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Source: <http://www.sec.state.ma.us/cor/corpweb/corncp/npinf.htm>

Articles of Organization

Nonprofit corporations are formed in the manner prescribed in M.G.L.Chapter 156B , s.11, s.12 and s.13, except the corporation does not have capital stock, the articles of organization omit reference to stock and stockholders and the corporation is formed for a purpose recognized by M.G.L.Chapter 180, s.4. Allowable purposes for a nonprofit corporation include:

1. any civic, educational, charitable, benevolent or religious purpose;
2. the prosecution of any antiquarian, historical, literary, scientific, medical, chiropractic, artistic, monumental or musical purpose;
3. for establishing and maintaining libraries;
4. for supporting any missionary enterprise having for its object the dissemination of religious or educational instruction in foreign countries;
5. for promoting temperance or morality in the Commonwealth;
6. for fostering, encouraging, or engaging in athletic exercises or yachting;
7. for encouraging the raising of choice breeds of domestic animals and poultry;
8. for the association and accommodation of societies of Free Masons, Odd Fellows, Knights of Pythias or other charitable or social bodies of like character and purpose;
9. for the establishment and maintenance or places for reading rooms, libraries, or social meetings;
10. for establishing boards of trade, chambers of commerce and bodies of like nature;
11. for providing nonprofit credit counseling services, as defined in M.G.L. Chapter 180, s.4A;

12. for encouraging agriculture or horticulture; for improving and ornamenting the streets and public squares of any city or town by planting and cultivating ornamental trees therein and also otherwise improving the physical aspects of such city or town and furthering the recreation and enjoyment of the inhabitants thereof;

13. for the purpose of purchasing, holding, preserving and maintaining burial grounds in accordance with M.G.L. Chapter 114; and

14. for the purpose of forming self insured workers compensation groups pursuant to M.G.L. Chapter 152.

Nonprofit corporations have the same powers as business corporations, except the power to purchase, receive, take or otherwise acquire, own, hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use, or otherwise deal in and with its own shares. (M.G.L. Chapter 180, s.6 as amended by M.G.L. Chapter 283 of the Acts of 1987.

Those powers, unless otherwise provided in its articles of organization, include:

- a. to have perpetual succession in its corporate name, unless a period for its duration is limited by special law or in its articles of organization;
- b. to sue and be sued;
- c. to have a corporate seal, which it may alter at its pleasure;
- d. to elect or appoint directors, officers, employees, and other agents, to fix their compensation and define their duties and obligations and to indemnify such corporate personnel;
- e. to purchase, receive, take by grant, gift, devise, bequest, or otherwise lease, or acquire, own, hold, improve, employ, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
- f. to sell, convey, lease, exchange, transfer, or otherwise dispose of, or mortgage, pledge, encumber or create a security interest in, all or any of its property, or any interest therein, wherever situated;
- g. to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities;
- h. to make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or encumbrance of, or security interest in, all or any of its property or any interest therein, wherever situated;
- i. to lend money, invest and reinvest its funds, and take and hold real and personal

property as security for the payment of funds so loaned or invested;

j. to do business, carry on its operations, and have offices and exercise the powers granted by this chapter in any jurisdiction within or without the United States;

k. to make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, religious, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof;

l. to pay pensions, establish and carry out pension, profitsharing, share bonus, share purchase, share option, savings, thrift and other retirement, incentive and benefit plans, trusts and provisions for any or all of its directors, officers and employees, and for any or all of the directors, officers and employees of any corporation, fifty percent or more of the shares of which outstanding and entitled to vote on the election of directors are owned, directly or indirectly, by it;

m. to participate as a subscriber in the exchanging of insurance contracts specified in M.G.L. Chapter 175, s.94B;

n. to be an incorporator of other corporations of any type or kind; and

o. to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed; provided that no such power shall be exercised in a manner inconsistent with this chapter or the general laws of the Commonwealth.

Additionally, nonprofit corporations, may, if provided in their articles of organization, have the power to be a partner in any business enterprise which the corporation would have the power to conduct and if the corporation is not a public charity may make contracts of guarantee and suretyship, whether or not in furtherance of the corporation's purposes as provided in M.G.L. Chapter 156B, s.9B (added by M.G.L. Chapter 152 of the Acts of 1986). Nonprofit corporations which are tax exempt, or which constitute public charities, should generally not include this latter power.

Other provisions you may wish to include are:

1. Meetings of members, if any, are authorized to take place anywhere within the United States.

2. The directors may make, amend, or repeal the by-laws in whole or in part, except with respect to any provision thereof which by law, the articles of organization, or the by-laws require action by the members.

3. No director shall be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as director notwithstanding any provision of law imposing such liability, provided however that this provision shall not eliminate the liability of a director, to the extent that such liability is imposed by applicable law;

a. for any breach of the director's duty of loyalty to the corporation or its stockholders.

- b. for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; and
- c. for any transaction from which the director derived an improper personal benefit.

This provision shall not eliminate the liability of a director for any act or omission occurring prior to the date upon which this provision becomes effective. No amendment or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

You may also wish to include provisions pertaining to the indemnification of officers and directors, (if the corporation wishes to seek tax exempt status) provisions relating to 501(c) of the Internal Revenue Code. A corporation's status as nonprofit does not guarantee tax exempt status. Such status must be applied for with the Internal Revenue Service and the Department of Revenue.

If the corporation wishes to apply for tax exempt status at the federal level, you must fill out Form 1023 and mail or deliver it, along with a certified copy of the by-laws and articles of organization to the Internal Revenue Service. The by-laws must be signed by a corporate officer or by a person possessing power of attorney for the corporation, attesting, under penalty of perjury, to the validity of the document. A certified copy of the articles of organization may be obtained from the Corporations Division.

The IRS will notify you of the tax status in approximately two months. Your client will receive a letter at the corporate address confirming the tax exempt status, denying such status, or requesting further information before such a ruling is made. A letter of confirmation will also contain instructions regarding the kind of substitute tax return that the corporation will have to file annually with the IRS.

Tax exemption at the federal level does not automatically guarantee tax exemption at the state and local levels. To apply for exemptions on local property taxes, you must fill out Form 3ABC supplied by your local assessor or obtained from the Planning and Research division of the Department of Revenue. Submit this form to your local assessor with a copy of the IRS exemption letter. Some local assessors will tend to grant exemptions if the IRS does; others may not do so without further investigation.

If the IRS grants a federal exemption the corporation is eligible for an exemption on income taxes. In order to qualify you must send a photocopy of the IRS exemption letter to the Corporate Exemptions Division of the Department of Revenue. Once you have filed the IRS letter with Corporate Exemptions, you do not have to file any subsequent Massachusetts corporate income tax.

If the IRS grants a federal tax exemption, the corporation is also eligible for an exemption on state sales tax. In order to acquire this exemption, you must fill out Form TA1 and submit it, with a copy of the IRS exemption letter, to the Bureau of Sales Excise of the Department of Revenue.

Amendments

All amendments to the articles of organization for a nonprofit corporation must be authorized by a two-thirds vote of its members entitled to vote(M.G.L. Chapter 180, s.7). The fee for filing articles of amendment is fifteen dollars (\$15.00).

A corporation that cannot obtain the required vote may petition the Secretary of the Commonwealth for any amendment or restatement to its articles of organization (M.G.L. Chapter 180, s.7A). The petition must state:

1. the reason for the inability to comply;
2. a list of the officers and members;
3. the notice given to persons entitled to vote including any publication made; and
4. the attempts made to secure the vote.

If the Secretary of the Commonwealth is satisfied that the proposed action is approved by a reasonable proportion of those entitled to vote as have expressed an opinion relative thereto and the petition otherwise conforms with the provisions of law relative thereto, the amendment will be filed. The filing fee for 7A petitions is thirty dollars (\$30.00).

Articles of Consolidation/Merger

Nonprofit corporations may merge or consolidate in the manner provided for business corporations (s.78). If one or more of the constituent corporations constitute a public charity governed by M.G.L. Chapter 12 then the surviving corporation must also constitute a public charity governed by said chapter(M.G.L. Chapter 180, s.10). The fee for filing articles of consolidation or merger is thirty five dollars (\$35.00).

Annual Reports

All nonprofit corporations must file an annual report on or before November 1 **except:**

1. churches or religious organizations;

✍ A religious organization is defined as a organization whose primary purpose is the advancement of religion.

2. nonprofit schools or colleges;

✍ Nonprofit schools or colleges are exempt if they are:

a. a private school which meets all instructional requirements of a public school and which is approved by a school committee;

b. an educational institution for children requiring special education which is approved by the department of education;

c. a private business school licensed by the Commissioner of Education;

d. a correspondence school licensed by the Commissioner of Education; and

e. a college, junior college, university or other educational institution with power to grant degrees, and which is approved by the Board of Regents.

3. charitable hospitals;

4. library associations whose real or personal property is exempt from taxation; and

5. any corporation organized prior to January 1, 1923 and having as part of its name the name of a political party.

The annual report must be signed under penalties of perjury by an officer of the corporation. The annual report shall state:

1. the name of the corporation;

2. the street address of its principal office;

3. the date of its last preceding annual meeting;

4. the names and addresses of all the officers and directors, and the date at which the term of office of each expires.

Dissolutions

Nonprofit corporations are divided into two groups; those that are public charities and those that are not. Virtually all tax exempt and many other nonprofit corporations are public charities. Generally, public charities will have two characteristics in addition to their nonprofit status. First, as their name implies they will be formed for a purpose which is primarily charitable. Second the organization will confer a benefit on an indefinite class or number of people. If you do not know whether the corporation is a public charity, contact the Division of Public Charities, Office of the Attorney General at (617) 727-2235. The procedure for dissolving nonprofit corporations is different for public charities.

Public Charities

Nonprofit corporations that file annual statements with the Charities Division of the Attorney General's office may dissolve by filing a petition with the Supreme Judicial Court. The Attorney General must be designated as a party to the action and a provision must be included in the petition which authorizes dispersal of corporate assets to a "like" charity. A majority vote of the board of directors is necessary to authorize the petition. Any questions regarding this procedure should be directed to the Office of the Attorney General at the above telephone number (M.G.L. Chapter 180, s.11A).

Other Nonprofit Corporations

A majority of the members of who are legally qualified to vote in meetings of the corporation may vote to authorize a petition for dissolution to be filed with the Supreme Judicial Court. The petition shall state the grounds for the application. After notice and a hearing the court may issue a decree of dissolution. The court will make a return to the Secretary of the Commonwealth giving the name of the corporation and the date the decree was entered.

Revocation of Charter: Nonprofit Corporations

Under the provisions of Chapter 180, s.26A, the Secretary of the Commonwealth is empowered to revoke the charter of nonprofit corporations which are delinquent in their filings. If a corporation has not filed its Annual Report for two or more consecutive years, the Secretary of the Commonwealth is empowered to mail notice of default to the last known address of the corporation. If the corporation fails to submit the delinquent documents within ninety days, the Secretary may revoke its charter (M.G.L. Chapter 180, s.26A).

Revivals

Nonprofit corporations may be revived in the same manner as business corporations except a certificate of good standing is not necessary for corporations which are tax exempt.

Filing Fees

All fees must be paid by check or money order payable to the Commonwealth of Massachusetts.

Application for Revival (*MGL Ch. 180, s.10C*): \$40.00

Articles of Amendment (*MGL Ch. 180, s.7*): \$15.00

Articles of Consolidation/Merger (*MGL Ch. 180, s.10*) : \$35.00

Articles of Consolidation/Merger (*MGL Ch. 180, s.10A*): \$35.00

Articles of Organization (*MGL Ch. 180*): \$35.00

Certificate of Appointment of Resident Agent (*MGL Ch. 180, s.10A*):\$10.00

Certificate of Change of Address of Resident Agent (*MGL Ch. 180, s.10C*):\$10.00

Certificate of Change of Directors or Officers (*MGL Ch. 180, s.6D*):no fee

Certificate of Change of Fiscal Year (*MGL Ch. 180, s.10C*): no fee

Certificate of Change of Principal Office (*MGL Ch. 180, s.10C*): \$10.00

Certificate of Correction (*MGL Ch. 180, s.3A*): no fee

Certificate of Resignation of Resident Agent (*MGL Ch. 180, s.10C*):\$10.00

Certificate of Revocation of Appointment of Resident Agent (*MGL Ch. 180,s.10C*): \$10.00

Massachusetts Nonprofit Corporation Annual Report (*MGL Ch. 180, s.26A*):\$15.00

Restated Articles of Organization (*MGL Ch. 180, s.7*): \$35.00

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