
The New DC Nonprofit Corporation Act

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*The new DC Nonprofit Corporation Act became effective July 2, 2011, and will be applicable to all post-1962 Act nonprofit corporations as of **January 1, 2012**. Pre-1962 nonprofit corporations ("old act" corporations) will have until **January 1, 2014**, to file a notice that they do not wish to be governed by the new law, and will become subject to the law if they do not give notice by that date. Notice must include the corporation's articles of incorporation (or other public organic record) and the names and street and mailing addresses of its current directors and officers. There is still some ambiguity as to whether "old act" corporations can effectively opt out of the new law, because the law states that "If the corporation desires to do business in the District, the corporation must file articles of incorporation with the Mayor and **otherwise comply with this title.**"*

The revised "Business Organizations" Title 29 of the District of Columbia Code takes a "hub-and-spoke" approach to the law. Chapter 1, "General Provisions," includes provisions that apply to all District of Columbia corporations. Chapter 4, "Nonprofit Corporations," provides specifics for nonprofits. All references below are to the District of Columbia Code, Title 29, and are preceded by §29-.

The attached chart is organized by old DC Code sections, and lists all corresponding new DC Code sections, and provides a description of all changes. The following points out new requirements and opportunities for nonprofits under the new law, including provisions that apply unless otherwise displaced, and additional changes to note.

New Requirements

- If a corporation has members, members must approve amendments to the articles; except for non-substantive, administrative changes. (408.02; 408.03; 408.05)

- A membership corporation must prepare a list of members entitled to notice of a meeting of members, including the address of and number of votes each member is entitled to cast at that meeting, and must make the list available for inspection by members or members' agents. Refusal or failure to prepare or make available the list shall not affect the validity of action taken at the meeting. An alternative to making such list available is for the corporation to state in a notice of meeting that the corporation has elected to proceed under 405.20(f), whereby a member's demand for inspection must state a proper purpose, and the corporation may offer a reasonable alternative method of achieving the purpose, within 10 business days. (405.20)
- Nonprofits are now explicitly required to maintain certain records at their principal office, and to allow members to inspect and copy records (or receive copies, including electronically). (Note: The rights of inspection may be abolished or limited by a corporation's articles or bylaws.) (413.01-03)

Displaceable Requirements

Under the new law there are certain requirements that may be superseded by provision in the articles of incorporation or bylaws of a nonprofit corporation. Nonprofits should review the following provisions and revise their bylaws if they see fit to alter any of the requirements.

Unless articles of incorporation or bylaws provide otherwise:

- Notice shall be in the form of a record. (401.03)
- Notice shall be given no fewer than 10 nor more than 60 days before each annual, regular, or special meeting of the members. (405.05)
- A majority of votes entitled to be cast on a matter by a voting group constitutes a quorum of that voting group for action on that matter. (405.24)
- Directors of a membership corporation shall be elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present. (405.27)
- Members entitled to cumulate their votes for directors prior to the new law shall continue to be entitled to do so. (414.03)
- After adopting a plan of merger, the Board of a corporation must submit it to the members entitled to vote on the plan for their approval. (409.04)
- Approval of the members is now not required for most sales or dispositions of assets. (410.01)
- A nonprofit corporation must furnish financial information on request to members. (413.20)
- A special meeting may be called by 10% of members, or such other amount up to 25% as the articles or bylaws may specify. (405.02)

New Opportunities

- A membership corporation may elect or appoint "delegates" to vote in a representative assembly for the election of directors or on other matters. (401.02)
- If authorized in a corporation's articles or bylaws, in the event of an emergency, the Board may assume emergency powers such as: modifying lines of succession, and relocating offices. (403.03)
- Some, but less than all, of the powers, authority, or functions of the board of directors may be vested by the articles of incorporation in a designated body. Some, but less than all, of the rights or obligations of

the members may be vested by the articles of incorporation or bylaws in a designated body. The articles or bylaws may prescribe qualifications for members of a designated body. (406.12)

- If authorized in a corporation's articles or bylaws, members may hold any annual, regular, or special meetings electronically. (405.01; 405.02)
- A corporation may provide in its articles or bylaws for a higher or lower quorum or voting requirement for members, or voting groups of members, than is provided for by the code (majority of votes entitled to be cast). (405.26)
- A corporation may appoint one or more election inspectors to act at a meeting of members to ascertain voting powers, determine validity of proxies and ballots, count votes, and otherwise oversee elections. (405.28)
- A nonprofit corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification or advance funds to pay for or reimburse expenses. (406.58)
- The articles of a nonprofit corporation may require third person approval for amendment, in addition to board and members' approval; the articles or bylaws may require such approval for amendment of the bylaws. (408.40)
- New "domestication" provisions allow nonprofits to become incorporated in the place where they do business, without having to file a new application for tax exemption for creation of a new legal entity, as previously required. A foreign nonprofit corporation may become a domestic nonprofit corporation if the domestication is authorized by the law of the foreign jurisdiction, and a domestic nonprofit corporation may become a foreign nonprofit corporation if the domestication is permitted by the laws of the foreign jurisdiction. (407.02)
- A limited liability company may now be formed for nonprofit purposes. (801.04)

Additional Changes to Note

- Biennial reports for all corporations will now be due April 1st, rather than January 15th. (102.11)
- The definition of "member" has changed; an individual or entity may be called a member by an organization, but is only a "member" for purposes of the DC Nonprofit Corporation Act if granted voting rights. (401.02)
- Common law concepts of the standards of conduct and liability for directors and officers are now codified. (406.30; 406.31)
- Indemnification processes and requirements are detailed and expanded. The law now allows for a court to order indemnification even if the relevant standard of conduct is not met. A corporation may also affirmatively expand indemnification of its officers and directors. (406.50-58)
- The general prohibition against loans to directors and officers remains, but exceptions are now explicitly carved out for reimbursable expenses and loans secured by a principal residence. (406.32)
- Some numerical requirements have changed, including:
 - Incorporation now requires one or more persons (previously it required three or more), and no notary. (402.01)
 - A member quorum is now a majority of votes entitled to be cast (unless changed by articles or bylaws), instead of 1/10. (405.24)

- A quorum for directors is now 1/3 or two directors, whichever is greater (previously it was 1/3). (406.24)
- The minimum number of directors on a committee is now one, not two. (406.25)
- Requirements for specific offices for a president, secretary and treasurer are replaced by a requirement to have a minimum of two separate officers, one responsible for management of the corporation, and one responsible for the financial affairs of the corporation, with one officer taking responsibility for meeting minutes. (406.40; 406.41)

[Please click here to see a comparison of the old and new DC Nonprofit Corporation Act.](#)

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the author of this alert.

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