



# READY REFERENCE PAGE

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FOR YOUR FILE  
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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. In 2019, New York State required at least three individual members or three individuals controlling an entity which is a sole member. 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.

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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 transaction 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."