



Jessica Birken, MNM, Esq.
Birken Law Office PLLC
1400 Van Buren St. NE
Suite 200
Minneapolis, MN 55413
www.birkenlaw.com
Office: 612.200.3679

Legal Mumbo Jumbo - Transcript

[Speaker 1]

Welcome to Charity Therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birken, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny nonprofit expert pals.

You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you you're not alone on this journey. So get ready to join the conversation and bring me the tough questions.

I ain't scared. Ready to rock? Let's dive in.

Hello and welcome to this episode of Charity Therapy. I'm here with my co-host, Meghan. Meghan, how's it going?

Hey, Jess. I am good. Happy to be here.

[Speaker 2]

Back for another episode. Per-uge. Per-uge.

My brain just went blank.

[Speaker 1]

We are at that point of the summer where it's like, what is even happening? It feels we should just all be on a patio with a cocktail or like on vacation. And what is even real?

Winter's coming. So I feel anyway, like we're going into the season where it's like, oh, God, I must maximize every moment of Minnesota good times. It's so true.

[Speaker 2]

So imagine you're sitting on a sunny patio right now with like an Aperol spritz or cold lemonade or something while you're listening to this episode. There you go. All right.

What are we doing? Yeah. Let's get into it.

So this question today. So when we're helping set up a new organization, one of the big questions that people have for us is when they can start taking in money to the nonprofit. And often the answer for that is like when they have a bank account.

So they have somewhere to put it. So Jess, can you walk us through what it looks like for a nonprofit to get a bank account? Like what are the steps?

[Speaker 1]

Yeah. So the first thing is you got to be incorporated. Do not be starting a nonprofit bank account as a personal account because that's not a nonprofit account.

That's your account. And there's no charitable intent giving money to a person. So you need to start the nonprofit, have a tax ID number.

You need articles of incorporation or whatever they're called in your state. And you probably need to have two people and a set of meeting minutes that authorize those two people to go to the bank because banks are very concerned with do you have the appropriate authority to do whatever it is you're trying to do?

[Speaker 2]

For sure. So it like in theory shouldn't be that hard, but you just need the paperwork backing you up to like go do the thing.

[Speaker 1]

Yeah. If you just stroll into the bank and you're like, Hey, I just want to open a new bank account for a nonprofit. That's not going to work.

You need to have your armload of stuff with you when you go. For sure. For sure.

[Speaker 2]

Okay. So you will not be surprised to hear that this directly relates to the question today. So let's just get right into it.

A listener writes it and says, Hello, I've recently started volunteering for a new chapter of a 501c3. We've been running into issues with opening a bank account, and it sounds like the national organization has not been very helpful. I'm not really sure where to start as this is the first time I'm dealing with nonprofit finances.

So far, I've obtained the organization's tax ID and articles of incorporation. What else do I need?

[Speaker 1]

You need to slow your roll. What the heck is going on here? This gives me the heebie-jeebies because we do not have enough information in this question.

But the way that my lawyer brain is coming at this is you formed a new chapter of the Volunteers for Saving the Snails, and there is Save the Snails National. And all around this country are little groups of volunteers who are doing the work of saving the snails. It may be that national is not being very helpful because you're not supposed to open a bank account.

Are you actually authorized to open a bank account? I was in-house at a large nonprofit where this would happen from time to time. We would have volunteers who started a new chapter, and they thought that because they were a chapter, they got to have their own banking, and they did not.

So national may not be helping you because you may not be allowed to have your own bank account. So I would stop and figure out whether you actually have the right to start a bank

account. And if you just went and found national's tax ID number and national's articles and pulled them from the state, you are potentially about to get in really big trouble.

[Speaker 2]

So this is the real example of our opener question of this is why you need the authorization that you are allowed to open a bank account. This is why the bank asks for this because you could just find their tax ID and order their articles and go to a bank, right?

[Speaker 1]

Yeah. Yes. It's entirely possible for anybody to just go pull a 990, grab the tax ID number, figure out where this organization is incorporated, go to the state that they're incorporated in, order a copy of their articles of incorporation for 15 bucks, and then stroll into a bank and be like, hi, I'd like to open a bank account in the name of random nonprofit that I have nothing to do with.

So the bank is going to want to see that you are authorized. And if you're a chapter and your chapter is allowed to use titles like president and treasurer, even though you're just a bunch of volunteers and you actually don't have any fiduciary duties and you actually aren't corporate officers, you can see how banks will allow it, especially if they're just like a local bank and they know you and they're like, oh, sure, that makes sense. But you may not have permission.

You may need to talk to the national organization and find out how your chapter is supposed to conduct its business. That's my worst case scenario. It's entirely possible that this chapter is separately incorporated, but it doesn't say that.

It says they've obtained these items, so I'm very scared. That wording is fishy. Yeah.

The reason that it matters is because the nonprofit needs to account for every penny that comes into the organization and they need to tell their state's attorney general, they need to tell the IRS, this is what we did with our money. And if you open a bank account that they don't know about, they don't have any oversight of, they don't have any window into, then they're out of compliance and that could jeopardize the tax exempt status for the entire organization and all of its chapters all over the country. I know it might be annoying, but you probably need to speak with someone at the central office and say, are we allowed to open a bank account?

That's question number one. And if they say, yeah, duh, okay, great. Then you need to have a board meeting and authorize two people to be signers on the bank account and take those meeting minutes to the bank.

Please don't just scam your way into having a secret bank account that nobody can know about or manage or report on the charitable dealings. Please don't do that. Even with the best of intentions, it's not a great move.

Yeah. And I know it's like annoying that like everything has to flow through this bureaucratic system and I get it. I get it.

It can be a pain in the ass if that's the structure. But if that's the structure, you got to respect it. So that's my take on that one.

[Speaker 2]

So just to zoom out a little bit, because this just brings up questions that I have since I'm not that familiar with the like chapter structure. You mentioned that it depends on the like setup of the organization. So some chapters can have bank accounts.

Like why would they do that?

[Speaker 1]

Yeah. So without getting too deep in the weeds on like all the legal mumbo jumbo, there's a variety of ways that large nonprofits can be set up. OK, you're Girl Scouts USA and there's a million Girl Scout troops, right?

They have parent subsidiary relationship where there's Girl Scouts USA. And then in my area, it's the Minnesota Wisconsin River Valleys branch of the Girl Scouts. And then all the little troops are unincorporated and they're all chapters that like report to the branch office and the branch office reports up to Girl Scouts USA.

That's one way to do it. Another way to do it is like Ducks Unlimited. Ducks Unlimited is like wildlife conservation group.

And they have one national office and then they have all these groups of volunteers. And whenever all the Ducks Unlimited volunteers raise money, it all gets sent to the main office. They don't have independent bank accounts.

There's no regional office in between. They're just like a bunch of volunteers and it's all one organization. And then you might have other groups where it's we are Campers America and there's a bunch of summer camps and they're all separately incorporated, but they're all tied together through contractual relationships with Campers America.

But they're separately incorporated because it's a summer camp. They have property. There's reasons that they're separately incorporated and they all have their own bank accounts and they just have a contractual relationship with the national organization.

So it really does depend on what is the structure of this big network, right? And there's like different ways you can structure it. If people are not helping you open a bank account and you're going around fishing for the information so that you can figure out how to start one, I am concerned that you're not supposed to be doing it.

[Speaker 2]

Right. And I mean, it makes total sense when you think about it, that it's, you know, all of this is very complicated and, you know, this person saving the snails on the ground as a volunteer doesn't understand all of the complexities of it. So they're just like, I want one.

That would be great. So it's like, OK, yes, I understand where you're coming from. You don't know the full picture, though.

So like, go talk to national, read your packet of information, whatever. See what that is actually supposed to look like for you.

[Speaker 1]

Yeah. And then if they say, yeah, you can open a banking account, but that's not our problem. You're your own entity.

Go deal with it yourself. Great. Then you call someone like me, talk to a lawyer and get some help.

Yep. Totally. Totally.

Cool. OK, what's the takeaway here, Meghan?

[Speaker 2]

There's a couple. One is that a nonprofit bank account is different than a personal bank account. And we cannot be crossing lines with that.

Like you need to open the correct kind of bank account so that charitable funds are being stored and used properly. And the process of opening that bank account is a little bit different and does require that you bring like authorizations to the bank, things like meeting minutes, board resolutions, showing that, hey, the nonprofit, the fiduciaries of this nonprofit say I'm allowed to do this right now. And you know, into this particular question, the structure of certain nonprofits, especially ones with chapters and affiliates, get complicated.

And just because you're a chapter does not necessarily mean that you get to open your own bank account. And even if you do, it's something that you need to work with the like national group around. It's not something that is just you can stroll into any old bank and get the account set up day one.

And I think that's all I got.

[Speaker 1]

Am I missing anything? No, those are perfect. Absolutely.

So, folks, don't open a bank account if you're not really supposed to. That's my advice. Sorry to be a Debbie Downer on this one, but don't be opening secret bank accounts.

That's a good plan. Sometimes it's that simple. Just don't do it.

Just don't do it. But you know what you should do is give us five star review on your podcast app. Excellent.

And share this episode with a friend. If you've got somebody, you know, who's trying to open a super secret bank account that National doesn't know about, give them this episode. Beautiful.

Love it. If you've got a question or a story to share, send us a note online. We would love to hear from you.

Thanks for listening.

About the Author



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

jess@birkenlaw.com | [612.200.3679](tel:612.200.3679) | [@JessBirken](https://www.instagram.com/JessBirken)
www.linkedin.com/in/jessbirken
www.facebook.com/birkenlaw