

NOTE: This checklist aims to give the practitioner a set of considerations in creating and reviewing articles of incorporation and bylaws for a nonprofit corporation. The checklist was originally published in *Nonprofit Law: A Practical Guide to Legal Issues for Nonprofit Organizations*.

Nonprofit Corporation Articles of Incorporation and Bylaws Checklist

ARTICLES OF INCORPORATION

1. For guidance for legal content of Articles of Incorporation, refer to:
 - a. Applicable state nonprofit corporation act
 - b. Tax exemption requirements
2. Mandatory Provisions
 - a. Name of Corporation
 - i. Confirm name is available in state of incorporation – check with Secretary of State’s office
 - b. Purpose of Corporation
 - i. To extent nonprofit will seek tax-exempt status, make sure purpose is consistent with tax-exempt status (review IRS requirements)
 - ii. Purpose clause should not be treated as “mission statement”
 - c. Irrevocable dedication of assets (review IRS requirements)
 - d. Name and address of registered agent
 - e. Name and address of incorporator
 - f. Description of whether nonprofit has “members” (in certain states)

-
- g. Description of what will happen to assets of nonprofit upon dissolution (in certain states)
 - h. Choice of type of nonprofit, i.e., public benefit, mutual benefit, and religious corporations (in certain states)
 - i. Designated body with Board powers (in certain states)
3. Permissive Provisions
- a. Names and addresses of initial Board of Directors (required in some states)
 - b. Elimination/Limitation of Liability of Directors
 - i. In some states, it is necessary to include language in articles of incorporation in order to take advantage of liability shield available to directors and officers
 - ii. Provision eliminates or limits the liability of a director to the corporation or its members for money damages
 - c. Indemnification
In some states, it is necessary to include language in articles of incorporation in order to take advantage of broadest indemnification protection available to directors and officers
 - d. Provisions relating to managing and regulating the affairs of the Corporation
 - e. Defining, limiting, and regulating the powers of the Corporation, the Board of Directors, members, and any class of members
 - f. Characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members (often required to be in articles if there will be different membership rights)
 - g. Amendments to Articles of Incorporation

BYLAWS

- 1. For guidance for legal content of Bylaws, look at:
 - a. Applicable state's nonprofit corporation act
 - b. Charitable solicitation laws
 - c. Tax exemption requirements
 - d. Sector-specific requirements

2. Subject Areas

- a. If “Members”:
 - i. Description of qualifications/selection process
 - ii. Description of classes of members (if any)
 - iii. Dues obligations
 - iv. Member representatives
 - v. Process for termination/removal of members
 - vi. Process for resignation/reinstatement of members
 - vii. Ability to transfer membership interests
 - viii. Annual/Regular/Special Meetings
 - A. Subject matter of annual meeting (such as election of Directors)
 - B. Location of meetings
 - C. Notice requirements
 - D. Process for waiver of notice
 - E. Record date
 - F. Member list
 - G. Conduct of Meetings
 - ix. Quorum and voting requirements
 - x. Ballot voting
 - xi. Written consents
 - xii. Electronic notices and voting
 - xiii. Proxy voting
 - xiv. Voting on mergers, sale of assets, and dissolution
- b. If no “Members”(as defined in the applicable state nonprofit corporation act), will nonprofit still use term “members” to designate donors or other individual entities involved with organization?
 - i. If so, include provisions in Bylaws to address any rights of such “members”
- c. Board of Directors
 - i. Powers and limitations of Board
 - ii. Selection of Board
 - iii. Types of Directors, including ex officio Directors (if any)
 - iv. Number or range of Directors
 - v. Tenure
 - A. Staggered terms
 - B. Term limits

-
- vi. Qualifications
 - vii. Removal/Resignation/Vacancies
 - viii. Regular/Special Meetings
 - A. Location of meetings
 - B. Waiver of Notice
 - C. Director's assent presumed
 - D. Order of business/conduct of meetings
 - ix. Quorum/Voting
 - x. Meetings by conference telephone
 - xi. Unanimous written consent
 - xii. Electronic communications/actions
 - xiii. Compensation (if any)
 - d. Committees
 - i. Board Committees
 - ii. Advisory Committees
 - iii. Address authority of each Committee
 - e. Officers
 - i. Chair/Vice-Chair
 - ii. President/CEO/Senior Executive Officer
 - iii. Secretary
 - iv. Treasurer
 - v. Other officers
 - vi. Address authority of each officer
 - vii. Removal/Resignation/Vacancies
 - f. Indemnification
 - i. Mandatory
 - ii. Permissive
 - iii. Advancement of Expenses
 - iv. D&O Insurance
 - g. Miscellaneous Matters
 - i. Receipt and disbursement of funds
 - ii. Corporate records and reports and inspection rights
 - iii. Representation of shares of other corporations
 - h. Amendments to Bylaws