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Webinar

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Presented by Don Kramer, Esq., Editor of *Nonprofit Issues* in partnership with the Pennsylvania Association of Nonprofit Organizations.

What past participants say about this webinar:

* Excellent, even for those who are Bylaws-savvy.

Featured Speaker



Don Kramer
Editor & Publisher
Nonprofit Issues

Tuesday, May 23
1:30-3:00 PM ET

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- * I got what I needed to proceed with change and revisions.
- * Well paced. Excellent speaker and materials.
- * The sample bylaws are SO helpful.
- * I have been involved in revising our bylaws for the last year. I wish I had [this webinar] a year ago!
- * Exactly what I hoped, with added emphasis of keeping it simple, non-detailed and 'timeless.'

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**Bylaws: The "Constitution" of Nonprofits - The Art and Science of Making Them Work
Tuesday, May 23, 2017
1:30-3:00 PM ET**

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Bylaws: The “Constitution” of Nonprofits

The Art Science of Making Them Work

Webinar

May 23, 2017

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READY REFERENCE PAGE

NO. 87
FOR YOUR FILE

Articles of Incorporation Establish Basic Form of Nonprofit Corporations

*State laws and IRS require certain provisions;
including additional terms is primarily a matter of style*

Articles of Incorporation, sometimes called a Certificate of Incorporation or Articles of Organization, are the fundamental governing document of a nonprofit corporation. They are filed with the appropriate state office to create the corporation.

The Articles normally include only the most basic provisions to meet the requirements of state law and the requirements established by the Internal Revenue Service to qualify for tax-exempt status, particularly the charitable exemption under Section 501(c)(3). The bylaws of the corporation usually contain significantly more provisions for ordinary governance of the corporation.

The Articles of Incorporation have primacy in the hierarchy of governing documents. Provisions of the Articles control over contrary provisions in the bylaws, while the bylaws control over corporate resolutions.

Articles do not have precise contours and the choice to include more than the minimally required provisions is largely a matter of the drafter's style. In general, we avoid adding provisions to the Articles that are not absolutely required when they can be covered just as well in the bylaws.

The Articles may be more difficult to amend than the bylaws, especially if there are members of the corporation (who are roughly analogous to shareholders of a business corporation) who have to approve the amendments. It also costs money to file the amendments with the state, while amendments to bylaws do not require such an expenditure. Ideally, the Articles will be written with sufficient generalization that they won't need to be reviewed or amended for many years.

What follows is an "annotated" set of Articles that we have used in Pennsylvania, with italicized comments on various paragraphs that may help illuminate some of the basic issues and choices. (We will provide a similarly annotated set of bylaws in future issues.) They are not provided as legal advice and should not be used without speaking with competent professional advisers.

Most of the items are "boilerplate" but the material in [brackets] must be tailored to the particular corporation. This version is intended for a public charity exempt under Section 501(c)(3), but it can easily be modified to fit the needs of other types of nonprofits.

* * * * *

ARTICLES OF INCORPORATION

[NAME OF CORPORATION]

In accordance with the requirements of 15 Pa. C.S. § 5306 (relating to articles of incorporation), the under-signed, desiring to incorporate a Pennsylvania nonprofit corporation, hereby certifies that:

1. The name of the corporation is:

The name is a marketing tool that can obviously be important to the success of the organization. It is not always sufficient that the name can be registered in the home state if the organization anticipates a

multi-state or national operation. Incorporators may want to do a broader name search if they expect to operate beyond the local level. They don't want to be in a situation where they can't use their own name in another locality.

In many states, there are additional limitations on words that cannot be used in corporate names without specific governmental approval, such as "college" or "hospital" or other words indicating governmental affiliation or professional credentials.

2. The address, including street and number, of its initial registered office in this Commonwealth is:

A Post Office box is not a sufficient address in Pennsylvania.

3. The corporation is incorporated under Pennsylvania's Nonprofit Corporation Law of 1988, as amended, exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States Internal Revenue Law (hereinafter referred to as the "Code"), including in particular to [...]

This is a purpose clause for a Section 501(c)(3) charity that may never need to be amended. The corporation is incorporated exclusively for 501(c)(3) purposes within the meaning of the applicable statute. Under both Pennsylvania and IRS requirements, the purpose clause could stop right there. We add a "particular" purpose, however, to indicate what the organization actually intends to do. Developing the proper language to describe the particular purpose requires thoughtful attention, both to be sure that it fits within range of activities the IRS deems to be charitable and to provide flexibility for modification and future growth. ([See Ready Reference Page: "IRS Has Generally Expansive View of 'Charitable'."](#))

But so long as the corporation continues to pursue the particular purpose, it may never be necessary -- although it may be appropriate -- to amend the Articles if the organization adds one or more new charitable purposes to its activities.

Without the language about the corporation being formed "exclusively" for 501(c)(3) purposes, the IRS will not recognize a 501(c)(3) exemption.

If the organization intends to seek IRS exemption as a school or college, it must include in the Articles the provisions prohibiting racial discrimination set out in Rev. Proc. 75-50.

4. The corporation does not contemplate pecuniary gain or profit, incidental or otherwise. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in paragraph 3 hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code [or (c) by a corporation which is not a private foundation pursuant to Section 509 (a)(3).]

These provisions restate requirements of Section 501(c)(3), including no private inurement, no electioneering, and no substantial lobbying. ([See Ready Reference Pages on private benefit and on lobby-](#)

[ing and electioneering.](#)) They also include an additional specific prohibition on any activity that is not permitted for a 501(c)(3) organization.

The paragraph notes specifically that the corporation may pay reasonable compensation for services rendered and may make payments and, importantly, distributions in furtherance of its charitable purposes. While probably unnecessary since the nonprofit corporation law and the Tax Code both allow such activity, it is comforting to those responsible to see that they have these powers.

The last phrase about Section 509(a)(3) should be included if the organization intends to seek public charity status as a supporting organization. ([See Ready Reference Page: "Supporting Organizations Are Public Charities."](#))

5. The term of its existence is perpetual.

There is usually no question that the corporation will have unlimited existence, although occasionally a special purpose organization may include a termination date.

6. The corporation is organized on a nonstock basis.

Although Pennsylvania law permits stock nonprofits, virtually every nonprofit is a nonstock corporation.

7. The corporation shall have [no] members [whose rights and obligations shall be spelled out in the Bylaws].

This paragraph is the most important in determining the basic structure of the organization and whether or not it will have members who have rights analogous to shareholders of a business corporation. Unless the members will be fully involved in the activities of the organization, it should probably not be created as a membership corporation.

In some cases, a sole member corporation can serve the interests of the nonprofit entrepreneurial founder of the organization or the "parent" corporation in a "system" of agencies. ([See Ready Reference Page: "The Key Question: Whose Organization Is It?"](#)) If it is a membership corporation, the criteria and selection process for membership should generally be spelled out in the bylaws, not in the Articles, since the rules are subject to frequent change.

Under Pennsylvania law, a nonprofit corporation is presumed to be a membership corporation unless the Articles provide otherwise. If there are no persons who function as members, however, the corporation is run by the Board as if it were a non-member corporation.

8. The name and address, including street and number, of each incorporator is:

Under Pennsylvania law, only individuals and corporations may serve as incorporators of a nonprofit corporation. Trusts, partnerships, unincorporated associations and other entities are not permitted to serve.

Many attorneys will use either a corporation service company or a lawyer or secretary in the office to serve as the incorporator of the organization. While anyone can serve, we like to see the actual movers and shakers behind the organization serve as the incorporators. When people look back on a successful corporation 20, 50 or 100 years later, it is always nice to see who was actually involved at the start.

9. Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all the remaining assets of the corporation exclusively for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code or to one or more governmental units described in Section 170(c)(1) of the Code as the Board of Directors shall determine, to be used exclusively for charitable purposes. Any

such assets not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for charitable purposes to one or more such organizations, as said Court shall determine. Under no circumstances shall any assets be distributed, upon dissolution, upon sale of substantially all of the assets, or otherwise, to directors, officers, or employees of the corporation.

This type of dissolution provision is also required by the IRS for exemption under Section 501(c)(3). Rev. Proc 82-2 spells out state laws which impose the limitation without reference in the Articles, but Pennsylvania is not one of them. Notice that the provision does not say that the final distribution will be made to another 501(c)(3) organization, but follows the IRS rule that the assets must be distributed for a 501(c)(3) purpose. In all probability a final distribution will be made to another charitable organization, but this provision gives the Board a little more latitude. It also allows the final distribution to a governmental agency which is permitted by the IRS.

In some situations, where the new corporation is affiliated with another charity, the dissolution clause may provide that the remaining net assets will go to the affiliated charity, so long as it is exempt under Section 501(c)(3) at the time.

Since not all nonprofit corporations are charitable and their net assets on dissolution do not have to be used for charitable purposes, the dissolution provision is not normally included on the printed form of articles that a state makes available to the public.

The last sentence of this paragraph, although not absolutely required, is added to comply with the language of Pennsylvania's Act 55, which establishes criteria for charitable exemption under state law. ([See Ready Reference Page: Act 55 Defines 'Charity' Eligible for Exemption.](#))

IN TESTIMONY WHEREOF, the incorporator[s] [has][have] caused these Articles of Incorporation to be executed this ____ day of _____, 200__.

There are a number of provisions not included here, although they may be required in some states. There are no limitations of Directors' liability and no indemnification provisions here because we include them in the bylaws of the corporation. Some states require such provisions in the Articles, and some lawyers include them even where not required to give them more status. Since Legislatures have a tendency to revise their statutes every once in a while, we like to see the provisions in the bylaws where they can more easily be modified if necessary and more frequently read by those concerned.

Left out by conscious choice are the provisions the IRS requires in the articles of incorporation of private foundations which prohibit self-dealing, excess business holdings, jeopardizing investments, or taxable expenditures, and require sufficient qualifying distributions. ([See Ready Reference Pages on Private Foundations.](#)) Under a Pennsylvania statute (and some other state laws) these provisions are deemed to be part of the Articles of Incorporation of a private foundation and are therefore never actually required in the Articles.

With most organizations it is clear from the outset whether they will be classified as a public charity or a private foundation. If these provisions are included in the Articles of a public charity with the proviso that they will be operative only if the organization is deemed a private foundation, they are superfluous and cause confusion if anyone actually reads the Articles. Worse yet, we have seen them included in the Articles of a public charity without the proviso that they apply only if the corporation is deemed a private foundation. In that case, they impose significant – and totally unnecessary -- limitations on the operations of the organization. It is far better, in our view, to omit the provisions entirely where not required.



Bylaws Function as “Constitution” Of Nonprofit Corporations

*Regulation of corporate governance demands
as much care and thought as the Constitution of a country*

Bylaws of a nonprofit Corporation should not simply be taken “off the shelf” and adopted by the organization. The Articles of Incorporation ([See Ready Reference Page: “Articles of Incorporation Establish Basic Form for Nonprofit Corporations”](#)) and the Bylaws essentially form the “Constitution” of the organization and establish the rules for governance. Like all Constitutions, they should be considered carefully.

In most states, the state nonprofit corporation law provides minimum standards and default procedures if the Articles and Bylaws are silent on many issues. But the Bylaws can be used to spell out specific provisions and are particularly important in establishing the rules about who controls the organization. ([See Ready Reference Page: “The Key Question: Whose Organization Is It?”](#))

Unlike a business corporation, in which, in very simplistic terms, the one who buys the most stock controls the organization, the Bylaws of a nonprofit corporation spell out the essential relationships of the participants. They are the power document of the organization.

Different attorneys have different philosophies on drafting Bylaws. Some include virtually all of the provisions of the statute in the Bylaws so that the users have virtually every reference in front of them. We tend to use a leaner form that spells out the important procedural issues the organization is most likely to look for when there are questions about how to proceed with a certain situation. But we don’t include everything in the statute.

We try to avoid aspirational terminology. A provision that “the Directors should consider ...” is essentially meaningless if they are not required to consider We try to avoid inconsistencies, which often occur when people use another organization’s form and make modifications that are not applied consistently throughout the document. We avoid passive tense. When things are to be done, we like to state who will be responsible for doing them.

We try to avoid ambiguities. In most cases, Directors will not be looking at the Bylaws. But they will look when there is a controversy. Some lawyers argue that ambiguity creates flexibility. We believe that ambiguity only gives the powerful more power to manipulate. Clear rules reduce or eliminate fights over procedure and encourage discussion of real issues. Bylaws should be clear enough to reduce the likelihood of litigation; they should not provide the basis for litigation.

What follows is the first in a series of Ready Reference Pages explaining the provisions of Bylaws for a fictitious Pennsylvania nonprofit corporation. They govern a complex structure in which the founder anticipates a large public membership. But the founder retains permanent equality in governance, essentially a veto power over a potential runaway public that joins the organization. They are “annotated” to explain the rationale behind both the complex provisions and some of the “boilerplate.”

We don’t recommend that anyone adopt these Bylaws. They are presented to show how issues can be dealt with. The Bylaws have been modified from a set used in a law school exam asking students to spot

some major reasons why they didn't provide the governance intended. Hopefully, the errors have been removed.

LIVELY ORDER OF SOCIAL THEORISTS ("LOST")

Bylaws

ARTICLE I – PURPOSES

1.1 The purposes of the Corporation are exclusively charitable as set forth in the Articles of Incorporation. In pursuing such purposes, the Corporation shall not act so as to impair its eligibility for exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

This is a simple purpose statement that never has to be revised as long as the organization remains a charity. We see a lot of Bylaws with extensive purpose clauses that become outmoded over time and are not revised even when organizations change their mission statement and activities. We see no point in requiring revision of Bylaws to avoid potential legal issues stemming from a conflict between the Articles of Incorporation, the Bylaws, and actual activities.

ARTICLE II – OFFICES

2.1 Registered Office. The registered office of the Corporation shall be at such location in Pennsylvania as the Directors may from time to time determine.

2.2 Other Offices. The Corporation may also have offices at such other places as the Directors may select and the business of the Corporation shall require.

This Article gives the Corporation total flexibility within the legal requirement to have an office within the state, and avoids the necessity to amend Bylaws when an office is moved.

ARTICLE III – MEMBERS

Members of a nonprofit Corporation are generally analogous to shareholders of a business corporation. They are the ultimate authority within the organization. They usually have the power to select and remove Directors and to approve any fundamental transaction such as merger or sale of substantially all of the assets. Their approval is usually required to amend the Articles of Incorporation and at least some provisions of the Bylaws. Once a membership has been established it may be difficult to eliminate, and it may be impossible without the consent of the Members.

Most charities are governed only by self-perpetuating Boards, in which case this Article of the Bylaws merely says that the Corporation shall have no Members and includes the section on "honorary" Members in 3.11 below.

3.1 Number and Dues. The Corporation shall have two Classes of Members consisting of the Initial Incorporator Members and Public Members. Dues, if any, shall be determined for Initial Incorporator Members by the Directors selected by Initial Incorporator Members, and for Public Members by the entire Board of Directors.

The Membership Article illustrates both the flexibility and the subtleties of the governance structure. This Corporation provides for essentially equal power for the founder (the Initial Incorporator) and the public. It is not a structure we would necessarily recommend. It confuses the answer to the question: Whose Organization Is It? ([See Ready Reference Page: "The Key Question: Whose Organization Is It?"](#))

This provision establishes the two separate Classes of Members, and provides that the dues, if any, for Initial Incorporator Members shall be established only by the Directors selected by the Initial Incorporator Members. Without that control, unless the dues are required to be the same for each Class, the dues for Initial Incorporator Members could be set prohibitively high by the Public Members, or by the Directors selected by Public Members, so that certain Initial Incorporator Members might not be able to participate.

3.2 Requirements for Membership. The Initial Incorporator Members shall be the Initial Incorporator and any individuals she may designate. Those persons who pay annual dues and support the purposes of the Corporation shall be eligible to become Public Members, provided that the Directors may establish any additional criteria for Membership. No person shall be admitted as a Public Member without the approval of the Directors or their designee. Such admission may be denied for any reason deemed sufficient by the Directors even though the applicant may meet the stated criteria for Membership.

The Initial Incorporator (the Founder) has the right to decide whether or not to have additional individuals serve with her as Initial Incorporator Members. If not, she can exercise all of the Membership powers herself. If so, she has the power to appoint any number of individuals she wants to serve (presumably along with her) as Initial Incorporator Members of the Corporation. (We use the term Initial Incorporator because one can look at the original Articles of Incorporation to determine what this person is without controversy. If the Founder was not actually the initial incorporator, we may have to use some other term which is spelled out in the original incorporator's organizational minutes for the corporation.)

The Initial Incorporator's power ceases after she dies, withdraws, or ceases to appoint Members. When the last of her appointees ceases to serve, the Public Members may amend the Bylaws to eliminate this provision (See Article X of the Bylaws), but until then (a little like Albert Barnes at the Barnes Foundation) she continues to effect the operation of the organization.

She has the right to serve for life if she so desires (see the Expulsion provision in Section 3.10 below).

The Membership criteria for Public Members are vague and should be embellished by the entire Board, including the Initial Incorporator Directors. Using the term "person," in contrast to the term "individuals" for Initial Incorporator members, allows organizations to be members as well as individuals, unless the Board adopts limiting qualifications.

The last two sentences are key to preventing a hostile take-over by a coordinated effort of new Members. If anyone who pays dues can become a Member without question, an organization can face the kind of fight over direction and tactics that faced the Sierra Club recently. The last sentence also makes clear that this is a selective organization, to which not everyone is necessarily welcome. The organization may ultimately be determined to be a public accommodation under applicable state law, in which case discrimination may not be permitted against a protected class, but the organization could prevent admission of those who do not share its philosophy.

The worst provision for membership criteria we have ever seen was contained in a set of model Bylaws published many years ago by the federal government for a community association. It said the Members were "anyone who lived or worked in the area bounded by" Since no admission procedure was required, there was no way to know who was a Member. An organization adopting the provision would essentially have been unable to operate.

3.3 Regular Meetings. Meetings shall be held as determined by the Directors.

Since the Directors are in charge of the day-to-day operations of the organization, they determine whether there is a need for regular meetings of the Members. Members can call a special meeting if they don't like what the Directors are doing. The provision could just as legitimately have the Members determine when they should meet.

3.4 Annual Meetings. The annual meeting of the Members shall be held on the second Monday of January of each year at the principal office of the Corporation or upon ten (10) days notice to the Members at such other time or place as the Directors shall determine.

The date of the annual meeting is arbitrary, but is often picked to be several months after the close of the fiscal year so that a final financial report for the prior year is available to the Members.

3.5 Special Meetings. Special meetings of the entire Membership may be called by the Initial Incorporator Member, the President, or the Board, and shall be called at the written request of 10% of the Membership. Special meetings of any Membership Class individually may be called by the President, the Board or at the written request of 10% of the Members of such Membership Class. At least five (5) days' written notice stating the time, place and purpose of any special meeting shall be given to the Members entitled to participate.

This provision gives the leadership of the organization the power to call a special meeting of the Members if they think it is necessary. Pennsylvania law requires that a special meeting may be called by 10% of the Members. Bylaws may permit a smaller number to call a meeting if the organizers want to give such power to an even smaller minority.

3.6 Quorum. Those Members who attend a duly convened meeting of Members shall constitute a quorum for the transaction of business at the meeting [provided that no business may be conducted at the meeting that was not set forth in the notice of the meeting]. The acts of a majority of those Members of each Class present at the meeting in person or by proxy, voting by Class, shall be the acts of the Members.

Quorum requirements are tricky for Membership organizations, especially when there are lots of Members widely scattered. Even with proxy voting permitted, it may be totally unrealistic to expect a majority of Members ever to participate in a meeting and a smaller percentage quorum may be most appropriate. The least rigorous, and most risky, is the whoever-shows-up standard utilized here. The danger of a totally runaway meeting can be ameliorated by removing the brackets and adding the proviso language, but even that may not prevent an unanticipated take-over vote for Directors unless it is done by mail ballot without a meeting.

The important part of this provision is the requirement for approval by a majority vote of those present in each Class of Members in order to take action. This essentially gives the Founder a veto power over the public.

3.7 Voting. Each Member shall be entitled to one vote, in person, by ballot, by mail or by proxy in accord with Section 3.8. Unless otherwise required by these Bylaws, the manner of voting on any matter, including changes in the Articles of Incorporation or Bylaws, may be by voice vote, show of hands, or by ballot, as determined by the Members present, or by mail if determined by the Board of Directors and a ballot is sent with notice of the question to be voted upon. At any time that there shall be a sole Member of any Class of Members of the Corporation, the sole Member shall act by written statement of the action, which shall be filed with the Secretary.

This provision spells out flexibility in voting procedures, including the permission to vote on specific questions, such as election of Directors, by mail ballot. Members present also have the right to call for a secret vote on any issue. The last sentence is carried over from the form used for organizations expected to be controlled by a sole Member or a relatively small group and is probably superfluous (although not wrong) here. A sole Member need not hold a "meeting" to take action.

3.8 Voting by Proxy. Any absent Member eligible to vote at any meeting of the Members may be represented as present and may vote at such meeting by a proxy authorized in writing by the Member or by his or her duly authorized attorney in fact. Such written authorization must specify the matter with respect to which the proxy is granted and the person entitled to vote, must be signed and dated by the Member granting the proxy, and must be filed with the Secretary of the Corporation. A proxy shall be revocable at will but the revocation shall not be effective until notice of the revocation has been given to the Secretary of the Corporation. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the Secretary of the Corporation.

Proxy voting possibilities vary by state law. Pennsylvania permits proxy voting only if it is included in the Bylaws. It obviously changes the character of an organization if Members can participate by proxy rather than personal attendance.

3.9 Unanimous Consent of Members in Lieu of a Meeting. Any action which may be taken at a meeting of Members (or any Class of Members) may be taken without a meeting if a consent or consents in writing setting forth the action to be taken shall be signed by all of the Members of the Membership Class entitled to vote thereon and shall be filed with the Secretary of the Corporation.

This is another provision that is probably superfluous for the Public Members of this organization, since it is unrealistic to expect to obtain a unanimous written consent from a large public Membership. But it would likely work for the Initial Incorporator Members and would be appropriate for any organization with a single Class of Members which is relatively small in number. The provision is not required under Pennsylvania law because the authority exists in the statute unless it is prohibited in the Bylaws, but is included to make the option clear to the people running the organization who have access to the Bylaws and may not have access to the statute. Some states may permit action by written consent of fewer than all of the Members.

3.10 Expulsion from Membership. The Directors may suspend privileges of or expel any Member for failure to pay Dues when required. In addition, any Member may be expelled from Membership, except the Initial Incorporator who may not be expelled, with or without the assignment of any cause, upon a majority vote of all Directors at a duly convened meeting, provided that written notice of the intention to expel and reasons therefor have been provided in the notice of the meeting. No Member shall be expelled without having the opportunity to be heard at such meeting, but no formal hearing procedure need be followed.

Pennsylvania law requires some sort of procedure before a Member may be expelled, except for failure to pay required dues. These Bylaws provide for an informal procedure, but only after notice and an opportunity for the Member to be heard. This procedure is before the Board and not the full membership because it is generally impractical to require membership approval with a large membership. This provision allows the Directors of each Class to participate in the removal of Members of the other Class. The Initial Incorporator would have more protection if only Initial Incorporator Members could remove Initial Incorporator Members and it would be more typical to provide that removal votes be taken separately within each Class of membership.

As the “Constitution” of the organization, we think it is important to provide at least a minimum of “due process,” not only to meet the requirements of the statute, but also to assure that the organization has an opportunity to hear the other side of the story if the Member wishes and to increase the likelihood that a court asked to review the expulsion will not interfere with the internal operations of the organization. Note that the Initial Incorporator may never be removed, which provides her with an additional level of protection.

3.11 Honorary Titles. The Directors may create such additional Classes of “Membership,” such as contributing members or honorary members, as they see fit, but such persons shall not have the right of Members under the Pennsylvania Nonprofit Corporation Law of 1988, as amended (the “Act”).

This provision is important in the Bylaws of both membership corporations and non-member self-perpetuating board organizations to make clear that everyone called a “member” does not have the rights of a Member under the nonprofit corporation law. Failing to make this clear, substantially increases the likelihood of litigation.

ARTICLE IV – DIRECTORS

4.1 Powers. The business and affairs of the Corporation shall be managed by the Board of Directors, except as other-wise required by the Act, these Bylaws or a resolution duly adopted by the Board.

This provision makes clear the obvious, that the Board is responsible for the affairs of the Corporation, but permits delegation of authority where the Board thinks it to be appropriate and where it can do so without violating its fiduciary duties.

4.2 Qualifications of Directors. Each Director shall be an individual of at least 18 years of age, who need not be a resident of Pennsylvania.

This provision used to provide that a Director must be a natural person of full age, but clients regularly asked what a natural person was and what full age was. It was rewritten in English.

4.3 Number, Election and Term of Directors. The Board of Directors shall consist of not fewer than four (4) nor more than sixteen (16) persons as determined by the Directors. An equal number of Directors shall be selected by the Initial Incorporator Members (“Initial Incorporator Directors”) and by the Public Members (“Public Directors”). The Initial Incorporator Directors and the Public Directors shall each be considered a separate Class of Directors. The Directors shall divide the United States into geographic regions and Public Members in each region shall elect one Public Director. Directors of each Class shall be divided equally between men and women pursuant to rules established by the Directors. Directors of each Class shall be chosen annually by ballot of the Members of each Class voting separately at the annual meeting of the Members and shall serve for terms of three years and until their successors are elected and qualified. As nearly as possible, an equal number of terms shall expire each year.

The selection procedures are the heart of the governance responsibility and Pennsylvania law offers almost unlimited opportunity for creativity to assure that crucial constituencies are represented. Here, the Initial Incorporator Member or Members select their own representatives on the Board. The Public Directors are elected by the Public Members within their districts. The districts are determined by all of the Directors, not just the Public Directors. The Directors will have a difficult time assuring that each Class is divided equally between men and women, but are required to make rules to assure that result.

With a large public membership, it may be more appropriate to have a significantly larger num-

ber of Public Directors. The Initial Incorporator would still be protected because of the quorum and voting requirements.

The Bylaws provide for three-year staggered terms to provide an additional level of continuity. There is no limitation on the number of terms a person may serve. ([See Ready Reference Page: "Term Limits Are For Cowards"](#)) If term limits are included, it is important to determine how partial terms will be counted toward the limit.

4.4 Removal. Any Public Director may be removed from office, with or without the assignment of any cause, by a vote of a majority of the other Directors, or by a majority of Members present, at a duly convened meeting of the Board or Members, as the case may be, provided that written notice of the intention to consider removal of such Director has been included in the notice of the meeting. No Director shall be removed without having the opportunity to be heard at such meeting, but no formal hearing procedure need be followed. Any Initial Incorporator Director, except the Initial Incorporator who may not be removed, may be removed at any time, with or without the assignment of any cause, by the Initial Incorporator or a majority of the other Initial Incorporator Directors.

This provision sets different provisions for removal of Directors in each Class. The Public Directors may be removed either by the Public Members or by a majority of the other Directors, including the Initial Incorporator Directors, after the informal hearing procedure. The Initial Incorporator retains the right to remove any of the Initial Incorporator Directors, but the other Initial Incorporator Directors may remove others in their Class. The Initial Incorporator herself may never be removed.

Removal provisions are critical, both to assuring control in the proper persons, and to setting procedures that can avoid needless litigation. ([See Nonprofit Issues, February 16, 2006, and February 1, 2005.](#)) The same rationale that applied to minimum due process for expulsion of Members in Section 3.10 applies to the removal of Directors.

4.5 Quorum. A majority of all Directors, including at least one Director from each Class, shall constitute a quorum for the transaction of business at any meeting, and the acts of a majority of the Directors of each Class of Directors present at a duly convened meeting at which a quorum is present shall be the acts of the Board, unless a greater number is required by the Act or these Bylaws.

Here is another protection for the Initial Incorporator and a provision to assure some equality of the two Classes. The Board cannot act without at least one member of each Class in attendance. (Requiring only a majority of the whole Board might not protect either Class if there were a vacancy in one Class of Directors and all the members of the other Class would constitute a majority of the whole.) In addition, at least one Director of each Class must approve the action. Requirements like this can lead to stalemate if one Class of Directors simply stays away so that nothing can be done. Where that appears to be a realistic possibility, we have added language that lack of representation of a Class will not defeat a quorum if a meeting is adjourned and re-convened after a reasonable notice period.

Note that only a majority vote is required unless a greater number is required by the state law or by the Bylaws. There may be situations in which a super-majority is required by statute, or is appropriate to require in the Bylaws. It may be particularly true for removal provisions, or for provisions to amend the Articles or Bylaws. In view of the special protections for the Founder in these Bylaws, no super-majority provisions have been included.

Be careful how you write voting provisions. There is a difference between a majority of those present, a majority of those voting, and a majority of those in office. The term “majority vote” alone may not be clear.

Also note that the vote must be taken at a meeting at which a quorum is present. Under general corporate law, a quorum of the Members may be lost and a meeting of the membership may continue, but if a quorum is lost at the Board, no further action may be taken.

4.6 Vote. Every Director shall be entitled to one (1) vote.

One-Director-one-vote is the most usual allocation of voting power, but Pennsylvania law allows fractional or multiple voting rights, which can be used solve a number of representational problems in representing necessary constituencies.

4.7 Unanimous Consent of Directors in Lieu of Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the Directors in office and shall be filed with the Secretary of the Corporation.

This provision is another one not strictly required because unanimous written consent is permitted unless restricted in the Bylaws. Pennsylvania law requires unanimous written consent to take action, although a few states may permit action with less than unanimous consent. The general rule of corporate law and these Bylaws do not permit proxy voting by Directors because they are fiduciaries and cannot delegate their discretionary authority.

4.8 Annual Meeting. The annual meeting of the Board shall be held promptly after the annual meeting of the Members.

The principal function of the “annual” meeting is to select officers for the ensuing year, and it is appropriate to include the newly selected Directors in that process.

4.9 Regular Meetings. Regular meetings of the Board shall be held as determined by the Board.

4.10 Special Meetings. Special meetings of the Board may be called by the President or by one-third of the Board at any time. At least five (5) days notice stating the time, place and purpose of any special meeting shall be given to the Members of the Board.

This provision could be written to allow the Initial Incorporator, if serving as an Initial Incorporator Director, to call a special meeting, but since one-third of the Directors can call a meeting, if she has her votes lined up, she effectively has the power. It may also be appropriate to allow a smaller percentage to call a special meeting.

4.11 Teleconference Meetings. Any Director may participate in a meeting of the Board or any committee thereof by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other.

This provision is not required since it is permitted by statute, but is included to make clear that it is possible so long as all persons can hear each other. We include a similar provision in the Membership provisions when there will be only a few Members, but it would not be practical in this organization. Pennsylvania has not made clear whether a “meeting” by way of an Internet chat room where all could post questions and answers before a vote is permissible.

4.12 Evaluation. The Directors shall at least every other year evaluate their own performance and the composition of the Board in terms of the skills, experience and contributions of its Members to

identify ways it may improve its effectiveness by selection of new Directors and otherwise.

We acquired this provision from a client who did an annual Board self-assessment to assure that the organization had committed and effective Board leadership. ([See Ready Reference Page: "Boards Should Assess Their Own Performance."](#)) It is an excellent requirement.

ARTICLE V – OFFICERS

5.1 Positions, Election, Term. The officers of the Corporation shall include a President, one or more Vice-Presidents, a Secretary and a Treasurer, who shall be elected by the Directors from among the Directors at the annual meeting of Directors and shall serve for a term of one year and until their successors are elected and qualified. The Directors may elect such other officers or assistant officers, who need not be Members of the Board, as they deem appropriate from time to time.

Pennsylvania law requires persons to function as President, Secretary and Treasurer, and permits the Treasurer to be a Corporation. The positions may have different names so long as they have the proper functions. The head of the organization may be called Chair, Clerk, Grand Master, or anything else the organization deems appropriate.

This provision requires that the named officers be Directors, but allows other officers, such as an assistant secretary, to be staff. Note that all of the Directors have the right to vote on all officers, despite the classification of Directors for other purposes. Additional Vice-Presidents may be utilized to supervise specific activities of an organization, or to provide a series of stepping stones to the Presidency.

There is no requirement in this set of Bylaws that the officers be split evenly between Public Directors and Initial Incorporators. In some organizations where representation of various groups is essential, such requirements may exist.

5.2 Consecutive Terms. Officers may be elected for consecutive terms.

This provision is not really necessary, since an officer may be re-elected if there is no prohibition in the Bylaws. It serves, however, as a place-holder in the form in case the organization wants to limit the time one can serve in any office. A tradition of changing the President annually can cause constant disruption for the chief executive officer; excessive length of service as President can discourage the development of Board leadership.

5.3 Duties. The duties of the officers shall include the following:

(a) The President shall preside at all meetings of the Members, Directors and Executive Committee; shall generally supervise the business of the Corporation; and shall execute documents on behalf of the Corporation. The President shall be an ex-officio Member of every Corporation committee.

(b) A Vice President shall have such powers and perform such duties as the Board of Directors may prescribe or as the President may delegate.

(c) The Secretary shall assure that minutes are prepared and maintained for all meetings of the Board and the Members; shall assure that appropriate notice is given for all meetings of the Board and Members; and shall perform such other duties as may be prescribed by the Board or by the President.

(d) The Treasurer shall assure that accurate accounts of the receipts and disbursements of the Corporation are maintained; shall cause financial reports to be provided to the Board and

the Members as requested, but not less than once a year; and shall perform such other duties as may be prescribed by the Board or by the President.

This form uses the normal titles for officers. Some larger organizations have a Chair of the Board and a staff person who serves as President.

These duties have been shortened and made very general. Note that the Secretary and Treasurer are not personally required to take minutes or prepare accounts. They are required to assure that the functions are carried out, often most effectively by staff. The provision avoids the use of personal pronouns. We find it offensive to still see Bylaws that the President shall preside at meetings and "he" shall do this and "he" shall do that.

5.4 Removal of Officers. Any officer or agent may be removed by the Board whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.

Less due process is required for removal of an officer since presumably the Directors have been able to evaluate the officer's conduct at close range.

ARTICLE VI – COMMITTEES

6.1 Establishment. The Board may establish one or more committees to consist of one or more Directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise any of the powers and authority of the Board, except that no committee shall have any power or authority as to the following:

- (a) the filling of vacancies on the Board;
- (b) the adoption, amendment or repeal of the Bylaws;
- (c) the amendment or repeal of any resolution of the Board; or
- (d) action on matters committed by the Bylaws or by resolution of the Board to another committee of the Board.

We tend to avoid a long list of committees and their functions, since the Board can establish committees by resolution and modify their functions as it deems appropriate, without having to go to through the process of amending the Bylaws. The most frequent exception to that general rule is the specification of an Executive Committee and its composition.

The list of prohibitions is derived from the state statute.

If any person who is not a Director is appointed to any committee of the Board, such non-Director shall have no right to vote on any question that would create a binding obligation of the Corporation.

We have added this provision to deal with the situation which occurs frequently in which persons not on the Board are appointed to Board committees (contrary to the first sentence of the Section). Pennsylvania law permits only committees of Directors to act on behalf of the organization (except for delegation of investment powers under the Prudent Investor Law), and this provision clarifies that while outsiders may talk and recommend to a Board committee, they may not take action to bind the Corporation.

6.2 Appointment to Committees. Unless otherwise determined by the Board or set out in these Bylaws, the President shall appoint Members of all committees.

This is a power issue. Some Bylaws state that the President may appoint all committee Members; some say the President with the approval of the Board; some say the Board will appoint. This provision recognizes the practical reality that the President initiates, but gives the Board Members power to overrule if they wish to do so.

6.3 Creation and Composition of Advisory Boards. The Corporation may, in its discretion, establish Advisory Boards that may include persons who are not Directors. Such Advisory Boards shall have no power to bind the Corporation and shall have only such other responsibilities and duties as delegated to them by the Board or the President.

This clarifies that the organization may create advisory committees without power to bind the Corporation. Such groups can play an extremely valuable role, from increasing the credibility of the letterhead to providing specific advice or specific services.

ARTICLE VII – RESIGNATIONS AND VACANCIES

7.1 Resignations. Any Member, Director or officer may resign such position at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then from that date. The acceptance of the resignation by the Board shall not be required to make it effective.

The keys to this paragraph are that a resignation may not be effective before it is received and need not be accepted to be effective.

7.2 Filling Vacancies.

(a) If a vacancy exists among the positions available for Public Directors, by virtue of a desire to fill unfilled positions, or by reason of death, resignation, disqualification or otherwise, the Public Directors in office may choose a person or persons who may serve as a Public Director for the remainder of the applicable term. If a vacancy exists among the positions available for Initial Incorporator Directors, by virtue of a desire to fill unfilled positions, or by reason of death, resignation, disqualification or otherwise, the Initial Incorporator Directors in office may choose a person or persons who may serve as an Initial Incorporator Director for the remainder of the applicable term.

Vacancies among Directors should be filled, as nearly as possible, in the same way the original Director was selected. In this case, it may not be practical to hold a vote of all of the Public Members, so the next best choice is to have the other Public Directors make the selection. In neither case in this organization, does one Class of Members have anything to say about the selection of representation for the other Class.

(b) If the position of any officer becomes vacant, by an increase in the number of officers, or by reason of death, resignation, disqualification or otherwise, the Directors may choose a person or persons who shall hold office for the remaining term.

Since the officers are selected by all of the Directors, all of the Directors determine any replacement.

ARTICLE VIII – MEETINGS AND NOTICE

8.1 Place of Meetings. Meetings may be held at such place within or without Pennsylvania as the Board may from time to time determine.

8.2 Notice. Whenever written notice is required to be given to any person, it may be given to such person either personally or by sending a copy thereof by first class or express mail, postage prepaid, or courier service, charges prepaid, or by facsimile transmission or electronic mail, to that person's ad-

dress appearing on the books of the Corporation, or in the case of Directors, supplied by that person to the Corporation for the purpose of notice. If the notice is sent by mail or courier service, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or deposited with a courier service for delivery to such person. In the case of facsimile or electronic mail it shall be deemed to have been given when dispatched. Such notice shall specify the place, day and hour of the meeting and any other information which may be required by the Act or these Bylaws, including, in the case of a meeting of Members, the general nature of the business to be transacted.

This is largely a statement of the law, with the elimination notice by telegram (which no longer exists) and the addition of electronic mail and fax.

8.3 Waiver of Notice. Any required notice may be waived by the written consent of the person entitled to such notice either before or after the time for giving of notice, and attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

8.4 Electronic Mail. Any action which may be done, or is required to be done, in writing under these Bylaws or the Act, including agreement to a unanimous written consent, shall be valid if sent and received by electronic mail.

This provision has been added in an attempt to comply with a separate state law that says electronic mail is deemed to be the same as a written signature if the parties agree.

ARTICLE IX – LIABILITY AND INDEMNIFICATION

9.1 General Rule. A Director shall not be personally liable for monetary damages as Director for any action taken, or any failure to take any action, unless:

(a) the Director has breached or failed to perform the duties of Director in accordance with the standard of conduct contained in Section 5712 of the Act and any amendments and successor acts thereto; and

(b) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness;

Provided, however, the foregoing provision shall not apply to (a) the responsibility or liability of a Director pursuant to any criminal statute or (b) the liability of a Director for the payment of taxes pursuant to local, state or federal law.

This provision, a type of personal liability limitation permitted in most states, must be included in the Articles or the Bylaws in order to be effective in Pennsylvania. (Some states require the language to be in the Articles.) We view it as an appropriate provision and critical to the willingness of good Directors to serve. ([See Ready Reference Page: "Directors Often Fear Risks of Personal Liability."](#))

9.2 Indemnification. The Corporation shall indemnify any officer or Director who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, (and whether or not by, or in the right of, the Corporation) (a "Proceeding") by reason of the fact that such person is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another domestic or foreign Corporation for-profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually

and reasonably incurred in connection with such Proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and with respect to any criminal proceeding, had no reason to believe such conduct was illegal, provided, however, that no person shall be entitled to indemnification pursuant to this Article in any instance in which the action or failure to take action giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness; and provided, further, however, in instances of a claim by or in the right of the Corporation, indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the Corporation is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.

We aren't happy with the language of this provision, but have not found a better way to explain succinctly what is permitted and what is required of the organization. The Corporation is required to provide indemnification under the circumstances described, and may not provide indemnification where prohibited here, which is a recitation of the state law. The requirement to indemnify applies only to officers and Directors, and does not specifically apply to employees or other representatives. The Board has the power to indemnify others (See Section 9.6), but can determine later whether or how to do so. Some Boards elect to include employees in the indemnification provisions of the Bylaws because it is their policy to indemnify employees.

9.3 Procedure. Unless ordered by a court, any indemnification under Section 9.2 or otherwise permitted by law shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because the officer or Director has met the applicable standard of conduct set forth under that section. Such determination shall be made:

- (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the action or proceeding;
- (b) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion; or
- (c) by the Members.

9.4 Advancement of Expenses. The Corporation shall advance expenses incurred by an officer or Director who may be eligible for indemnification pursuant to this Article in defending a Proceeding unless such Proceeding is brought against the person by or in the right of the Corporation, and may advance such expenses in any case in which it decides indemnification may be appropriate, in advance of the final disposition of such Proceeding, upon receipt of an undertaking by or on behalf of such person to repay the amount so advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation.

Most Bylaws state that the Corporation will advance expenses in all cases upon receipt of an "undertaking" to repay if the person is ultimately not entitled to coverage. This provision has been changed to provide that the Board may withhold expenses if the case is brought by the Board or in the name of the Board. In one odd case in Pennsylvania, a Board could not sue a treasurer who had allegedly stolen funds until it advanced expenses for the treasurer to defend

himself. If the allegation was true, the likelihood of recovering by expense money was pretty small. All of this may be academic if an insurance policy provides defense automatically.

9.5 Continuing Right to Indemnification. The indemnification and advancement of expenses provided pursuant to this Article shall continue as to any person who has ceased to be an officer or Director of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such person.

9.6 Other Rights. This Article shall not be exclusive of any other right which the Corporation may have to indemnify any person as a matter of law.

ARTICLE X – AMENDMENTS

10.1 Articles of Incorporation. The Articles of Incorporation of the Corporation may be amended by the Members at any duly convened meeting of Members after not less than 10 days notice of such purpose has been given, including a copy of the proposed amend-ment or a summary of the changes to be effected thereby, provided that no amendment shall be effective without the approval of the Initial Incorporator.

10.2 Bylaws. The Bylaws may be amended by the Members at any duly convened meeting of Members or, to the extent not prohibited by law, by vote of the majority of all Directors in office at a duly convened meeting of Directors, after notice of such purpose has been given, including a copy of the proposed amendment or a summary of the changes to be effected thereby, provided that no amendment shall be effective without the approval of the Initial Incorporator.

The most important provision of these sections is the requirement for approval by the Initial Incorporator. Without the requirement of her approval, all of her rights could be taken away over her objection and the entire scheme she created could be lost.

Our standard Bylaws require approval by a majority of all Members or all Directors for approval of such amendments, effectively raising the requirement over the usual vote requirement of a majority of those present. Some states may have a statutory requirement for a super-majority. In this case, a majority vote of those present may be sufficient since no change may be effective without the approval of the Initial Incorporator

10.3 Amendment after Withdrawal of Initial Incorporator. Notwithstanding the requirement for approval by the Initial Incorporator in Sections 10.1 and 10.2, such approval shall not be required after the death, incompetence or withdrawal of the Initial Incorporator from Initial Incorporator Membership. In addition, when there are no Initial Incorporator Members of the Corporation, the Articles of Incorporation or Bylaws may be amended by the Public Members and/or Public Directors without regard to quorum or voting requirements for Initial Incorporator Members or Directors and as if the special provisions for separate quorum and voting did not exist.

This provision is necessary to avoid ossification when the Initial Incorporator dies, becomes incompetent, or withdraws from the organization. The Initial Incorporator Members will still have veto power as a group so long as any of them continues to serve. Once they are all gone, or a majority agree, the Public Members and Public Directors can move on to change the corporate structure as they deem appropriate. Under Pennsylvania law, Directors can act on their own when there are no Members of a nonprofit corporation, but the law does not provide what happens when there are no members of a Class of membership which has specific powers in the structure.

ARTICLE XI – MISCELLANEOUS

11.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of November and end on the last day of October.

Fiscal year is an arbitrary selection that may be related to funding cycles or the fiscal year of an affiliated organization. We often select an unusual fiscal year because auditors sometimes charge lower fees for work during periods when they are not so busy with the great bulk of taxpayers whose fiscal year ends on December 31 or June 30.

11.2 Conflicts of Interest. The Board shall adopt a policy on dealing with conflicts of interest.

Many organizations include their Conflicts Policy in the Bylaws, but we merely include a requirement that the Board adopt a policy. Since the Conflicts Policy may need relatively frequent review and modification, we prefer not to require an amendment of the Bylaws to amend the policy. ([See Ready Reference Page: "Conflict of Interest Policies Help Avoid Problems."](#))

11.3 Headings. In interpreting these Bylaws, the headings of articles shall not be controlling.

11.4 Bond. If required by the Board, any person shall give bond for the faithful discharge of his or her duty in such sums and with such sureties as the Board shall determine.

11.5 Subventions. The Corporation shall be authorized, by resolution of the Directors, to accept subventions on terms and conditions not inconsistent with the Pennsylvania Nonprofit Corporation Law and to issue certificates therefor.

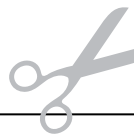
We always get questions about this paragraph. Subventions are permitted in only a few states. They are transfers of assets to the Corporation which we think of as somewhere between debt and equity. The organization may make periodic payments in the nature of interest. The funds may be repaid by the Corporation at certain times or on the occurrence of certain events, but only if the organization does not become insolvent as a result of the payment. At all times the repayment requirement is subordinate to every other obligation of the organization. Under Pennsylvania law, if the authority is not in the Bylaws, subventions are not permitted. We are aware of only a few cases in which they have actually been used.

11.5 Corporate Seal. The corporate seal of the Corporation shall be in circular form and shall bear the name of the Corporation and the words "Corporate Seal, Pennsylvania 200_."

Adopted:_____

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Sole Member Bylaws Can Protect Founder of Nonprofit

The right to appoint and remove directors and veto any amendments to governing documents is critical to control of the organization

We have frequently referred to a “sole member” corporation to protect a founder of a nonprofit corporation when the founder wants assurance that he or she can develop the organization as a career to help make the world better in some way.

Not everyone believes that such control is appropriate or in the public interest. But we have seen too many founders work for years essentially as volunteers to create an organization and then get fired when their “best friends” on the Board decide to go in a different direction. The community usually loses an important effort in such situations, especially when the best friends could have gone off and established their own organization to do what they want to do.

The key to control of a “sole member” corporation is the power to appoint and remove directors if necessary, and to veto any changes in governing documents. A sole member who has that power can assure that the Board will be generally in support of the founder’s vision. But the founder cannot exercise the power arbitrarily or it will be very difficult to get directors to serve in the future.

Because we have had a lot of requests for a form of bylaws for a sole member corporation, an “annotated” version is set out below. It can be modified for use by an individual, a husband/wife couple, or a group of founders with only minor changes in wording. A more completely annotated set of bylaws, involving a much more complicated structure but also protecting the founder, is available in our [Ready Reference Page: “Bylaws Function as Constitution of Nonprofit Corporations”](#). The other Ready Reference Page comments on a number of issues that are not discussed here. The annotations are in italics below the relevant section of the Bylaws. This form is only a form and should not be used without consulting an attorney to assure that it is appropriate for a specific state and situation.

The LOST ORGANIZATION
A Pennsylvania nonprofit corporation

ARTICLE 1

PURPOSES

1.1 The purposes of the Corporation are exclusively charitable as set forth in the Articles of Incorporation. In pursuing such purposes, the Corporation shall not act so as to impair its eligibility for exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 2

OFFICES

2.1 Registered Office. The registered office of the Corporation shall be at such location in Pennsylvania as the Directors may from time to time determine.

2.2 Other Offices. The Corporation may also have offices at such other places as the Directors may select and the business of the Corporation shall require.

ARTICLE 3

MEMBERS

3.1 Number. The Corporation shall have one class of Members consisting of the Initial Incorporator and such other persons as the Members admit to Membership.

This form provides substantial flexibility in its use. It can be used by a sole member, who is sometimes called the Founder if that person was not the actual incorporator, or by a group of founder/incorporators. The initial person or group may admit other Members if they wish. The following procedures contemplate that there will be more than a single member, but a sole member may act by filing a written consent in the minute book. This section does not provide for Members' dues, although in a Membership corporation with many members, it is important to state who has the authority to set the dues, normally the Directors.

3.2 Requirements for Membership. The Members may establish any additional criteria for Membership. No person shall become a Member unless approved by a majority of the Members. Such approval may be denied for any reason deemed sufficient by the Members even though the applicant may meet the stated criteria for Membership.

Criteria for Membership are set by the Members, not by the Directors, and Members may deny approval to anyone. If the Initial Incorporator admits additional members, he/she loses a significant element of control, although, as will be seen below, the Initial Incorporator may never be involuntarily removed.

3.3 Regular Meetings. Meetings shall be held as determined by the Members.

In general, many decisions relating to the Members which are usually made by the Directors in organizations with a general membership are made by the Members in these bylaws in order to keep control.

3.4 Annual Meetings. The annual meeting of the Members shall be held on the _____ of _____ of each year at the principal office of the Corporation or upon ten days notice to the Members at such other time or place as the Members shall determine.

3.5 Special Meetings. Special meetings of the entire Membership may be called by the President, the Board or at the written request of 10% of the Membership. At least five days' written notice stating the time, place and purpose of any special meeting shall be given to the Members entitled to participate.

The Form allows the President, who may not be a Member, or the Board, as well as the Members, to call a special meeting of the Members if they believe that something important should be brought before the Members. The requirement to hold a special meeting does not mean that the Members have to comply with any substantive requests for action.

3.6 Quorum. A majority of all Members shall constitute a quorum for the trans-action of business at the meeting.

If there are only two Members, neither may act alone. If there are two founders, often a husband and wife, they need to realize that they are locked in so that neither can act unilaterally.

3.7 Voting. Each Member shall be entitled to one vote, in person, by ballot, by mail or by proxy in accord with Section 3.8. Unless otherwise required by these Bylaws, the manner of voting on any matter, including changes in the articles or bylaws, may be by voice vote, show of hands, or by ballot, as determined by the Members present, or by mail or electronic mail if determined by the Members and a means of voting is sent with notice of the question to be voted upon. At any time that there shall be a sole Member of the Corporation, the sole Member shall act by written statement of the action, which shall be filed with the Secretary. The acts of a majority of Members voting shall be deemed to be the acts of the Members.

3.8 Voting by Proxy. Any absent Member eligible to vote at any meeting of the Members may be represented as present and may vote at such meeting by a proxy authorized in writing by the Member or by his or her duly authorized attorney in fact. Such written authorization must specify the matter with respect to which the proxy is granted and the person entitled to vote, must be signed and dated by the Member granting the proxy, and must be filed with the Secretary of the Corporation. A proxy shall be revocable at will but the revocation shall not be effective until notice of the revocation has been given to the Secretary of the Corporation. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the Secretary of the Corporation.

3.9 Unanimous Consent of Members in Lieu of a Meeting. Any action which may be taken at a meeting of Members may be taken without a meeting if a consent or consents in writing setting forth the action to be taken shall be signed by all of the Members and shall be filed with the Secretary of the Corporation.

3.10 Expulsion from Membership. Any Member may be expelled from Membership, except an Initial Incorporator who may not be expelled, with or without the assignment of any cause, upon a majority vote of all Members present at a duly convened meeting of the Members, provided that written notice of the intention to expel and reasons therefor have been provided in the notice of the meeting. No Member shall be expelled without having the opportunity to be heard at such meeting, but no formal hearing procedure need be followed.

The Initial Incorporator is protected from expulsion even if he/she admits other Members to the Corporation. If the Initial Incorporator admits more Members, however, he/she may become a minority vote so it is very important to consider whether or not to admit additional Members.

3.11 Honorary Titles. The Board may create such additional classes of “membership,” such as contributing members or honorary members, as they see fit, but such person shall not have the right of Members under the Pennsylvania Nonprofit Corpora-tion Law of 1988, as amended (the “Act”).

ARTICLE 4

DIRECTORS

4.1 Powers. The business and affairs of the Corpora-tion shall be managed by the Board of Directors, except as other-wise required by the Act, these Bylaws or a resolution duly adopted by the Board.

4.2 Qualifications of Directors. Each Director shall be an individual of at least 18 years of age, who need not be a resident of Pennsylvania.

4.3 Number, Election and Term of Directors. The Board of Directors shall consist of not fewer than _____ nor more than _____ persons, as may be determined from time to time by the Members. Directors shall be chosen annually by ballot of the Members at the annual meeting of the Members and shall serve for terms of _____ years and until their successors are elected and qualified. As nearly as possible, an equal number of terms shall expire each year.

The right of the Initial Incorporator to appoint the Directors is critical to the control of the organization. Presumably, the Initial Incorporator will appoint himself/herself to serve on the Board because that is where the decisions will be made. The Members establish the number of Directors to serve on the Board.

4.4 Removal. Any Director may be removed from office, except an Initial Incorporator who may not be removed, with or without the assignment of any cause, by a vote of a majority of Directors in office, or of Members present, at a duly convened meeting of the Board or Members, as the case may be, provided that written notice of the intention to consider removal of such Director has been included in the notice of the meeting. No Director shall be removed without having the opportunity to be heard at such meeting (unless the action is taken by the Members), but no formal hearing procedure need be followed.

This is probably the most critical section of the Bylaws. The section provides that the Initial Incorporator, if serving as a Director, may not be removed at any time. It also provides that other Directors may be removed by either the Members or the other Directors. If the Directors seek to remove another Director, they must give notice to the person being removed and an opportunity to be heard. The Members may act without the opportunity to be heard. We sometimes write the bylaws so that only the Members have the right to remove a Director. The right to remove the Directors is critical to the control of the organization.

4.5 Quorum. A majority of all Directors shall constitute a quorum for the transaction of business at any meeting, and the acts of a majority of the Directors present at a duly convened meeting at which a quorum is present shall be the acts of the Board, unless a greater number is required by the Act or these Bylaws.

4.6 Vote. Every Director shall be entitled to one vote.

4.7 Unanimous Consent of Directors in Lieu of Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the Directors in office and shall be filed with the Secretary of the Corporation.

4.8 Annual Meeting. The annual meeting of the Board shall be held promptly after the annual meeting of the Members.

4.9 Regular Meetings. Regular meetings of the Board shall be held as determined by the Board.

4.10 Special Meetings. Special meetings of the Board may be called by the Members, the President or by _____ of the Board at any time. At least five days notice stating the time, place and purpose of any special meeting shall be given to the members of the Board.

4.11 Teleconference Meetings. Any Director may participate in a meeting of the Board or any committee thereof by means of a conference telephone or similar communications equipment by which

all persons participating in the meeting can hear each other.

4.12 Evaluation. The Directors shall at least every other year evaluate their own performance and the composition of the Board in terms of the skills, experience, diversity, and contributions of its members to identify ways it may improve its effectiveness by selection of new Directors and otherwise.

ARTICLE 5

OFFICERS

5.1 Positions, Election, Term. The officers of the Corporation shall include a President, one or more Vice-Presidents, a Secretary and a Treasurer, who shall be elected by the Directors from among the Directors at the annual meeting of Directors and shall serve for a term of one year and until their successors are elected and qualified. The Directors may elect such other officers or assistant officers, who need not be members of the Board, as they deem appropriate from time to time.

This form allows the Directors to select the officers of the Corporation, and does not provide that the Initial Incorporator shall be the President. Presumably if the Initial Incorporator wants to be President, the Directors will elect him/her or they could find themselves removed.

Occasionally, the Bylaws will provide for a Chair of the Board as well as a President/CEO, particularly if the Initial Incorporator wants to be the full time executive but wants some separation in the operation of the Board.

5.2 Consecutive Terms. Officers may be elected for consecutive terms.

5.3 Duties. The duties of the officers shall include the following:

(a) The President shall preside at all meetings of the Directors and Executive Committee; shall generally supervise the business of the Corporation; and shall execute documents on behalf of the Corporation. The President shall be an ex-officio member of every Corporation committee.

(b) A Vice President shall have such powers and perform such duties as the Board of Directors may prescribe or as the President may delegate.

(c) The Secretary shall assure that minutes are prepared and maintained for all meetings of the Board and the Members; shall assure that appropriate notice is given for all meetings of the Board and Members; and shall perform such other duties as may be prescribed by the Board or by the President.

(d) The Treasurer shall assure that accurate accounts of the receipts and disbursements of the Corporation are maintained; shall cause financial reports to be provided to the Board and the Members as requested, but not less than once a year; and shall perform such other duties as may be prescribed by the Board or by the President.

5.4 Removal of Officers. Any officer or agent may be removed by the Board whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.

We do not protect the Initial Incorporator from removal from an office, although the Initial Incorporator who wants to serve despite the reservations of the other Directors could change the Board to assure such election.

ARTICLE 6

COMMITTEES

6.1 Establishment. The Board may establish one or more committees to consist of one or more Directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board forming the committee, shall have and may exercise any of the powers and authority of the Board, except that no committee shall have any power or authority as to the following:

- (a) The filling of vacancies on the Board.
- (b) The adoption, amendment or repeal of the Bylaws.
- (c) The amendment or repeal of any resolution of the Board.
- (d) Action on matters committed by the Bylaws or by resolution of the Board to another committee of the Board.

If any person who is not a Director is appointed to any committee of the Board, such non-Director shall have no right to vote on any question that would create a binding obligation of the Corporation.

6.2 Appointment to Committees. Unless otherwise determined by the Board or set out in these Bylaws, the President shall have the power to appoint and remove members and chairs of all committees.

6.3 Creation and Composition of Advisory Boards. The Corporation may, in its discretion, establish Advisory Boards that may include persons who are not Directors. Such Advisory Boards shall have no power to bind the Corporation and shall have only such other responsibilities and duties as may be delegated to them by the Board or the President.

ARTICLE 7

RESIGNATIONS AND VACANCIES

7.1 Resignations. Any Member, Director or officer may resign such position at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then from that date. The acceptance of the resignation by the Board shall not be required to make it effective.

7.2 Filling Vacancies.

(a) If a vacancy exists among the positions available for Directors, by virtue of a desire to fill unfilled positions, or by reason of death, resignation, disqualification or otherwise, the Members may choose a person or persons who may serve as a Director for the remainder of the applicable term.

(b) If the position of any officer becomes vacant, by an increase in the number of officers, or by reason of death, resignation, disqualification or otherwise, the Directors may choose a person or persons who shall hold office for the remaining term.

(c) If at any time there shall be no Members, the Directors may select a person or persons who shall become the Members of the Corporation or may amend the Bylaws to eliminate Member-

ship.

This form gives the Directors the right to appoint new Members if there are no Members or to amend the Bylaws to eliminate the concept of Membership. Under Pennsylvania state law, if there are no Members in fact the Directors have the full responsibility for the operation of the Corporation, but this specifically gives the Board the right to designate new Members.

ARTICLE 8

MEETINGS AND NOTICE

8.1 Place of Meetings. Meetings may be held at such place within or without Pennsylvania as the Board may from time to time determine.

8.2 Notice. Whenever written notice is required to be given to any person, it may be given to such person either personally or by sending a copy thereof by first class or express mail, postage prepaid, or courier service, charges prepaid, or by facsimile transmission or electronic mail, to that person's address (or facsimile number or e-mail address) appearing on the books of the Corporation, or in the case of Directors, supplied by that person to the Corporation for the purpose of notice. If the notice is sent by mail or courier service, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with the courier service for delivery to such person or, in the case of facsimile or electronic mail when dispatched. Such notice shall specify the place, day and hour of the meeting and any other information which may be required by the Act or these Bylaws, including, in the case of a special meeting of Members, the general nature of the business to be transacted.

8.3 Waiver of Notice. Any required notice may be waived by the written consent of the person entitled to such notice either before or after the time for giving of notice, and attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

8.4 Electronic Mail. Any action which may be done, or is required to be done, in writing under these Bylaws or the Act, including agreement to a unanimous written consent, shall be valid if sent and received by electronic mail.

ARTICLE 9

LIABILITY AND INDEMNIFICATION

9.1 General Rule. A Director shall not be personally liable for monetary damages as a Director for any action taken, or any failure to take any action, unless:

(a) the director has breached or failed to perform the duties of Director in accordance with the standard of conduct contained in Section 5712 of the Act and any amendments and successor acts thereto; and

(b) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness;

Provided, however, that the foregoing provision shall not apply to (a) the responsibility or liability of a Director pursuant to any criminal statute or (b) the liability of a Director for the payment of taxes

pursuant to local, state or federal law.

9.2 Indemnification. The Corporation shall indemnify any officer or Director who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, (and whether or not by, or in the right of, the Corporation) (a "Proceeding") by reason of the fact that such person is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another domestic or foreign corporation for-profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such Proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and with respect to any criminal proceeding, had no reason to believe such conduct was illegal, provided, however, that no person shall be entitled to indemnification pursuant to this Article in any instance in which the action or failure to take action giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness; and provided, further, however, in instances of a claim by or in the right of the Corporation, indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the Corporation is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.

9.3 Procedure. Unless ordered by a court, any indemnification under Section 9.2 or otherwise permitted by law shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because he or she has met the applicable standard of conduct set forth under that section. Such determination shall be made:

- (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the action or proceeding;
- (2) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or
- (3) by the Members.

9.4 Advancement of Expenses. The Corporation shall advance expenses incurred by an officer or Director who may be eligible for indemnification pursuant to this Article in defending a Proceeding unless such Proceeding is brought against the person by or in the right of the Corporation, and may advance such expenses in any case in which it decides indemnification may be appropriate, in advance of the final disposition of such Proceeding, upon receipt of an undertaking by or on behalf of such person to repay the amount so advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation.

9.5 Continuing Right to Indemnification. The indemnification and advancement of expenses provided pursuant to this Article shall continue as to any person who has ceased to be an officer or Director of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such person.

9.6 Other Rights. This Article shall not be exclusive of any other right which the Corporation may have to indemnify any person as a matter of law.

ARTICLE 10

AMENDMENTS

10.1 Articles of Incorporation. The Articles of Incorporation of the Corporation may be amended only by a majority of all Members at a duly convened meeting of Members after not less than 10 days notice of such purpose has been given, including a copy of the proposed amendment or a summary of the changes to be effected thereby, provided that no such amendment shall be effective without the approval of the Initial Incorporator so long as the Initial Incorporator is a Member of the Corporation.

10.2 Bylaws. The Bylaws may be amended by a majority of all Members at any duly convened meeting of Members or, to the extent not prohibited by law, by vote of the majority of all Directors in office at a duly convened meeting of Directors, after notice of such purpose has been given, including a copy of the proposed amendment or a summary of the changes to be effected thereby, provided that no such amendment shall be effective without the approval of the Initial Incorporator so long as the Initial Incorporator is a Member of the Corporation.

The proviso that no amendment will be effective without the approval of the Initial Incorporator is an additional protection, especially if the Initial Incorporator intends to appoint additional Members. If there is a group of Initial Incorporators, this provision might be written to require approval of a majority of the Initial Incorporators. The special protection applies only so long as the Initial Incorporator remains a Member of the Corporation so that the Corporation can function when the Initial Incorporator leaves for any reason.

The unilateral right of the Members to amend the Bylaws is also critical to control. We had a situation in which the sole Member doubled the size of the Board overnight and appointed a group of friends to attend a special meeting of the Board the following day when faced with a revolt of a Board that wanted to remove her from the Presidency and enter into a 5-year contract with the executive director.

ARTICLE 11

MISCELLANEOUS

11.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of _____ and end on the last day of _____.

11.2 Policies. The Board shall adopt policies dealing with conflicts of interest, whistleblower protection, and document retention and destruction.

11.3 Headings. In interpreting these Bylaws, the headings of articles shall not be controlling.

11.4 Bond. If required by the Board, any person shall give bond for the faithful discharge of his or her duty in such sums and with such sureties as the Board shall determine.

11.5 Subventions. The Corporation shall be authorized, by resolution of the Directors, to accept subventions on terms and conditions not inconsistent with the Pennsylvania Nonprofit Corporation Law and to issue certificates therefor.

11.6 Corporate Seal. The corporate seal of the Corporation shall be in circular form and shall bear the name of the Corporation and the words "Corporate Seal, Pennsylvania 2011."

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU**

ARTICLES OF INCORPORATION _____

In accordance with the requirements of 15 Pa. C.S. § 5306 (relating to articles of incorporation), the undersigned, desiring to incorporate a Pennsylvania nonprofit corporation, hereby certify that:

1. The name of the corporation is

2. The address, including street and number, of its initial registered office in this Commonwealth is:

3. The corporation is incorporated under Pennsylvania's Nonprofit Corporation Law of 1988, as amended, exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States Internal Revenue Law (hereinafter referred to as the "Code"), including in particular to

4. The corporation does not contemplate pecuniary gain or profit, incidental or otherwise. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in paragraph 3 hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code ***** or (c) by a corporation which is not a private foundation pursuant to Section 509(a)(3)*****.

5. The term of the corporation's existence is perpetual.

6. The corporation is organized on a nonstock basis.

7. The corporation shall have [no] members [whose rights and obligations shall be spelled out in the Bylaws].

8. The name and address, including street and number, of each incorporator is:

9. Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all the remaining assets of the corporation exclusively for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code or to one or more governmental units described in Section 170(c)(1) of the Code as the Board of Directors shall determine, to be used exclusively for charitable purposes. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for charitable purposes to one or more charitable or governmental organizations, as said Court shall determine. Under no circumstances shall any assets be distributed, upon dissolution, upon sale of substantially all of the assets, or otherwise, to directors, officers, or employees of the corporation.

IN TESTIMONY WHEREOF, the incorporators have caused these Articles of Incorporation to be executed this day of , 2014.

_____ (Seal)

_____ (Seal)

A Pennsylvania Nonprofit Corporation

(Membership)

Bylaws

ARTICLE 1

PURPOSES

1.1 The purposes of the Corporation are exclusively charitable [educational, religious, etc] as set forth in the Articles of Incorporation. In pursuing such purposes, the Corporation shall not act so as to impair its eligibility for exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 2

OFFICES

2.1 Registered Office. The registered office of the Corporation shall be at such location in Pennsylvania as the Directors may from time to time determine.

2.2 Other Offices. The Corporation may also have offices at such other places as the Directors may select and the business of the Corporation shall require.

ARTICLE 3

MEMBERS

3.1 Number and Dues. The Corporation shall have _____ classes of Members consisting of _____. Dues, if any, for each membership class shall be determined annually by [the Members] [the Board of Directors].

3.2 Requirements for Membership. The Members [Directors] may establish any additional criteria for Membership. No person shall become a Member unless approved by [a majority of the Members] [the Directors]. Such approval may be denied for any reason deemed sufficient by the Members [the Directors] even though the applicant may meet the stated criteria for Membership.

3.3 Regular Meetings. Meetings shall be held as determined by the Members [Directors].

3.4 Annual Meetings. The annual meeting of the Members shall be held on the _____ of _____ of each year at the principal office of the Corporation or upon ten days written notice to the Members at such other time or place as the Members [Directors] shall determine.

3.5 Special Meetings. Special meetings of the entire Membership may be called by the President, the Board or at the written request of 10% of the Membership. [A special meeting of any Membership Class individually may be called by the President, the Board, or at the written request of 10% of the members of such Membership Class.] The secretary or the person or group calling such meeting shall give at least five days' written notice stating the time, place, if any, and purpose of any special meeting to the Members entitled to participate.

3.6 Quorum. [A majority] of [all Members] [the Members of each Class] shall constitute a quorum for the transaction of business at any meeting. The acts of a majority of Members [of each Class] voting shall be deemed to be the acts of the Members.

3.7 Voting. Each Member shall be entitled to [one] vote in Record Form as defined in Section 11.1(b) below, in person, by ballot, by mail or by proxy in accord with Section 3.8. Unless otherwise required by these Bylaws, the manner of voting on any matter, including changes in the articles or bylaws, may be by voice vote, show of hands, or by ballot, as determined by the Members present, or in Record Form if determined by the Board of Directors and a designation of the means of voting is sent with notice of the question to be voted upon. At any time that there shall be a sole Member of the Corporation, the sole Member shall act in writing, which shall be filed with the Secretary of the Corporation.

3.8 Voting by Proxy. Any absent Member eligible to vote at any meeting of Members may be represented as present and may vote at such meeting by a proxy authorized in writing by the Member or by his or her duly authorized attorney in fact. Such proxy shall be executed or authenticated by the Member or the Member's duly authorized attorney-in-fact and filed with or transmitted to the Secretary of the Corporation or its designated agent. An email, internet communication or other means of electronic transmission from a member or attorney-in-fact or a photographic, facsimile or similar reproduction of a writing executed by a Member or attorney-in-fact may be treated as properly executed or authenticated for purposes of this paragraph, and shall be so treated if it sets forth or utilizes a confidential and unique identification number or other mark furnished by the Corporation to the Member for the purposes of a particular meeting or transaction. A proxy shall be revocable at will but the revocation shall not be effective until notice of the revocation has been given to the Secretary of the Corporation or its designated agent in writing or by electronic transmission. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, notice of such death or incapacity is given to the Secretary of the Corporation.

3.9 [Unanimous] Consent of Members in Lieu of a Meeting. Any action that may be taken at a meeting of Members may be taken without a meeting if a consent or consents

setting forth the action to be taken shall be provided in writing by [all Members] [a majority¹ of all Members [of each Membership Class] who would be entitled to vote thereon at a meeting at which all Members entitled to vote were present and voting] and shall be filed with the Secretary of the Corporation.

3.10 Electronic Meetings. A meeting of Members may be held by means of the Internet or other electronic communications technology in a fashion pursuant to which the Members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the Members, pose questions to the Directors or others, make appropriate motions and comment on the business of the meeting. Such meeting need not be held at a particular geographic location.

3.11 Expulsion from Membership. Any Member may be expelled from Membership, with or without the assignment of any cause, upon a majority vote of all Members or Directors present at a duly convened meeting of the Members or Directors as the case may be, provided that written notice of the intention to expel and reasons therefor have been provided in the notice of the meeting. No Member shall be expelled without having the opportunity to be heard at such meeting, but no formal hearing procedure need be followed.

3.12 Honorary Titles. The Board may create such additional classes of “membership,” such as contributing members or honorary members, as they see fit, but such “members” shall not have the right of Members under the Pennsylvania Nonprofit Corporation Law of 1988, as amended (the “Act”).

ARTICLE 4

DIRECTORS

4.1 Powers. The business and affairs of the Corporation shall be managed by the Board of Directors, except as otherwise required by the Act, these Bylaws or a resolution duly adopted by the Board.

4.2 Qualifications of Directors. Each Director shall be an individual of at least 18 years of age, who need not be a resident of Pennsylvania.

4.3 Number, Election and Term of Directors. The Board of Directors shall consist of not fewer than _____ nor more than _____ persons. Directors shall be chosen annually by ballot of the Members at the annual meeting of the Members and shall serve for terms of _____ years and until their successors are elected and qualified. As nearly as possible, an equal number of terms shall expire each year.

4.4 Removal. Any Director may be removed from office, with or without the assignment of any cause, by a vote of a majority of Directors in office, or of Members present, at a duly convened meeting of the Board or Members, as the case may be, provided that written

¹ This percentage should equal the percentage required for valid corporate action as set out in the second sentence of Section 3.6 above.

notice of the intention to consider removal of such Director has been included in the notice of the meeting. No Director may be removed without having the opportunity to be heard at such meeting, but no formal hearing procedure need be followed.

4.5 Quorum. [A majority] of all Directors shall constitute a quorum for the transaction of business at any meeting, and the acts of a majority of the Directors present at a duly convened meeting at which a quorum is present shall be the acts of the Board, unless a greater number is required by the Act or these Bylaws.

4.6 Vote. Every Director shall be entitled to one vote.

4.7 Unanimous Consent of Directors in Lieu of Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if a written consent or consents setting forth the action so taken shall be submitted by all of the Directors in office and shall be filed with the Secretary of the Corporation.

4.8 Annual Meeting. The annual meeting of the Board shall be held promptly after the annual meeting of the Members.

4.9 Regular Meetings. Regular meetings of the Board shall be held as determined by the Board.

4.10 Special Meetings. Special meetings of the Board may be called by [the Members,] the President or by [one-third] of the Board at any time. At least five days written notice stating the time, place and purpose of any special meeting shall be given to the members of the Board.

4.11 Teleconference Meetings. Any Director may participate in a meeting of the Board or any committee thereof by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other.

4.12 Evaluation. The Directors shall at least every other year evaluate their own performance and the composition of the Board in terms of the skills, experience, diversity, and contributions of its members to identify ways it may improve its effectiveness by selection of new Directors and otherwise.

ARTICLE 5

OFFICERS

5.1 Positions, Election, Term. The officers of the Corporation shall include a President, one or more Vice-Presidents, a Secretary and a Treasurer, who shall be elected by the Directors from among the Directors at the annual meeting of Directors and shall serve for a term of one year and until their successors are elected and qualified. The Directors may elect such other officers or assistant officers, who need not be members of the Board, as they deem appropriate from time to time.

5.2 Consecutive Terms. Officers may be elected for consecutive terms.

5.3 Duties. The duties of the officers shall include the following:

(a) The President shall preside at all meetings of the Members, Directors and Executive Committee; shall generally supervise the business of the Corporation; and shall execute documents on behalf of the Corporation. The President shall be an ex-officio member of every Corporation committee.

(b) A Vice President shall have such powers and perform such duties as the Board of Directors may prescribe or as the President may delegate.

(c) The Secretary shall assure that minutes are prepared and maintained for all meetings of the Board and the Members; shall assure that appropriate notice is given for all meetings of the Board and Members; and shall perform such other duties as may be prescribed by the Board or by the President.

(d) The Treasurer shall assure that accurate accounts of the receipts and disbursements of the Corporation are maintained; shall cause financial reports to be provided to the Board and the Members as requested, but not less than once a year; and shall perform such other duties as may be prescribed by the Board or by the President.

5.4 Removal of Officers. Any officer or agent may be removed by the Board whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.

ARTICLE 6

COMMITTEES

6.1 Establishment. The Board may establish one or more committees to consist of one or more Directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board forming the committee, shall have and may exercise any of the powers and authority of the Board, except that no committee shall have any power or authority as to the following:

(a) The filling of vacancies on the Board.

(b) The adoption, amendment or repeal of the Bylaws.

(c) The amendment or repeal of any resolution of the Board.

(d) Action on matters committed by the Bylaws or by resolution of the Board to another committee of the Board.

If any person who is not a Director is appointed to any committee of the Board, such non-Director shall have no right to vote on any question that would create a binding obligation of the Corporation.

6.2 Appointment to Committees. Unless otherwise determined by the Board [or set out in these Bylaws], the President shall have the power to appoint and remove members and chairs of all committees.

6.3 Creation and Composition of Advisory Boards. The Corporation may, in its discretion, establish Advisory Boards that may include persons who are not Directors. Such Advisory Boards shall have no power to bind the Corporation and shall have only such other responsibilities and duties as may be delegated to them by the Board or the President.

ARTICLE 7

RESIGNATIONS AND VACANCIES

7.1 Resignations. Any Member, Director or officer may resign such position at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then from that date. The acceptance of the resignation by the Board shall not be required to make it effective.

7.2 Filling Vacancies.

(a) If a vacancy exists among the positions available for Directors, by virtue of a desire to fill unfilled positions, or by reason of death, resignation, disqualification or otherwise, the [Members] [Directors in office] may choose a person or persons who may serve as a Director for the remainder of the applicable term.

(b) If the position of any officer becomes vacant, by an increase in the number of officers, or by reason of death, resignation, disqualification or otherwise, the Directors may choose a person or persons who shall hold office for the remaining term.

(c) If at any time there shall be no Members, the Directors may select a person or persons who shall become the Members of the Corporation.

ARTICLE 8

MEETINGS AND NOTICE

8.1 Place of Meetings. Meetings may be held at such place within or without Pennsylvania as the Board may from time to time determine. Meetings of Members may be held without geographic location as provided in Section 3.10 above.

8.2 Notice. Whenever notice is required to be given to any person, it shall be given to such person either personally or by sending a copy thereof by first class or express mail,

postage prepaid, or courier service, charges prepaid, to the person's address appearing on the books of the Corporation, or in the case of Directors, supplied by that person to the Corporation for the purpose of notice, or by facsimile transmission, e-mail or other electronic communication to the person's facsimile number or address for e-mail or other electronic communications supplied by the person to the Corporation for the purposes of notice. Notice by mail or courier shall be deemed to have been given when deposited in the United States mail or with a courier service for delivery. Notice by facsimile, email or other electronic communication shall be deemed to have been given when sent. Such notice shall specify the day, hour and geographic location, if any, of the meeting and any other information which may be required by the Act or these Bylaws, including, in the case of a special meeting of Members, the general nature of the business to be transacted.

8.3 Waiver of Notice. Any required notice may be waived by written consent of the person entitled to such notice either before or after the time for giving of notice, and attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except where a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

ARTICLE 9

LIABILITY AND INDEMNIFICATION

9.1 General Rule. A Director shall not be personally liable for monetary damages as a Director for any action taken, or any failure to take any action, unless:

(a) the director has breached or failed to perform the duties of Director in accordance with the standard of conduct contained in Section 5712 of the Act and any amendments and successor acts thereto; and

(b) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness;

Provided, however, that the foregoing provision shall not apply to (a) the responsibility or liability of a Director pursuant to any criminal statute or (b) the liability of a Director for the payment of taxes pursuant to local, state or federal law.

9.2 Indemnification. The Corporation shall indemnify any officer or Director [or any employee or representative] who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (and whether or not by, or in the right of, the Corporation) (a "Proceeding"), by reason of the fact that such person is or was a representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another domestic or foreign corporation for-profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such Proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the

best interests of the Corporation, and with respect to any criminal proceeding, had no reason to believe such conduct was illegal; provided, however, that no person shall be entitled to indemnification pursuant to this Article in any instance in which the action or failure to take action giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness; and provided, further, however, in instances of a claim by or in the right of the Corporation, indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the Corporation is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.

9.3 Procedure. Unless ordered by a court, any indemnification under Section 9.2 or otherwise permitted by law shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because he or she has met the applicable standard of conduct set forth under that section. Such determination shall be made:

(a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the action or proceeding;

(b) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

(c) by the Members.

9.4 Advancement of Expenses. The Corporation shall advance expenses incurred by an officer or Director [employee or representative] who may be eligible for indemnification pursuant to this Article in defending a Proceeding unless such Proceeding is brought against the person by or in the right of the Corporation, and may advance such expenses in any case in which it decides indemnification may be appropriate, in advance of the final disposition of such Proceeding, upon receipt of an undertaking by or on behalf of such person to repay the amount so advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation.

9.5 Continuing Right to Indemnification. The indemnification and advancement of expenses provided pursuant to this Article shall continue as to any person who has ceased to be an officer or Director of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such person.

9.6 Other Rights. This Article shall not be exclusive of any other right which the Corporation may have to indemnify any person as a matter of law.

ARTICLE 10

AMENDMENTS

10.1 Articles of Incorporation. The Articles of Incorporation of the Corporation may be amended only by a majority of all Members at any duly convened meeting of Members after not less than 10 days written notice of such purpose has been given, including a copy of the proposed amendment or a summary of the changes to be effected thereby.

10.2 Bylaws. The Bylaws may be amended by a majority of all Members at any duly convened meeting of Members or, to the extent not prohibited by law, by vote of the majority of all Directors in office at a duly convened meeting of Directors, after written notice of such purpose has been given, including a copy of the proposed amendment or a summary of the changes to be effected thereby.

ARTICLE 11

MISCELLANEOUS

11.1 Definitions.

(a) Written. Whenever a written document or written action is required by these Bylaws, it shall be sufficient if such document is provided or action is taken in Record Form.

(b) Record Form. “Record Form” means inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

(c) Sign or Signature. Whenever these Bylaws require a signature or a signed document, it shall be sufficient if the person signing acts with present intent to authenticate or adopt information in Record Form and (1) manually signs or adopts a tangible symbol or (2) attaches to, or logically associates with, information in Record Form an electronic sound, symbol or process.

11.2 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of _____ and end on the last day of _____.

11.3 Policies. The Board shall adopt policies dealing with conflicts of interest, whistleblower protection, and document retention and destruction.

11.4 Headings. In interpreting these Bylaws, the headings of articles shall not be controlling.

11.5 Bond. If required by the Board, any person shall give bond for the faithful discharge of his or her duty in such sums and with such sureties as the Board shall determine.

11.6 Subventions. The Corporation shall be authorized, by resolution of the Directors, to accept subventions on terms and conditions not inconsistent with the Act and to issue certificates therefor.

11.7 Corporate Seal. The corporate seal of the Corporation shall be in circular form and shall bear the name of the Corporation and the words "Corporate Seal, Pennsylvania _____."

Adopted: _____

Welcome to...

Bylaws:

The “Constitution” of Nonprofits – The Art & Science of Making Them Work



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Bylaws

The “Constitution” of Nonprofit Organizations

- ✓ Check State Nonprofit Corporation Law
- ✓ Establishes rules on who controls the organization
- ✓ Spell out essential relationships of participants



Bylaws

- **Avoid**

Aspirational language

Inconsistencies

Passive tense

Ambiguities

- **Ensure**

Clear enough to reduce likelihood of litigation

A Word About **Articles of Incorporation**

- The controlling document
- Name issues
- Exclusively charitable, including...
- The “magic language” for 501 (c)(3)
- Membership by default

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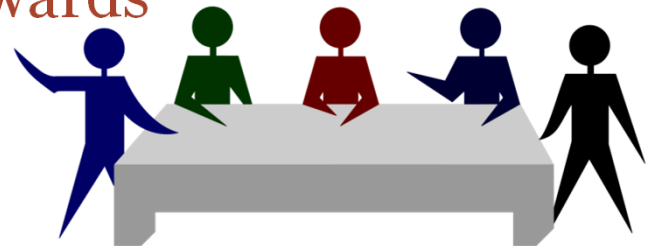
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Term limits are for cowards



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What Does this Mean?



In an organization in which voting members directly elect the officers, who by virtue of such election also serve as directors, the bylaws provide:

“No director may serve more than two (2) consecutive terms in any elected position. Upon completion of two (2) consecutive terms in any position, a minimum period of one (1) calendar year must elapse prior to that member standing for reelection or re-appointment to any position.”

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A Bad Removal Provision



Removal: A director may be removed, without cause, as determined by a two-thirds vote of the Board present at any meeting at which there is a quorum. In addition, any member of the Board of Directors may be removed for a substantial cause by the majority vote of the Board present at any meeting at which there is a quorum. Substantial cause shall include failure to participate in the activities of the Board of Directors as evidenced by the failure to attend at least three (3) consecutive meetings of the Board of Directors.

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Final Comments



- **Your bylaws are your “Constitution”. Make them relate to your organization and clear enough to avoid litigation**
- **Always have bylaws reviewed by an attorney who has knowledge of nonprofit laws.**
- **Make sure all board members periodically review the bylaws to ensure compliance with them.**

Questions?



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