



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

Registering To Do Business in Georgia

A nonprofit organization's tax-exempt status is tied to its incorporation. The IRS decides whether to recognize a nonprofit as tax-exempt under §501(c)(3) of the Internal Revenue Code based on its articles of incorporation and bylaws. If an organization incorporates in one state and obtains its §501(c)(3) status then later decides to move states, the organization should *not* reincorporate in the new state. Conducting business in the new state under a new incorporation in that state will result in tax liability. The organization should instead maintain its incorporation in the original state (including filing its annual registration and reports) and also register as a foreign corporation (by obtaining a certificate of authority) in the new state, if required to do so under that state's law. Below is an outline of the foreign nonprofit corporation requirements in Georgia.

- I. **Transacting Business.** A nonprofit corporation incorporated in a state other than Georgia is considered "foreign" to Georgia and may not transact business in Georgia until it obtains a certificate of authority from the Secretary of State. Whether or not a nonprofit corporation is transacting business in the state is determined by the facts and circumstances of the particular case.
 - A. Activities that do NOT constitute transacting business. Georgia law specifically provides a non-exhaustive list of activities that do *not* constitute transacting business in Georgia. If all of the organization's activities in Georgia fall within the following categories, the organization is not required to obtain a certificate of authority:
 1. maintaining, defending, or settling a claim or dispute;
 2. holding director and/or member meetings or other internal affairs activities;
 3. maintaining bank, trust, or brokerage accounts;
 4. maintaining offices for the transfer, exchange, and registration of membership;
 5. effecting sales through independent contractors;
 6. soliciting or procuring orders that require acceptance outside the state of Georgia before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

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7. making loans or acquiring debt, mortgages, or liens on property securing those loans;
 8. securing or collecting debts or enforcing any rights in property securing those debts;
 9. simply owning (for investment purposes) real or personal property;
 10. conducting an isolated transaction not in the course of a number of repeated transactions of a similar nature;
 11. effecting transactions in interstate or foreign commerce;
 12. serving as trustee, executor, administrator, guardian, or in like fiduciary capacity;
 13. owning an interest in or controlling another entity organized under the laws of or transacting business within the state of Georgia; or
 14. serving as a manager of a limited liability company organized under the laws of or transacting business within the state of Georgia.
- B. Activities that may constitute transacting business. Georgia law does not define what constitutes transacting business in the state, but any conduct more regular, systematic, or extensive than that outlined above *may* constitute transacting business and require the nonprofit corporation to obtain a certificate of authority. The organization must determine whether or not it should file and should consult legal counsel in doing so. Activities that fall within any of the following categories may require a certificate of authority:
1. maintaining an office to conduct local intrastate business;
 2. selling personal property not in interstate commerce;
 3. entering into contracts relating to local business or sales;
 4. owning or using real estate for general corporate purposes;
 5. obtaining a significant portion of the organization's funds from the state of Georgia; or
 6. conducting a substantial portion of the activities that make up the organization's mission and purpose within the state.

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II. Certificate of Authority.

- A. A certificate of authority gives a foreign nonprofit corporation the same rights as a Georgia nonprofit corporation within the state of Georgia.
1. An organization that decides that it should obtain a certificate of authority should do so within 30 days of commencing business in Georgia.
 2. An organization that should have obtained a certificate of authority but does not may not file a lawsuit in Georgia.
 3. The failure of a foreign nonprofit corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending a proceeding in Georgia.
- B. Application for Certificate of Authority. The Application can be found online at <https://cgov.sos.state.ga.us/Account.aspx/LogOn?ReturnUrl=%2fhome.aspx>. Prior to accessing the form, a cGov360 account must be created. Then upon logging in, click on business filings and then find the Nonprofit foreign corporation registration form. and must include the following:
1. the name of the foreign nonprofit corporation;
 2. the name of the state or country in which it is incorporated;
 3. its date of incorporation;
 4. the mailing address of its principal office (wherever its principal office is);
 5. the address of its registered office in Georgia and the name of its registered agent at that office;
 6. the names and respective business addresses of its CEO, CFO, and secretary, or individuals holding similar positions; and
 7. a certificate of existence or similar document, no more than 90 days old, authenticated by the Secretary of State or other official having custody of corporate records in the state or country in which the nonprofit corporation is incorporated.
- C. The initial filing fee is \$225. The organization will then need to file an annual registration and \$30 fee between January 1 and April 1 of each year.

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Withdrawal of Foreign Corporation. A foreign nonprofit corporation that ceases its operations in Georgia should file an Application for Withdrawal, which can be found online at

[sos.ga.gov/corporations/acrobat/applications/Application%20%20Certificate%20of%20Authority%20Withdrawal%20\(CD%20555\).pdf](https://sos.ga.gov/corporations/acrobat/applications/Application%20%20Certificate%20of%20Authority%20Withdrawal%20(CD%20555).pdf)

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