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## Critics Page

# Empowering Creative Uses of Nonprofit Legal Structures

By [Melissa Passman](#)

For some, the term “legal structures” can provide a sense of comfort and certainty. For artists, this term may be more readily associated with rigidity and lack of creativity. This can be especially true in the realm of nonprofits, which are at once omnipresent in the art world yet can appear to be shrouded in bureaucracy.

Rather than stifling innovation, a conversational shift is taking place. The legal intricacies of nonprofits are now becoming parameters to exploit rather than obstacles to artists and other members of the art community as they seek to implement their transformative ideas, effectively create change, and draw attention to their cause. As societal conversations at large shift, founders have followed. They more openly question what these structures might represent, codify and perpetuate. Within this pushback new possibilities have emerged, with those newly engaged in nonprofit formation questioning long-held practices and power dynamics. From this dialogue, new models are rapidly expanding the scope of the possible. The tension between the desire to create change and the functionality of available legal forms has become even more present as greater attention is paid to the underlying power structures and questions of sources of funding and leadership.

For a variety of reasons, often tax-driven, the 501(c)(3) structure is almost always raised immediately as an ideal option in the United States. Despite its familiarity to many, the 501(c)(3) structure is full of legal landmines. Even for the initiated, novel issues arise on a regular basis.

The 501(c)(3) is attractive primarily because of its tax characteristics. In the United States federal tax code, a 501(c)(3) organization is generally exempt from federal taxation on its exempt operational purposes, including those that are charitable and educational. In addition, the donor may take advantage of an income tax deduction for contributions to a 501(c)(3) organization.

Immediately on discussing formation, the terms “board of directors,” “president,” and “mission” become significant categories that require responses. Founders must immediately consider a variety of factors and are confronted with the hierarchical structure of the 501(c)(3) format, in which a board of directors oversees the activities of the organization.

The specter of public scrutiny is another piece of the conversation, as a 501(c)(3) must also disclose its federal tax returns to the public, which are made available through both the IRS and other websites such as [Guidestar](#). Additionally, the 501(c)(3) must register with individual states, depending on their activities.

Finally, nonprofits are subject to certain prohibitions on their activities. Among others, no individual may receive a private benefit, meaning that certain interactions between an artist’s studio and the artist’s nonprofit may suddenly be subject to scrutiny and even fall into the category of “self-dealing.” In addition, a 501(c)(3) may not engage in any political activity in which the nonprofit supports a candidate. Certain 501(c)(3) organizations may seek to influence legislation to a small degree, but this activity must be closely monitored and is highly scrutinized.

While these “do’s and don’ts” can seem daunting, some have embraced these dynamics as an opportunity to expand conversations and explore the ways in which artists and the art world can uniquely address long-held practices that have stifled conversation. Artist Kathryn Andrews founded The Judith Center, a new 501(c)(3) organization that will work across a range of communities and disciplines to advocate for gender equality on a national basis. Under the umbrella of a nonprofit, The Judith Center can initiate important conversations in public institutions across the fields of art, science, and politics among groups that might otherwise remain siloed.

One inherent tension in nonprofits is the source of fundraising. Often nonprofits that rely on a broad base of donations will solicit grantmaking private foundations, which are funded by a limited pool of donors, usually an individual or family. For Museums Moving Forward, an organization founded by museum professionals to provide a data-focused approach to the diversity, equity, inclusion, and accessibility issues embedded in the museum structure, the nonprofit structure raised difficult questions around the traditional link between fundraising and governance, as certain donors may expect a board seat. These dynamics often contribute to the ongoing lack of diversity and perspectives on boards. Co-founder and curator Mia Locks, acutely aware of this pattern, decided to separate funding from governance, allowing for a wider range of voices in the process. This demarcation is a significant step in changing assumptions and practices, particularly prevalent in the museum world.

With greater scrutiny on sources of funding, this attention to structure will become even more important as nonprofits consider their own guidelines in terms of what funds they may be willing to receive, as well as what kinds of due diligence it may be interested in performing.<sup>1</sup>

While the tax code may not immediately change, artists and art world changemakers who seek to engage the public may find new ways to subvert these elements and shine a greater light on the possibilities for conversations. I, for one, am cheering them on.

1. Other arts professionals have recently explored the limitations and potentials of nonprofit institutions as well, including nico wheadon in [Museum Metamorphosis: Cultivating Change Through Cultural Citizenship](#), and Laura Raicovich in [Culture Strike: Art and Museums in an Age of Protest](#).

## Contributor

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