

# The Complete Guide to Nonprofit Corporations

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## CHAPTER 1

### CHOICE OF ENTITY

#### 1.0 INTRODUCTION

#### 1.1 PRINCIPAL FORMS OF NONPROFIT ENTITIES

- (a) Nonprofit Corporation
- (b) Unincorporated Association
- (c) Charitable Trust
- (d) Other

#### 1.2 FOR-PROFIT ENTITIES

- (a) Sole Proprietorship
- (b) General Partnership
- (c) Limited Partnership
- (d) Limited Liability Company
- (e) For-Profit Corporation

#### 1.3 NONTAX CONSIDERATIONS IN SELECTING FORM OF ENTITY

- (a) Nonprofit Entities
  - (i) Costs of Organization
  - (ii) Government Regulation
  - (iii) Continuity of Existence
  - (iv) Transferability of Interests
  - (v) Exercise of Management Functions
  - (vi) Limitation of Liability
- (b) For-Profit Entities
  - (i) Costs of Organization
  - (ii) Government Regulation
  - (iii) Continuity of Existence
  - (iv) Transferability of Interests
  - (v) Exercise of Management Functions
  - (vi) Limitation of Liability

#### 1.4 TAX CONSIDERATIONS

- (a) Tax Exempt Entities
  - (i) In General
  - (ii) Section 501(c)(3) Tax Exempt Entities
- (b) For-Profit Entities

#### FORMS

Articles of an Unincorporated Association  
Bylaws of an Unincorporated Association  
Charitable Declaration of Trust (Example from IRS)

CHAPTER 2

**ORGANIZING A NONPROFIT CORPORATION**

**2.1 PREPARING TO INCORPORATE**

**2.2 INCORPORATORS**

**2.3 NAMING THE NONPROFIT CORPORATION**

- (a) Statutory Requirements
- (b) Prohibited Names
- (c) Identical and Deceptive Names
- (d) Names Requiring a Letter of Consent
- (e) Name Availability
- (f) Use of Assumed Name by Nonprofit Corporation
  - (i) Which Nonprofit Corporations May Use an Assumed Name
  - (ii) Procedure
- (g) Registered Name by Foreign Corporation

**2.4 ADDITIONAL PREINCORPORATION CONSIDERATION—SELECTION OF FISCAL YEAR**

**2.5 ARTICLES OF INCORPORATION—REQUIRED CONTENTS**

- (a) Minimum Requirements
- (b) The Name of the Nonprofit Corporation
- (c) Purpose
  - (i) Tax Exempt Purpose Requirements
  - (ii) Broad or Narrow Purposes
  - (iii) Defense of Ultra Vires
- (d) The Period of Duration
- (e) Registered Agent
- (f) Who or What May Be a Registered Agent
- (g) Registered Office
- (h) Change of Address and Name of Registered Agent
- (i) Incorporators
- (j) Members, Members who are Sole Managers, or no Members?
- (k) Initial Directors

**2.6 ARTICLES OF INCORPORATION—OPTIONAL PROVISIONS**

- (a) Greater Voting Requirements
- (b) Restrictions on the Board
- (c) Number for a Quorum
- (d) Amendment of Bylaws
- (e) Indemnification
- (f) Less Than Unanimous Consent

**2.7 EXECUTION AND VERIFICATION OF ARTICLES OF INCORPORATION**

- (a) Statutory Requirements
- (b) Filing Articles of Incorporation with Secretary of State—Fees
  - (i) In General
  - (ii) Filing and Special Handling—Fees

## **2.8 COMPLETING CORPORATE ORGANIZATION**

- (a) Adoption of Bylaws
  - (i) In General
  - (ii) Contents of Bylaws
  - (iii) Matters Subject to Provisions of Bylaws
- (b) Organizational Meeting of Directors or Members
  - (i) Notice
  - (ii) Checklist for Organizational Meeting of Directors or Members
- (c) Minutes
- (d) Corporate Seal
- (e) Obtaining Business Licenses
- (f) State Franchise Tax Exemptions
  - (i) In General
  - (ii) Franchise Tax Reports
- (g) Public Reports of Nonprofit Corporations

## **FORMS**

Incorporation Checklist  
Corporate Data Summary  
Consent Letter  
Assumed-Name Certificate for an Incorporated Business or Profession  
Resignation of Registered Agent  
Articles of Incorporation for a Nonprofit Corporation (without members)  
Articles of Incorporation for a Nonprofit Corporation (with members)  
Articles of Incorporation for a Nonprofit Corporation (with Management vested in Members)  
Bylaws of a Nonprofit Corporation (without members)  
Bylaws of a Nonprofit Corporation (with members)  
Bylaws of a Nonprofit Corporation (with managing members)  
Waiver of Notice of Meeting  
Unanimous Written Consent of Directors in Lieu of the First and Organizational Meeting of Directors  
Unanimous Written Consent of Managing Members in Lieu of the First and Organizational Meeting of Managing Members  
Organizational Meeting Minutes  
Life Cycle of a Public Charity—Organizing Documents (Example from IRS)

## **ENDNOTES**

# **CHAPTER 3**

## **TAX EXEMPTIONS**

### **3.0 INTRODUCTION**

### **3.1 § 501(c)(3) TAX EXEMPTION**

### **3.2 ORGANIZATIONAL TEST**

### **3.3 OPERATIONAL TEST**

- (a) Commercial Activities
- (b) No Private Benefit
- (c) No Private Inurement
- (d) No Excess Benefit
- (e) Not an “Action Organization” involved in Lobbying or Political Campaigns

### **3.4 PUBLIC CHARITIES**

### **3.5 PRIVATE FOUNDATIONS**

- (a) In General
- (b) Private Operating Foundations
- (c) Excise Taxes on Private Foundations
  - (i) Excise Tax on Investment Income
  - (ii) Excise Tax on Self-Dealing Transactions
  - (iii) Excise Tax on Undistributed Income
  - (iv) Excise Tax on Excess Business Holdings
  - (v) Excise Tax on Certain Investments that Jeopardize the Entity
  - (vi) Excise Tax on Taxable Expenditures
- (d) Termination of Private Foundation

### **3.6 UNRELATED BUSINESS INCOME TAX**

### **3.7 OTHER FEDERAL TAX EXEMPTIONS**

- (a) Section 501(c)(4)
- (b) Other Exempt Organizations

### **3.8 STATE TAX EXEMPTIONS**

### **3.9 ANNUAL REPORTS—THE NEW FORM 990**

- (a) Introduction
- (b) Overview of Form 990 Changes
- (c) Governance
- (d) Phase-in Filing Requirements

### **FORMS**

- Form 990 Return of Organization Exempt From Income Tax
- Form 1023 Application for Recognition of Exemption

### **ENDNOTES**

## **CHAPTER 4**

### **DIRECTORS AND OFFICERS**

#### **4.1 DIRECTORS**

- (a) Definitions
- (b) Qualifications, Tenure, and Compensation of Directors
  - (i) Qualifications
  - (ii) Number of Directors
  - (iii) Term of Office
  - (iv) Compensation
- (c) Vacancies on Board of Directors
  - (i) In General
  - (ii) Removal of Directors
  - (iii) Filling Vacancies
- (d) Meetings of Board of Directors
  - (i) In General
  - (ii) Place of Meetings
  - (iii) Notice of Meetings
  - (iv) Quorum Requirement
  - (v) Voting

- (vi) Meetings Conducted by Telephone Conference
- (vii) Actions Without Meetings by Unanimous Consent
- (viii) Actions Without Meetings by Less Than Unanimous Consent
- (e) Duties and Powers of Directors
  - (i) General Standard of Performance
  - (ii) Managerial Responsibilities
  - (iii) Powers of Corporation Exercisable by Directors
- (f) Committees of the Board of Directors—Authority to Create
- (g) Liability of Directors
  - (i) In General
  - (ii) Transactions With Interested Directors
  - (iii) Unlawful Loans to Officers and Directors
  - (iv) Unlawful Distributions
  - (v) Failure to Pay Taxes
  - (vi) Distribution of Assets in Dissolution
  - (vii) Enforcement
- (h) Defenses
  - (i) Reliance upon Information Supplied by Others
  - (ii) Business Judgment Rule
- (i) Articles Provision Limiting Director Liability
  - (i) In General
  - (ii) Statutory Authority for Limitation
- (j) Indemnification and Insurance
  - (i) Corporate Authority to Indemnify
  - (ii) Insurance

#### **4.2 OFFICERS**

- (a) Corporate Officers
- (b) Election and Removal of Officers
  - (i) Election
  - (ii) Removal
- (c) Compensation of Officers
- (d) Duties of Officers
  - (i) Day-to-Day Duties
  - (ii) Duties Prescribed by Statute
  - (iii) Standard of Care—Liability
  - (iv) Reliance upon Information Supplied by Others
- (e) Authority of Officers to Bind Corporation

#### **4.3 CRIMINAL LIABILITY**

- (a) Of the Corporation
- (b) Of Individuals

#### **FORMS**

Notice of Annual Meeting of Board of Directors  
Notice of Special Meeting of Board of Directors  
Waiver of Notice of Meeting of Board of Directors  
Nonprofit Corporate Information Questionnaire  
Minutes of the Annual Meeting of the Board of Directors  
Minutes of a Special Meeting of the Board of Directors  
Unanimous Written Consent of the Board of Directors in Lieu of the Annual Meeting of Directors  
Meeting by Unanimous Consent of the Board of Directors in Lieu of a Special Meeting of the Board of Directors

## ENDNOTES

## CHAPTER 5

### MEMBERS—MEETINGS AND VOTING

#### 5.0 INTRODUCTION

#### 5.1 MEETINGS AND ACTIONS WITHOUT MEETINGS

- (a) Meetings Generally
  - (i) Annual Meetings
  - (ii) Call of Special Meetings
  - (iii) Place of Meetings
- (b) Notice of Meetings
  - (i) In General
  - (ii) How Notice Is to Be Given
  - (iii) Contents of Notice
- (c) Waivers of Notice—Statutory Authority
- (d) Record of Members
- (e) Voting Lists
- (f) Quorum
- (g) Procedure at Members' Meetings
  - (i) Preparation for Meeting
  - (ii) Chairing the Meeting
  - (iii) Agenda for Meeting
  - (iv) Minutes of Meeting
- (h) Action by Members Without a Meeting
  - (i) Action by Consent
  - (ii) Conduct of Meeting by Telephone Conference

#### 5.2 VOTING OF MEMBERS

- (a) Voting Rights
  - (i) In General
  - (ii) Limitation on Voting Rights
  - (iii) Class Voting
  - (iv) Determination of Record Date for Notice, Voting, and Other Purposes
- (b) Voting by Proxy
  - (i) In General
  - (ii) Nature, Duration, and Revocability
- (c) Election of Directors
  - (i) In General
  - (ii) Cumulative Voting
  - (iii) Classification of Directors
- (d) Matters for Which a Greater Than Majority Vote May Be Required

#### 5.3 FINANCIAL RECORDS AND ANNUAL REPORTS

- (a) Financial Reports
- (b) Reports to Secretary of State

## **5.4 INSPECTION RIGHTS**

- (a) Members' Right to Inspect
- (b) Directors' Right to Inspect
- (c) Regulatory Agencies Right to Inspect
  - (i) Attorney General
  - (ii) Secretary of State
  - (iii) Comptroller of Public Accounts
- (d) Inspection Rights—Penalties and Liabilities
  - (i) Refusal to Permit Member Inspection
  - (ii) Refusal of Corporation to Permit Inspection by State Officials

## **FORMS**

Notice of Annual Meeting of Members  
Notice of Special Meeting of Members  
Waiver of Written Notice of Meeting of Members  
Minutes of Annual Meeting of Members  
Unanimous Consent to Annual Meeting of Members  
Unanimous Written Consent of Members in Lieu of Annual Meeting of Members  
Proxy for Annual Meeting of Members  
Demand for Members' List and Other Records

## **ENDNOTES**

# **CHAPTER 6**

## **AMENDMENT OF ARTICLES AND BYLAWS**

### **6.1 AMENDMENT OF ARTICLES OF INCORPORATION**

- (a) Statutory Authority
- (b) Procedure to Amend Articles
  - (i) In General
  - (ii) Adoption of Amendment by Members Without Meeting
  - (iii) Members' Meeting to Adopt Amendment—Notice
  - (iv) Required Vote of Members or Directors as Applicable
  - (v) Class Voting on Amendments
- (c) Contents of Articles of Amendment—Statutory Requirements
- (d) Execution of Articles of Amendment
- (e) Filing Articles of Amendment With Secretary of State
- (f) Delayed Effectiveness of Certain Filings
  - (i) In General
  - (ii) Acts Effective Upon a Specified Date and Time
  - (iii) Acts Effective Upon Future Facts or Events
- (g) Effect of Issuance of Certificate of Amendment
- (h) Restated Articles of Incorporation—Statutory Authority

### **6.2 AMENDMENT OF BYLAWS**

- (a) Statutory Authority
- (b) Considerations in Decision to Amend Bylaws
- (c) Procedure to Effect Amendment

### **6.3 CORRECTION OF INACCURATE OR DEFECTIVE INSTRUMENTS**

- (a) In General
- (b) Articles of Correction
- (c) Filing Articles With Secretary of State—Fees

- (d) Effect of Issuance of Certificate of Correction
- (e) Filing of Reproductions

## **FORMS**

- Articles of Amendment
- Nonprofit Corporation Restated Articles Without Amendment
- Nonprofit Corporation Restated Articles With Amendment
- Unanimous Consent of the Board of Directors Amending its Bylaws
- Articles of Correction
- Unanimous Consent of the Board of Directors Amending its Articles of Incorporation
- Unanimous Consent of the Members Amending its Articles of Incorporation

## **ENDNOTES**

# **CHAPTER 7**

## **MERGERS, SALE OF ASSETS, AND CONVERSIONS**

### **7.1 MERGERS—IN GENERAL**

### **7.2 PRELIMINARY PLANNING**

- (a) Reviewing Data
- (b) Related Activities
- (c) Time Schedule and Allocation of Responsibility

### **7.3 MERGER AMONG DOMESTIC NONPROFIT CORPORATIONS**

- (a) Plan of Merger
- (b) Provisions of the Agreement of Merger—General Matters
- (c) Plan of Exchange
- (d) Approval of Merger or Exchange
- (e) Abandonment of Plan of Merger or Exchange
- (f) Amendment of Agreement of Merger or Exchange

### **7.4 FILING ARTICLES OF MERGER OR EXCHANGE AND CONSUMMATING MERGER OR EXCHANGE**

- (a) Filing with Secretary of State
- (b) Consummating the Merger or Exchange
- (c) Abandoning the Merger or Exchange
- (d) Effect of Merger

### **7.5 MERGER AMONG DOMESTIC AND FOREIGN CORPORATIONS**

- (a) General Authorization and Procedure
- (b) Surviving Corporation as a Domestic Corporation
- (c) Surviving Corporation as a Foreign Corporation

### **7.6 TRANSFER OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS**

- (a) Approval of the Sale
- (b) Effect of Disposition

### **7.7 OTHER TRANSFERS OF ASSETS**

## **7.8 MERGERS OR EXCHANGES PURSUANT TO REORGANIZATION UNDER FEDERAL BANKRUPTCY LAWS**

- (a) In General
- (b) Authority to Sign Documents
- (c) Procedure for Merger or Exchange

## **7.9 CONVERSIONS**

- (a) Introduction
  - (i) In General
  - (ii) Nonprofit Corporations Eligible for Conversion
  - (iii) Legal Effect of a Conversion
- (b) The Plan of Conversion—Preparation
- (c) Approval of Conversion
- (d) The Articles of Conversion
  - (i) Preparing the Articles of Conversion
  - (ii) Filing the Articles of with the Secretary of State
- (e) Requirements for Abandoning the Conversion

## **FORMS**

Plan of Merger

Resolutions—Approval by the Directors

Notice to Members of a Special Meeting to Consider Plan of Merger

Proxy

Simple Resolution Approving Plan of Merger

Resolution of Abandonment of Merger

Articles of Merger

Asset Purchase Agreement

Articles of Conversion

Unanimous Written Consent of the Board of Directors in Lieu of the Special Meeting of Directors

Unanimous Written Consent of Members in Lieu of the Special Meeting of Members

## **ENDNOTES**

# **CHAPTER 8**

## **DISSOLUTION**

### **8.0 IN GENERAL**

#### **8.1 VOLUNTARY DISSOLUTION**

- (a) Dissolution by Corporate Action
  - (i) In General
  - (ii) Authorized Procedure
  - (iii) Corporate Duties Prior to Filing Articles of Dissolution
  - (iv) Articles of Dissolution
  - (v) Filing Articles of Dissolution
  - (vi) Effect of Issuance of Certificate of Dissolution
- (b) Revocation of Voluntary Dissolution Proceedings
  - (i) In General
  - (ii) Filings Required for Revocation of Voluntary Dissolution Proceedings

- (c) Corporate Actions after Dissolution
  - (i) Limited Purposes of Continued Existence
  - (ii) Authority of Directors During Post-Dissolution Period
  - (iii) Procedure for Accelerated Extinguishment of Claims Following Dissolution
- (d) Revocation of Dissolution by the Courts

## **8.2 DISTRIBUTIONS IN DISSOLUTION**

- (a) In General
- (b) Tax Considerations

## **8.3 INVOLUNTARY DISSOLUTION**

- (a) In General
- (b) By Order of Secretary of State
  - (i) Grounds
  - (ii) Notice of Delinquency
  - (iii) Effect of Issuance of Certificate of Involuntary Dissolution
  - (iv) Reinstatement by Secretary of State
- (c) Action Brought by Attorney General
  - (i) Statutory Authority
  - (ii) Notice
  - (iii) Cure of Default
  - (iv) Decree of Involuntary Dissolution
- (d) Appointment of Receiver for Specific Corporate Assets
- (e) Appointment of Receiver to Rehabilitate Corporation
  - (i) In General
  - (ii) Qualifications, Powers, and Duties of Receivers
  - (iii) In Actions by Members
  - (iv) In Actions by Creditors
  - (v) Temporary Nature of Appointment
- (f) Jurisdiction of Court to Liquidate Corporate Assets
  - (i) Statutory Authority
  - (ii) Authorized Actions

## **FORMS**

Articles of Dissolution

Unanimous Consent of Members and Directors to Liquidate Corporation Pursuant to Plan of Liquidation

## **ENDNOTES**