

CHAPTER 41. NONPROFIT CORPORATIONS GENERALLY

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Subchapter A. INCORPORATION

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§ 41.1. General checklist for incorporating nonprofit corporations. [Reserved]

Source

The provisions of this § 41.1 adopted June 22, 1973, effective June 23, 1973, 3 Pa.B. 1164; amended April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993. Immediately preceding text appears at serial pages (68211) to (68212).

§ 41.2. Incorporators.

- (a) One or more corporations or natural persons of full age may incorporate a nonprofit corporation.
- (b) A foreign corporation for profit or a foreign corporation not-for-profit may incorporate a nonprofit corporation. It is not necessary that the incorporator corporation be qualified to do business in this Commonwealth.
- (c) Full age means 18 years of age or older.

Source

The provisions of this § 41.2 adopted June 22, 1973, effective June 23, 1973, 3 Pa.B. 1164; amended April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993. Immediately preceding text appears at serial page (68212).

§ 41.3. Nonprofit corporation names.

(a) Section 5303 of the NPCL (relating to corporate name) does not require that the corporate name of a nonprofit corporation contain a corporate designator such as Corporation, Corp., Company, Co., Incorporated, Inc., and the like.

(b) The corporate name shall also comply with the applicable requirements of Chapter 17 (relating to names).

Source

The provisions of this § 41.3 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 41.4. Stated purposes.

(a) Section 5301 of the code (relating to purposes) provides that a nonprofit corporation may be incorporated for a lawful purpose including one or more of the following or similar purposes:

- (1) Athletic.
- (2) A lawful business purpose to be conducted on a not-for-profit basis.
- (3) Beneficial.
- (4) Benevolent.
- (5) Cemetery.
- (6) Charitable.
- (7) Civic.
- (8) Control of fire.
- (9) Cultural.
- (10) Educational.
- (11) Encouragement of agriculture or horticulture.
- (12) Fraternal.
- (13) Health.
- (14) Literary.
- (15) Missionary.
- (16) Musical.
- (17) Mutual improvement.
- (18) Patriotic.
- (19) Political.
- (20) Prevention of cruelty to persons or animals.
- (21) Professional, commercial, industrial, trade, service or business associations.
- (22) Promotion of the arts.
- (23) Protection of natural resources.
- (24) Religious.
- (25) Research.
- (26) Scientific.
- (27) Social.

(b) The stated purposes of a nonprofit corporation may not consist of solely a statement to the effect that its corporate purpose is to engage in all lawful business for which corporations may be incorporated under 15 Pa.C.S. Subpart A (relating to nonprofit corporations). Compare with 15 Pa.C.S. § 1301 (relating to purposes).

(c) Under section 5108 of the code (relating to limitation on incorporation), a corporation which might be incorporated under the code may not be incorporated under another statute. Accordingly, domestic corporations not-for-profit shall be incorporated under the code, except:

(1) Electric cooperative corporations, which are incorporated under Chapter 73 of the code (relating to the Electric Cooperative Law of 1990).

(2) Fraternal benefit societies, which continue to be incorporated under the Fraternal Benefit Society Code (40 P. S. §§ 1141-101—1141-1001).

Authority

The provisions of this § 41.4 amended under section 506 of The Administrative Code of 1929 (71 P. S. § 186); and the Associations Code, 15 Pa.C.S. § 133.

Source

The provisions of this § 41.4 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993; amended February 13, 1998, effective February 14, 1998, 28 Pa.B. 801. Immediately preceding text appears at serial page (166566).

§ 41.5. Term of existence.

The term of existence of a nonprofit corporation may be limited in the articles of incorporation. Section 5306(a) of the NPCL (relating to articles of incorporation) provides that the duration of a corporation is perpetual absent a provision in the articles setting forth a limited term. Section 5502(a)(1) of the NPCL (relating to general powers) that every nonprofit corporation shall have perpetual succession unless a limited duration is specified in its articles.

Source

The provisions of this § 41.5 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 41.6. Share structure.

(a) Section 5306(a)(6) of the NPCL (relating to articles of incorporation) permits a nonprofit corporation to be organized on a stock share basis, in which case the articles of incorporation are required to set forth the aggregate number of shares which the corporation shall have the authority to issue.

(b) Section 5306(a)(6)(ii) of the NPCL authorizes the articles of incorporation of a nonprofit corporation organized on a stock share basis to set forth a statement of the voting rights, designations, preferences, limitations and special rights in respect of the shares of any class the fixing of which by the articles of incorporation is desired.

(c) Section 5306(a)(6)(iii) of the NPCL authorizes the articles of incorporation of a nonprofit corporation organized on a stock share basis to set forth authority vested in the board of directors or other body to divide by provision in the bylaws the authorized and unissued shares into classes or series, or both, and to determine for a class or series its voting rights, designations, preferences, qualifications, limitations and special rights.

(d) A typical provision of the articles of a nonprofit corporation which is not organized on a stock share basis reads as follows:

The corporation is organized upon a nonstock basis.

Source

The provisions of this § 41.6 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 41.7. Corporations without members.

Section 5306(a)(7) of the NPCL (relating to articles of incorporation) authorizes the articles of incorporation of a nonprofit corporation to specify that the corporation is to have no members. In that case, section 5751(b) of the NPCL (relating to classes and qualifications of membership) provides that a provision of law requiring notice to, the presence of, or the vote, consent or other action by members of a nonprofit corporation shall be satisfied by notice to, the presence of, or the vote, consent or other action by the board of directors or other body of the corporation. A typical provision of the articles reads as follows:

The corporation shall have no members.

Source

The provisions of this § 41.7 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 41.8. Naming of the first directors in the articles.

(a) The first directors of the corporation may, but are not required to be named in the articles of incorporation.

(b) Section 5306(c) of the NPCL (relating to articles of incorporation) provides that the naming of directors in the articles of incorporation shall constitute an affirmation that the directors have consented in writing to serve as directors.

(c) If the directors are not named in the articles of incorporation, section 5310(a) of the NPCL (relating to organization meeting) provides that they shall be elected at the organization meeting of the incorporators.

Source

The provisions of this § 41.8 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 41.9. Other provisions in the articles.

Section 5306(a) of the NPCL (relating to articles of incorporation) authorizes the articles of incorporation of a nonprofit corporation to contain other provisions consistent with the NPCL which the incorporator may choose to insert if one of the following exists:

- (1) A section of the NPCL authorizes or requires provisions pertaining to the subject matter thereof to be set forth in the articles or bylaws of a nonprofit corporation or in an agreement or other instrument.
- (2) The provisions are not inconsistent with the NPCL and relate to the purpose of the corporation, the management of its business or affairs or the rights, powers or duties of its members, security holders, directors or officers.

Source

The provisions of this § 41.9 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 41.10. Incorporation of an unincorporated association.

Section 5331 of the NPCL (relating to unincorporated associations) provides that in the case of the incorporation as a nonprofit corporation of an unincorporated association the articles of incorporation shall contain, in addition to provisions otherwise required by the NPCL, a statement that the incorporators constitute a majority of the members of the committee authorized to incorporate the association by the requisite vote required by the organic law of the association for the amendment of the organic law.

Source

The provisions of this § 41.10 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 41.11. Advertisement.

(a) Section 5307 of the NPCL (relating to advertisement) requires that the incorporators shall advertise their intention to file or the corporation shall advertise the filing of articles of incorporation in the Department one time in two newspapers published in the English language, one of which shall be a newspaper of general circulation, and the other the legal newspaper, if any, designated by the rules of the court for the publication of legal notices, otherwise, in two newspapers of general circulation, published in the county in which the initial registered office of the corporation is to be located. If there is only one newspaper of general circulation published in a county, advertisement in that newspaper is sufficient. Advertisements may appear prior to or after the day the articles of incorporation are filed with the Department and shall briefly set forth the following:

- (1) The name of the proposed corporation.
- (2) A statement that the corporation is to be or has been incorporated under the NPCL.

- (3) A brief summary of the purpose of the corporation.
 - (4) A date on or before which the articles will be filed with the Department or the date the articles were filed.
- (b) Title 45 of the *Pennsylvania Consolidated Statutes*, section 307 (relating to effect of failure to advertise when required) provides that no legal proceeding or the like, in which notice is required to be given by official or legal advertising, shall be binding upon an interested person unless the advertising is effected and a proof of publication is filed of record in the matter or proceeding. The proofs referred to in this section may not be submitted to, and will not be received and filed by, the Department, but shall be filed in the minute book of the corporation.

Source

The provisions of this § 41.11 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

Subchapter B. SPECIAL PROCEDURES

- Sec.
41.51. Statement of summary of record.
41.52. Annual report.

§ 41.51. Statement of summary of record.

- (a) A nonprofit corporation which was incorporated prior to February 13, 1973, and which desires to effect one or more of the following transactions with the Department shall submit Form DSCB:15-1311/5311/9305 (Statement of Summary of Record) with the initial filing or request:
- (1) The filing of a document in the Department under the NPCL except section 5311 of the NPCL (relating to filing of statement of summary of record by certain corporations).
 - (2) The securing from the Department of one of the following:
 - (i) A certificate to the effect that the corporation is a corporation incorporated and existing under the laws of the Commonwealth.
 - (ii) A certified copy of the articles of the corporation.
- (b) Paragraph 5 of Form DSCB: 15-1311/5311/9305 (Statement of Summary of Record) requires a statement of the place, including volume and page numbers or their equivalent, where the documents constituting the currently effective articles of the corporation are recorded, the date of each filing or recording, and the text of the currently effective articles. If the text of the articles appears of record in the Department, the text may be incorporated by reference and is not required to be set forth at length in the certificate of summary of record. The information specified in this subsection may be omitted in a certificate of summary of record which is delivered to the Department contemporaneously with amended and restated articles of the corporation filed under the NPCL.

(c) The purpose of this section is to establish an authoritative initial text of the articles of the corporation upon the records of the Department and under section 5311(b) of the NPCL to form a basis for determination by the Department that the corporation has been incorporated. Therefore, it is unnecessary for a corporation to file Form DSCB:15-1311/5311/9305 (Statement of Summary of Record) more than one time under this section, regardless of the number of frequency of transactions of the character set forth in subsection (a) effected by the corporation.

Source

The provisions of this § 41.51 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

§ 41.52. Annual report.

(a) Section 5110 of the NPCL (relating to annual report) requires that the following corporations that have effected a change in their officers during the preceding calendar year file Form DSCB:15-5110 (Annual Statement-Nonprofit Corporation) on or before April 30 of each year:

(1) A domestic nonprofit corporation which has been incorporated after December 31, 1972 or which has filed Form DSCB:15-1311/5311/9305 (Statement of Summary of Record-Domestic Nonprofit Corporation), or a corresponding form under prior law.

(2) A qualified foreign nonprofit corporation.

(b) There is no fee for filing Form DSCB:15-5110 (Annual Statement-Nonprofit Corporation).

(c) The filing of Form DSCB:15-5110 (Annual Statement-Nonprofit Corporation) does not constitute compliance with the requirements of the NPCL for filing Form DSCB:15-1507/4144/5507/6144/8506 (Statement of Change of Registered Office).

Source

The provisions of this § 41.52 adopted April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993.

Cross References

This section cited in 19 Pa. Code § 13.31 (relating to searches and information; telephone inquiries); and 19 Pa. Code § 23.51 (relating to annual report information).

Subchapter C. FORMS

Sec.
41.101. Official forms.

§ 41.101. Official forms.

The following official forms have been promulgated under the provisions set forth in this chapter and appear in Appendix A:

Form DSCB:15-5110 (Annual Statement-Nonprofit Corporation).

Form DSCB:15-5306 (Articles of Incorporation-Domestic Nonprofit Corporation).

Form DSCB:15-1311/5311/9305 (Statement of Summary of Record).

Form DSCB:15-5341 (Statement of Revival-Domestic Nonprofit Corporation).

Form DSCB:15-5902 (Statement of Termination- Nonprofit Corporation).

Form DSCB:15-5915 (Articles of Amendment-Domestic Nonprofit Corporation).

Form DSCB:15-5926 (Articles of Merger-Domestic Nonprofit Corporation).

Form DSCB:15-5954 (Articles of Division-Nonprofit Corporation).

Form DSCB:15-5963 (Articles of Conversion-Domestic Nonprofit to Business Corporation).

Form DSCB:15-5971 (Articles of Dissolution by Members Before Commencement of Business-Domestic Nonprofit Corporation).

Form DSCB:15-5977 (Articles of Dissolution-Domestic Nonprofit Corporation).

Form DSCB:15-5989 (Articles of Involuntary Dissolution-Domestic Nonprofit Corporation).

Source

The provisions of this § 41.101 adopted June 22, 1973, effective June 23, 1973, 3 Pa.B. 1164; reserved April 17, 1992, effective April 18, 1992, 22 Pa.B. 1993. Immediately preceding text appears at serial pages (68212) to (68215), (24888) to (24889), (68216) to (68221) and (24896).

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