North Carolina Center for Nonprofits

Many missions | *100* counties | *One* voice

How to Start a 501(c)(3) Nonprofit Organization in North Carolina

Information Packet

We recommend that you seriously consider whether to create a new nonprofit organization. The laws and regulations that tax-exempt nonprofits must follow are complex and time consuming. Finding and maintaining funds from a wide range of supporters is difficult. Identifying and engaging strong board members takes time and attention.

Page 2 of this document offers ideas for accomplishing your goals without starting a new nonprofit.

The North Carolina Center for Nonprofits has compiled these resources as a service to you. 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

You can become a Member of the Center to get access to many services for governing and managing your organization, sustaining it over time, increasing its impact, and saving time and money. These include sample bylaws, samples of important policies for board governance, and a checklist to help you comply with nonprofit laws and regulations.

For information on all the benefits of Center membership and to join, visit **https://www.ncnonprofits.org/membership/member-benefits**. Membership is open to all 501(c)(3) nonprofits operating in North Carolina, groups applying for this status, and other community groups that work for the public benefit and have chosen not to apply for tax exemption.

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 North Carolina Center *for* Nonprofits' Information Central webpage.

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 the organization 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 bylaws.
- 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.

BYLAWS
of
ABC ORGANIZATION.

ARTICLE I: Name and Purpose

Section 1. **Name.** The name of the organization shall be ABC Organization., hereinafter called the "Organization."

Section 2. **Purpose.** The purpose of the Organization is to help 501(c)(3) nonprofits achieve their important goals in the community and work together to improve the lives of the people of North Carolina. The Organization, which is organized under the North Carolina Nonprofit Corporation Act, 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) of the Internal Revenue Code or successor provisions.

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

ARTICLE II: Membership

Section 1. **General Rights and Powers.** The Organization shall have no legal members with the rights and obligations set forth in the North Carolina Nonprofit Corporation Act. For the purpose of these bylaws, the term "member" refers to organizations meeting the qualifications set forth in Article II, Section 2 of these bylaws. Except as otherwise provided 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 the Articles of Incorporation or these bylaws, any right of members to vote and any right, title or interest in or to the Organization, its properties and franchises, shall cease and divest upon termination of membership, except that liability of a member for sum due the Organization shall survive such termination unless otherwise expressly provided by the Board of Directors.

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

Section 3. **Approval of Members.** Members, as defined in Article II Section 1, shall be approved upon the affirmative vote of a majority of the Board of Directors present at a duly constituted meeting.

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. In addition to any voting rights set forth in these bylaws, the Board of Directors may authorize members to vote on other matters. Except as otherwise determined by the Board of Directors, votes of members shall be conducted by written ballot, which may be conducted electronically, and a plurality of votes cast shall be necessary for approval of any matter upon which members are asked to vote.

ARTICLE III: Board of Directors

Section 1. **General Powers.** The property, business, and affairs of the Organization shall by overseen by its Board of Directors in accordance with these Bylaws. The Board is responsible for overall policy and direction of the Organization and delegates responsibility for day-to-day operations to the President. Specific powers of the Board of Directors include but are not limited to:

a. defining the mission, goals, and objectives of the Organization, and assigning priorities among the goals and objectives when needed;
b. selecting the Organization's President and periodically reviewing his or her performance;
c. approving major personnel policies;
d. reviewing and approving the Organization's budget;
e. raising the financial resources required to meet the Organization's goals and objectives, as coordinated by the President, and establishing general fund raising policies; and
f. conducting a biennial review and evaluation of the Organization'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. At least one-half shall be elected by the members of the Organization in accordance with these bylaws, and the remainder shall be appointed by the elected Directors and the continuing appointed Directors. Directors shall have a demonstrated commitment to the Organization'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 Organization, 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 electronic ballot sent to the email address of record of each member of the Organization. Written mail ballots sent by regular mail will be sent to anyone who has not provided the Organization with an electronic address or who has indicated a preference not to be contacted electronically. A candidate or candidates shall be deemed elected upon receipt of a plurality of the votes cast by [Insert Date].

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 as provided otherwise in these bylaws, the term shall begin on the first day of the Organization's fiscal year. Each Director shall hold office until his or her term 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 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 at which a quorum is present shall be the act of the Board of Directors. A Director who is present at a Board of Directors meeting 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 meeting is adjourned or shall forward such dissent by registered mail to the Secretary of the Organization immediately after the meeting is adjourned. Such right to dissent shall not apply to Directors who voted in favor of such action. If at any Board of Directors meeting 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, as long as all Directors participating in the meeting may simultaneously hear one another during the meeting. 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 unanimous written vote, whether in print or electronic form, by all Directors then in office, or by other similar 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, 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 provides 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 IV: Officers

Section 1. **Officers.** The officers of the Organization shall consist of a Chair of the Board of Directors, a Vice-Chair of the Board, a Secretary, a Treasurer, a President, 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 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 and Terms.** At one meeting each year, the Board of Directors 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 from the first day of the fiscal year, or immediately upon election if such election occurs after the first day of the fiscal year, until the last day of the fiscal year or until his or her death, resignation, retirement, removal, or disqualification, if such occurs before the first day of the next fiscal year 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 Organization 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 all meetings of the Board of Directors and shall perform the following duties and responsibilities:

a. appoint the chairpersons of all Board committees and serve as liaison among the Organization’s Board, its committees, and the staff;
b. maintain liaison as needed with foundations supporting the Organization 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 Organization’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 Committee, including all votes and resolutions adopted; the recording of all corporate documents and records; the issuing of notices 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. The President shall serve as the Secretary. The Board may also appoint an Assistant Secretary. In the absence of the Secretary or in the event of his or her death, inability or refusal to act, the Assistant Secretary, if one is appointed and 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 Organization. He or she shall make to the Board of Directors at each meeting an accurate account of the Organization’s receipts and disbursements; prepare or cause to be prepared a true statement of the Organization’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 by the Board of Directors or by the Treasurer, Board Chair, or President.

Section 8. **President.** The President of the Organization shall direct and execute all decisions of or programs adopted by the Board of Directors, shall act as the chief executive officer of the Center, shall serve as 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, hiring and discharging all employees; executing contracts or other instruments on behalf of the Organization 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 Organization, or shall be required by law to be otherwise signed or executed; signing checks, drafts, or other orders for payment of money; depositing all monies and other assets in the name of the Center 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 shall furnish the Board with an operating and financial report at each meeting thereof. The President shall be appointed upon the majority vote of the Board of Directors present at a duly constituted 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 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, or any other officer or assistant officer to furnish such surety as it may determine.

Section 11. **Compensation of Officers.** The President 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 Organization and according to policies authorized by the Board of Directors.

ARTICLE V: Miscellaneous Provisions

Section 1. **Indemnification.** Every person who is or shall have been a Director or officer of the Organization and his or her personal representatives shall be indemnified by the Organization 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 Organization, 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 Organization shall begin on the first day of July of each year and shall end on the thirtieth day of June of the next year.

Section 3. **Corporate Seal.** The official seal of the Organization shall have inscribed thereon the name of the Organization. This 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.

Section 5. **Activities of the Organization.** No substantial part of the activities of the Organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Organization 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 Organization 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, contribution 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. **Dissolution and Distribution of Assets.** No part of the Organization’s net earnings shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the Organization shall be authorized and empowered to pay reasonable compensation for services rendered to the Center and to make payments and distributions that further the purposes set forth herein. The Organization may be dissolved and its assets and liabilities liquidated in such manner as the Board of Directors shall resolve, provided that upon dissolution, after payments of all debts, no part of the remaining assets may be distributed to any Organization trustee, member, or officer 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 ABC Organization on [Insert Date]. They were most recently revised by the Board of Directors on [Insert Date].

North Carolina Center for Nonprofits

Many missions | *100* counties | *One* voice

Helpful IRS Websites
(IRS ***www.irs.gov***)

"Life Cycle of a Public Charity"
http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Life-Cycle-of-a-Public-Charity

"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

"Compliance Guide for 501(c)(3) Charities"
https://www.irs.gov/pub/irs-pdf/p4221pc.pdf

"Stay Exempt Online Courses for 501(c)(3) Organizations"
(Includes the course "Applying for Tax Exemption")
www.stayexempt.irs.gov