

## CHAPTER 4

### ORGANIZATION OF NONPROFIT CORPORATIONS

#### §401. Incorporators

**1. Incorporate.** One or more persons acting as incorporators shall execute and file, in accordance with sections 403 and 404, articles of incorporations for a corporation.

[PL 1991, c. 780, Pt. U, §13 (AMD).]

**2. Need not be residents.** Incorporators need not be residents of this State.

[PL 1977, c. 525, §13 (NEW).]

**3. Incorporators.** The incorporator or incorporators may be natural persons or domestic or foreign corporations, whether or not authorized to do business or carry on activities in this State, or any combination of natural persons or domestic or foreign corporations. If a corporation acts as an incorporator, the articles of incorporation must be accompanied by a certificate of an appropriate officer of that corporation, not the person signing the articles, certifying that the person executing the articles on its behalf is authorized to do so.

[PL 1997, c. 376, §24 (AMD).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1991, c. 780, §§U13,14 (AMD). PL 1997, c. 376, §24 (AMD).

#### §402. Members

**1. Classes of members.** A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein.

[PL 1977, c. 525, §13 (NEW).]

**2. Directors, officers, employees and members not liable.** The directors, officers, employees and members of the corporation shall not, as such, be liable on its obligations.

[PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

#### §403. Articles of incorporation

**1. Form of articles of incorporation.** The articles of incorporation shall set forth:

A. The name of the corporation; [PL 1977, c. 525, §13 (NEW).]

A-1. Whether the corporation is a public benefit corporation or a mutual benefit corporation, as described in section 1406; [PL 2001, c. 550, Pt. C, §9 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

B. If the corporation is a public benefit corporation, the purpose or purposes for which the corporation is organized and, if the corporation is a mutual benefit corporation, the purpose or purposes for which the corporation is organized or a statement that it is organized for all purposes permitted under the Act; [PL 2001, c. 550, Pt. C, §10 (AMD); PL 2001, c. 550, Pt. C, §29 (AFF).]

C. Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation; [PL 1977, c. 525, §13 (NEW).]

D. The information required by Title 5, section 105, subsection 1; [PL 2007, c. 323, Pt. B, §7 (AMD); PL 2007, c. 323, Pt. G, §4 (AFF).]

E. The number of directors constituting the initial board if the number has been designated or if the initial directors have been chosen; [PL 1997, c. 376, §25 (AMD).]

F. The maximum and minimum, not less than 3, number of directors if they differ from the initial board; and [PL 1977, c. 525, §13 (NEW).]

G. The name and address of each incorporator. [PL 1977, c. 525, §13 (NEW).]  
[PL 2007, c. 323, Pt. B, §7 (AMD); PL 2007, c. 323, Pt. G, §4 (AFF).]

**2. Corporate powers not set forth in incorporation.** It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.  
[PL 1977, c. 525, §13 (NEW).]

**3. Controlling amendment to bylaws.** Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.  
[PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1997, c. 376, §25 (AMD). PL 2001, c. 550, §§C9,10 (AMD). PL 2001, c. 550, §C29 (AFF). PL 2007, c. 323, Pt. B, §7 (AMD). PL 2007, c. 323, Pt. G, §4 (AFF).

#### §404. Filing of articles of incorporation

**1. Filing.** When the articles of incorporation are delivered for filing by the Secretary of State, the Secretary of State shall, before filing them, determine that the articles:

A. Comply with the requirements of sections 104 and 106; [PL 1977, c. 525, §13 (NEW).]

B. Set forth the information required by sections 402 and 403; and [PL 1989, c. 501, Pt. L, §40 (AMD).]

C. Do not adopt as the name of the corporation a name that is in violation of section 301-A. [PL 2003, c. 344, Pt. B, §16 (AMD).]

D. [PL 1989, c. 501, Pt. L, §40 (RP).]  
[PL 2003, c. 344, Pt. B, §16 (AMD).]

**2. Secretary of State to file articles of incorporation.** Upon making such determination, the Secretary of State shall file the articles of incorporation.  
[PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1989, c. 501, §L40 (AMD). PL 2003, c. 344, §B16 (AMD).

#### §405. Beginning of corporate existence; filing as conclusive evidence of incorporation; exceptions

**1. Filed articles constitute charter and authority.** The filed articles constitute the corporation's charter and authority to carry on activities.

[PL 1977, c. 525, §13 (NEW).]

**2. Beginning of corporate existence.** The existence of the corporation shall begin as of the filing date of the articles of incorporation, endorsed by the Secretary of State upon the articles filed as provided by section 106.

[PL 1977, c. 525, §13 (NEW).]

**3. Filing of articles of incorporation; conclusive evidence.** The fact that the articles of incorporation have been filed by the Secretary of State shall be conclusive evidence that all conditions required by this Act to be performed by the incorporators have been complied with, that the corporation has been incorporated and that its corporate existence has begun. Nothing in this subsection shall be construed to prohibit the State from instituting proceedings to:

A. Cancel or revoke the articles of incorporation; [PL 1977, c. 525, §13 (NEW).]

B. Enjoin any person from acting as a corporation within this State without being duly incorporated; or [PL 1977, c. 525, §13 (NEW).]

C. Compel dissolution of the corporation; and in any such proceeding by the State, this section shall not give rise to any presumptions against the State. [PL 1977, c. 525, §13 (NEW).]

[PL 1977, c. 525, §13 (NEW).]

**4. Fact of filing.** The fact of filing the articles may be proved by production of a certified copy thereof or in any other manner permitted by law.

[PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

#### §406. Powers of incorporators; organizational meeting

**1. Management of affairs until first annual meeting.** If the persons who are to serve as directors until the first annual meeting of the members have not been named in the articles of incorporation, the incorporator or incorporators, until the directors are elected, shall manage the affairs of the corporation and may do whatever is necessary and proper to perfect the organization of the corporation, including the adoption of the original bylaws of the corporation and the election of directors. If the persons who are to serve as directors until the first annual meeting have been named in the articles of incorporation, the power of the incorporator or incorporators to act for the corporation shall terminate upon filing of the articles. If the initial directors have not been named in the articles, the power of the incorporator or incorporators shall terminate upon the election and qualification of at least one director.

[PL 1977, c. 525, §13 (NEW).]

**2. Organizational meeting.** At any time before or after the filing date of the articles of incorporation, an organizational meeting of the incorporator or incorporators, or of the board of directors if the initial directors were named in the articles of incorporation, shall be held, either within or without this State, to adopt bylaws of the corporation, to elect directors, if the meeting is of the incorporators, to serve or hold office until the first annual meeting of the members, to elect officers if the meeting is of the directors, to do any other or further acts to complete the organization of the corporation and to transact such other business as may come before the meeting. Such meeting may be held without call, upon the unanimous agreement of the incorporators or directors, as the case may be, or upon call as provided in subsection 3.

[PL 1977, c. 525, §13 (NEW).]

**3. Meeting; how called.** If the organizational meeting is of the incorporators, it shall be held at the call of a majority of the incorporators. If the organizational meeting is of the directors named in the articles of incorporation, it shall be held at the call either of a majority of the incorporators or of a majority of the directors named in the articles. The person or persons calling the meeting shall give to

each other incorporator or director, as the case may be, at least 3 days' written notice thereof by any usual means of communication. The notice shall state the time, place and purposes of the meeting. [PL 1977, c. 525, §13 (NEW).]

**4. Waiver of notice.** The provisions of section 705 pertaining to waiver of notice shall apply to the organizational meeting. [PL 1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

#### **§407. Shares of stock and dividends prohibited**

A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes and upon dissolution or final liquidation may make distributions to its members as permitted by this Act, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit. Upon dissolution or liquidation, the assets of a corporation whose purposes and activities have been primarily charitable, religious, eleemosynary, benevolent or educational shall be transferred or conveyed only to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation. [PL 1977, c. 592, §15 (AMD).]

#### SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1977, c. 592, §15 (AMD).

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