

Regulatory issues

September 15, 2022

PMAP 3210: Introduction to Nonprofits
Andrew Young School of Policy Studies

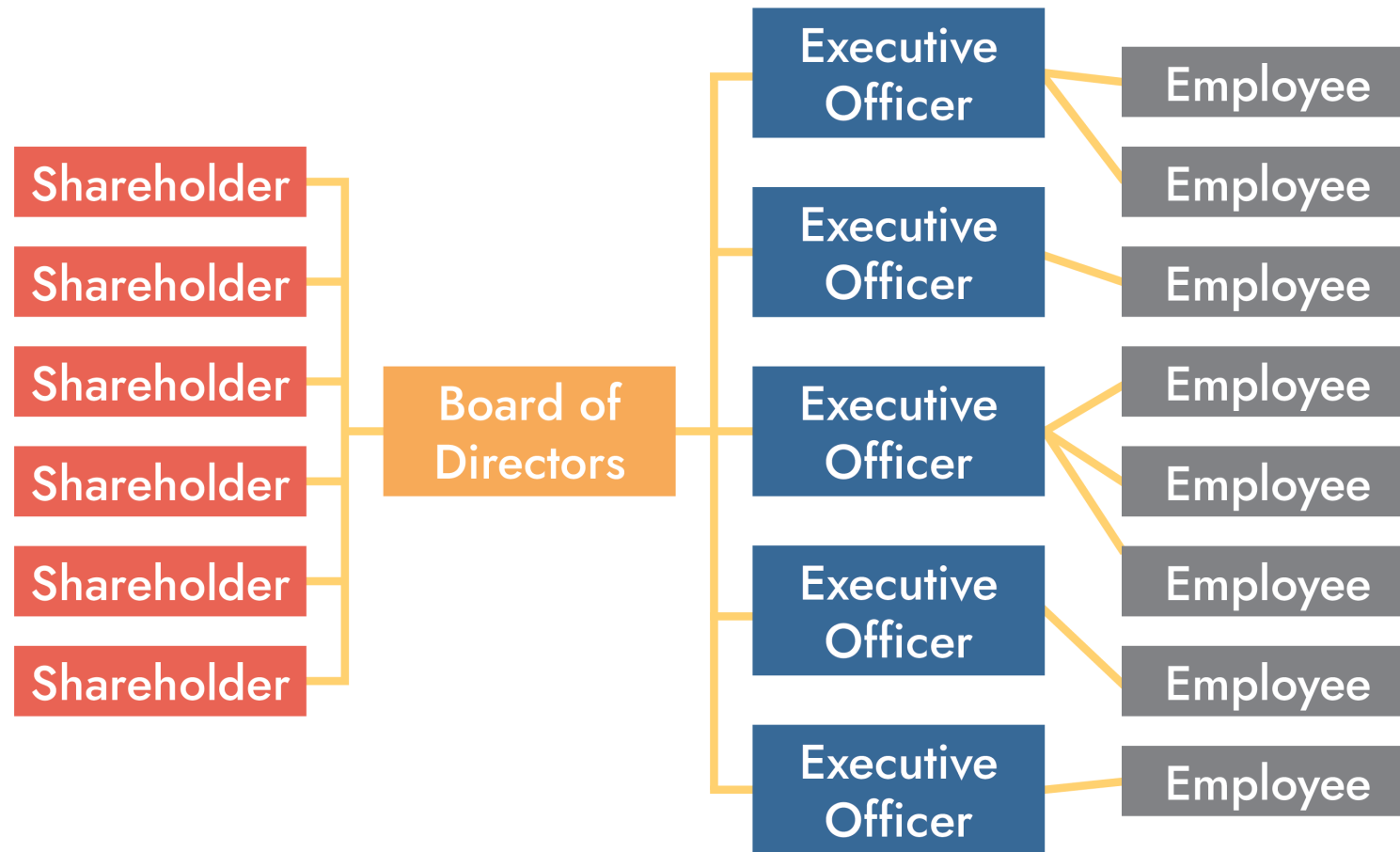
Plan for today

Incorporation issues

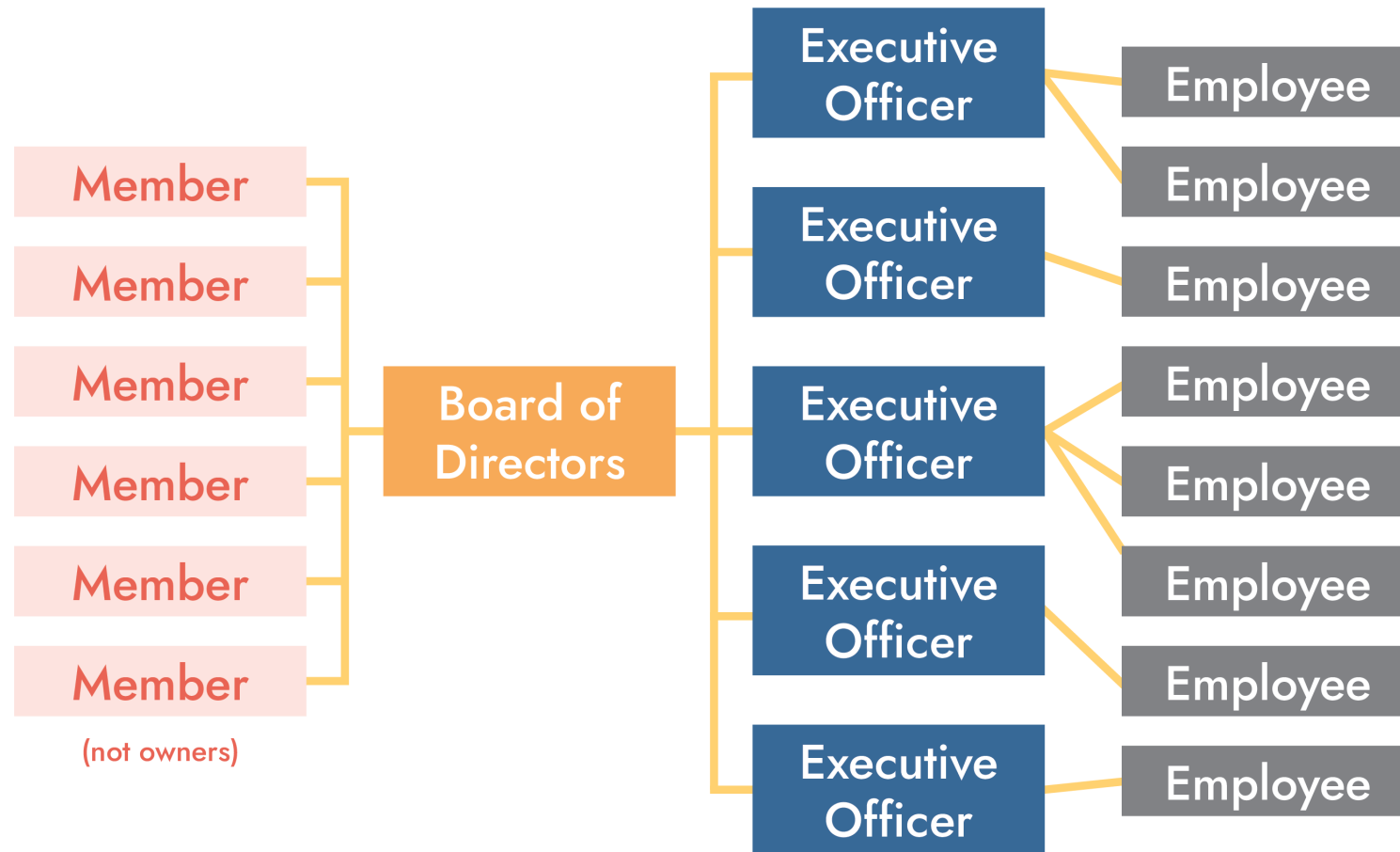
Money issues

Incorporation issues

Typical corporate structure



Typical nonprofit structure



Corporate veil

Corporate veil

Advantages of incorporation?

Limited liability

Corporate shield

Tax advantages

Corporate tax rate lower than personal tax rate

Nonprofit exemptions

Structure

Accountability

Legal recognition creates trust

Perpetuity

Organization can endure over time

Advantages of incorporation?

Other stuff

Cheaper postage

Free public service announcements

Volunteers

Halo effect

Free stuff

Group decision-making

Disadvantages of incorporation?

Loss of control

Board oversees all decisions

Compliance expenses

It takes money and time to keep up with everything

Paperwork

Lots of forms!

Federal, state, and local tax filings

Different deadlines!

Corporate governance

Articles of incorporation

Filed with the state

Purpose statement

Membership governance

Name, address, etc.

Limitations on director liability

Special tax statement

What happens at dissolution

Suggested Language for Corporations and Associations (per Publication 557)

Individuals

Businesses and Self-Employed

Charities and Nonprofits

[Exempt Organization Types](#)[Lifecycle of an Exempt Organization](#)[Annual Filing and Forms](#)[Charitable Contributions](#)[Search for Charities](#)[Education Sessions](#)

International Taxpayers

Articles of Incorporation of _____. The undersigned, a majority of whom are citizens of the United States, desiring to form a Non-Profit Corporation under the Non-Profit Corporation Law of ____, do hereby certify:

First: The name of the Corporation shall be _____.

Second: The place in this state where the principal office of the Corporation is to be located is the City of _____, _____ County.

Third: Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Fourth: The names and addresses of the persons who are the initial trustees of the corporation are as follows:

Name _____ Address _____

Fifth: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under

Corporate governance

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What happens at dissolution

Bylaws

Not filed with the state

Internal document

Board operations

Executive operations

Other operations

Purpose statement

Make it as broad as possible to maximize flexibility

Not the same as the mission statement!

"Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code."

Nonprofit corporation members

Members \approx Shareholders

Members \neq anyone who donates

Members make organizational decisions

Members choose the board

Churches

Social clubs

Fraternities and sororities

Should you have members?

Advantages of members

All participants have equal voice

More democratic and egalitarian

Disadvantages of members

Hard to undo

Decision making is more complex

Less stable

Bylaws

Governing document for the organization

Size of board and how it works

Roles of executive directors and officers

Rules for meetings, elections, hiring

Conflict of interest policies

Compensation and indemnification of directors

Process of amending bylaws

Finding public information

Articles of incorporation are public information

You can find them online!

Some nonprofits put them on their websites

Georgia Gwinnett College Foundation

State Departments of State maintain databases of all incorporations

Georgia Secretary of State's Business Search

Money issues

§501(c)(3)

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TITLE 26—INTERNAL REVENUE CODE

§ 501

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (I).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or

§501(c)(3)

Creating a nonprofit does not automatically grant you 501(c)(3) status!

Nonprofits are state-based corporations

501(c)(3) is a federal IRS regulation

Getting federal 501(c)(3) status is a separate process

Why get 501(c)(3) status?

Exemption from many federal taxes

Tax deduction for your donors

Major donors won't contribute unless you have it

IRS seal of approval (though the bar is low)

Costs of being a 501(c)(3)

Political activity

Unrelated business income
(UBI)

Time!

Paperwork, cost, and time

Paperwork

- GA Articles of Incorporation
- GA Data Transmittal Form 227
- GA Notice of Incorporation
- GA Initial "Annual" Registration
- Bylaws
- IRS Form SS-4: Obtain an EIN
- IRS Form 1023: 501(c) Tax Exempt Application
- IRS Determination Letter
- Form 3605: Application Recognition of Exemption (optional)
- URS Charitable Registration, if applicable
- Form C-100: Charitable Organization Registration

Cost

- GA Articles of Incorporation: \$100
- GA Notice of Incorporation: \$40
- GA initial "Annual" Registration: \$50
- Georgia charitable registration: \$35
- IRS 501(c): \$275 or \$600 IRS fee

Time

- GA incorporation: \approx 5–12 business days
- IRS 501(c) tax exemption: 2 weeks to 3 months

Automatic tax exemption

Some organizations get automatic tax exemption

Organizations that receive less than \$5,000 annually

Bona fide religious organizations

Fiscal sponsorship

(a small nonprofit that temporarily falls under the exemption of a larger nonprofit)

Fundraising and jurisdictions

The IRS grants tax exemption for donations, but...

...39 states regulate donations

If you are a Georgia-based nonprofit, you can't ask for donations in other states unless you register there too!

Except for DE, ID, IN, IA, MT, NE, NV, SD, TX, VT, WY

This includes the internet!

Charleston Principles

<https://www.charitycompliancesolutions.com/charleston-principles>

1: Using the internet for fundraising is legitimate

2: States should enforce fundraising laws and prosecute bad actors, regardless of where the nonprofit is based

3: Guidelines for getting donations from home states and from other states

4: A call to reduce the administrative burden of multi-state filing

Unified Registration Statement

**Standardized Registration
for
Nonprofit Organizations.**

**Under State Charitable
Solicitation Laws**

A product of an ongoing project of the National Association of Attorneys General (NAAG) and the National Association of State Charities Officials (NASCO)

In collaboration with the Multi-State Filer Project, Inc. (MFP)
<http://www.multistatefiling.org>

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<http://multistatefiling.org/>

Accepted in Georgia
with a supplement form

CO, FL, and OK
do not accept the URS 🙄

Only good for initial filing,
not annual reports 🙄

How to set up a nonprofit

Lots of guides online

This one is good