N.C. Center *for* Nonprofits

How to Start a 501(c)(3) Nonprofit Organization

Information Packet

We recommend that you do not try to start a new nonprofit in the current economic climate. Due to the impact of the financial crisis on grantmakers and individual donors, it will be very difficult to find funding to start and sustain new organizations. The first page of this document offers ideas for accomplishing your goals without starting a new nonprofit.

The N.C. Center for *Nonprofits has compiled these resources as a complimentary service for visitors. The Center does not provide consulting services or assistance with filing documents for incorporation or tax-exempt status. We recommend that you consult an attorney to help with the legal process of forming a tax-exempt nonprofit.*

Our Members have access to many additional services for help managing their organizations, increasing their impact, and saving time and money. For information on all the benefits of Center membership and to join, visit www.ncnonprofits.org/memberservices.asp. Membership is open to all 501(c)(3) nonprofits and to groups in the process of starting a nonprofit.

Alternatives to Starting a Nonprofit

Establishing a new nonprofit corporation and maintaining the required administrative, regulatory, legal, and financial support can be very difficult. Funding a nonprofit on a long-term basis is also a big challenge, especially with funders' growing concern about duplication. Before you decide to create a new, separate nonprofit, we suggest that you talk with existing nonprofits that have goals similar to yours. First consider creating a project or program within another organization rather than spending your time and energy to establish a whole new entity.

Many nonprofits begin and end without ever achieving their vision. Can you achieve yours without starting a new organization?

1. Become a volunteer, board member, or even a staff member with a nonprofit already active in your area.

2. Identify three nonprofits most compatible with your ideas. Explore creating a special project or initiative - and negotiate your involvement.

3. Look at national organizations working in your area of interest and start a local chapter.

4. If your effort will be quite local and small, form an unincorporated association or club. Have meetings and activities, but skip the reporting requirements if your annual budget stays under $25,000.

5. If you want to finance scholarships, family emergency funds, or others' activities and needs, establish a fund at a community foundation or organization.

-- Jon Pratt

Common Ground, July/Aug '01. Jon Pratt is executive director of the Minnesota Council of Nonprofits. Reprinted with permission.

N.C. Center *for* Nonprofits

Creating a 501(c)(3) Nonprofit in North Carolina

Initial Planning

- *Is your nonprofit needed?* Carefully assess the need for your proposed nonprofit organization. Before you decide to create a new, separate nonprofit, talk with existing nonprofits that have goals similar to yours. Consider creating a project or program within another organization rather than spending your time and energy establishing a new organization.

- *Establish a Board of Directors.* If you are sure a new organization is really needed, the next step is to establish a Board of Directors. North Carolina law requires only one board member, but best practices recommend that you have no fewer than five; seven or more are preferable.
  - As you recruit board members, make sure they are aware of their roles and responsibilities. These include but are not limited to: selecting and reviewing the performance of the chief executive; recruiting new board members; ensuring effective organizational planning; evaluating organizational performance; providing financial oversight; and ensuring legal and ethical integrity.
  - A first priority for the board is to clarify the organization's mission and purpose. The board must determine both its short- and long-term goals by identifying who the organization will serve, clarifying what values will drive the organization, and planning for how the organization's mission may evolve.

Steps to Establish Your Nonprofit

- Before applying for tax-exempt status, you need to create organizational bylaws. It's helpful to review those of existing nonprofits and to have a lawyer review them before they're finalized.

- Incorporate by registering with the N.C. Department of the Secretary of State. For forms and free information, including guidelines for incorporating: 888/246-7636 or 919/807-2225 or *www.secretary.state.nc.us/corporations*.

- Apply for a Federal Employer Tax Identification Number (even if your nonprofit doesn't have employees). This number is used by the IRS to track reports and your Form 1023 tax-exempt application (see below). To apply, submit IRS Form SS-4 either online, by phone, by mail, or by fax. Call the IRS's Business & Specialty Tax Line (800/829-4933) or see *www.irs.gov/businesses/small/article/0,,id=97860,00.html*.

- Next, apply for tax-exempt status as a 501(c)(3) nonprofit. Call the IRS (800/829-3676) for Form 1023 and the packet that goes with it. The form and instructions are also available at *www.irs.gov/charities/index.html*. We strongly recommend you have an attorney and an accountant/CPA familiar with nonprofit tax law review your application before final submission. You will hear back from the IRS in 3-24 months.

- After receiving tax-exempt status, apply to the N.C. Department of Revenue for exemption from state sales tax, corporate income tax, and franchise tax. If your organization will have paid employees, get a State Withholding Identification Number (you must begin withholding taxes as soon as you begin paying employees). Contact the N.C. Department of Revenue at 877/252-3052.

- You are required to carry workers' compensation insurance once you have three full -or part-time employees and/or corporate officers. Contact the North Carolina Industrial Commission (919-807-2500, *www.comp.state.nc.us*) for information on how to obtain coverage.

- File with the N.C. Employment Security Commission (919/733-7156, *www.ncesc.com*) for unemployment taxes when you have at least four full- or part-time employees working a total of 20 weeks in one calendar year. Apply for an Unemployment Tax Number and then file the Employer's Quarterly Tax and Wage Report.

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- Apply for local property tax exemption by contacting your local County Tax Office. Even if property tax exemption is granted, it is still necessary to file a complete property listing by January 31.

- Finally, make sure you apply for a Charitable Solicitation License through the Solicitation Licensing Branch of the N.C. Department of the Secretary of State (888/830-4989 or 919/807-2214, *www.secretary.state.nc.us/csl)* if you will be raising $25,000 or more in one calendar year.

Ongoing Legal Requirements

- *Report to the IRS.*
  - **Nonprofits with annual gross receipts of less than $25,000** must file an e-Postcard annually. If your annual budget is less than $5,000 and you've never applied for 501(c)(3) tax-exempt status, you still need to file (you won't be penalized for filing late). Call IRS Customer Account Services, 877/829-5500.
  - **Nonprofits with annual gross receipts of $25,000 or more** must file a Form 990 annually within 5.5 months after your fiscal year ends. All supporting or controlling organizations must file Form 990 or 990-EZ.
  - **Private foundations** must file a 990-PF.

  These forms are available on the IRS website, *www.irs.gov/charities/index.html***.** Nonprofits that fail to file their e-Postcard, 990, or 990-EZ for three consecutive years will automatically lose their tax-exempt status. Call 877/829-5500 or your CPA for details.

- *Renew your organization's Charitable Solicitation License.* The license must be renewed annually, within 5.5 months after the end of your fiscal year.

- *Collect sales tax on items sold*. If your nonprofit sells retail items, register with the N.C. Department of Revenue for a Certificate of Registration, file the returns, and pay the tax due on a quarterly or monthly basis, depending on your volume of sales. Contact the Taxpayer Assistance Division, 877/252-3052 or *www.dornc.com***.** Your nonprofit may be eligible for semi-annual refunds of sales taxes paid.

- *When needed, update your principal office address and registered agent with the N.C. Secretary of State*. For a Change of Registered Office/Agent form, call the N.C. Department of the Secretary of State (919/807-2225).

- *Follow all state and federal laws related to employment*, including I-9, W-2, and W-4 forms; withholding taxes; and posting all compliance posters. For free compliance posters, call 800/625-2267 (N.C. Department of Labor), 866/487-2365 (U.S. Department of Labor), and 800/688-8349 (N.C. Industrial Commission).

Resources

- *How to Form a Nonprofit Corporation*, Anthony Mancuso (Nolo Press, 800/728-3555, *www.nolo.com*).
- *The Nonprofit Handbook*, Gary Grobman (White Hat Communications, 717/238-3787, *www.whitehatcommunications.com).*
- Chapter 55A North Carolina Corporation Act: *www.ncga.state.nc.us/enactedlegislation/statutes/html/bychapter/chapter_55a.html***.**
- *Principles & Practices for Nonprofit Excellence: A Self-Help Tool for Nonprofit Organizational Effectiveness* (*www.ncnonprofits.org/principles.asp),* published by the N.C. Center *for* Nonprofits. Provides specific benchmarks of best practices around planning, governance, human resources, financial management, fundraising, information and technology, evaluation, strategic alliances, civic engagement and public policy, and transparency and accountability.

Want more help with nonprofit issues and information? Join the N.C. Center *for* Nonprofits. For a reasonable annual fee ($70 to $1,200, depending on your expenses), your board and staff can access a broad array of information through our website, Board & Staff Helpline, referral networks, workshops and conferences, and more. Just one of our services -- the Frequently Asked Question (FAQ) section of our website -- has more than 1,000 answers and/or resources at our Members' fingertips! Join at ***www.ncnonprofits.org***, or call 919/790-1555 ext. 100.

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The following was excerpted from Guidebook for Boards of Directors of North Carolina Nonprofit Corporations (2nd Edition). *We recommend that those interested in forming a 501(c)(3) nonprofit read the entire guidebook, which is available to Center Members at* www.ncnonprofits.org/mbronly/faq_boards.asp?roles.

Part 3
The Duties and Liabilities of Nonprofit Board Members – Take Note

This part describes:

- the basis of legal liabilities for nonprofit board members
- the nature of board members' "fiduciary duties"
- the enforcement of legal liabilities against nonprofit board members
- the protections against individual board member liability

Board member liability is an important matter and one that should give any nonprofit board member pause. You should understand how nonprofit board members might become personally liable. You should be familiar with your fiduciary duties and how to carry them out, as well as how you might become legally liable for breaching your duties. You should know what protections are available to you and make sure your nonprofit has these in place.

3.1 How might a nonprofit board member become liable?

Nonprofit board members may become liable as a result of their corporate role in three ways:

Liability to the nonprofit corporation (or person suing on its behalf). Board members may be liable for breaching their corporate or fiduciary duties, which are enforceable in a lawsuit brought by the nonprofit corporation or someone suing on its behalf – often a member or another key stakeholder.

Liability for corporate harm. Board members may be liable for having participated in a corporate decision that directly harms somebody, such as negligently authorizing a dangerous policy that resulted in injuries at a day care center.

Liability for violating statutory requirements. Board members may be directly liable for making decisions or taking actions that violate statutory provisions dealing with such matters as environmental protection, tax compliance, or antitrust law.

3.2 What are a nonprofit board member's fiduciary duties?

Fiduciary duties are at the core of the American corporation, including nonprofits. As a nonprofit board member, you have duties to the corporation and its stakeholders. Some of these duties are legally enforceable in court, and they create the potential for personal liability. Some of the fiduciary duties are merely aspirational and are not enforceable in court, but failing to comply with them disserves the nonprofit and can be the basis for your not continuing as a board member.

There are three fiduciary duties. The *duty of care* describes the attention and judgment you are expected to exercise in performing your board member functions. The *duty of loyalty* arises when you or another board member has a personal interest that conflicts with the nonprofit's interests. The *duty of obedience* requires board members to comply with the nonprofit's governing principles as contained in its corporate documents.

Duty of care. Under North Carolina law, board members must discharge their duties with "the care an ordinarily prudent person in a like position would exercise under similar circumstances." What does this mean? Here are some guidelines:

You should attend board meetings. Board members act as a group, and your attendance at board and committee meetings is important. Even if you perform other tasks for the nonprofit like soliciting funds or participating in a specific program, repeated absences from board meetings shows indifference and may violate your duty of care.

You should become informed. You should read the information presented to you before and at meetings. You should be curious. Generally this information will come from the nonprofit's staff, and you must decide whether it is sufficient. If not, you should request additional information. If you are not adequately informed, you may violate your duty of care.

You can rely on trustworthy information. You are expected to be familiar with the financial, legal, and operational issues facing the nonprofit, but you are not expected to be an expert. By law, you may rely on "reports, communications and information received from another board member, a committee or from any officer employee or agent" – if you believe the source to be reliable and competent. If you know something that contradicts this information, or if your reliance is otherwise unreasonable, you may be held to have violated your duty of care.

You should exercise independent judgment. Group-think is a danger in any decision-making body. As a board member, you should be objective and independent. Your responsibilities are to the nonprofit as a whole, not any particular person (such as the nonprofit's executive director) or any particular constituency.

You should monitor the nonprofit's activities. The board delegates the conduct of the nonprofit's day-to-day operations to the nonprofit CEO/ED, staff, and sometimes outside agents. You are responsible for overseeing these operations. You should be inquisitive. You should insist on regular reports, and you should act if you believe there is mismanagement, illegality or other improprieties.

This describes what you should do. But many of these duties of care are aspirational and not enforceable in court. Under the *business judgment rule*, a nonprofit director who exercises good faith judgment will usually be protected from liability to the corporation and its members. This is true even if the corporate action turns out to be unwise or unsuccessful. (This judicial policy not to "second guess" nonprofit board members has been recognized in other states, but no North Carolina court has yet had an opportunity to apply it here.) The business judgment rule does not apply in cases of criminal activity, fraud or willful misconduct.

"Good Practices" Pointer

Some courts have said that the business judgment rule depends on board members making *informed* decisions. To get the protection of the rule, well-advised boards insist on receiving written reports and professional advice before making important decisions. This creates a record of responsible, attentive decision-making.

Your duty of oversight includes ensuring the nonprofit complies with the law – such as health and safety standards, mandatory insurance coverage, and tax reporting rules. If you believe the nonprofit is not in compliance or is engaged in illegal activities, you should point this out to the nonprofit's chief executive and demand an investigation and action. If this does not happen, you should bring the issue to the full board. If the board fails to act, you should have your dissent recorded in the minutes and you should consider resigning from the board.

"Good Practices" Pointer

If you become aware of illegal activity that is not corrected, you may have legal obligations to disclose the matter to government authorities. You should consult an attorney on your obligations and your options.

In addition to monitoring for legal compliance, you are also obligated to monitor for improper management activities. If you suspect activities such as embezzlement of nonprofit funds, financial misreporting, undisclosed self-dealing transactions, unauthorized activities, or other improper behavior by the nonprofit's CEO/ED or staff (or other board members), you should bring the matter to the chief executive or the full board. This will often present an uncomfortable situation, but your role as "watchdog" for the nonprofit is one of the most important you have. If the matter is not resolved, you should consider resigning.

Nonprofits, particularly private foundations, often oversee the investment and disbursement of large amounts of money. Under what standard are the nonprofit's investment policies judged? Under North Carolina law, as of 2007, educational, religious, and charitable organizations may:

- invest in any property deemed advisable by the board of directors, whether or not it produces a current return
- retain contributed property for as long as the board of directors deems advisable
- include contributed funds in any pooled or common fund maintained by the nonprofit corporation
- invest all or part of the funds in any pooled or common fund available for investment (such as mutual funds) maintained by another entity, in which funds are co-mingled and investment determinations are made by persons other than the board of directors of the nonprofit corporation.

The board of directors has significant discretion to delegate management and oversight of the nonprofit's investments. Under North Carolina law, the board may:

- delegate to its committees, officers, employees, or agents the authority to act in place of the board of directors in investment of contributed funds
- contract with independent investment advisors, investment counsel or managers, banks, or trust companies, with regard to management and investment of contributed funds
- authorize the payment of reasonable compensation for investment advisory or management services.

"Good Practices" Pointer

In making investment management decisions (including delegation), the board should consider the nonprofit's long- and short-term needs in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

In addition, the nonprofit's investment authority and the board's exercise of discretion with respect to funds are both subject to any restrictions in a gift instrument under which the nonprofit received those funds.

Duty of loyalty. As a nonprofit director, you must act in the best interests of the nonprofit – not for your own advantage. The *duty of loyalty* arises in a number of situations:

Self-dealing transactions. If the nonprofit enters into a transaction (such as a contract or lease) in which you have an interest, the nonprofit's interests come first. (In some nonprofits, such as private foundations, such a transaction is absolutely prohibited.) In most nonprofits, conflict-of-interest transactions are not prohibited so long as you disclose your interest so that other disinterested board members can pass on the fairness of the transaction to the nonprofit. Under North Carolina law, you are deemed to have an interest in a transaction if the other party to the transaction is a related person or a business in which you have a position or financial interest. For example, if you (or a related person) supplies goods to the nonprofit, the conflict of interest carries the risk that the nonprofit may be overcharged. You have a duty to put the nonprofit's interests first and disclose your conflict. This is so even if you personally receive no monetary or other tangible benefit in the transaction.

Example

Consider these conflicts: (1) Director A holds a significant investment in Furniture Inc. which sells office furniture to the nonprofit. (2) Director A's spouse applies to become the nonprofit's head of personnel. (3) Director A is an accountant who works in an accounting firm, which offers to provide financial advice to the nonprofit. In each case, there is a conflict between A's personal, financial, or professional allegiance and the interests of the nonprofit.

Corporate opportunities. If you become aware of a business transaction or other opportunity offered by an outside party that you believe the nonprofit would be interested in taking for itself – such as office space that the nonprofit has been looking for – you cannot take the opportunity yourself. Instead, you must first offer the opportunity to the nonprofit if it fits within its current or future plans, and disclose your interest. This gives the nonprofit board a chance to take the deal or reject it. Only after disinterested board members have rejected it can you take the outside opportunity for yourself.

Example

Board member B is on the board of the local country club. Landowner Z owns two lots adjacent to the country club's golf course and asks B if the club would want to buy. B purchases the lots without informing the board. This usurps a corporate opportunity, because B received the offer in her status as a board member. B should have disclosed the offer to the board. The nonprofit corporation may be able to treat the lots as having been purchased by B for the nonprofit.

Confidential information. In your role as a board member, you may become aware of nonpublic information whose confidentiality is valuable to the nonprofit – such as the possibility the nonprofit qualifies for a government grant or that the nonprofit's endowment has identified a lucrative investment opportunity. You may not use this information for your own benefit. Only if the board approves your use may you use information that belongs to the nonprofit.

Example

The board of a private university solicits bids for construction of a new library annex. When the bid of Builders Corporation wins, board member C secretly buys stock of Builders Corporation. This use of confidential information to buy stock is a breach of C's duty to the private university – and may also be insider trading, a violation of federal securities laws.

In each situation, notice that the first step is for you to recognize the conflict. This will not always be obvious. Being aware that the nonprofit's interests may conflict with your own requires a special sensitivity and astuteness. Once you recognize the conflict, it is your duty to disclose it. This is so even if you believe the transaction with the nonprofit is on fair terms, or the opportunity is one the nonprofit would not want, or the information is not valuable.

"Good Practices" Pointer

Many nonprofits have a policy statement about conflicts of interest, which board members sign on joining the board. Typically, the statement calls on board members to disclose any "dual" interest and not to vote or use any influence in the matter. The statement describes particular conflicts that might arise in the nonprofit – for example, in an art museum, board members who

collect or deal in art for themselves or who use the art museum's facilities for personal events. The board should be sure that the nonprofit's policy statement is readable and used consistently. If not, it will only serve as evidence in litigation of what the board failed to do.

Under North Carolina law, a majority of disinterested board members (not less than two) can approve a conflict transaction if they believe the transaction is in the nonprofit's best interests. If you have a conflict, can you participate in board deliberations or any vote concerning the matter? North Carolina law says that your presence or vote does not affect the validity of the board's action. But to bolster the appearance of disinterested approval, once you have identified your interest and described your relationship to the transaction, you should leave that part of a meeting at which the matter is discussed.

This will not affect the meeting's quorum, which is deemed to be satisfied if a majority of *disinterested* board members approve the transaction.

"Good Practices" Pointer

If the board passes on a board member's conflict of interest, it is imperative that the minutes of the meeting reflect the interested director's disclosure and the board's response. If the board approves a transaction in which the board member has an interest, the nonprofit may also be required to disclose it to the IRS as a "related party transaction."

In some situations, self-dealing is flatly prohibited – regardless of motives or fairness. For example, the board's responsibility toward endowment funds or employee benefit plans are as a "trustee," which means that self-dealing with these funds is strictly forbidden. Private foundations are expressly prohibited from engaging in self-dealing, and this prohibition is enforced by an excise tax. In addition, under North Carolina statutory law, a nonprofit corporation cannot make loans to a board member, unless the board member is a full time employee and the board (with the interested board member abstaining from voting) approves the loan by majority vote. Board members who approve loans to other board members become personally liable to repay the loan.

What happens if the board becomes aware of a conflict of interest only after approving a transaction or taking other action? The board should re-examine the matter, by seeking appropriate disclosure from the interested board member and then creating a record of its scrutiny. The board may be within its rights to reverse its prior approval and cancel the transaction.

"Good Practices" Pointer

In a membership nonprofit, the board can ask the members to ratify the board's approval of a conflict of interest transaction. If so, the notice of the members' meeting must describe this matter.

Duty of obedience. The board must be true to the organization's purposes and goals, as stated in the articles of incorporation and bylaws. In addition, many nonprofits (unlike business corporations) are

charged with carrying out specific instructions. They may come from the terms of gifts or bequests, or from purpose statements describing how the nonprofit's funds are to be used. As a board member, you must abide by these instructions.

Example

In 1975, Beryl Buck bequeathed $10 million worth of oil company stock to a trust for the benefit of Marin County, California, one of the richest counties in the country. Ten years later, when the stock's value had risen to $400 million, the trustee sought court approval to spend some of the income to benefit the San Francisco Bay area. The California attorney general opposed on the ground that the original restriction was still possible to effectuate. The court agreed and denied the trustee's request.

Do you have a duty of obedience to represent a particular constituency if they chose you for the board? For example, perhaps you are on the board of a statewide environmental association and you represent environmental groups in the eastern region. Remember that the law imposes common responsibilities and powers on all board members. Although you can bring your constituency's concerns and perspectives to the attention of the board, your duty is to advance the nonprofit's mission and overall interests, not the interests of the sub-group that elected you.

The Sarbanes-Oxley Act. The passage of the federal Sarbanes-Oxley Act in 2003 has implications for nonprofit board members' oversight duties. Although the law focuses on for-profit corporations, two aspects of the law also apply to nonprofits. First, nonprofits must provide protection for "whistleblowers," individuals (generally staff) who report possible illegal activity on the part of directors, management, or other staff. Many nonprofits have developed whistleblower protection policies. Second, Sarbanes-Oxley makes it illegal to modify, conceal, falsify, or destroy documents to prevent their use in an official proceeding such as litigation or a federal investigation. As a result, nonprofits have begun to craft internal document retention and destruction policies. Samples of these policies are available in the N.C. Center *for* Nonprofits Frequently Asked Questions.

In addition, many nonprofits have taken additional steps ranging from creating separate audit committees to drafting internal codes of ethics. Nonprofit board members should be aware of these developments and ensure that their organization takes reasonable steps to ensure that it meets the highest standards of accountability and integrity. An excellent resource is "The Sarbanes-Oxley Act and Implications for Nonprofit Organizations," published by Independent Sector.

MISSION STATEMENT REVIEW

A mission statement tells the aim, direction or grand intent of the organization. Its few words embody the organization's basic commission to make something happen in the world (Carver).

The statement is generally short, to the point and answers the following questions:

Why do we exist?

What is the purpose or essence of this organization?

Who is the target population that will benefit from our services?

What do we desire to achieve in the long run?

What makes us unique from other similar organizations?

What human needs are compelling our organization?

Has our mission changed or do we expect it to change in the future?

What values drive this organization?

Where will we focus our services?

The mission statement focuses on the results of the organization, not the activities that propel it to the accomplishment of those results. In other words, the mission statement focuses on why, not how.

Review your mission statement against the following questions.

CLARITY. Is the mission stated simply enough for everyone to understand it?

COMPELLING. Does it evoke action? Is it likely to strike a responsive chord for most readers?

UNIQUE. Does this statement position the organization apart from others? Does it convey the unique attributes, services, or products of the organization?

TRANSFORMATIONAL. Is it a guide to what the organization desires to be/become? Does it address the "mega-ends" of the organization?

The mission statement should focus on the change that the organization would like to see occur; it should be a goal that stretches the potential of the organization and is still feasible to achieve within a given period of time. The mission statement serves multiple audiences. Internally, it provides the focus and momentum for all activities within the organization. It also provides outsiders (funding sources, community members, etc.) with a concise statement about theorganization that they can then use to determine if they want to develop a relationship with your program. From the perspective of those funding sources, it enables them to quickly view your organization and determine if it is appropriate to consider for funding.

Source: "Get Ready; Get Set," A free, downloadable publication of the Center for Nonprofit Management, www.cnmsocal.org.

Checklist for the most important provisions of your by-laws

- Indemnification. A statement that limits the personal liability of board members.
- Whether the organization has members (such as members of a neighborhood or professional association) and if so, what their rights are. In a true membership organization, members have the right to elect officers and other rights. Even if you don't have members with legal rights, you can still have people called "members," but the distinction should be clarified in the by-laws.
- Minimum and maximum number of board members. Example: minimum of 5 and a maximum of 15 board members. Note: Some states specify a minimum, and some specify a formula for a minimum and maximum, so check your state's law.
- The number required for a quorum (how many board members must be present in order for official votes to be taken). Many states specify the minimum required for a quorum; for example, in California a quorum may be as low as one-fifth of the board.
- Terms and term limits. Example: A board term might be two years, with term limits of three consecutive terms (making a total of six years); after a year off, a board member may be permitted to return. Similarly, terms can be "staggered" so that, say, 1/3 of the board is up for reelection each year.
- Titles of officers, how appointed, and terms. Example: By majority vote at a regular meeting of the board; an officer term is for one year with two consecutive officer terms maximum.
- Procedure for removing a board member or officer. Example: By majority vote at a regularly scheduled meeting where the item was placed on the written agenda distributed at least two weeks ahead.
- Conflict of interest policy (See below for links to Board Café articles on this subject).
- Minimum number of board meetings per year. Example: Four, with one in each quarter.
- How a special or emergency board meeting may be called.
- How a committee may be created or dissolved.
- What committees exist, how members are appointed, and powers, if any.
- Conference calls and electronic meetings. Example: Votes by email or webforum are prohibited. Meetings may be held by conference call if all members can simultaneously hear one another.

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The N.C. Center for Nonprofits recommends that an attorney who is knowledgeable about nonprofit law review your bylaws. If your nonprofit makes significant changes to your articles of incorporation, you will need to submit these changes to the IRS and the N.C. Department of the Secretary of State. Examples include changes in principal office, registered office and/or registered agent, and your organization's mission.

BYLAWS

ARTICLE I: Name and Purpose

Section 1. **Name.** The name of the organization shall be hereinafter called the "Corporation.

Section 2. **Purpose.** The purpose of the Corporation is to in the state. The Corporation, which is organized under the Non-Profit Corporation Act of North Carolina, shall operate exclusively for charitable and educational purposes and in a manner consistent with Chapter 55A of the General Statutes of North Carolina and Section 501(c)(3) or successor provisions of the Internal Revenue Code.

Section 3. **Offices.** The principal office and registered agent of the Corporation shall be located in North Carolina. The Corporation may have such other offices, within or outside the city of as may be designated by the Board of Directors, or as shall be appropriate or necessary for the conduct of the affairs of the Corporation.

ARTICLE II: Membership

Section 1. **General Rights and Powers.** Except as otherwise provided by law, by the Articles of Incorporation, or by these bylaws, the number, classes, qualifications, rights, privileges, dues, fees, responsibilities, and the provisions governing the withdrawal, suspension, and expulsion of members shall be determined by the Board of Directors. Except as may otherwise be required by law, the Articles of Incorporation, or these bylaws, any right of members to vote and any right, title or interest in or to the Corporation, its properties and franchises, shall cease and divest upon termination of membership, except that liability of a member for sum due the Corporation shall survive such termination unless otherwise expressly provided by the Board of Directors.

Section 2. **Qualifications for Membership.** which are registered in North Carolina and which are or would be eligible to be tax-exempt under Section 501(c)(3) or successor provisions of the Internal Revenue Code will be eligible for membership in the Corporation, subject to any additional standards which may be set by the Board of Directors.

Section 3. **Election of Members.** Members shall be elected upon the affirmative vote of a majority of the Board of Directors present at a duly constituted meeting upon nomination by at least one member of the Board.

Section 4. **Voting Rights.** Except as otherwise provided in these bylaws, each member shall be entitled to one vote on each matter upon which members have voting rights.

Section 5. **Compensation.** No member shall receive any compensation for his or her service in such capacity, except that the Board of Directors may by resolution provide for reimbursement for actual disbursements expended on behalf of or in service to the corporation and according to policies authorized by the Board of Directors.

ARTICLE III: Annual Meeting

Section 1. **Annual Meeting.** The annual meeting shall be held at a time and place to be determined by the Board of Directors.

Section 2. **Special Meetings.** Special meetings may be called by the Chair of the Board, the President/Executive Director, by one-third of the members of the Board of Directors, or by the members having one-tenth of the votes entitled to be cast at such meeting.

Section 3. **Notice.** Written notice stating the place, date, and hour of the Annual Meeting and any special meetings shall be mailed by regular mail to the address of record for each member entitled to vote at the meeting not less than two weeks nor more than 90 days before the date of the meeting, by or at the direction of the Secretary.

Section 4. **Quorum.** One fifth of the number of members then in good standing present in person or by proxy shall constitute a quorum for the transaction of any business. If at any meeting of the members there is less than a quorum present, a majority of those present may adjourn the meeting, without further notice, until a quorum is obtained.

Section 5. **Proxies.** At any meeting of the members, a member entitled to vote may do so by proxy executed in writing for that meeting. Proxies may confer general voting rights, or they may be limited to prescribed action on a particular issue.

Section 6. **Manner of Acting.** A majority of the votes cast on a matter to be voted upon by the members present or represented by proxy at a duly constituted meeting shall be necessary for the adoption thereof unless a greater proportion is required by law or these bylaws.

Section 7. **Alternative Action.** Any action required by law to be taken at a meeting of the members, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members entitled to vote with respect to the subject matter thereof and filed with the Secretary of the Corporation as part of the corporate records, whether done before or after the action so taken. Meetings may also be held in a form other than physical presence, such as conference calls or teleconferences. Any other action which may be taken at a meeting of members, including the election of Directors, may be conducted by mail ballot in such manner as the Board of Directors may by resolution determine.

ARTICLE IV: Board of Directors

Section 1. **General Powers.** The property, business, and affairs of the

Corporation shall by overseen by its Board of Directors in accordance with these Bylaws and the purposes of the

The Board is responsible for overall policy and direction of the Corporation and delegates responsibility for day-to-day operations to the President/Executive Director. Specific powers of the Board of Directors include but are not limited to:

a. defining the mission, goals, and objectives of the Corporation, and assigning priorities among the goals and objectives when needed;
b. selecting the Corporation's President/Executive Director and periodically reviewing his or her performance;
c. approving major personnel policies;
d. reviewing and approving the Corporation's budget;
e. raising the financial resources required to meet the Corporation's goals and objectives, as coordinated by the President/Executive Director, and establishing general fund raising policies; and
f. conducting a biennial review and evaluation of the Corporation's performance of the goals and objectives of highest priority.

Section 2. **Number and Qualifications.** The number of Directors shall be not less than four nor more than fifteen, of whom eight shall be elected by the members of the Corporation in accordance with these bylaws and seven appointed by the elected Directors and the continuing appointed Directors. Directors shall have a demonstrated commitment to the Corporation's mission.

Section 3. **Nomination.** The Chair of the Board of Directors shall appoint a Nominations Committee which shall be responsible for producing a slate of candidates for election to the Board of Directors, in accordance with such procedures as the Board of Directors may by resolution determine. The Nominations Committee shall provide each member of the Corporation, in such form as the Board of Directors may prescribe, a description of the procedure for nomination and election of Directors.

Section 4. **Election.** Directors shall be elected by written mail ballot sent by regular mail to the address of record of each member of the Corporation. A candidate or candidates shall be deemed elected upon receipt of a plurality of the votes cast by date certain.

Section 5. **Appointed Directors.** The Board of Directors in office at the time that a call for nominations is made shall by majority vote appoint to the Board of Directors one person for each vacancy in the appointive seats thereof. The newly appointed directors will serve during the same term as the Directors elected for the upcoming term.

Section 6. **Term of Office.** Directors shall serve for a term of two years, or until a successor is duly elected or appointed, except that in the case of the first Board of Directors established after the effective date of these Bylaws four of those elected and three of those appointed shall serve for a term of one year. Except as provided otherwise in these bylaws, the term shall begin at the Annual Meeting following election or appointment. Each Director shall hold office until his or her terms expires, death, resignation, removal, disqualification, or his or her successor has been elected or appointed. No Director, whether elected or appointed, may serve more than six consecutive years. Any director may resign at any time by

giving written notice to the Chair of the Board. The resignation takes effect upon receipt of notice or at a later date if specified in the notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any director may be removed at any time with or without cause by two-thirds vote of the Board of Directors.

Section 7. **Vacancies.** Vacancies may be filled by majority vote of the remaining members of the Board of Directors for the unexpired term.

Section 8. **Quorum.** One half of the number of Directors then in office shall constitute a quorum for the transaction of any business, except that if the number of Directors then in office is four or fewer, then three Directors shall constitute a quorum. Except as otherwise provided in these bylaws, the act of the majority of the Directors present at a meeting of which a quorum is present shall be the act of the Board of Directors. A Director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her contrary vote is recorded or his or her dissent is otherwise entered in the minutes of the meeting or unless he or she shall file written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof of shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to Directors who voted in favor of such action. If at any meeting of the Board of Directors there is less than a quorum present, a majority of those present may adjourn the meeting, without further notice, until a quorum is obtained.

Section 9. **Meetings.** Meetings of the full Board of Directors shall be held at least twice each year at such place within or outside of North Carolina as may be fixed by resolution of the Board, or as may be specified in the notice of the meeting. Regular meetings of the Board of Directors shall be held at times set by resolution of the Board. Any meeting of the Board may be held in a form other than physical presence, such as conferences or teleconferences. Special meetings of the Board may be called by or at the request of the Chair, the President, or any three Directors. Notice must be given at least one week in advance by any usual means of communication to each member of the Board of Directors, and any action taken at a special meeting shall be voidable upon a failure to obtain acknowledgement of receipt of notice from any member of the Board. Such notice need not specify the purpose of which the meeting is called. Notice need not be given of regular meetings of the Board of Directors held at times fixed by resolution of the Board. Meetings may be held at any time without notice if all the directors are present, or if at any time before or after the meeting those not present waive notice of the meeting in writing. Action on specific items can be taken by the Board by a mail ballot signed by a majority of the Directors then in office, or by similar usual means of communication.

Section 10. **Waiver of Notice.** Any Director may waive notice of any meeting. The attendance by a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 11. **Committees.** The Board of Directors may create committees,

including an Executive Committee, which shall have and may exercise such powers as conferred or authorized by the resolutions creating them. The Chair of the Board shall appoint the chairpersons of all committees of the Board. If an Executive Committee is created, it shall be composed of Directors, shall consist of three or more members of the Board, shall include the Chair of the Board and the President/Executive Director, and shall have all the powers and authority of the Board of Directors in the intervals between meetings of the Board, subject to the direction and control of the Board of Directors. The designation of any committee and the delegation thereto of authority shall not relieve the Board of Directors, or any member of the Board, of any responsibility or liability imposed upon it or him or her by law. A majority of any such committee, if the committee is composed of more than two members, may determine its action and fix the time and place of its meetings, unless the Board of Directors shall provide otherwise.

Section 12. **Compensation.** No Director shall receive any compensation for his or her service in such capacity, except that the Board of Directors may by resolution provide for the reimbursement of actual travel and lodging expenses incurred in the performance of duties of Directors, to the extent provided by such resolution, and except as otherwise provided in these bylaws.

ARTICLE V: Officers

Section 1. **Officers.** The officers of the Corporation shall consist of a Chair of the Board of Directors, a Vice-Chair of the Board, a Secretary, a Treasurer, a President/Executive Director, additional Vice-Chairs as the Board of Directors may authorize, and such subordinate officers as the Board of Directors may appoint or authorize the Chair or President/Executive Director to appoint. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where action of two or more officers is required.

Section 2. **Election.** The Board of Directors, initially and at each subsequent annual meeting thereafter, shall elect from among the Directors the Chair, Vice-Chair, Secretary, and Treasurer, and such Vice-Chairs as the Board may have authorized. Each officer shall hold office until the next annual meeting or until his or her death, resignation, retirement, removal, or disqualification, if such occurs before the next annual meeting or until his or her successor has been elected and qualified. If necessary to fill offices that have become vacant, the Board may elect officers at any regular meeting.

Section 3. **Vacancies.** The term of office of any office shall terminate upon the election and qualification of a successor or upon the effective date of his or her resignation submitted in writing to the Secretary of the Board of Directors, upon his or her death, or upon a vote of two-thirds of the Directors then in office to remove him or her from office if in their judgment the best interests of the Corporation will be served thereby. Any vacancy among the officers shall be filled by the Board of Directors. Any officer or assistant officer may also be removed from office by the Board of Directors or the Chair, whichever is the appointing authority, upon such terms as may have been specified in writing at the time of appointment of such officer.

Section 4. **Chair.** The Chair shall chair the Annual Meeting and meetings

of the Board of Directors and shall perform the following duties and responsibilities:

a. appoint the chairpersons of all Board committees and seve as liaison among the Corporation's Board, its committees, and the staff;
b. maintain liaison as needed with foundations supporting the Corporation and other potential funding sources;
c. facilitate and coordinate the Board's discharge of its responsibilities as set forth in the bylaws and by Board resolutions; and
d. such other responsibilities as provided in the Corporation's bylaws or as may be directed by the Board.

Section 5. **Vice-Chair.** The Vice-Chair, or Vice-Chairs if authorized, shall have such powers and perform such duties as the Board of Directors may prescribe or as the Chair may delegate, provided that the First Vice-Chair shall sit in the stead of the Chair in his or her absence.

Section 6. **Secretary and Assistant Secretary.** The Secretary shall do or oversee the following: the keeping of minutes of all meetings of the Board of Directors and the Executive Committtee, including all votes and resolutions adopted; the recording of all Corporate documents and records; the issuing of notices for the Annual Meeting and for meetings of the Board of Directors; and the filing of all reports required by governmental authorities. The Secretary shall have other responsibilities as the Board of Directors may prescribe. In the absence of the Secretary or in the event of his or her death, inability or refusal to act, the Assistant Secretary, unless otherwise determined by the Board of Directors, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. The Assistant Secretary shall perform such other duties as may be assigned by the Secretary or Board Chair.

Section 7. **Treasurer and Assistant Treasurer.** The Treasurer shall oversee the custody of all funds, securities, and assets of the Corporation. He or she shall make to the Board of Directors at each meeting an accurate account of the Corporation's receipts and disbursements; prepare or cause to be prepared a true statement of the Corporation's assets and liabilities within a reasonable time after the close of each fiscal year; and, in conjunction with the President, make financial information available to Board members and to the public. The Treasurer shall have other responsibilities as the Board of Directors may prescribe. In the absence of the Treasurer or in the event of his or her death, inability or refusal to act, the Assistant Treasurer, who shall be appointed by the Chair of the Board unless otherwise determined by the Board of Directors, shall perform the duties of the Treasurer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Treasurer. He or she shall perform such other duties as may be assigned to them by the Board of Directors or by the Treasurer, Board Chair, or President.

Section 8. **President/Executive Director.** The President of the Corporation, who also holds the title of Executive Director, shall direct and execute all decisions of or programs adopted by the Board of Directors, shall act as the chief executive officer of the Corporation, shall serve as Assistant Secretary, and shall perform such other duties as the Board of Directors may prescribe or authorize. The foregoing duties shall include, but

not be limited to, the hiring and discharging of all employees; the execution of contracts or other instruments on behalf of the Corporation except in cases where the execution thereof is expressly delegated by the Board of Directors or by the bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; the signing of checks, drafts, or other orders for payment of money; the depositing of all monies and other assets in the name of the Corporation according to policies or in such depositories as the Board of Directors may prescribe; serving as a voting member of the Board of Directors; and serving on the Executive Committee if the Board of Directors authorizes an Executive Committee. The President/ Executive Director shall furnish the Board with an operating and financial report at each meeting thereof. The President/Executive Director shall be appointed upon the majority vote of the Board of Directors present at a duly consituted Board meeting and shall serve at the pleasure of the Board of Directors, except that the Board may, at its discretion, retain the services of the President/Executive Director upon a contract for a fixed period of time.

Section 9. **Other Officers.** The duties and terms of office of any other officer or assistant officer appointed pursuant to Section 1 of this Article shall be specified by the Board of Directors or by the Chair or President if so authorized by the Board of Directors.

Section 10. **Surety.** The Board of Directors may require the Treasurer, President/Executive Director, or any other officer or assistant officer to furnish such surety as it may determine.

Section 11. **Compensation of Officers.** The President/Executive Director may be paid such reasonable compensation as the Board of Directors or its Executive Committee may authorize and direct. No other officer who is a member of the Board of Directors may receive any compensation, except as reimbursement for actual disbursements expended on behalf of or in service to the Corporation and according to policies authorized by the Board of Directors.

ARTICLE VI: Miscellaneous Provisions

Section 1. **Indemnification.** Every person who is or shall have been a director or officer of the Corporation and his or her personal representatives shall be indemnified by the Corporation against all costs and expenses reasonably incurred by or imposed upon him or her in connection with or resulting from any action, suit, or proceeding to which he or she may be made a party by reason of his or her being or having been a director of officer of the Corporation or of any subsidiary or affiliate thereof, except in relation to such matters as to which he or she shall finally be adjudicated in such action, suit, or proceeding to have acted in bad faith and to have been liable by reason of willful misconduct in the performance of his or her duty as such director or officer. "Costs and expenses" shall include, but without limiting the generality thereof, attorney's fees, damages, and reasonable amounts paid in settlement.

Section 2. **Fiscal Year.** The fiscal year of the Corporation shall begin on the first day of July of each year and shall end on the thirtieth of June of the next year, unless otherwise determined by the Board of Directors.

Section 3. **Corporate Seal.** The official seal of the Corporation shall have inscribed thereon the name of the Corporation. The official seal shall also contain such other words or figures as the Board of Directors may determine. The official seal may be used by placing, by any process whatsoever, an impression, facsimile, or other reproduction of said official seal.

Section 4. **Amendments.** The Bylaws may be altered, amended, or repealed and new Bylaws adopted upon the vote of two-thirds of the members of the Board of Directors present and voting at a duly constituted meeting, provided that notice of such proposed action, including the content thereof, be included in the call for the meeting. These Bylaws may also be amended by mail ballot upon the affirmative vote of two-thirds of the members of the Board of Directors. In the case of amendment by mail ballot, the notice of vote shall include a description of the proposed amendment and a statement as to its effect and purpose.

Section 5. **Activities of the Corporation.** No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a Corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (or the corresponding provision of any future United States Internal Revenue Law) of (b) by a Corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954, as amended (or the corresponding provision of any future United States Internal Revenue Law).

Section 6. **Conflict of Interest.** No contract or other transaction between the Corporation and one or more of its trustees or officers, or between the Corporation and any other corporation, firm, association or other entity in which one or more of the trustees or officers are directors or officers, or have a substantial financial interest, shall be approved by a vote of the Board or any committee thereof if such trustee or trustees or officer or officers (hereinafter called "interested trustee or trustees") are present at the meeting of the Board, or of a committee thereof, which authorizes such contract or transaction, or his or her votes are counted for such purpose, unless:

a. The material facts as to such trustee's or officer's interest in such contract or transaction and as to any such common directorship, officership, or financial interest are disclosed in good faith or are known to the Board or committee, and the Board or committee authorizes such contract or transaction by unanimous written consent, provided at least one trustee so consenting is disinterested, or by a majority vote without counting the vote or votes of such interested trustee or officer even though the disinterested trustees are less than a quorum; or

b. The material facts as to such trustee's or officer's interest in such contract or transaction and as to any such common directorship, officership, or financial interest are disclosed in good faith or are

known to the members entitled to vote thereon, if any, and such contract or transaction is authorized by a majority vote of such members.

Section 7. **Dissolution and Distribution of Assets.** No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to the Corporation and to make payments and distributions in furtherance of the purposes set forth herein. The Corporation may be dissolved and its assets and liabilities liquidated in such manner as the Board of Directors shall resolve, provided that upon dissolution, after payment of all debts, no part of the remaining assets may be distributed to any trustee, member, or officer of the Corporation but shall be distributed as the Articles of Incorporation direct in accordance with such laws and regulations as may be applicable thereto, provided, however, that the distribution must be to another organization exempt under Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended (or the corresponding provision of any future United States Internal Revenue Law), or to the United States, state or local governments, for a public purpose.

These bylaws were approved at a meeting of the Board of Directors of the on



Helpful IRS Websites

(IRS, **www.irs.gov**)

"Life Cycle of a Public Charity"
www.irs.gov/charities/charitable/article/0,,id=122670,00.html

"Applying for 501(c)(3) Tax-Exempt Status"
www.irs.gov/pub/irs-pdf/p4220.pdf

"Tax-Exempt Status for Your Organization"
www.irs.gov/pub/irs-pdf/p557.pdf