

THE PARALEGAL'S GUIDE TO DRAFTING NONPROFIT DOCUMENTS

ARTICLES OF INCORPORATION

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MEETING IRS REQUIREMENTS

- Clients often wish to create their own charitable entities.
- The first step is to draft the Articles of Incorporation (also called Certificate of Incorporation and used interchangeably in these materials).
- This Articles of Incorporation is the corporation's organizing document.

MEETING IRS REQUIREMENTS

(cont.)

- Governed by both state law and federal law.
- Must be filed with the state where the entity will be located.
- Consult local law before drafting.

Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

- Application for securing tax exempt status for the entity.
- Must be filed within 27 months from the end of the month in which it was organized.
- Requires many exhibits including the entity's Articles of Organization showing proof that the Articles of Incorporation were filed with the state.

IRS requires that the Articles of Incorporation include:

- Name of entity
- Statement of exempt purpose
- Dissolution clause
- Date the document was adopted

PROPERLY LIMITING THE
ORGANIZATION'S PURPOSE/
DRAFTING A THOROUGH AND
ACCURATE STATEMENT OF
PURPOSE

Internal Revenue Code of 1986, as amended (the “Code”), Section 501(c) (3) governs the federal not for profit law.

501(c)(3) provides:

- Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

IRS sample language

- “The organization is organized exclusively for charitable, religious, educational, and scientific purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.”

Most common types of 501(c)(3) organizations are:

- Charitable
- Educational
- Religious

Stating one of the 501(c)(3) purposes in the Articles of Incorporation:

- Stating the purpose of the organization is “relief of the poor” would properly limit its tax exempt purpose.
- Stating for example, “relief of the elderly within the meaning of section 501(c)(3).”

Organizational Test

- Articles of organization must limit the organization's purposes to one or more of the ones stated in 501(c)(3) of the Code
- Must not state that the entity can carry on activities that do not further one or more of those purposes.

Examples

- At page 25, Publication 557 provides eight examples of what satisfies the criteria to have a tax exempt purpose in the entity's Articles of Incorporation.
- See pages 8-9 of written materials for these examples.

HOW TO PERFORM A NAME SEARCH

- Each state has provisions to check whether a name is available for use by the entity.
- Typically can be found on each state's respective Secretary of State website.
- Names must be distinguishable from existing names on file for other corporations.
- Some states allow name reservation.

KEY COMPONENTS OF THE ARTICLES OF INCORPORATION

- Each state has its own requirements.
- Each state's statutes and forms should be reviewed before drafting.

Articles of Incorporation contain the following information:

- 1. Name of corporation.
- 2. Statement of purpose.
- 3. Location of office.
- 4. Contact information for initial directors.
- 5. Appointment of registered agent.

Articles of Incorporation contain the following information (cont.):

- 6. Other information such as any information which the corporation is permitted but not required to provide and can include IRS language.
- 7. Name and contact information for incorporator.
- 8. Executed by incorporator.

Private foundations are subject to additional requirements in the Articles of Incorporation:

- Directors:
 - 1) must refrain from acts of self-dealing (§4941 of the Code)
 - 2) meet minimum distribution requirements of distributing 5% of its assets each year to other charitable causes (§4942 of the Code)
 - 3) abstain from "excess business holdings" (§4943 of the Code)
 - 4) abstain from "jeopardizing investments" (§4944 of the Code)
 - 5) refrain from making certain expenditures (§4945 of the Code)
 - 6) pay tax on net investment income (§4940 of the Code).

WALKTHROUGH OF EXAMPLES

- Federal Example - see page 12 of written materials
- New York Example – see page 14 of written materials
- Connecticut Example – see page 16 of written materials

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