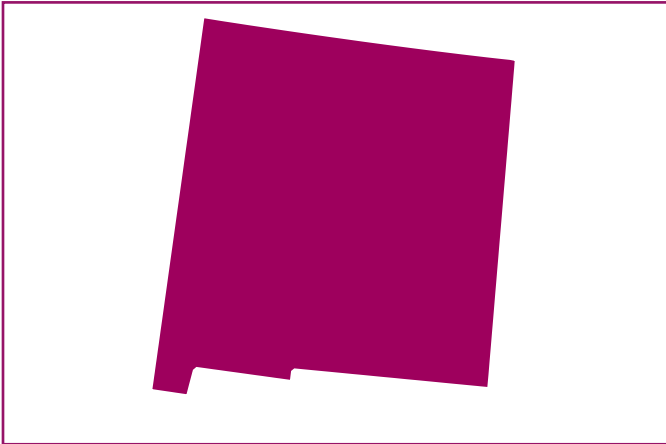


This profile is part of a set of 51 profiles, including all U.S. states and the District of Columbia, which outlines state laws, regulations, and requirements that apply to charitable organizations. It covers six areas and highlights ways in which state laws differ from federal laws governing charitable organizations.



Formation, Elections, Operation, and Dissolution

Nonprofit Corporations

Nonprofit Corporation Act, NM ST Ch. 53, Art. 8

Nonprofit Unincorporated Associations

N.M. Stat. Ann. Chapter 53, Title 10 (but not specific to nonprofit corporations).

Election of Directors

Elected or appointed in the manner set forth in the articles or bylaws. N.M. Stat. Ann. § 53-8-18.

There shall be at least three directors. N.M. Stat. Ann. § 53-8-18.

Director Term

In the absence of a provision specifying a term in the articles or bylaws, the term shall be one year. N.M. Stat. Ann. § 53-8-18.

Meeting and Quorum Requirements

Quorum (Members): Unless bylaws provide otherwise, ten percent of the votes of members entitled to be cast on a matter constitutes a quorum. N.M. Stat. Ann. § 53-8-16.

Quorum (Directors): A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but

in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. N.M. Stat. Ann. § 53-8-20.

If annual meeting of members not held in any 13-month period, the district court can order meeting to be held. N.M. Stat. Ann. § 53-8-13.

Officer Requirements

Officers as stated in the bylaws or in resolution of the Board (not to be inconsistent with bylaws). One officer must have secretarial duties. N.M. Stat. Ann. § 53-8-23.

Officer Term

No relevant statute found.

Dissolution

Dissolution is governed by N.M. Stat. Ann. § 53-8-47 et seq.

Duties, Indemnification, and Interested Transactions

Director Duties

A director shall perform his duties as a director including his duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the corporation and with such care as an ordinarily prudent person would use under similar circumstances in a like position. N.M. Stat. Ann. § 53-8-25.1.

Officer Duties

Duties shall be stated in the bylaws or in a resolution of the board. N.M. Stat. Ann. § 53-8-23.

Board Independence Requirements

No relevant statute found.

Interested Transactions

No relevant statute found.

Indemnification of Directors/Officers

A corporation may indemnify current or former directors but a corporation cannot indemnify the individual if he/she is adjudged to be liable on the basis that he breached his duties to the office and the breach constitutes willful misconduct or recklessness. The corporation may make any other indemnification as authorized by the articles of incorporation or bylaws or by a resolution adopted after notice by the members entitled to vote. N.M. Stat. Ann. § 53-8-26.

Loans to Directors, Officers, or Employees

Any director or officer who assents to or participates in the making of any loan to a director or officer shall be personally liable to the corporation for the amount of the loan until the repayment thereof. N.M. Stat. Ann. § 53-8-29.

Notable Departures from Federal Law

Religious/Church Exemption

Religious organizations are exempt from the Charitable Solicitations Act. N.M. Stat. Ann. § 57-22-4.

See tax sections below.

Healthcare "Plus Factors"

In order to receive a license, a hospital (whether for-profit or nonprofit) must provide services to "nonpaying patients and low-income reimbursed patients in the same proportion as the patients are treated in acute-care general hospitals in the local community." However, no specific standards are set forth. N.M. Stat. Ann. § 24-1-5.8(C)(2) and (C)(5).

General

Rebuttable Presumption of Reasonableness - Delegation to Disinterested "Others"

No relevant statute found.

Charitable Solicitation Requirements

Governed by the Charitable Solicitations Act. NM ST Ch. 57, Art. 22.

Charitable organizations must register with the attorney general. N.M. Stat. Ann. § 57-22-6.

Religious organizations are exempt from the Act. N.M. Stat. Ann. § 57-22-4.

State-Specific Retention Policies

Corporate record retention requirements are established by N.M. Stat. Ann. § 53-8-27 and N.M. Stat. Ann. § 53-8-86.

Personal Information Collection and Protection Laws

No relevant statute found.

Whistleblower Protection

Not specific to nonprofit organizations; however, the Whistleblower Protection Act can be found at N.M. Stat. Ann. § 10-16C-1 to C-6.

State Volunteer Liability Law

No relevant statute found.

Independent Audit Requirements

No relevant statute found.

State Filing Requirements

An annual report must be filed. N.M. Stat. Ann. § 53-8-82 et seq.

Model Acts

Uniform Prudent Management of Institutional Funds Act

Adopted

Uniform Prudent Investor Act

Adopted

Tax Exemptions

Income Tax

New Mexico considers an organization to be tax-exempt if the federal government has granted the organization status under 501(c) of the Internal Revenue Code with a classification as an educational or social entity. N.M. Stat. Ann. § 7-2A-4. Unrelated business income is taxable.

See also Office of Taxation & Revenue for New Mexico.

<http://www.tax.newmexico.gov/Businesses/information-for-non-profits.aspx>

Sales and Use Taxation

Gross receipts for nonprofit organizations may be exempt from gross receipts tax. N.M. Stat. Ann. § 7-9-29.

Gross receipts of certain religious organizations may be exempt from the gross receipts tax. N.M. Stat. Ann. § 7-9-41.

Property Tax Exemption

Property used for charitable purposes is exempt from taxation. N.M. Const. art. VIII, § 3. See also *Pecos River Open Spaces, Inc. v. Cnty. of San Miguel*, 2013-NMCA-029 (finding that conservation of land was a charitable use and therefore the land shall not be subject to taxation).

Miscellaneous Exemptions

Exempt from franchise tax unless the corporation receives unrelated business income. N.M. Stat. Ann. § 53-8-28.

General Resource:

<http://www.sos.state.nm.us/uploads/files/Corporations/ch53Art8.pdf>

Disclaimer

This manual is intended to be used as a practical and informative guide only, and is not a substitute for the advice of legal counsel. It is not to be considered comprehensive or to be used as legal authority for any purpose. Please note that the information provided within may not be accurate for many reasons, including but not limited to changes in applicable legal authority and the applicability of such authority in any particular circumstance is highly fact-specific and open to multiple interpretations. The information presented here is accurate as of 10/26/2016.