

Practice 2B: Nonprofit Incorporation and Bylaws

- The land trust has incorporated according to the requirements of state law and maintains its corporate status. It operates under bylaws based on its corporate charter or articles of incorporation. The board periodically reviews the bylaws.
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A land trust that raises money and holds land and/or easements is advised to incorporate as a nonprofit corporation, following the state's incorporation statute. Incorporation is a prerequisite for obtaining federal (and sometimes state) tax-exempt status and, as dictated by state law, helps shield board members associated with the land trust from liability for land trust actions. Bylaws outline the basic operating procedures of the land trust and should be reviewed regularly to ensure their relevance. Several states post sample bylaws on their web pages.

Benefits of Incorporation

A group of people can undertake some land conservation efforts without incorporating. But a land trust that is going to raise money and hold land and/or easements is advised to incorporate as a nonprofit corporation (or operate under the umbrella of another incorporated organization). Reasons to incorporate include the following:

- Incorporation is a prerequisite for obtaining federal (and sometimes state) tax-exempt status, which exempts the land trust from paying federal income tax and allows it to offer tax benefits to donors.
 - Incorporation helps shield board members and officers associated with the land trust from certain liability for land trust actions.
 - Incorporation can expand the trust's pool of donors. Many individuals, banks and foundations will give only to an incorporated organization.
 - Incorporation gives the land trust a separate existence from the individuals operating it.
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How to Incorporate

Land trusts should consult an attorney familiar with nonprofit incorporation as they work

through the state incorporation process. If an attorney does not draft the documents, one should at least review them before they are submitted to ensure that they meet legal requirements. An attorney's review also helps avoid mistakes, omissions or confusing language that can slow approval.

Incorporation procedures vary from state to state. In brief, to incorporate, a land trust generally needs to take the following steps, although the order may vary depending on state law and the formative process of the land trust:

- 1. Find out the specific requirements for incorporating in the appropriate state.** Contact the state's office of the secretary of state, which will be located in the state's capital city. Most websites for the secretary of state now contain information on nonprofit incorporation.
- 2. Become familiar with the requirements for state and federal tax-exempt status.** The document drafted to set up the land trust—the corporate charter (also called articles of incorporation, articles of organization, articles of agreement, certificate of incorporation, etc.)—needs to conform to IRS and state requirements to qualify the organization for tax-exempt status.
- 3. Draft and file the corporate charter or articles of incorporation.** The charter establishes the organizational form of the land trust. The broad purposes and powers of the land trust are stated in the charter. Each state may require additional information in the charter, such as: the location of the corporate office; the establishment of an agent for notice of any action against the land trust; and the names and addresses of the original incorporators of the land trust. The IRS also requires specific items. A land trust that operates in more than one state incorporates in one state only, but may have to qualify as a foreign corporation in the other state(s).
- 4. Establish a board and elect officers.** State law will generally specify the minimum number of board members required.
- 5. Draft and adopt bylaws.** The bylaws outline the basic operating procedures of the land trust. They are primarily an internal document. A thorough review of state law is necessary to draft effective and tailored governing documents for the land trust. State law specifies who (usually the incorporators or the members) may adopt the bylaws.

The Land Trust Alliance may be able to direct you to a publication or organization that provides specific guidelines regarding your state's requirements.

Bylaws

Bylaws are the internal governing document for the organization. State law also governs

some of the items contained in bylaws, such as voting rights and processes for dissolution. Many states offer sample bylaws that conform to the state's requirements. As noted above, it is important for those drafting the bylaws to have an understanding of the state's laws. In general, bylaws will address the following items:

- Organization name;
 - Purposes of the corporation;
 - Office location;
 - Membership, including qualifications, voting rights, termination, and annual meeting;
 - Board of directors (or trustees), including qualifications, quorums, terms, termination, and meetings;
 - Officers;
 - Committees;
 - Fiscal policies, including fiscal year and fiscal controls;
 - Amendment of the bylaws; and
 - Dissolution of the organization.
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Changes in Articles and Bylaws

Amendments to the corporate charter (articles of incorporation) usually need to be approved by a vote of the members; state law usually specifies a minimum percentage required. The bylaws should specify procedures for amending the bylaws, but state law may also set some minimum requirements.

Helpful LTA Publications

- See [Starting a Land Trust](#), published by the Land Trust Alliance, for further discussion of incorporation and land trust boards.

Other Helpful Publications

- An excellent publication to help you incorporate is [How to Form a Nonprofit Corporation](#), by Anthony Mancuso, Diana Fitzpatrick and Mari Stein, 2004. Published by Nolo Press. It provides forms for articles and bylaws and lists state specific requirements.

Sample Bylaws

- Land Trust Alliance
- Lowcountry Open Land Trust (SC)
- Maine Coast Heritage Trust

- Orange County Land Trust (NY)

Society for the Protection of New Hampshire Forests

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◦ This example can be used as a starting point to create a policy or other document for your own land trust, but should be altered as necessary to reflect your organization's unique circumstances using guidance found in the *Land Trust Standards and Practices Guidebook* text and corresponding Standards and Practices Curriculum. This material is designed to provide accurate, authoritative information in regard to the subject matter covered. It is provided with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting, or other professional counsel. If legal advice or other expert assistance is required, the services of competent professionals should be sought.