

Module 15

Samples of Nonprofit Organization By-Laws



By-Laws of a Statewide Religious Charity

As Adopted November 18,1995

Source of this sample: National Center for Nonprofit Boards (BoardSource). These materials are part of “The Nonprofit Board’s Guide to Bylaws: Creating a Framework for Effective Governance.”

ARTICLE I

NAME

Section 1. The name of the Corporation shall be [statewide religious charity].

Section 2. The principal office of the Corporation shall be in [City, State].

ARTICLE II

OBJECT AND PURPOSE

Section 1. The object and purpose of the Corporation shall be establishing and operating a social service agency in the broadest possible sense of that term, as set forth in the Articles of Incorporation.

ARTICLE III

BOARD OF TRUSTEES

Section 1. The Board of Trustees has the general power to (1) control and manage the affairs, funds and property of the Corporation; (2) disburse the Corporation’s monies and dispose of its property in fulfillment of its corporate purpose; provided, however, that the fundamental and basic purposes of the Corporation shall not thereby be amended or changed and provided further that the Board of Trustees shall not permit any part of the net earnings or capital of the Corporation to inure to the benefit of any private individual.

The Board of Trustees shall appoint an Executive Director who shall be responsible to the Board for the management and staffing of the Corporation.

Section 2. The Board of Trustees shall consist of sixteen (16) members, twelve (12) of whom shall be elected (the “Elected Trustees”) by each of the six (6) religious regional areas (the “Regional Areas”), and four (4) of whom shall be appointed (the “Appointed Trustees”) by the [state’s top religious leader], all as in this Article III provided. Ex-officio members shall include the [state’s top religious leader], the Executive Director of the Corporation and such other ex-officio members and members emeriti as are appointed by the Trustees. Ex-officio members shall not be entitled to vote on any matter requiring the act of the Board of Trustees.



- Section 3. There shall at all times be two (2) members of the Board of Trustees who are elected by each of the six (6) Regional Areas, and four (4) members of the Board of Trustees who are appointed by the [state's top religious leader]. No later than March 31 in each calendar year, each Regional Area and the [state's top religious leader] shall elect or appoint, as applicable, a successor to any Trustee elected by said Regional Area or appointed by the [state's top religious leader], as applicable, whose term expires during such calendar year.
- Section 4. Trustees shall be elected or appointed to office for a term of three (3) years commencing with the annual meeting immediately following their election or appointment; provided, however, that the term of office of those Trustees constituting the Board of Trustees as of the date of adoption of these Bylaws shall serve until their successors are elected or appointed, as applicable, during the 1997 calendar year or the 1998 calendar year, as designated in the Articles of Amendment to the Articles of Incorporation of the Corporation dated January, 1996. No Trustee shall serve more than two (2) consecutive terms without a lapse of at least one (1) year prior to election or appointment to a third term of office. A Trustee elected or appointed to an unexpired term of office shall be eligible to serve only one (1) additional term of office without a lapse of at least one (1) year before election or appointment to an additional term of office.
- Section 5. No fewer than three-fourths of the whole number of Trustees shall at all times be members of the founding church in good standing who are canonically resident in [State] (Articles of Incorporation IX).
- Section 6. Any Trustee may resign by giving written notice of his or her resignation to the Board or to the President or Secretary of the Corporation. Such resignation shall take effect at the time specified in such notice and the acceptance of such resignation shall not be necessary to make it effective. A Trustee may be removed from office, with or without cause, as follows: (i) an Elected Trustee may be removed from office by the Regional Area which elected said Trustee; and (ii) an Appointed Trustee may be removed from office by the [state's top religious leader]. Any Trustee absent for three (3) consecutive meetings of the Board without prior notice to the chair may be removed from the Board by the Executive Committee acting in its sole discretion.
- Section 7. Any vacancy occurring in the Board of Trustees by reason of death, resignation or removal shall be filled in the following manner: (i) if the vacancy pertains to an Elected Trustee, the vacancy shall be filled by the Regional Area which elected said Trustee; and (ii) if the vacancy pertains to an Appointed Trustee, the vacancy shall be filled by the [state's top religious leader]. A Trustee so elected or appointed to fill a vacancy occurring in the Board of Trustees shall hold office for the unexpired portion of the original term.



ARTICLE IV

MEETINGS

Section 1. The Board of Trustees shall annually hold four (4) business meetings, one retreat/workshop meeting and an annual meeting. The business meetings shall be held in [City, State] at such place designated by the Executive Committee.

The meeting place of the retreat/workshop and the annual meeting shall be designated by the Executive Committee. The date and time of all meetings shall be recommended by the Executive Committee and approved by the Board of Trustees.

Section 2. The annual meeting of the Board of Trustees shall be held on a date designated by the President occurring in the first or second quarter of the calendar year following completion of any and all necessary elections or appointments of Trustees pursuant to Article III of these Bylaws to serve on the Board of Trustees for the ensuing year. Written notice shall be given seven (7) days prior to the date of the annual meeting.

Section 3. Special meetings may be called by the President. Written notice shall be given seven (7) days prior to the date of the meeting.

Section 4. A majority of the number of directors entitled to vote, including in that number two (2) elected officers, shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees, but if less than such number is present at a meeting, the majority of the Trustees entitled to vote and present may adjourn the meeting from time to time without further notice.

Section 5. The act of the majority of the Trustees entitled to vote and present at a meeting at which a quorum is present shall be the act of the Board of Trustees, unless the act of a greater number is required by law, the Articles of Incorporation, or as otherwise provided in these Bylaws.

ARTICLE V

OFFICERS

Section 1. The officers of the Corporation shall be President, Vice President, Secretary, Treasurer and such other officers and assistant officers as may be deemed necessary by the Board of Trustees. One person may hold more than one (1) office, and any office may be left unfilled. Only members of the Board of Trustees may serve as officers of the Corporation.

Section 2. Candidates shall be selected by a nominating committee appointed by the President and by nominations from the floor. Elections shall be held at the annual meeting and may be by secret ballot.



- Section 3. Officers of the Corporation shall be elected annually. Each officer shall hold office until said officer's successor shall have been duly elected and shall have qualified, or until said officer's earlier death, resignation, or removal. No officer, other than the Treasurer, may serve for more than two (2) consecutive terms. The Treasurer may serve an unlimited number of consecutive terms as Treasurer, not to exceed a total of six (6) consecutive years in office.
- Section 4. Any officer or agent may be removed, with or without cause, by a vote of the Board of Trustees whenever in its judgment the best interests of the Corporation will be served thereby.
- Section 5. A vacancy in any office because of death, resignation, removal, disqualification, creation of a new office, or any other reason, may be filled by the Executive Committee for the unexpired portion of the term.
- Section 6. The officers shall perform the duties prescribed by these Bylaws and by the parliamentary authority adopted by this Corporation.

ARTICLE VI

EXECUTIVE COMMITTEE

- Section 1. The Executive Committee shall consist of the elected officers of the Board of Trustees.
- Section 2. The Executive Committee is authorized to transact the business of the Corporation between regular meetings, making decisions which cannot wait for regular Board meetings; provided, however, that the Executive Committee shall not have the authority of the Board of Trustees in reference to the following matters: (a) the filling of vacancies on the Board of Trustees or on any committee of the Board of Trustees; (b) the amendment or repeal of the Corporation's Bylaws or the adoption of new Bylaws; and (c) the fixing of compensation of Trustees for serving on the Board of Trustees or on any committee of the Board of Trustees. Reports of actions taken shall be made at the next regular Board meeting.

ARTICLE VII

DUTIES OF OFFICERS

- Section 1. The President shall be the chief elected official of the Corporation; pre- side at all meetings of the Board and Executive Committee; appoint committees, standing and special, as may be deemed necessary; is ex- officio member of all committees except the nominating committee; the President has general supervision over the activities of the Board of Trustees.
- Section 2. The Vice President assists the President in the performance of pre- scribed duties; assumes the duties of the President in the absence of that officer and performs such other duties as may be assigned by the



President. The vice President shall also serve as the President Elect and shall succeed to the office of President upon the expiration of the President's term of office.

Section 3. The Secretary is the recording officer of the Board of Trustees and the custodian of its records; duties include recording minutes of meetings of the Executive Committee and regular meetings of the Board; keeping a file of all reports; conducting correspondence; performing related duties as may be assigned by the President and/or the Board of Trustees.

Section 4. The Treasurer is the financial officer of the Board of Trustees and shall also act as the Chair of the Finance Committee which shall work with the Executive Director in (1) preparation of budgets, (2) financial reports, and other related duties as assigned by the President or the Board of Trustees.

ARTICLE VIII

EXECUTIVE DIRECTOR

Section 1. The Executive Director is appointed by the Board of Trustees and serves, without vote, as an ex-officio member of the Board and all Board Committees. The Executive Director is responsible for the management and staffing of the Corporation and the implementation of policies as established by the Board of Trustees.

ARTICLE IX

COMMITTEES

Section 1. Standing Committees may be established by the Board of Trustees as it deems necessary, and may include any or all of the following Standing Committees with the responsibilities and duties listed below:

- A. Program Committee: Responsible for the regular review of all programs in light of agency mission and resources; responsible for recommending the continuation or discontinuation of current programs; responsible for reviewing new program proposals and recommending those to be accepted; responsible for recommending the institution of major program revisions.
- B. Nominating Committee: Responsible for developing and recommending a profile of Board membership and identifying how current Board members fit the profile; responsible for communicating to Regional Areas the special skills and attributes needed for Board membership as well as membership requirements; responsible for nominating individuals for election to Board officer positions; responsible for insuring that Board members receive appropriate orientation; responsible for reviewing the service of each Board member on an annual basis.



- C. Finance Committee: Responsible for working with staff to create the upcoming fiscal year budget; responsible for presenting budget recommendations to the Board; monitors implementation of the approved budget on a regular basis and recommends proposed budget revisions; recommends to the Board appropriate policies for the management of the Corporation's assets.
- D. Fund Raising Committee: Responsible for working with staff to create a series of annual goals for each source of contributed income and for establishing time frames for the raising of funds from each source of income category; responsible for assuring the timely raising of funds to meet goals and objectives.
- E. Endowment Committee: Responsible for investing gifts to the endowment fund and dividends therefrom within the guidelines established by the Board of Trustees; promotes and encourages giving to the endowment fund and consults with individual donors to advise regarding mechanisms for giving available through the Corporation.
- F. Marketing Committee: Responsible for developing a marketing plan to gain broad acceptance of the Corporation's plans and objectives and to activate a determined public relations campaign.
- G. Strategic Planning Committee: Responsible for analyzing the Corporation's organization and its environment and for creating an orderly program to guide the Corporation's future development.

The President shall appoint Special Committees on an as needed basis for specific functions.

- Section 2. The Chair and the members of each Committee shall be appointed by the President, and need not be a member of the Board of Trustees.
- Section 3. Each Standing Committee shall meet on a regular basis (as needed) at meeting times designated by the Chair and shall submit a written report to the Executive Director on or before fourteen (14) days before the next regularly scheduled meeting of the Board of Trustees for distribution to the Board in preparation for said meeting.

ARTICLE X

AMENDMENT OF BYLAWS

- Section 1. These Bylaws may be amended at any regular meeting of the Board of Trustees by a two-thirds vote of those present, provided a quorum is present and provided that the amendment has been submitted in writing to the Board of Trustees at least fourteen (14) days prior to such regular meeting.



ARTICLE XI

PARLIAMENTARY AUTHORITY

Section 1. *Robert's Rules of Order, Newly Revised* shall govern the Corporation in all cases to which they are applicable and in which they are not inconsistent with these Bylaws and any special rules of order this Board may adopt, and are not in conflict with the Bylaws of the [religious organization] or the Articles of Incorporation of the Corporation.

CERTIFICATE

The undersigned hereby certifies that the foregoing Amended and Restated Bylaws have been duly adopted by the Board of Directors of [statewide religious charity] at a meeting duly held on November 18, 1995, that they include all amendments adopted through this date, and that they have not been further amended, rescinded or repealed, and are currently in effect.

REFERENCES

Source: National Center for Nonprofit Boards (BoardSource). These materials are part of "The Nonprofit Board's Guide to Bylaws: Creating a Framework for Effective Governance."

Special appreciation to Erin Hardwick, Executive Director, South Carolina Association of Nonprofit Organizations, 625 Taylor Street, Suite C, Columbia, South Carolina 29201. Tel: 803-929-0890; Fax: 803-929-0173. E-mail: info@scanpo.org.



By-Laws of a Children's Literacy Organization

Source of this sample of By-Laws: National Center for Nonprofit Boards (BoardSource). These materials are part of "The Nonprofit Board's Guide to Bylaws: Creating a Framework for Effective Governance."

ARTICLE I

OFFICES

- Section 1. Principal Office. The principal office of the corporation within the [State] shall be in [City, State].
- Section 2. Other Offices. The corporation may also have offices at such other places both within and without the [State] as the board of directors may from time to time determine or the activities of the corporation may require.

ARTICLE II

MEMBERS

The corporation shall have no members.

ARTICLE III

BOARD OF DIRECTORS

- Section 1. Management. The board of directors shall have general power to control and manage the affairs and property of the corporation and shall have full power to adopt rules and regulations governing the action of the board of directors and shall have full authority with respect to, among other things, the distribution and payment of monies received by the corporation from time to time; provided, however, that the fundamental and basic purposes of the corporation, as expressed in the certificate of incorporation, shall not thereby be amended or changed, and provided, further, that the board of directors shall not permit any part of the net earnings or capital of the corporation to inure to the benefit of any private individual except as permitted under the Not-for-Profit Corporation Law of the State of [State].
- Section 2. Number. The number of directors constituting the entire board shall not be less than three (3). The first board shall consist of four (4) directors. Thereafter, within the above specified limits, the number of directors shall be determined by resolution of the board of directors.
- Section 3. Election and Tenure. The directors shall be elected at the annual meeting of the board of directors and each director so elected shall hold office until the annual meeting of the board of directors next succeeding his or her election and until his or her successor has been elected and qualified or until his or her earlier resignation or removal.
- Section 4. Newly Created Directorships and Vacancies. Newly created directorships



resulting from an increase in the number of directors and vacancies occurring in the board for any reason may be filled by a majority of the directors then in office, although less than a quorum, and each director so chosen shall hold office until the next succeeding annual election of directors and until his or her successor has been elected and qualified or until his or her earlier resignation or removal.

- Section 5. Removal. Any director may be removed, with or without cause, at any time by the vote of the directors then in office at a special meeting called for that purpose.
- Section 6. Meetings. The annual meeting of the board of directors, commencing with the year 1990, shall be held at such time and place as shall be designated by the board of directors. Regular meetings of the board of directors may be held without notice at such time and place as from time to time may be fixed by the board of directors. Special meetings of the board of directors shall be held at the demand of the president or of any director. Any one or more members of the board or any committee thereof may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.
- Section 7. Notice of Meetings. The annual meeting of the board of directors may be held without notice to the directors. Regular meetings may also be held without notice to the directors. Special meetings shall be held upon three days written notice mailed or upon written or oral notice given personally or by telephone or other means of electronic communication, in which case the meeting may be held as soon after such notice is given as a quorum may be assembled at the place of the meeting, unless another time shall be specified in the notice. The notice of a special meeting shall state the place, date and hour of the meeting. If the notice is mailed, it shall be by first class mail and shall be deemed to be given when deposited in the United States mail, with postage thereon prepaid, directed to the director at his or her address as it appears on the books of the corporation. A majority of directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of adjournment of the meeting of the board of directors to another time or place shall be given to the directors who were not present at the time of adjournment and, unless such time and place are announced at the meeting, to the other directors.
- Section 8. Waiver of Notice. Notice of a meeting need not be given to any director who submits a signed waiver of notice, whether before or after the meeting, or who attends a meeting without protesting, prior thereto or at its commencement, the lack of notice to him.



Section 9. Quorum. At all meetings of the board of directors, a majority of the entire board of directors shall constitute a quorum for the transaction of business or any specified item of business.

Section 10. Voting. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors, except as may otherwise be specifically provided by statute or by the certificate of incorporation.

Section 11. Consents. Whenever any action is required or permitted to be taken by the board of directors or any committee thereof, such action may be taken without a meeting if all members of the board of directors or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consent thereto by the members of the board of directors or committee shall be filed with the minutes of the proceedings of the board of directors or committee.

Section 12. Compensation. Directors, as such, shall not receive any stated salary for their services, but, by resolution of the board of directors, a fixed sum and expenses of attendance, if any, may be allowed to any director for attendance at each regular or special meeting of the board of directors or any meetings of any committee of the board of directors of which such director is a member.

Section 13. Committees of Directors. The board of directors, by resolution adopted by a majority of the entire board, may designate, from among its members, an executive committee and one or more other committees, each consisting of three or more directors, and each of which, to the extent provided in such resolution, shall have all the authority of the board of directors except as otherwise prohibited by law. Vacancies in the membership of the committee shall be filled by the board of directors at a regular or special meeting of the board of directors. The executive committee shall keep regular minutes of its proceedings and report the same to the board when required.

ARTICLE IV

OFFICERS

Section 1. Officers. The officers of the corporation shall be elected by the board of directors and shall be a president, a vice-president, a secretary and a treasurer. The board of directors may also elect or appoint one or more additional vice-presidents, one or more assistant secretaries and assistant treasurers and such other officers and agents as it shall determine from time to time advisable. No officer need be a member of the board of directors and any two or more offices may be held by the same person, except the offices of president and secretary. The officers of the corporation shall be elected annually by the board of directors at its annual meeting.



- Section 2. Tenure; Resignation; Removal. Each officer of the corporation shall hold office until his or her successor is elected or appointed or until his or her earlier displacement from office by resignation, removal or otherwise. Any officer may resign by written notice to the corporation and may be removed for cause or without cause by the board of directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the board of directors.
- Section 3. Compensation. The compensation of all officers of the corporation shall be fixed by the board of directors.
- Section 4. Authority and Duties. All officers as between themselves and the corporation shall have such authority and perform such duties in the management of the corporation as may be provided in these bylaws, or, to the extent not so provided, as may be prescribed by the board of directors.
- Section 5. The President. The president shall be the chief executive officer of the corporation. He or she shall have general and active management of the business of the corporation. He or she shall see to it that all resolutions and orders of the board of directors are carried into effect, and, in connection therewith, he or she shall be authorized to delegate to the other officers of the corporation such of his or her powers and duties as president at such times and in such manner as he or she may deem to be advisable. He or she shall be ex officio a member of all standing committees; and he or she shall preside at all meetings of the directors.
- Section 6. The Vice President. The vice president or, if there be more than one, the vice presidents, shall assist the president in the management of the business of the corporation and the implementation of resolutions and orders of the board of directors at such times and in such manner as the president or the board of directors deem to be advisable. The vice president, or, if there be more than one, the vice presidents in the order of their seniority as indicated by their titles or, in the absence of differing titles, in the order of their election, or as otherwise determined by the board of directors, shall in the absence or disability of the president exercise the powers and perform the duties of president, and he or she or they shall have such other powers and duties as the board of directors or the president may from time to time prescribe.
- Section 7. The Treasurer. The treasurer shall have the care and custody of the corporate funds and other valuable effects, including securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. The treasurer may disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements,



and shall render to the president and the board of directors, at meetings or whenever they may require it, an account of all his or her transactions as treasurer and of the financial condition of the corporation. The treasurer shall perform such other duties as generally are incident to the office of treasurer and as may be prescribed by the board of directors or by the president.

- Section 8. The Secretary. The secretary shall attend all meetings of the board of directors and shall record the minutes of all proceedings taken at such meetings, and maintain all documents evidencing corporate actions taken by written consent of the board of directors, in a book to be kept for that purpose; and he or she shall perform like duties for any committees of the board of directors when required. He or she shall see to it that all notices of special meetings of the board of directors are duly given in accordance with these bylaws or as required by statute; he or she shall be the custodian of the seal of the corporation, and, when authorized by the board of directors, he or she shall cause the corporation seal to be affixed to any document requiring it, and, when so affixed, attested by his or her signature as secretary or by the signature of an assistant secretary; and he or she shall perform such other duties as generally are incident to the office of secretary and as from time to time may be prescribed by the board of directors or by the president.

ARTICLE V

BOARD OF ADVISORS

- Section 1. Board of Advisors; Tenure; Authority. The board of directors may appoint from time to time any number of persons or advisors of the corporation to act either singly or as a committee or committees. Each such advisor shall hold office during the pleasure of the board of directors and shall have only such authority or obligations as the board of directors may from time to time determine.
- Section 2. Compensation. Advisors shall not receive, directly or indirectly, any salary or other compensation for their services, but, by resolution of the board of directors, reimbursement of expenses may be allowed to any advisor for expenditures reasonably incurred on behalf of activities for the benefit of the corporation.

ARTICLE VI

GENERAL PROVISIONS

- Section 1. Checks, Notes, etc. All checks or other orders for the payment of money and all notes or other instruments evidencing indebtedness of the corporation shall be signed on its behalf by such officer or officers or such other person or persons as the board of directors may from time to time designate.



- Section 2. Fiscal Year. The fiscal year of the corporation shall be fixed by, and may from time to time be changed by, resolution of the board of directors.
- Section 3. Seal. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words “Corporate Seal, [State]”. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.
- Section 4. Voting of Securities of Other Corporations. In the event that the corporation shall at any time or from time to time own and have power to vote any securities, including without limitation shares of stock, of any other issuer, such securities shall be voted by such person or persons, to such extent and in such manner, as may be determined by the board of directors.

ARTICLE VII

INDEMNIFICATION

The corporation shall (1) indemnify any person, made a party to an action by or in the right of the corporation to procure a judgment in its favor, by reason of the fact that he or she, his or her testator or intestate, is or was a director or officer of the corporation, against the reasonable expenses, including attorneys’ fees, actually and necessarily incurred by him or her in connection with the defense of such action, or in connection with an appeal therein, except in relation to matters as to which such director or officer is adjudged to have breached his or her duty to the corporation under section 717 of the [State] Not-For-Profit Corporation Law, and (2) indemnify any person, made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the corporation to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the corporation served in any capacity at the request of the corporation, by reason of the fact that he or she, his or her testator or intestate, was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys’ fees, actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such officer or director acted in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation, and in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful, in each case to the fullest extent permissible under sections 721 through 726 of the [State] Not-For-Profit Corporation Law or the indemnification provisions of any successor statute.



ARTICLE VIII

AMENDMENTS

These by-laws may be amended or repealed, in whole or in part, and new by-laws may be adopted by the board of directors.

REFERENCES

Source: National Center for Nonprofit Boards (BoardSource). These materials are part of “The Nonprofit Board’s Guide to Bylaws: Creating a Framework for Effective Governance.”

Special appreciation to Erin Hardwick, Executive Director, South Carolina Association of Nonprofit Organizations, 625 Taylor Street, Suite C, Columbia, South Carolina 29201. Tel: 803-929-0890; Fax: 803-929-0173. E-mail: info@scanpo.org.



State of South Carolina

NonProfit Organization Application Documents 501(C) (3): Applying for and Maintaining Your Nonprofit State: An Overview

By: Kirby Mitchell, Managing Attorney, Legal Services Agency of Western Carolina, Inc., 1 Pendleton Street, Greenville, SC 29601. Phone: (864) 679-3247; FAX: (864) 679-3260.

Note: These materials are designed to provide general information and operate as an introductory overview. Before applying for 501(c)(3) status, specific legal advice or other expert assistance is strongly recommended.

Quotes and Partial Transcript from a Case Example:

- 1 “I am in a group at my church and we’ve been talking about the needs of our community. We want to start an after-school center for kids, a place for them to get tutoring, homework help, things like that. We think we can apply for a few grants to help fund this idea, help it become a reality. I think we are interested in becoming a 501(c)(3) group ... But, you know, we’ve got some questions.”
2. Say, what is a “nonprofit” exactly? A nonprofit organization, whether incorporated or operated as a trust or as an unincorporated association, is an organization in which no part of its income can be distributed to the members, directors, or officers. Nonprofit organizations are not prohibited from making a profit. The prohibition is against the distribution of any profits to member, officers, or directors of the organization?
3. O.K., so we just need to apply with the Internal Revenue Service (IRS)? An organization obtains § 501 (c)(3) tax-exempt status by filing Forms 1023 (Application for Recognition of Exemption) and 8718 (User Fee for Determination. See attached Sample Form 1023. If the organization does not file these forms within 15 months after being established, the IRS will recognize tax-exempt status only from the date the IRS receives the application. This step, however, generally should come after a nonprofit corporation has been properly organized under state law. A nonprofit enterprise should first satisfy state requirements for recognition from the state as a nonprofit organization before applying for tax-exempt status.
4. Well, wait ..., that’s a big application packet you just handed me! What are the benefits of this nonprofit status, anyway? (1) Most nonprofit organizations are exempt from federal and state income taxes; (2) Some nonprofits are subject to reduced postal rates; (3) Some nonprofits are exempt from property and franchise taxes; (4) Some grants and certain funding are only available to 501(c)(3) nonprofit groups; (5) Contributions to 501(c)(3) are tax deductible under § 170 of the Internal Revenue Code; (6) Many people trust and expect better services from nonprofits in some fields.



5. O.K. well then, where should we get started? Most nonprofit organizations seek corporate status. The law relating to corporations is more defined and more flexible than that relating to trusts and associations. In addition, corporate status provides the benefits of limited liability for members of the organization, centralized management, and more definite standards relating to liability of officers and directors. Most states have adopted special nonprofit corporation statutes that govern organization and operation of nonprofit corporations. In South Carolina, see S.C. Code Ann. § 33-31-101. et seq. (“South Carolina Nonprofit Corporation Act”) (1994). See attached §33-31-101.
6. To organize a nonprofit corporation, duplicate originals of the articles of incorporation are filed with the Secretary of State for the state in which the corporation is located. The Secretary of State of South Carolina has standardized forms. The articles of incorporation of a nonprofit, charitable organization must limit the charity’s purposes to one or more of the exempt purposes set out in § 501 (c)(3) of the Internal Revenue Code, and there are other specific requirements that must be met.
7. After a state issues a certificate of incorporation, the incorporators or initial board of directors, should call an organizational meeting at which they will adopt bylaws and elect members. Minutes of each meeting of members or directors of a corporation are official records of corporate transactions. Minutes must be retained in a minute book prepared and maintained by the secretary. Minutes of a corporate meeting are prima facie evidence of what occurred at each meeting.
8. O.K., We’ve done all that. Are we tax-exempt? Not yet. Being organized as a nonprofit enterprise does not, of itself, assure tax-exempt status. Exemption from federal income taxes requires that a nonprofit organization apply for exempt status with the Internal Revenue Service (IRS). A tax-exempt entity must satisfy the provisions of §§ 501, 521, 527 or 528 of the Code to qualify for exempt status. Most nonprofit organizations qualify under § 501 (c)(3).
9. What do I need to know about applying for recognition of exemption under 501 (c)(3)? Most nonprofits seek tax-exempt status under § 501 (c)(3) of the Internal Revenue Code. Contributions to 501 (c)(3) organizations qualify donors for charitable contribution deductions. A 501 (c)(3) must be organized and operated exclusively for one or more of the following purposes: charitable, religious, education, scientific, literary, testing for public safety, fostering national or international amateur sports competition, or prevention of cruelty to children or animals. A § 501(c)(3) organization must distribute its assets for one or more exempt purposes upon dissolution, and no private individual may benefit from earnings of the organization.
10. A 501(c)(3) organization obtains tax-exempt status by filing Forms 1023 (Application for Recognition of Exemption) and 8718 (User Fee for Determination. See attached Sample Form 1023. Note: Exempt status will be recognized in advance of operations if an organization’s proposed operations can



be described in sufficient detail to permit a conclusion that the organization will meet requirements for exempt status.

11. How long does it take to complete this application? It can take a while! The IRS includes “Instructions for Form 1023” which indicate the estimated average time to prepare and do all the record-keeping to properly complete Parts I thru IV of Form 1023 is about 56 hours. Learning about the law or the form is estimated as taking about 5 hours. Actually preparing and sending the form to the IRS is estimated at 8 hours. Also, see attached Procedural Checklist.
Note: There are additional schedules that need to be completed depending on whether you are a church, school, medical research facility, etc.
12. How much does this cost? If you have had (or are a new organization, and are anticipating) annual gross receipts averaging not more than \$10,000: \$150.00. If you have had or anticipate more than \$10,000: \$500.00. Refer to Form 8718.
13. Hmm... What else do you think I need to know? (1) There are many sources of information about how to manage and run a nonprofit organization (e.g., SCANPO, thousands of existing nonprofits, churches, United Ways, etc.), so you do not need to feel terribly lost or “reinvent the wheel;” Many groups have come before you!; (2) From the very beginning, plan to give donors a written acknowledgement of any contribution; (3) There are annual reporting requirements: § 501(c)(3)s must file annual information returns on Form 990 or 990EZ each year, specifying receipts and disbursements and indicating current financial status; (4) Generally, you should consider all your § 501 (c)(3)’s financial records and minutes and information as public, not confidential, as most of it generally needs to be disclosed to anyone who requests copies; (5) Also you need to plan to disclose your solicitation efforts.
14. Well, do you really think our group needs to apply for tax-exempt status? It really depends on what you want to do, and all the facts and circumstances of your individual situation. Generally, if a nonprofit organization has gross receipts of less than \$5,000 annually, it need not apply for tax-exempt status. If it normally has gross receipts in each year of not more than \$25,000, it need not file an annual return. Just working on filling out Form 1023 can often force you and your group to really plan and think about what you want the organization to become.
15. One option that works for some groups is to have another established 501(c)(3) group act as their fiscal agent for the first year of their life as a new nonprofit organization; if you consider this option, be sure to keep the two groups’ finances, income statements, financial records, etc., absolutely separate: no commingling!
16. O.K., well, if we go through all this and get our tax-exempt status, what do we need to do to keep it? Keep meticulous records and minutes, and follow



all reporting and compliance requirements for both the State of South Carolina and the IRS.

17. How do groups lose their tax-exempt status? A nonprofit organization that is not organized and operated exclusively for its exempt purpose or purposes or that permits its earnings to inure to the benefit of any private individual or entity will lose its exempt status. Further, a § 501 (c)(3) organization can lose its exempt status if it engages in substantial lobbying or if any of its activities include the intervention or participation in a political campaign on behalf of, or in opposition to, a candidate for public office.
18. So, key things to avoid: (1) No part of the net earnings of a nonprofit may inure to the benefit of private individuals. Payment of excessive compensation or excessive rents and use of the facilities of a nonprofit organization to serve a private interest constitute inurement; (2) Do not engage in substantial commercial activity that is unrelated to the tax-exempt purpose of the organization; (3) Do not lobby, which is generally defined as attempting to influence legislation by propaganda or otherwise (note: some nonprofits can elect to engage in a “limited” amount of lobbying, but expenditures for this must be accurately reported). See attached sample article re: Christian Coalition
19. This sounds a little tricky, but I think our group can do it with a little help and a little advice. Know anyone who can help us?
20. Best idea: if possible, get an attorney on your nonprofit organization’s initial Board of Directors.
21. Other possibilities: (1) If you think your group might qualify for assistance through Legal Services, send a brief written proposal to Teresa Cosby at the Legal Services Agency of Western Carolina, Inc., 1 Pendleton Street, Greenville, SC 29601, Phone: (864) 679-3240; Fax: (864) 679 3260. (2) If Legal Services cannot have an attorney from their office help your group, it is possible we can find a volunteer attorney in the area who will help you.,

Some internet resources to help you get started:

www.irs.gov
www.scanpo.org
www.lsawc.net

Procedural checklist:

Make sure the application is complete.

If you do not complete all applicable parts or do not provide all required attachments, we may return the incomplete application to your organization for resubmission with the missing information or attachments. This will delay the processing of the application and may delay the effective date of your organization’s exempt status. The organization may also incur additional user fees.



Have you . . .

_____ Attached Form 8718 (User Fee for Exempt Organization Determination Letter Request) and the appropriate fee?

_____ Prepared the application for mailing? (See Where to File addresses on Form 8718.) Do not file the application with your local Internal Revenue Service Office.

_____ Completed Parts I through IV and any other schedules that apply to the organization?

_____ Shown the organization's Employer Identification Number (EIN)?

a. If your organization has an EIN, write it in the space provided. .

b. If this is a newly formed organization and does not have an Employer Identification Number, obtain an EIN by telephone. (See Specific Instructions, Part I, Line 2, on page 3.)

_____ Described your organization's specific activities as directed in Part II, line 1, of the application?

_____ Included a conformed copy of the complete organizing instrument? (See Specific Instructions, Part 1, Line 10, on page 3.)

_____ Had the application signed by one of the following?

a. An officer or trustee who is authorized to sign (e.g., president, treasurer); or

b. A person authorized by a power of attorney (Submit Form 2848, or other power of attorney.)

_____ Enclosed financial statements (Part IV)?

a. Current year (must include period up to within 60 days of the date the application is filed) and 3 preceding years.

b. Detailed breakdown of revenue and expenses (no lump sums).

c. If the organization has been in existence less than one year, you must also submit proposed budgets for two years showing the amounts and types of receipts and expenditures anticipated.

Note: During the technical review of a completed application, it may be necessary to contact the organization for more specific or additional information.

Do not send this checklist with the application. Citation/Title

§ 33 31 10j, Short title.

Code 1976 § 33 31 101



CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED TITLE 33. CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS

CHAPTER 31. SOUTH CAROLINA NONPROFIT CORPORATION ACT ARTICLE 1. GENERAL PROVISIONS

Current through End of 2000 Reg. Sess.

§ 33 31 101. Short title.

This chapter may be cited as the South Carolina Nonprofit Corporation Act of 1994. HISTORY:

1994 Act No. 384. ,§ 1. eff May 10. 1994. 1

994 Act No. 384, § 11, provides as follows:

“SECTION 11. The analysis lines preceding the code sections are for identification only and are not considered part of the Code sections. The Official Comments and the South Carolina Reporter’s Notes which are included after each section are included for analytical and information purposes only and must not be considered part of the sections themselves.”

HISTORICAL NOTES OFFICIAL

COMMENT

The short title provides a common name for use in referring to the state’s nonprofit corporation act.

The Introduction to the Model Act provides a general background and description of the Act, its basic approach, and significant additions and changes from the last revision of the Model Act.

SOUTH CAROLINA REPORTERS’ COMMENTS

This act is derived from the Revised Model Nonprofit Corporation Act adopted in 1987 by the Subcommittee on the Model Nonprofit Corporation La” of the Business Law Section of the American Bar Association. The Official Comments following each section were prepared by the Subcommittee on the Model Nonprofit Corporation Law of the Business Law Section of the American Bar Association. They are reproduced with permission. These Official Comments describe the substantive decisions made in the drafting process and in many cases explain the meaning and purpose of the section.

This act was prepared for introduction in South Carolina by a committee of the South Carolina Law Institute. This drafting committee was chaired by Theodore J. Hopkins. The drafting committee members included: Rudolph C. Barnes, Sr., Arthur M. Bjontegard, C. C. Burgess, James R Burkhard, Preston H. Callison, Shawn M. Flanagan, William L. Ivey, R. Bentz Kirby, E. Crosby Lewis, Andrew B. Marion, Burnett R. Maybank,III, William S. McMaster, Martin C. McWilliams, Jr., C. Pinckney Roberts, Edward C. Roberts, Lester S. Schwartz, Paul J. Ward, Roger A. Way, Jr., David Wheeler, and Mitchell M. Willoughby. References in the South



Carolina Reporters' Comments to "the committee" refer to this committee. The South Carolina Reporters Comments which follow each section were drafted as part of the preparation of this act by Professors Martin C. McWilliams, Jr., and James R. Burkhard of the University of South Carolina School of Law. These South Carolina Reporters' Comments are primarily intended to explain the differences, if any, between the section and the former law, and any differences between the section and the official text of the Revised Model Nonprofit Corporation Act ("Revised Model Nonprofit Corporation Act").

*21591 The Official and South Carolina Reporters' Comments are intended to assist those who use and interpret this act to determine the intention of the drafters and the interrelationship between the various sections. As such, the comments serve the same function and purposes as the comments to the Uniform Commercial Code.

Title 36, of the 1976 Code. They can be useful particularly in a state like South Carolina because the State does not have a large body of nonprofit corporation case law. The comments are not, however, part of the statutory law and, therefore, are not binding on any court or other adjudicatory body.

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Form **8718**

(Rev. November 2000)
Department of the Treasury
Internal Revenue Service

User Fee for Exempt Organization

Determination Letter Request

**Attach this form to determination letter application.
(Form 8718 is NOT a determination letter application.)**

For IRS Use Only

Control number _____
Amount paid _____
User fee screener _____

1 Name of organization

2. Employer Identification Number

Caution: Do not attach Form 8718 to an application for a pension plan determination letter. Use Form 8717 instead.

3. Type of request

Fee

a Initial request for a determination letter for:

- An exempt organization that has had annual gross receipts averaging not more than \$10,000 during the preceding 4 years, or
- A new organization that anticipates gross receipts averaging not more than \$10,000 during its first 4 years ► \$150

Note: If you checked box 3a, you must complete the Certification below.

Certification

I certify that the annual gross receipts of

name of organization

have averaged (or are expected to average) not more than \$10,000 during the preceding 4 (or the first 4) years of operation.

Signature ►

Title ►

b Initial request for a determination letter for:

- An exempt organization that has had annual gross receipts averaging more than \$10,000 during the preceding 4 years, or
- A new organization that anticipates gross receipts averaging not more than \$10,000 during its first 4 years ► \$500

c Group exemption letters ► \$500

Instructions

The law requires payment of a user fee with each application for a determination letter. The user fees are listed on line 3 above. For more information, see Rev. Proc. 2000-8, 2000-1, I.R.B. 230.

Check the box or boxes on line 3 for the type of application you are submitting. If you check box 3a, you must complete and sign the certification statement that appears under line 3a.

Attach to Form 8718 a check or money order payable to the United States Treasury for the full amount of the user fee. If you do not include the full amount, your application will be returned. Attach Form 8717 to your determination letter application.

Send the determination letter application and Form 8718 to:
Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

If you are using express mail or a delivery service, send the application and Form 8718 to:
Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Attach Check or Money Order Here