none"> • Any nonprofit that uses a contractor to solicit contributions or to advise or assist in fundraising-related activities. <i>Note: All contracts with solicitors and fundraising consultants are filed with the N.C. Secretary of State and available to the public.</i> 	<ul style="list-style-type: none"> • Check the registry of licensed solicitors and fundraising consultants at www.secretary.state.nc.us/csl/Search.aspx. • Have at least two officials of your nonprofit (including at least one board member) sign all contracts.
<p>Collected sales tax on items you sell and forwarded these funds to the State?</p>	<ul style="list-style-type: none"> • Any nonprofit selling retail items like books, videos, t-shirts, concessions, webinars, and electronic publications. • Sales are exempt if (a) conducted only once a year to raise funds <i>and</i> if all products are delivered within 60 days after the solicitation, or (b) proceeds are given to the State of N.C. or a state agency (e.g., public schools). 	<ul style="list-style-type: none"> • Register with the N.C. Dept. of Revenue for a Certificate of Registration. • File Form #500 and pay the tax quarterly or monthly, depending on your volume of sales. • Contact the Taxpayer Assistance Division, N.C. Dept. of Revenue for details, 877-252-3052, www.dornc.com.
<p>Applied for refunds of state and local sales and use taxes that you have paid?</p>	<ul style="list-style-type: none"> • Any qualifying nonprofit that wants refunds of sales tax it pays on purchases in N.C. See www.ncnonprofits.org/faq/sales_tax_refund.pdf. • Qualifying nonprofits include all 501(c)(3)s except those classified as Community Improvement and Capacity Building, Public and Societal Benefit, or Mutual and Membership Benefit organizations by the National Taxonomy of Exempt Entities (NTEE). See http://nccs.urban.org/classification/NTEE.cfm. • Applies to purchases made directly by the organization, not through reimbursement. 	<ul style="list-style-type: none"> • Apply for an Account ID number from the Central Examination Division, N.C. Dept. of Revenue. See www.dornc.com/downloads/e585_faq.pdf for details. • File Form E-585 semi-annually for refunds—by Oct. 15 for taxes paid Jan.-June; by Apr. 15 for taxes paid July-Dec. • Contact the Examinations Division, N.C. Dept. of Revenue, 877-252-3052, www.dornc.com, if you have been denied refunds since July 1, 2008. The Center and our Members got the law changed to make most 501(c)(3) nonprofits eligible!
<p>Applied for exemption from local property taxes?</p>	<ul style="list-style-type: none"> • Any nonprofit owning real or personal property (buildings, land, or property such as office equipment) used wholly and exclusively for tax-exempt purposes. 	<ul style="list-style-type: none"> • Apply with your local county tax assessor. You may appeal the local board's decision to the State Property Tax Commission, 877-308-9103. • Call your local county tax office for details.
<p>Obtained Worker's Compensation Insurance?</p>	<ul style="list-style-type: none"> • Any incorporated nonprofit with three or more employees and/or corporate officers (includes officers on nonprofit boards, even though they are unpaid, and subcontractors without their own coverage). 	<ul style="list-style-type: none"> • Contact the N.C. Industrial Commission, 919-807-2500, www.comp.state.nc.us.

Have you...

Who has to do it?

How and when to do it.

<p>Updated the name, phone, and physical addresses of your registered agent with the N.C. Secretary of State?</p>	<ul style="list-style-type: none"> Any nonprofit incorporated in N.C. or authorized as a foreign nonprofit in N.C. that has changed its principal office address, registered office address, or registered agent. Failure to do this can result in administrative dissolution of your nonprofit. 	<ul style="list-style-type: none"> File a Change of Registered Office/Agent form at any time. To get one, or to check what is on file now, contact the N.C. Dept. of the Secretary of State, 919-807-2225, www.secretary.state.nc.us/corporations.
<p>Made sure your board members understand their fiduciary duties and how to carry them out?</p>	<ul style="list-style-type: none"> All nonprofits and foundations. Every nonprofit board member is a fiduciary of the organization and has duties of care, loyalty, and obedience. 	<ul style="list-style-type: none"> Part 3 of the Center's <i>Guidebook for Boards of Directors of North Carolina Nonprofits</i> (www.ncnonprofits.org/faq/Guidebook-2ed.pdf) explains the duties and liabilities of board members. Share it with your board.
<p>Adopted whistleblower and document retention-destruction policies?</p>	<ul style="list-style-type: none"> All nonprofits and foundations. 	<ul style="list-style-type: none"> See the Center's website for details, www.ncnonprofits.org/faq/cgxiii5pg6.pdf and www.ncnonprofits.org/mbronly/faq_financial.asp#24. About electronic records: Keep three years of hard copy files before making them electronic. Avoid file types that may become obsolete (PDF is probably safest). Store these carefully!
<p>Elected 501(h) status to have clearer and more generous lobbying limits than the "insubstantial part test"?</p>	<ul style="list-style-type: none"> Any nonprofit that lobbies can choose to elect 501(h) status. Under 501(h), nonprofits can use up to 20% of the first \$500,000 of their exempt purpose expenditures to lobby. For larger organizations, this limit increases on a sliding scale up to \$1 million. 	<ul style="list-style-type: none"> Complete IRS Form 5768 (www.irs.gov/pub/irs-pdf/f5768.pdf) once; the election will apply for subsequent tax years. See www.ncnonprofits.org/faq/faq501h.pdf for details.
<p>Registered as a lobbyist principal or solicitor (organizations) and as a lobbyist (individuals) as well as filed quarterly reports?</p>	<ul style="list-style-type: none"> Nonprofits compensating lobbyists need to register as "lobbyist principals." Nonprofit employees (but not volunteers) who spend at least 5% of their time on lobbying the N.C. General Assembly or N.C. executive branch officers in any 30-day period must register as lobbyists. Any paid nonprofit contractor who lobbies must register as a lobbyist. Entities that aren't principals, but solicit members of the general public to engage in lobbying, must register as solicitors if they spend at least \$3,000 in any 90-day period on this solicitation. 	<ul style="list-style-type: none"> Lobbyists, principals, and solicitors must register with the N.C. Secretary of State every year (within one day of starting lobbying) and pay a \$100 annual fee. Principles must report total compensation paid to lobbyists for actual lobbying and related activities once a year on their final reports. Lobbyists, principals, and solicitors must file quarterly reports of their lobbying and solicitation activities. Get forms at www.secretary.state.nc.us/lobbyists. See a summary of NC lobbying laws at www.ncnonprofits.org/advocacy/NC_Lobbying_Law.pdf.
<p>Applied for an Unemployment Tax Number and paid State Unemployment Tax?</p>	<ul style="list-style-type: none"> Any nonprofit that has employed four or more people for any part of 20 different weeks during the current or previous calendar year. You may be able to elect to reimburse the state for unemployment claims instead of paying a part of payroll into unemployment insurance. Members, Contact Joseph Poretto (800-526-4352, ext. 7888, jporetto@firstnonprofit.com) to see if you can save. 	<ul style="list-style-type: none"> Apply before hiring employees. Contact the N.C. Employment Security Commission (ESC), 919-733-7395, www.ncesc.com. (Note: The ESC will move into the N.C. Dept. of Commerce in Nov. 2011, so contact information for unemployment insurance will change.) The N.C. Center for Nonprofits' unemployment tax savings program for Members has already saved nonprofits almost \$4 million. See www.ncnonprofits.org/benefits/fnc.asp for details.
<p>Properly classified all employees and independent contractors?</p>	<ul style="list-style-type: none"> Any nonprofit with paid staff, consultants, or contractors. Government agencies act quickly on improper classification of consultants and contractors who are really employees. 	<ul style="list-style-type: none"> See IRS Publication 1779, 800-829-3676, www.irs.gov/pub/irs-pdf/p1779.pdf, to find specific criteria for classifying employees vs. contractors.

Have you...	Who has to do it?	How and when to do it.
<p>Properly classified all employees as either exempt or non-exempt.</p>	<ul style="list-style-type: none"> All nonprofits and foundations with paid employees. Under the Fair Labor Standards Act, you must provide overtime pay to all workers unless they are specifically exempted from coverage. See p. 20-22 of <i>Employment Law For North Carolina Nonprofits</i> (www.ncnonprofits.org/faq/employment_law.pdf). 	<ul style="list-style-type: none"> For more information: www.dol.gov/elaws/esa/flsa/overtime/menu.htm.
<p>Followed all state and federal employment laws including I-9, W-2, W-4 forms; withholding tax; paying employment taxes; wall posters; and paying for overtime?</p>	<ul style="list-style-type: none"> Any nonprofit with paid employees, whether part-time or full-time. If your non-exempt employees work any more than 40 hours in a work week, you <i>must</i> pay overtime. Your nonprofit must pay Social Security tax and Medicare taxes for all employees. 	<ul style="list-style-type: none"> Contact the U.S. Dept. of Labor, 866-4-USA-DOL, www.dol.gov, or the N.C. Dept. of Labor, 800-NC-LABOR, www.nclabor.com. Order free employment posters at 800-NC-LABOR or download them at www.nclabor.com/posters/posters.htm. You do not need to buy these posters! See the Center's <i>Employment Law for North Carolina Nonprofits: A Handbook for Managers and Boards</i> at www.ncnonprofits.org/faq/employment_law.pdf. For more information on withholding and paying federal employment taxes, see www.irs.gov/charities/article/0,,id=128586,00.html.
<p>Electronically filed a Form 5500 for your employee retirement plan?</p>	<ul style="list-style-type: none"> Nonprofits with 403(b) plans and other employee retirement plans subject to the Employment Retirement Income Security Act (ERISA). 	<ul style="list-style-type: none"> File Form 5500 for plan years beginning in 2009 and 2010. This is due seven months after your plan's year-end date. See www.dol.gov/ebsa/5500main.html for more information. Those at your nonprofit responsible for signing your Form 5500 need to register on the Department of Labor's EFAST2 website, www.efast.dol.gov. If your nonprofit has a 403(b) plan, you must have a written plan document. See www.irs.gov/retirement/article/0,,id=172433,00.html for details.
<p>Taken advantage of the small employee health care tax credit?</p>	<ul style="list-style-type: none"> Nonprofits with 25 or fewer employees and average wages of \$50,000 or less can claim the credit against payroll taxes paid to the IRS. All nonprofits must report the value of employees' health benefits on W-2 forms. 	<ul style="list-style-type: none"> Claim this credit on Form 990-T, the unrelated business income tax (UBIT) form, even if your nonprofit doesn't owe any UBIT. Download the form at www.irs.gov/pub/irs-pdf/f990t.pdf. See www.irs.gov/newsroom/article/0,,id=227404,00.html for information.
<p>Studied current reporting requirements for funds through the State?</p>	<ul style="list-style-type: none"> Any nonprofit that receives state funds or federal funds that pass through a state government agency. 	<ul style="list-style-type: none"> Nonprofits receiving less than \$25,000 in state grants must submit a state grant compliance report and certification form to their funding agency within six months of the end of their fiscal year. Nonprofits receiving less than \$500,000 must submit the same items as above, plus a program of activities and accomplishments report and a schedule of receipts and expenditures within six months of the end of their fiscal year. Nonprofits receiving \$500,000 or more must submit all items listed above, plus a "Yellow Book" or A-133 audit, to their funding agency and the N.C. Office of the State Auditor within nine months of the end of their fiscal year. See www.ncgrants.gov/NCGrants/Regulations.jsp. ■