

This guide is intended to assist small, start-up organizations in the formation and maintenance of a nonprofit entity. While accurate, information in this document is not intended to be comprehensive, so it is important to consult with a legal or tax professional if questions arise. (See [disclaimer](#)).

CHAPTER 2: FORMING THE ORGANIZATION

Should you incorporate? What steps do you need to take to form a organization?

I. Forming the Organization: A Checklist	2
II. Articles of Incorporation	2
<i>A. Why Incorporate?</i>	2
<i>B. Articles of Incorporation</i>	3
III. Maintenance of Corporate Status.....	6
<i>A. Payments</i>	7
<i>B. Annual Report</i>	7
<i>C. Registered Office or Agent</i>	8
<i>D. Dissolution</i>	9
IV. Drafting Bylaws.....	9
V. Structure and Operations of the Board of Directors	9
<i>A. General Board Types and Obligations</i>	10
<i>B. Structure of the Board</i>	11
<i>C. Composition and Selection of the Board</i>	12
<i>D. Business Operations of the Board</i>	15
<i>E. Committees</i>	16
<i>F. Communication</i>	16

I. Forming the Organization: A Checklist [Return](#)

_____ [Choose the form of your organization](#)

- Organization
- Unincorporated association
- Trust

_____ [Draft the *Articles of Incorporation*](#) (assuming that your nonprofit has chosen to incorporate)

_____ [Submit your Articles and appropriate fee](#) to the State Corporation Commission or similar agency

_____ Plan your Board's structure and operation

- Consider the nonprofit's mission and purpose
- Determine the criteria and selection for members of the Board
- Discuss the care and feeding of the Board
- Consider leadership positions and officers of the Board
- Address the business operations of the Board

_____ [Draft your *Bylaws*](#)

_____ [Maintain corporate status](#)

- Pay all fees assessed by the State Corporation Commission ("SCC")
- File annual reports with the SCC
- Retain a registered office and agent
- Do not submit a Certificate of Dissolution

II. Articles of Incorporation [Return](#)

A. Why Incorporate?

Once you're ready to form your nonprofit entity, the first choice that you need to make is what *type* of entity to form. The three basic forms are corporations, unincorporated associations, and charitable trusts. All three types may apply for and receive tax-exempt status from the Internal Revenue Service ("IRS").

The primary advantage of an unincorporated association is that state law requires fewer formalities in terms of organization, reporting, and registration. Once the nonprofit applies for tax-exempt status, however, the IRS still requires the nonprofit to submit a Form 1023 application, along with formal documentation of the nonprofit's operations.

One main disadvantage of an unincorporated association is that the members may be held personally liable for operations and actions of the association. In contrast, the members and directors of a nonprofit *corporation* are protected from personal liability. For this reason, the corporate form is often the most desirable organizational form for a nonprofit.

Once you decide to form a nonprofit *corporation*, you must comply with the requirements of the state in which your organization will be located. Most states, including Virginia, have enacted laws specifically addressing the incorporation of a nonprofit. In Virginia, nonprofit corporations are governed by the Virginia Nonstock Corporation Act, Va. Code Ann. § 13.1-801 *et seq.* The following discussion will focus on the provisions of the Virginia statutes; it is imperative that you consult the statutes for the state in which your particular nonprofit will be incorporated.

B. Articles of Incorporation

The most important part of the incorporation process is drafting the Articles of Incorporation (the “Articles”). These serve as the defining document for your corporation, listing the nonprofit’s purpose and the main aspects of organization and governance. State code lists certain mandatory and optional provisions to be included in the Articles. *See* Va. Code Ann. § 13.1-819. When drafting the Articles, you should include less rather than more, including only what is formally required by statute. The nonprofit, in contrast to a for-profit corporation, must include in its Articles certain provisions that the IRS requires for tax-exempt status.

Beyond these requirements, you should address the majority of a nonprofit’s operational matters in the nonprofit’s Bylaws, which you will be able to amend more easily. Amending the Articles, requires filing changes with the state, along with a filing fee, while amendments to the Bylaws can take place within the corporation.

Once you have drafted your Articles, the process of incorporation is completed by the incorporator or incorporators. *See* Va. Code Ann. §§ 13.1-804, 13.1-818. The incorporator will be the person who files the Articles of Incorporation with the appropriate state agency. In Virginia, the Articles are filed with the Clerk of the State Corporation Commission (“SCC”) and must comply with the filing requirements of § 13.1-804. The charter and filing fee for incorporation is \$75.00. The contact information is as follows:

Office of the Clerk
State Corporation Commission
Post Office Box 1197
Richmond, Virginia 23218-1197

Tel: (804) 371-9733
Website: www.scc.virginia.gov

The SCC sample form for Articles for a Non-Stock Corporation is Form SCC819, *available at* <http://www.scc.gov/division/clk/forms/scc819.pdf>. When the nonprofit officially becomes a corporation, the incorporator(s) are the persons responsible for appointing directors.

Mandatory Provisions

Under Va. Code Ann. § 13.1-819, the following provisions *must* be included in a nonprofit's Articles (§ 13.1-819(A)):

1. The Corporate Name – the individuals forming the nonprofit should choose the corporate name. The corporate name must meet the requirements of § 13.1-829, which specifies, among other things, that the name of the corporation may not contain any word or phrase which indicates or implies that it is organized for the purpose of conducting any business other than a business which it is authorized to conduct. The nonprofit should also have “back-up” names in case the first name is already taken. A call to the Clerk's office at the SCC can confirm whether a name is available.

Reservation of Corporate Name – prior to incorporating, the nonprofit may reserve a corporate name for 120 days and may renew such reservation for successive 120-day periods under § 13.1-830. For the appropriate form to reserve a corporate name, *see* Form SCC631, *available at* <http://www.scc.virginia.gov/division/clk/forms/scc631.pdf>.

2. Members – if the nonprofit will not have any members, the Articles *must* contain a statement to that effect. If the nonprofit is to have one or more classes of members, the Articles *may* include a provision designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting, or denying the right to vote. Alternatively, the Articles *may* provide that membership provisions will be in the nonprofit's Bylaws. It is preferable only to include in the Articles the minimum information regarding membership that is required by statute and to include additional membership considerations in the nonprofit's Bylaws, since the Bylaws may be more easily amended.

Whether you choose to make your nonprofit corporation a member versus non-member corporation will depend on your goals and purposes for formation. If you form your nonprofit primarily to benefit a distinct group of individuals (i.e. prospective members), a membership corporation is preferable. In a membership corporation, persons or entities who qualify as members will provide the nonprofit with financial support, staff, and/or often public support for the nonprofit. In turn, members may have a vote regarding certain corporate governance matters, including the approval of board members and certain reorganizations or alterations of the mission.

Alternatively, if a nonprofit is formed primarily for the goal of achieving a mission that does not directly benefit members, membership is not as critical. For many such nonprofits, the time and cost of supporting a membership may be more of a burden than an advantage. Furthermore, members will generally be allowed a certain level of control, which will take away some of the decision-making authority of the board.

3. Directors – if the directors of the nonprofit are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or

appointed, and a designation of ex officio directors, if any, must be included in the Articles. *See* Va. Code Ann. § 13.1-855.

4. Registered Agent and Office – the registered agent is the person designated by the nonprofit corporation upon whom process against the nonprofit may be served. Under Virginia law, the Articles must state the address of the nonprofit's initial registered office, including both (i) the post-office address with street and number, if any, and (ii) the name of the city or county in which it is located. The Articles must also state the name of its initial registered agent at that office, and that the agent is either (i) an individual who is a resident of Virginia and either a director of the corporation or a member of the Virginia State Bar, or (ii) a domestic or foreign stock or nonstock corporation, limited liability corporation or registered limited liability partnership authorized to transact business in Virginia. The nonprofit may not act as its own registered agent, and the individual designated as registered agent must meet one of the above statutory qualifications.
 - a. Often, the Virginia attorney assisting the nonprofit with incorporation may be willing to serve as registered agent.
 - b. If the registered agent's qualification is that of an initial director, then the names and addresses of all the initial directors must be included in the Articles. A corporation can have directors immediately upon formation only if they are named in the Articles.
 - c. If a nonprofit later decides to change the registered agent, it is an easy process. *See* Form SCC636, *available at* <http://www.scc.virginia.gov/division/clk/forms/scc636.pdf>.
5. Incorporator – Under Va. Code Ann. § 13.1-818, one or more persons may act as incorporator. The incorporator signs and files the Articles with the SCC. Typically the incorporator only serves as such until the first meeting of the nonprofit following incorporation, at which time directors and officers are elected and/or appointed.

Optional Provisions

The following elements *may* be included in the Articles (§ 13.1-819(B)):

1. Directors – the names and addresses of the persons who are to serve as the initial directors of the nonprofit. If the directors are not named in the Articles, the incorporator appoints the initial directors in a separate document after incorporation.
2. Other Provisions, Not Inconsistent with Law – the Articles may include any provision not inconsistent with law, including corporate purposes, management and regulation of the nonprofit, powers of the nonprofit, directors and members, and any provision required or permitted to be set forth in the Bylaws.
 - a. Purpose and Powers. Although under the Virginia statute, the Articles are not required to state a purpose, they must state the purpose if you seek federal tax-exempt status under I.R.C. § 501(c)(3). There are two tests that a nonprofit must meet in order to qualify for

tax-exempt status under § 501(c)(3): the organizational test and the operational test.¹ The organizational test requires that the Articles limit the nonprofit to one or more exempt purposes.

The nonprofit's purpose(s) in the Articles may be as broad as, or more specific than, the purposes listed in § 501(c)(3). It is advisable to draft the purpose as broadly as possible to allow the nonprofit to adapt in the future to changes in the nonprofit or to changing needs in the community, without the formality and expense of filing amendments to the Articles.

The purpose of a nonprofit as stated in the Articles is broader than its mission statement. When drafting the purpose clause, it is advisable to follow the sample purpose provision as set forth in IRS Publication 557.

The operational test looks at whether the nonprofit is being “operated exclusively” for one or more exempt purposes. This test does not focus on the Articles.

In Virginia, nonprofits have the general power to carry on their business, and the broad range of powers listed in § 13.1-826, unless the Articles provide otherwise.

- b. Limitations – for tax-exempt approval, the Articles must also specifically prohibit certain activities such as inurement of benefits to individual members; the intervention of the nonprofit in political campaigns or substantial lobbying; and a general prohibition on any activities that would prevent the nonprofit from obtaining, or cause the nonprofit to lose, IRS tax-exempt status. Again, IRS Publication 557 provides a helpful sample provision for these limitations.
- c. Dissolution – the Articles must also include a specific dissolution provision requiring distribution of assets to another § 501(c)(3) entity, the federal government, or to a state or local government, for public purposes upon dissolution. A sample dissolution provision is set forth in IRS Publication 557.

For sample Articles of Incorporation, see Appendix, Chapter 2 [articlesofincorporation](#)

III. Maintenance of Corporate Status [Return](#)

Unless the Articles of Incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business.² A nonprofit corporation must fulfill specific administrative requirements to maintain that corporate status, which are laid out in state law.

¹ MARILYN E. PHELAN, NONPROFIT ENTERPRISES: ORGANIZATIONS, TRUSTS, AND ASSOCIATION §§ 8:02–8:04 (2000).

² VA. CODE ANN. § 13.1-826.

In general, a corporation will retain its corporate existence if it does not exceed or abuse its authority to carry on business by carrying out illegal activities.³ Along with fulfilling taxation filing requirements to be discussed in the next chapter, a corporation authorized to transact business will remain in good standing in Virginia if it: (a) pays all fees assessed by the State Corporation Commission (SCC); (b) files an Annual Report; (c) retains a Registered Office or Agent; and (d) does not submit a Certificate of Dissolution.⁴

A. Payments

A corporation authorized to transact business must submit payment to the SCC for all fees, fines, penalties and interest assessed, imposed, charged or to be collected as required by the SCC.

A corporation must pay fees for:

1. Charter and entrance;⁵
2. Filing documents or issuing certificates;⁶
3. Annual registration;⁷
4. SCC information and response;⁸ and
5. Miscellaneous charges.⁹

You should take special note regarding the payment of fees for annual registration. If your corporation fails to file the Annual Report in a timely manner, the SCC will mail a notice of that they are about to terminate its corporate existence. Whether or not such notice is mailed, if your corporation fails to file the annual report before a final date, the corporate existence of such corporation automatically ends as of that day, and its properties and affairs will pass automatically to its directors as trustees in liquidation.¹⁰

A corporation should also review the specific statutes concerning the assessment of fees and charges by the SCC.¹¹

B. Annual Report

A corporation authorized to transact business must file and deliver an Annual Report with the SCC which sets forth:¹²

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated;

³ VA. CODE ANN. § 13.1-915.

⁴ VA. CODE ANN. § 13.1-809, 915.

⁵ VA. CODE ANN. § 13.1-815.1.

⁶ VA. CODE ANN. § 13.1-816.

⁷ VA. CODE ANN. § 13.1-36.1; Va. Code Ann. § 13.1-914.

⁸ VA. CODE ANN. § 13.1-21.1.

⁹ VA. CODE ANN. § 13.1-21.2.

¹⁰ VA. CODE ANN. § 13.1-914.

¹¹ VA. CODE ANN. § 13.1-815.

¹² VA. CODE ANN. § 13.1-936.

2. The address of the registered office of the corporation (including both (i) the post office address with street and number, if any, and (ii) the name of the county or city in which it is located), and the name of its registered agent at such address; and
3. The names and post-office addresses of the directors and the principal officers of the corporation.

You must file this report on forms furnished by the SCC, supplying the information as of the date of the report.

Except as otherwise provided, the Annual Report of a domestic or foreign corporation must be filed with the SCC before the day that is one year from the day that you incorporated or were first authorized to transact business in the local State, and by such date every year. You must file this report no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the SCC will return it for correction or explanation. Otherwise, the SCC will file it in the clerk's office.

At the discretion of the SCC, the Annual Report due date for a corporation may be extended, on a monthly basis, for a period of no more than eleven months, at the request of your corporation's registered agent of record. You should also review the specific State statutes regarding regulations for procedural requirements for filing an Annual Report.¹³

C. Registered Office or Agent

In order to transact business, your corporation must retain a Registered Office or Agent. The Registered Agent of a corporation is the corporation's agent for service of process, notice, or demand should your corporation be involved in a legal proceeding. The Registered Agent can designate other persons who can accept service if they do so in writing, in front of a notary public. Whenever this person accepts service of process, a photographic copy of this instrument should be attached to the return.¹⁴

A Registered Office may be the same as any of its places of business.¹⁵

The sole duty of the Registered Agent is to forward to the corporation at its last known address any process, notice or demand that is served on the registered agent. The Registered Agent may be an individual or a corporation¹⁶

A corporation should review the specific State statutes regarding regulations for change or resignation of the Registered Office or Agent.¹⁷

¹³ VA. CODE ANN. § 13.1-936.

¹⁴ VA. CODE ANN. § 13.1-836.

¹⁵ VA. CODE ANN. § 13.1-833.

¹⁶ See page 15 of the Manual for further discussion of who is eligible to be the Registered Agent.

¹⁷ VA. CODE ANN. § 13.1-834, 835.

D. Dissolution

A corporation authorized to transact business may terminate its corporate existence by submitting a Certificate of Dissolution or may be terminated by the SCC.

Either directors or members of the entity may dissolve the corporation. A dissolved corporation continues its corporate existence but may not transact any business except to wind up and liquidate its business, including: (1) collecting its assets; (2) disposing of its properties; (3) discharging or making provision for discharging its liabilities; (4) distributing its remaining property; and (5) doing every other act necessary to wind up and liquidate its business.¹⁸

A corporation should review the specific State statutes regarding regulations for procedural requirements for dissolution.¹⁹

IV. Drafting Bylaws [Return](#)

In addition to the articles of incorporation, a nonprofit corporation must file a governing document, such as the bylaws, in order to secure tax-exempt status. The bylaws and articles of incorporation are filed at the same time, but the bylaws outline internal governance structure and operations of the board. The bylaws may be general enough to allow some degree of flexibility and yet specific enough to serve as a guiding document concerning the responsibilities, structure, and operations of the Board of Directors.

Bylaws are necessary in order to determine which staff and board members have authority and decision-making responsibilities and how those responsibilities should be carried out. They create a framework for the corporation which aids in resolving internal disputes and ensures that financial resources are used properly. Page 17 of the Appendix provides sample bylaws for a nonprofit corporation. Below, is a checklist walks through the basic considerations and decision points involved with crafting bylaws.

V. Structure and Operations of the Board of Directors [Return](#)

The function of the Board of Directors is to carry out the mission of the corporation. The structure of the Bylaws outlines the parameters under which the Board operates. When determining the structure of a Board of Directors for a nonprofit corporation, you should keep in mind that the ultimate goal is to assess: “What is needed to facilitate both active participation and effective decision making?”

Note that the structure of the Board may change as the organization matures. The way in which the Board is structured and the way in which it operates should be spelled out in the bylaws of the corporation. The section below walks through a number of considerations for determining the structure and operations of the Board.

A. General Board Types and Obligations

Types of Boards

¹⁸ VA. CODE ANN. § 13.1-906.

¹⁹ VA. CODE ANN. § 13.1-902-917.

- Governing Board

The governing Board makes decisions about the policies and operations of the corporation. The governing Board has a responsibility to tend to the legal, financial, operational and human resources functions.

- Advisory Board

An advisory Board extends the outreach of the organization to engage community leaders and to seek their “expert” guidance on matters affecting the organization. An advisory Board or committee may have specific skills which equip them to provide consulting, ideas, and suggestions. Advisory committees may offer advice but do not set policy. The organization may accept or reject the advice offered.

Obligations of the Board

Individuals who serve on boards must understand that they are bound by two primary duties: the *Duty of Care* and the *Duty of Loyalty*.

The Duty of Care requires Board members to act (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interests of the corporation.

The Duty of Loyalty requires Board members to pursue the corporation’s best interest, whether over money or politics. The Duty of Loyalty prohibits a director from engaging in self-dealing unless there is full disclosure to the Board and the transaction is clearly in the corporation’s best interest.

Other Duties – if an organization is young, it may not have the financial resources to commit to hiring staff to support the operations. Unless the Board is able to recruit a cadre of volunteers to function in staff roles, the Board members of a young organization may also have to serve as workers.

B. Structure of the Board²⁰

Size of the Board

- Large board (More than 21 members)
- Mid-size board (Up to 21 members)
- Small board (Up to 12 members)

When an organization is incorporated, it must list the names and addresses of the persons who are to serve as the initial directors. If the directors are not named in the Articles, the incorporator may appoint the initial directors in a separate document after incorporation.

An corporation in its formative stages may be guided by as few as three individuals. However, as stated earlier, the Board of Directors has a responsibility to tend to the legal, financial, operational and human resources functions. A larger governing Board would enable the corporation to benefit from a broader set of skills. When the organization matures, its operations are likely to become more complex. In order to afford the organization the flexibility that it needs to grow, it is recommended that the bylaws provide an acceptable *range* for the number of directors. The organization will need to set the upper limit for the ideal number of directors, taking into consideration the various functions and committees that will be needed to support the governance of the organization.

Tenure and Terms of Board Membership

- Structure and rotation of terms

It is helpful to stagger terms so that 1/3 of the board members are beginning their terms, 1/3 are ending terms, and 1/3 remain. Under this structure, the length of a single term should be divisible by three. For example, three years of service would be defined as a single term. Staggered terms allow for new board members to be mentored as they learn the organization and to become fully immersed in the board operations. It is difficult for organizational development if too many board members are new. On the other hand, a board may become stagnant if the same individuals serve year after year.

- Term limits

It is customary to specify the number of terms a board member may serve. Often, the recommended number of terms is two or three. Term limits help to manage the health of the board. Term limits can be a helpful recruiting tool in order to attract new board members. Potential board members will want to consider the length of the commitment before accepting the responsibility to serve on the Board. If term limits do not exist, a Board can

²⁰ Brown, William A., “Exploring the Association between Board and Organizational Performance in Nonprofit Organizations”, Center for Nonprofit Leadership & Management, January 5, 2004.

become stagnant or complacent. Term limits provide a graceful exit by those whose interests may have waned.

If a board member is truly engaged and wants to remain active, then there are at least two options. First, designate a length of time that a board member remains off the board after which time the individual may be eligible once again for a full rotation of service. Second, an emeritus board may be created. An emeritus board provides a way to engage former board members by keeping them apprised of organizational activities and/or inviting them to attend the annual meeting of the Board.

C. Composition and Selection of the Board²¹

You should always take care when it comes to selecting new board members, particularly when selecting the early board members who will lay the groundwork for future boards. If the Board regularly evaluates its own performance, then the Board will have a clear idea about what skill sets are needed to round out the composition of the Board. The skill sets required may shift as a corporation moves from the forming stage to the operational stage, growth stage, and maturity.

1. Composition

Below is a listing of considerations to ensure a diverse board:

- Demographic Distribution
 - Gender
 - Race
 - Age
- Geographic Distribution
- Representative Stakeholders
- Skill sets
 - Business
 - Communications
 - Educational
 - Financial
 - Fundraising
 - Human Resources
 - Professional: legal, medical, psychological, religious, technical
 - Programmatic
 - Public Relations

Two other factors may help to shape the composition of the board. These factors are the stage of the development of the organization and whether or not the organization is in a position to hire

²¹ www.governance.com.au, Nonprofit Governance & Management Centre, “Strengthening Board Effectiveness”

employees to carry out its operations. Together, these factors will help to identify the skills needed to govern the organization.

a. Stage of development of the organization

- Start-up
- Growth
- Mature

The skill sets required to steward an organization may be very different for a mature organization compared to a start-up organization or an organization in the growth stages. For example, a start-up organization may require board members to be more “hands-on” in the daily operations of the organization, especially if professional staff is not available. As discussed earlier, the creation of staggered terms and term limits enables the organization to bring in the new skills it needs.

b. Role of Professional Staff vs. Board

As mentioned above, whether or not professional staff is available may influence the skills and time commitment required of board members to run the organization. If professional staff is available, then the board needs to identify which, if any, are also members of the board and whether or not they have voting rights.

Does the organization employ professional staff?

No

Will the board chairman also serve as the executive director of the organization? Is there an opportunity for other volunteers or staff members to attend board or committee meetings on a periodic basis? How many volunteers will you need and what roles will they serve? Do the volunteers have job descriptions?

Yes

Will the paid executive director be a voting member of the board? What staff members will regularly attend meetings? Is there an opportunity for other volunteers to attend board or committee meetings on a periodic basis?

The decision to hire professional staff depends almost exclusively on the financial resources available to the nonprofit organization. Nonprofit organizations are formed with a wide range of access to financial resources. The decision to hire professional staff should not be taken lightly. In the formative stages of a organization, it may be highly likely that the organization is fully staffed by volunteers who may or may not also be members of the board. Volunteer staffing has its advantages and disadvantages. The opportunity to hire part-time or full-time staff allows the board to delegate many of the administrative functions.

2. Selection Process for New Board Members

- Research: Resume & Application
- Interview

Your organization should clearly outline the process to provide for the nomination, review, and final selection of board members. Many boards require an application form and or resume as part of the nominations process. Others require a personal interview so that board candidates may meet with staff and board members in a small setting prior to accepting their role on the board. This kind of care and attention to the selection of the board member conveys the significance that is placed on the role of the board.

3. Board Development

a. Orientation and Training

- Orientation: individual or group
- Briefing packets
- New board member mentors
- On-going training of board members

A strong orientation program will send a signal to new board members that they are critical players on the team.²² The board member should be fully briefed about the organization's history, goals and operations. The new board member should be provided with a number of documents such as the (1) mission statement of the organization, (2) Articles of Incorporation, (3) Bylaws, (4) most recent annual report, (5) financial statements including the budget and tax filings of form 990, (6) policies, (7) expectations for meeting attendance and committee work, and (8) a list of current board members with complete contact information and committee designations

b. Training

Training new board members and integrating them into the organization is another important process. Training can take several forms. Training can focus on developing particular skills or training may be an on-going education concerning the operations of the organization through presentations by volunteers or staff.

c. Board Annual Self Evaluation

The organization may want to survey the members of the board on a yearly basis in order to evaluate board member engagement, strengths and weaknesses. It is recommended that a written questionnaire be used to as a tool to collect information about various aspects of the board.

²² www.governance.com.au, Nonprofit Governance & Management Centre, "Strengthening Board Effectiveness"

d. Board Retreats²³

Retreats occur outside of the regular schedule of board meetings. Retreats may occur on an annual basis or they may be held on a periodic basis to address long-range topics. Retreats may or may not be facilitated by paid consultants. Retreats provide an opportunity for nurturing relationships among board members and building board cohesion.

D. Business Operations of the Board²⁴

The business of the board includes executive responsibilities, finance, personnel, program, nominations, resource development/fundraising, public information/media, and planning and evaluation.²⁵ Often boards conduct their business through standing committees that meet outside of the regularly scheduled board meetings. Committees meet to conduct business or make recommendations on policy issues within their areas of responsibility. However, ad hoc committees may be appointed with a specific charge and deadline to achieve results.

Meetings

- Frequency
- Regular vs. Special vs. Committee

Meetings are the principal means through which board carry out their legal responsibilities.²⁶ Therefore, it is important to spell out the expectations for meeting attendance in the bylaws of the organization.

Leadership and Officers²⁷

1. Officers

- President
- President-Elect
- Immediate Past President
- Secretary
- Treasurer

The officers of the organization are to carry out core responsibilities which are essential to fulfilling the governance role.

²³ Futter, Victor Nonprofit Governance and Management, “Board Retreats” pp. 229 – 232. American Society of Corporate Secretaries, 2002.

²⁴ “A Guide for Board Members of Nonprofit Organizations”, United Way of the Capital Area

²⁵ www.mosaica.org/principles.htm “Operating Principles for Boards of Directors of Nonprofit Organizations: an Overview.”

²⁶ IBID

²⁷ Module 7 “Board Duties and Responsibilities: Clarifying Job Descriptions”. Clemson University Extension and South Carolina Association of Nonprofit Organizations, 2002.

2. Other Leadership

Committee Chairs often serve as part of an executive committee meeting with the officers.

E. Committees

- Standing Committees
- Ad hoc Committees

The Board of Directors may want to appoint standing committees to carry out specific functions. For example, a curriculum committee of an independent school would be responsible for attending to the curriculum and making adjustments as deemed necessary. A young organization may not have depth of the board to appoint a number of distinct standing committees. In this case, an audit committee and a nominating/board development committee are suggested as the minimum committees required. The Board of Directors may appoint ad hoc committees to carry out specific functions such as an anniversary committee. The board should consider whether or not non-board members may serve on standing and/or ad hoc committees.

F. Communication

- Meetings
- Conference calls
- Written reports
- E-mails

The Board of Directors will want to outline acceptable methods of communication. May meeting notices and minutes be distributed via e-mail or must they be sent through the postal service? How will committees report their activities to the full board? If a conference call constitutes a meeting, shall minutes be recorded?

In summary, it is important for the early members of the organization to think through the processes and outline structure in which the organization will operate. You should outline these processes in the bylaws in a manner that is neither too restrictive nor too vague. Although bylaws may be amended, the amending of bylaws should not be taken lightly and guidelines for such amendment should be clear.

For sample bylaws, see Appendix, Chapter 2, [samplebylaws](#)

CHAPTER 2 APPENDIX

Sample Articles Of Incorporation And Sample By-Laws

I. Sample Articles of Incorporation

ARTICLES OF INCORPORATION⁵⁵
OF
_____, INC.,
A NONSTOCK CORPORATION

The undersigned person(s), pursuant to Chapter 10 of Title 13.1 of the Code of Virginia of 1950, as amended, hereby adopt and set forth the following articles of incorporation:

Article I – Name

The name of the Corporation is _____ Inc.⁵⁶

Article II – Purpose and Powers⁵⁷

The Corporation is organized exclusively for charitable, religious, educational, or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, including, without limitation, the purposes of _____. The Corporation shall not be operated for the primary purpose of carrying on a trade or business for profit. The Corporation shall have all powers granted under Va. Code Ann. § 13.1-826 and any other applicable statute.

Article III – Limitations⁵⁸

At all times, the following shall operate as conditions restricting the operations and activities of the Corporation:

1. No part of the net earnings of the Corporation shall inure to the benefit or be distributed to any private person except the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payment and distributions in furtherance of the purposes set forth in Article II hereof;

⁵⁵ Many provisions in the Sample Articles have been taken from Henry A. Hart, *Virginia Tax-Exempt Organizations—Organizational, Operational and Liability Considerations*, in TAX-EXEMPT ORGANIZATIONS, at III-5 to III-7, III-30 to III-33 (Virginia Law Foundation 2002).

⁵⁶ See VA. CODE ANN. § 13.1-829.

⁵⁷ This Article should set forth general tax exempt purposes of the nonprofit with appropriate language in light of the subsection of IRC § 501(c) under which exemption is sought. See IRS Publication 557.

⁵⁸ See IRS Publication 557.

2. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation nor shall it in any manner or to any extent participate in or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office; nor shall the Corporation engage in any activities that are unlawful under the applicable federal, state, or local laws; and
3. Notwithstanding any other provision of these Articles, the Corporation shall neither have nor exercise any power, nor shall it directly or indirectly engage in any activity that would (1) prevent it from obtaining exemption from federal income taxation as a corporation described in § 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, or (2) cause it to lose such exempt status.

Article IV – Members

The Corporation is to have no members.⁵⁹

(In the case of a nonprofit with the goal of providing legal services to individuals and their family members afflicted with cancer, a non-membership organization is preferable. The individuals that the nonprofit serves will not be limited to members, but rather will extend to the public at large. Since such membership is not critical, it is preferable to not have members so as to preserve control and decision-making authority in the board of directors and to not have the additional expense of keeping up memberships.)

Article V - Registered Office and Registered Agent⁶⁰

The address of the initial registered office of the Corporation in the Commonwealth of Virginia is located in the City of Roanoke, at _____ Roanoke, Virginia, and the name of its initial registered agent at such address is _____ [who is a resident of Virginia and (an initial director of the Corporation) *or* (a member of the Virginia State Bar)] *or* [which is a domestic or foreign stock or nonstock corporation, limited liability company, or registered limited liability partnership authorized to transact business in Virginia].

Article VI - Principal Office

The address of the principal office of the Corporation is located in the City of Roanoke, at _____, Roanoke, Virginia _____.

⁵⁹ Alternatively, if the nonprofit is to have members: “The Corporation is to have the following class(es) of members:_____.” This Article should set forth any provisions designating the class(es) of members, stating the qualifications and rights of the members of each class and conferring, and limiting or denying the right to vote or provide in the articles that such provisions may be included in the Bylaws.

⁶⁰ See VA. CODE ANN. § 13.1-819(A)(5).

Article VII - Directors

The directors of the Corporation are to be elected or appointed by [manner in which directors are to be elected or appointed].⁶¹ The number of directors constituting the initial Board of Directors is _____ (___); and, the name and address of each such director is as follows:

NAME

ADDRESS

The number of directors may be amended as provided in the Bylaws of the Corporation.

Article VIII – Dissolution⁶²

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the Circuit Court of the city or county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations as said Court shall determine, which are organized and operated exclusively for such purposes.

Executed this ____ day of _____, 200__.

_____ Incorporator

_____ 200_

⁶¹ If directors are to be elected by cumulative voting, it must be so stated. VA. CODE ANN. § 13.1-852. If director terms are to be staggered, it must be so stated. VA. CODE ANN. § 13.1-858. If directors are to be removed only for cause (as opposed to with or without cause), it must be so stated. VA. CODE ANN. § 13.1-860.

⁶² See IRS Publication 557.

Starting A Nonprofit: What You Need To Know, 1st Ed. – Chapter 2

Office of the Clerk
State Corporation Commission
Post Office Box 1197
Richmond, Virginia 23218-1197

Re: Articles of Incorporation for _____ (the “Corporation”)
Dear Sir or Madam:

Enclosed please find Articles of Incorporation for the Corporation and a check in the amount of Seventy-five and 00/100 Dollars (\$75.00).

Please record the Articles of Incorporation and return the certificate and receipt to me. Please call with any questions or comments you may have.

Sincerely,

Enclosures – 2

II. Sample Bylaws

Below are sample bylaws along with a discussion that would be appropriate for a legal aid society in Roanoke, Virginia. It is a non-membership society, since the legal services will be open to the general public that is suffering the financial consequences of cancer.

Article I – Name and Location

- 1.1 The name of the Corporation shall be [Corporation].
- 1.2 The principal office of the Corporation shall be located within Roanoke, Virginia.

The corporation must choose a legally available corporate name. It may be necessary to contact a lawyer or corporate name service in order to find an available name. It is important to re-reserve the name, if the corporation takes awhile to officially form, in order to ensure the availability. In addition to availability, the name must be distinguishable from the names of other corporations in Virginia.

Article II – Purposes

- 2.1 The purpose for which the Corporation is formed is [insert mission statement here] and any and all services that the Board of Directors sees fit.

In addition to the mission statement, it is necessary to include a provision that will ensure that the corporation is consistent with the Internal Revenue Code §501(c)(3) tax exempt status.

Additionally, after the mission statement it is important to include a “catch-all” phrase to allow for flexibility in the corporation.

Article III – Board of Directors

3.1 Powers & Duties

3.1.1 General Powers

The business and affairs of the Corporation shall be conducted under the direction of, and the control and disposal of, the Corporations’ properties and funds shall be vested in its Board of Directors, except as otherwise provided in the nonprofit corporation law of the Commonwealth of Virginia, the Corporation’s Articles of Incorporation, or these Bylaws.

3.1.2 Duties

The Board of Directors is charged with (2) two primary duties: the Duty of Care and the Duty of Loyalty.⁶³

Duty of Care requires board members to act (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interests of the Corporation.

Duty of Loyalty requires board members to pursue the Corporation’s best interest, whether over money or politics. The Duty of Loyalty prohibits a director from engaging in self-dealing unless there is full disclosure to the board and the transaction is clearly in the corporation’s best interest.

3.2 Number, Election, Term, and Qualifications

3.2.1 Number

There shall be no fewer than 3 and no more than 21 members of the Board.

3.2.2 Terms and Term Limits

Each board member shall be elected at an annual meeting by the full board to serve a three-year term. The term is once renewable such that a board member may serve two consecutive three-year terms. Board members shall be divided into three classes to achieve a staggered rotation of terms.

The minimum number of board members set at three allows the organization to begin to function as soon as it is incorporated. Providing an acceptable range of members allows for growth of the board over time. Setting a number divisible by (3) three affords the board an opportunity to

⁶³ Futter, Victor, Nonprofit Governance & Management, “Chapter 8: Duties and Potential Liabilities of Officers and Directors of Nonprofit Organizations”, 2002, pp. 84-87)

set a rotation such that when 1/3 of the board is newly elected, 1/3 has completed a year of service, and 1/3 is serving the final year of a single term.

3.2.3 Eligibility for Renewal

A board member who has completed two consecutive terms shall remain off the Board for one full year before being considered for board membership again. At this time, the former board member turned candidate is eligible to serve two consecutive terms again.

3.2.3 Qualifications

The Nominating/Board Development Committee shall propose a slate of members at the annual meeting of the Board upon giving due consideration the recommendations of such persons. The Board shall be comprised of members with consideration of, but not limited to, the following skills: business, development, finance, healthcare, human resources, legal, public relations and communications, and/or a general interest in cancer.

3.3 Attendance

3.3.1 In order to uphold the Duty of Care, it is expected that board members attend all regularly scheduled board meetings.

3.3.2 A board member who misses three consecutive meetings, unless excused, shall be deemed to have resigned. The office shall become vacant for the remainder of the term. The minutes should note any excused absences.

3.3.3 A board member may take a “leave of absence” for up to six months with approval from the Executive Committee. The board member must submit a request in writing with a justification for the leave. Examples of acceptable reasons for leave include but are not limited to: maternity, care for family members, personal health.

In the case of this corporation which provides services to cancer patients and loved ones, it is highly likely that board members may be dealing with their own personal health concerns and may need to take time away from the corporation to deal with them.

3.4 Nominating/Board Development

3.4.1 Board members may be reviewed and proposed by a Nominating/Board Development Committee appointed by the President/Chairman of the Board. The Nominating/Board Development Committee shall interview all board candidates and request a resume and/or application. When selecting candidates for presentation to the board, the Nominating/Board Development Committee shall give consideration to expertise, needs of the committees, demographics of the board, and other factors as deemed appropriate in addition to the candidate’s commitment to the mission of the Corporation.

3.4.2 To ensure that prospective board members are fully prepared to assume their duties, board members shall receive copies of the following materials:

(1) the mission statement of the Corporation, (2) the Articles of Incorporation, (3) the Bylaws, (4) the most recent annual report, (5) financial statements including the budget and tax filings of form 990, (6) policies, (7) expectations for meeting attendance and committee work, and (8) a list of current board members with complete contact information and committee designations.

3.4.3 Upon election to the Board, new members shall have the opportunity to participate in a board member orientation.

3.4.4 The Nominating/Board Development Committee shall be responsible for the ongoing training and development of the Board including an annual assessment of board performance. As such, the committee shall give consideration to board structure (board size, committees, etc.), inputs (board member skills and time), and processes (common vision, clear roles, and meeting practices).

3.5 Resignation and Vacancies

3.5.1 Resignations

A board member may resign at any time by providing written notice to the Board Chair, Secretary, or Executive Director.

3.5.2 Board Vacancies

A director elected to fill a vacancy due to resignation shall be elected for the unexpired term of the predecessor. Vacancies may be filled at any time by the affirmative vote of a majority of the remaining directors then in office, even if it is less than a quorum.

3.6 Regular Meetings

3.6.1 Regular meetings

The Board of Directors shall meet no fewer than (9) nine times, including an annual meeting.

During the formative stages of developing the corporation, the board will most likely meet monthly or perhaps more often. As the corporation becomes established, the board may elect to meet less often. For example, some corporations may choose to omit a meeting during the summer or winter seasons.

3.6.2 Definition of Annual Meeting

The annual meeting of the Board shall be the regular board meeting which occurs in April. The purpose of the meeting shall be to elect officers, board members, set the budget and calendar of meetings for the coming year, and any other business as set forth before the Board.

3.6.3 Special Meetings

The Board Chair may call a special meeting of the Board whenever deemed necessary or when requested to do so by (3) three or more directors or by the Executive Director. Notice of a special meeting shall be provided in writing to each board member at least (7) seven days in advance of the meeting.

3.6.4 Meeting Notification

The Board of Directors shall set the schedule of meetings for the coming year at the annual meeting. The schedule of meetings shall serve as proper notice. Meeting materials shall be prepared and distributed not later than the Friday before the meeting.

3.6.5 Rules of Order

Meetings shall be guided by specific parliamentary procedure as adopted by the Board of Directors.

3.7 Quorum and Voting

3.7.1 Meeting quorum

A quorum exists if 2/3 of the members of the board are present for a meeting.

3.7.2 Voting

Each member of the Board shall have (1) one vote. An action may be passed by the Board at a meeting through an affirmative vote by the majority of those present.

3.7.3 Amendment to Bylaws

The bylaws may be amended with vote of a super majority of the Board. Proposed amendments must be submitted in writing to the Board prior to the meeting in which the vote is to be held.

Article IV – Officers and Agents

4.1 Number and qualifications

The board officers shall consist of a President, President-Elect, Immediate Past President, Secretary/Treasurer.

The roles of president-elect and immediate past president provide for continuity and stability in the corporation. The immediate past president serves as a mentor to the president while the president-elect is continuously learning and preparing for the role of president.

4.2 Election and Term of Office

The Nominating/Board Development Committee shall present a slate of officers for the coming year for vote by the full board at the annual spring meeting.

4.6 Authority and Duties of Officers

4.6.1 President

The President of the Board shall serve a one-year term. The President is responsible for convening meetings and general oversight of board activities. The President appoints the Nominating/Board Development Committee and serves on the Personnel Committee.

4.6.2 President-Elect

The President-Elect shall serve a one-year term with the expectation of assuming the role of President. In the event of the prolonged absence or disability of the President, the President-Elect shall have all the authority and duties vested in the President.

4.6.3 Immediate Past President

The Immediate Past President serves on the Nominating/Board Development Committee and serves as a resource to the President. The Immediate Past President serves a one-year term of office.

4.6.3 Recording Secretary

The Secretary of the Board shall ensure that proper notice is given for meetings, and is responsible for recording and distributing minutes of meetings. In the absence of the Secretary, the President shall appoint a person to act as Secretary at a particular meeting.

4.6.4 Treasurer

The chairman of the finance committee serves as the Treasurer of the Board and as such, is a member of the Executive Committee. The Treasurer shall be responsible for submitting the annual budget for approval by the full Board. The proposed budget shall be presented for discussion at the meeting prior to the annual meeting. The budget shall be approved at the annual meeting. The Treasurer shall prepare the monthly financial reports to the Board, receive and make deposits, and make disbursements up to \$1,000. Disbursements over \$1,000 require the co-signature of the Board President. At the end of the term the Treasurer shall deliver to the successor all books, monies, and other property of the Corporation then in his or her possession.

Article V – Committees of the Board

- 5.3** The creation of committees shall be recommended by the Executive Committee to the full Board. Committees in addition to those listed below may include: program committee, resource development, public relations, and others as deemed necessary by the Board. The President of the Board may appoint committee chairs. The President of the Board may designate an ad hoc committee to carry out special projects within certain time parameters. For example, an anniversary planning committee or a long-range plans committee.

5.3.1 Executive Committee

The Executive Committee shall be comprised of the officers of the Board and the chairmen of committees. The Executive Committee has authority to exercise all the

powers and functions of the board in the management and direction of the affairs of the Corporation. The Executive Committee of the Board shall hold a minimum of (4) four meetings per year outside of the regular board meetings and shall report on such meetings at the next regular meeting of the full Board.

5.3.2 Committee Chairs

The committee chair holds the responsibility for convening meetings and ensuring that communication is upheld with the Board. The committee chair shall be appointed by the President of the Board.

5.3.3 Nominating/Board Development Committee

The Nominating/Board Development Committee shall be appointed by the President of the Board. The Nominating/Board Development Committee shall recruit, interview, and present candidates for election to the Board at the annual spring meeting of the Board. The Nominating/Board Development Committee shall be responsible for maintaining a pool of potential board members, annual assessment of board performance, and board training.

5.3.4 Audit Committee

The Audit Committee shall ensure that the financial reporting is in compliance with current statutes. The Audit Committee shall ensure that an annual audit is completed and that all tax forms are filed. Reports of the auditors and copies of tax forms shall be readily available to board members.

5.3.5 Personnel Committee

At the point in time that the Corporation shall employ an executive director and/or other staff, the Personnel Committee shall set human resources policies. The Personnel Committee shall be responsible for the hiring and annual review of the Executive Director and serves as the last point of appeal in the grievance process.

Article VI – Advisory Council

- 6.1** An Advisory Council may be appointed at the discretion of the President and the Executive Director to offer special expertise in the business, legal, or health aspects of dealing with cancer. The Advisory Council has no governing authority but represents interested parties who have demonstrated expertise or knowledge of the community but who may not be able to serve on a governing board for various reasons. The Advisory Council shall meet at least once per year. Otherwise, Advisory Council members may be available for consultation on an individual basis.

An advisory council is not necessary but may enable the board to fulfill its governing duties to the corporation by providing technical expertise.

Article VII – Indemnity of Officers and Directors

- 7.1** Each person now or hereafter a director or officer of the Corporation (and his or her heirs, executors and administrators) shall be indemnified by the Corporation to the fullest extent permitted by the laws of the Commonwealth of Virginia (See Va. Code Ann. § 13.1-702) against all claims, liabilities, judgments, settlements, costs and expenses, including all attorney's fees, imposed upon or reasonably incurred by him or her in connection with or resulting from any action, suit, proceeding or claim to which he or she is or may be made a party by reason of his or her being or having been a director or officer of the Corporation (whether or not he or she is a director or officer at the time such costs or expenses are incurred or imposed upon him or her), except in relation to matters as to which he or she shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of his or her duties as such director or officer.
- 7.2** Under Va. Code Ann. §13.1-697, the Corporation has the authority to indemnify an officer or director if 1) he conducted himself in good faith, and 2) he believed in the case of conduct in his official capacity with the Corporation, that his conduct was in its best interests; and in all other cases, that his conduct was at least not opposed to its best interests; and in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

If the determination as to whether a director or officer was guilty of gross negligence or willful misconduct is to be made by the Board, it may rely as to all questions of law on the advice of independent counsel. Such right of indemnification shall not be deemed exclusive of any rights to which an officer or director may be entitled by any bylaw, agreement, vote of members, or otherwise. The Corporation shall have the authority to purchase suitable policies of indemnification insurance on behalf of its officers, directors, or agents, the premiums for which may be paid out of the assets of the Corporation

Article VIII – Conflicts of Interest

8.1 Conflict Defined

A conflict of interest exists when the interests or activities of any director, officer or staff member may be seen as competing with the interests or activities of the Corporation; or the director, officer, or staff member derives a financial or other material gain as a result of a direct or indirect relationship.

8.2 Disclosure

Any conflict of interest shall be disclosed to the Board of Directors by the person who has the conflict. When the conflict relates to a matter requiring action by the Board of Directors, that person shall not participate in the discussion nor vote on the matter, but their presence may be counted if it is necessary in order to achieve the quorum.

The National Charities Information Bureau requires that nonprofit organizations adopt a policy on conflicts of interest. The duty of loyalty, as discussed earlier, demands that a director or officer of a corporation act in the best interests of the corporation. If there is a conflict with a director, they must disclose their conflict and remove themselves from any votes pertaining to the matter in conflict. This article does not necessarily need to be included in the Bylaws because it can be adopted as a policy by the Board of Directors instead.

Article IX – Account Books and Minutes

- 9.1** The Corporation shall keep correct and complete books and records of account and financial statements and shall also keep minutes of the proceedings of its Board of Directors and Committees. All books and records of the Corporation may be inspected by any director or his or her accredited agent or attorney, for any proper purpose at any reasonable time. The minutes will be entrusted to [a member of the Board] and will be kept [in a particular place]. In accordance with the IRS laws, the minutes will be made available to the public upon request. Additionally, the minutes will be emailed to all the Board of Directors to go over, so at the next meeting, the Board can agree to their accuracy.

The minutes will be reviewed by the board and the board must agree to their veracity because the board is ultimately responsible for the operations and governance of the corporation.

Article X – Fiscal Year and Audit

- 10.1** The fiscal year of the Corporation shall be January 1 through December 31, inclusive. After the close of each fiscal year of the Corporation, financial transactions of the Corporation for the preceding fiscal year shall be reviewed by certified public accountants, as directed by the Board of Directors, and a report of the review shall be made to the Board of Directors within ninety days after the close of the fiscal year.

Article XI – Loans to Directors and Officers

- 11.1** The law of the Commonwealth of Virginia prohibits any loans or advances, other than customary travel advances, to be made by the Corporation to any of its directors or officers.

Article XII – Amendment to Bylaws

- 12.1** These Bylaws may be amended or repealed in whole or in part by a supermajority vote (over two thirds) of the active members present and voting at any special or regular meeting of the Corporation, provided that 14 days notice of the proposed amendment or repeal be given in the call for such meeting.

(The ability to pass amendments to the by-laws is necessary so that your corporation will have the flexibility necessary to adjust to the organization's needs. There may be specifications for amendments in the Articles of Incorporation to allow for amendments. Rather than the

majority vote necessary to approve normal business decisions, amendment of the by-laws should require a supermajority vote in order to make sure that the organization's rules and structure cannot be altered too easily.)

Bylaws Certificate

The undersigned certifies that he/she is the Secretary of [name of corporation], a Virginia nonprofit corporation, and that, as such he/she is authorized to execute this certificate on behalf of said Corporation, and further certifies that the foregoing Bylaws, consisting of _____ (____) pages, including this page, constitute the Bylaws of the Corporation as of this date, duly adopted by the [members or directors, depending on whether articles of incorporation specify members or directors are entitled to adopt bylaws], of the Corporation at their [date] [annual, special, or regular] meeting, as amended from time to time prior to the date hereof.

Dated: [date]

[Signature of Secretary]

[Name of Secretary], Secretary