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Key Governing Documents for a Nonprofit Organization

There are three primary documents that govern the operations of a nonprofit organization: (1) the articles of incorporation, (2) the bylaws, and (3) the conflict of interest policy. This legal guide introduces each of these documents and identifies key elements that you should consider as you are preparing governing documents for your organization.

This legal guide only provides a general overview. The requirements for governing documents vary by state, so you will need to confirm the requirements that apply to your organization. In addition, if your organization intends to seek federal tax-exempt status from the Internal Revenue Service (IRS), there are specific provisions that your governing documents must contain. Consultation with an attorney is recommended.

Articles of Incorporation

What are Articles of Incorporation?

The articles of incorporation are filed with your state to form your organization. The content required in the articles of incorporation varies by state, although they will all include the name of your organization, a statement of its purposes, and the names of the incorporator(s) who are forming the organization.

Are Articles of Incorporation Required?

State Level

Every state requires you to file articles of incorporation (referred to in Massachusetts as the articles of organization, in New Hampshire as the articles of agreement, and in Connecticut as the certificate of incorporation) to form your organization.

Federal Level

Federal tax law requires that Section 501(c)(3) organizations provide the IRS with a copy of their articles of incorporation and notify the IRS of any amendments.

Important Elements of Articles of Incorporation

If your organization intends to seek tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, it is important to include the following provisions in the articles of incorporation.



Exempt Purpose

The articles of incorporation must state the organization's exempt purpose(s), such as charitable, religious, educational, and/or scientific purposes. Your organization's purpose(s) in its articles of incorporation should be consistent with the organization's mission and its intended activities. You will refer to the purposes clause in your articles of incorporation throughout the life of your organization.

The organization's purposes must be limited to those described in Section 501(c)(3). If the organization's articles of incorporation list purposes that are broader than those permitted by Section 501(c)(3), the organization may not qualify as tax-exempt. However, you should be careful to not make your organization's purposes too narrow so that there is room for evolution and growth that may occur over the life of your organization.

Dissolution Clause

The assets held by your organization must be dedicated only to Section 501(c)(3) exempt purposes and may not be used for the benefit of the organization's members, officers or other private persons (with some exceptions, such as reasonable compensation for services provided to the organization). As such, the articles of incorporation generally must provide that, upon dissolution of the organization, its assets must be distributed only for a Section 501(c)(3) exempt purpose. If the articles of incorporation permit the organization's assets to be distributed for any other purpose (including to any private individuals), then the organization will not qualify as tax-exempt.

If your organization is formed in Massachusetts, the Massachusetts nonprofit laws satisfy this requirement, so it is not necessary to include specific language in the articles of incorporation, although it is still best practice to do so. An organization formed in another New England state must include an adequate dissolution provision in its articles of incorporation to comply with IRS requirements.

Other Tax-Exempt Provisions

To comply with applicable IRS requirements, the articles of organization must include limitations on the organization's lobbying activities and participation in political campaigns.

Amendment of the Articles of Incorporation

The articles of incorporation can be amended by the organization after formation, although this should not be a frequent occurrence. For example, it may be necessary to amend your organization's purposes clause if its exempt purpose evolves significantly over the life of the organization. Amendments generally require approval of the organization's board of directors (and/or members, if applicable), filing of the amendment with the state, and notification to the IRS.

Using Template Articles of Incorporation

Many states have a form of articles of incorporation that nonprofit organizations can complete or use as a starting point. These can generally be found on the state's website. As noted above, depending on your organization, you may need to include additional provisions in your articles of incorporation beyond those required under state law. The [Lawyers Clearinghouse](#) offers a [template that contains sample language](#) that you may wish to include in your articles. Consultation with an attorney is recommended.

Bylaws

What are Bylaws?

Bylaws serve as the operators' manual of a nonprofit organization, directing how the nonprofit will be run. Bylaws establish procedures for holding elections, organizing and running meetings, membership structure (if needed) and other essential operations of a nonprofit. They are helpful in preventing or resolving conflicts and disagreements. They also establish the rules regarding responsibilities, rights, and expectations of board members. Bylaws are created when the organization is established but are not written in stone and can be amended.

Are Bylaws Required?

State Level

Most states require bylaws, including all New England states. Many states do not require a copy of the bylaws be on public record, but you should check with your state Secretary of State.

Federal Level

Federal tax law requires that 501(c)(3) organizations provide the IRS with a copy of their bylaws and notify the IRS of any amendments.

Important Elements of Bylaws

Bylaws add to the state rules that govern how to form and run a nonprofit organization. The following topics are typically addressed in the bylaws, which are discussed in greater detail below.

- Size of the board and how it will function
- Membership
- Roles and duties of directors (board members) and officers
- Roles and make up of committees (if any)
- Rules and procedures for holding meetings
- Conflict of interest policies and procedures
- Indemnification and compensation
- Amendment of the bylaws

State law may require that certain provisions be included in the bylaws or limit what the bylaws can provide. State law may also provide default rules if the bylaws are silent. You should review the state law applicable to your organization to determine the rules that apply.

Size of the board and how it will function

The board of directors is responsible for overseeing the organization's activities and mission. This board meets periodically to discuss and vote on the affairs of the organization.

Board size and terms: Bylaws should identify the size of the board, by stating a permitted minimum and maximum number of board directors. Bylaws should also state the length of board members' service. Consider whether term limits should be in place – do you want to have new board members on a regular basis with potentially new ideas and skill sets or is continuity and organizational knowledge valued? Consider staggering the start date of board terms to ensure continuity; for example, board members serve two-year terms in which half the board positions are filled each year.

Meetings: Bylaws should set out the requirements for holding regular and special board meetings, including meeting frequency, meeting notice and voting and quorum requirements. A quorum is the minimum number of board members who must be present for official decisions to be made. Particularly important in view of the recent pandemic is specifying requirements for in-person, video and telephonic meetings.

Officers

Many states require an organization to have specific officer positions. Most nonprofits include a president, vice president, secretary, and treasurer, although their exact titles may vary by state and/or by organization. One person may hold multiple officer positions (though that is not always wise), but certain states (such as Vermont and Rhode Island) prohibit the same person from serving as both president and secretary. The rules governing the election of and terms for officers should be addressed separately from the board of directors in the bylaws.

Membership

Some nonprofit organizations may have members. Membership in a nonprofit can be limited to the board of directors but can also include other stakeholders or members of the public. Eligibility, obligations and rights of members should be included in the bylaws. An important member right is the election of the board of directors. Members may also have voting rights on other major decisions.

Membership can be used for other purposes, for example, fundraising by requiring a membership fee or increasing a sense of community involvement within the organization, which may be different from “membership” under state law.

Careful consideration should be given to whether your organization will have members and the identity and rights of those members, including whether they are “members” under state law.

Roles and duties of directors and officers

Election and termination: The board of directors is responsible for governance and oversight of the affairs and property of the nonprofit organization. Officers are often responsible for day-to-day operations of the organization and may also have specific duties under state law. Thus, it is important to describe the qualifications and duties of board directors and officers, as well as details on their election and termination (resignation and removal). In a member-based organization, directors are elected by the membership, typically during annual meeting. Otherwise, sitting directors may vote on filling open positions. Officers are typically elected by the board of directors.

Responsibilities: While some responsibilities can be delegated, some duties should remain with the entire board including to:

- remove directors or officers;
- hire, terminate or establish the compensation of the Executive Director/CEO;
- approve the annual budget;
- authorize a transaction involving all or substantially all of the assets of the nonprofit;
- authorize a merger, consolidation, dissolution or bankruptcy of the organization; and
- amend the bylaws and other governing documents.

Roles and make up of committees

Committees are smaller groups made up of board members (and optionally others) that are assigned specific tasks relating to running the organization, such as finance, executive and board nominating committees. The bylaws can name standing committees or give the board the ability to create committees as needed. Bylaws will often create an executive committee, a smaller group of decision-makers usually including the executive director and officers that meets between board meetings to take immediate action or speak on behalf of the board, and a finance committee to oversee the finances of the organization.

If the committees are set out in the bylaws, the bylaws should identify what powers of the board are delegated to these committees, require that committees take meeting minutes and report to the board, and set out committee quorum rules for voting (relevant if the committee is given the power to make decisions for the organization). The bylaws may also define the roles and responsibilities of the committees.

Rules and procedures for holding member meetings

If your organization has members, the bylaw should set out the frequency of member meetings and include details on how meetings are to be run. A membership nonprofit should hold at least one member meeting each year. Some states may require more.

The bylaws may set out a time for the membership annual meeting, as well as require a quorum for any decisions. Check with your Secretary of State office to see what quorum requirements may apply to your member meetings.

Conflict of interest policies and procedures

The board of directors and board officers have legal duties towards the nonprofit:

- Duty of care. Directors should ensure the prudent use of all nonprofit assets.
- Duty of loyalty. Actions and decisions of the board of directors should be in the best interest of the nonprofit.
- Avoiding conflict of interest. Board members run the risk of a conflict of interest when they take actions with the nonprofit that can benefit themselves financially. Most organizations adopt a separate conflict of interest policy (see below), but bylaws may include a provision for handling such conflicts of interest.

Indemnification and compensation

Compensation: There should be no compensation for board directors as it is a volunteer position. However, bylaws can permit reimbursement for incurred expenses. Officers can be compensated *only for work done as officers*. As it may be difficult to discern between board and officer work, compensation for officers should be carefully defined. Note that board directors may also hold other positions within the organization for which they may be compensated. Care should be taken in setting compensation to ensure that it is reasonable and that appropriate procedures are followed under the organization's conflict of interest policy (see below).

Indemnification: Directors and officers should not be liable or held personally responsible for harm to third parties that resulted from decisions or activities undertaken in good faith and with the reasonable belief that the action was in the best interest of the organization. An indemnification clause protecting directors and officers from personal liability should be included in the bylaws. Section 501(c)(3) organizations must ensure that their indemnification clause complies with applicable IRS requirements. Directors and officers' insurance is offered by most insurance agencies and it is recommended that the organization buy an insurance policy.

Amendment of the bylaws

Bylaws should discuss how they can be amended. Without provisions on how to amend the bylaws there is no legal way for an organization to modify them. Typically a majority board vote is required to amend the bylaws.

Practical Tips in Drafting Bylaws

- *Don't include information that changes frequently.* It will be harder to keep the bylaws current.

- *Know the difference between “shall” and “may”.* Use “shall” when compliance is mandatory and “may” when it is permitted, but not required.
- *Be realistic in what you can achieve.* Don’t try to overregulate your organization.
- *Review bylaws regularly.* Knowing the rules will help keep your organization in compliance – and alert you to when realities on the ground have made following bylaws unrealistic.
- *Check with your Secretary of State* to learn specific rules that apply to bylaws in your state.

Using Template Bylaw documents

Using a model template as a basis for your organization’s bylaws is a good place to start. The [Lawyers Clearinghouse](#) offers bylaw model templates for [membership-based bylaws](#) and [no-member bylaws](#). But no template knows all the details of your nonprofit, so make sure you modify for your organization’s specific needs. Consultation with an attorney is recommended.

Conflict of Interest Policy

Your organization should adopt a formal policy for handling conflicts of interest that arise for directors and officers. A conflict of interest may arise, for example, if the organization is considering entering into a contract with a director or officer (or a family member of a director or officer) or with another organization in which a director or officer has a financial interest. The policy should provide for the interested director or officer to recuse themselves from board discussions and decisions regarding the matter. The policy should also require directors and officers to disclose potential conflicts of interest to the organization.

Using Template Conflict of Interest documents

The IRS has a sample conflict of interest policy that your organization may adopt, which is included as Appendix A to the [instructions to the IRS Form 1023](#). The [Lawyers Clearinghouse](#) also offers a sample [conflict of interest policy](#) and a sample [certification and disclosure statement](#) to be completed by directors and officers.

This guide was prepared Mary Rose Scozzafava, Senior Legal Fellow, Conservation Law Foundation. The Conservation Law Foundation gratefully acknowledges the review and helpful input received from Amy R. Segal and Meghan Walsh, WilmerHale.

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