

**FORMING A NEW NONPROFIT: NUTS AND BOLTS
OF WASHINGTON STATE LAW**

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FORMING A NEW NONPROFIT: NUTS AND BOLTS

This chapter will address the legal requirements and procedures for establishing a nonprofit corporation under Washington State law, as well as provide a summarized overview of the various types of nonprofit statutes under Washington law with a focus on the most commonly used statute, the Washington Nonprofit Corporation Act. The “nuts and bolts” discussion will also point out some important organizational issues an organization may need to address in conjunction with drafting its governing documents. While this chapter will not discuss obtaining tax-exempt status, it will discuss the federal tax law requirements with respect to the governing documents.

I. Organizational Options under Washington Law

Washington has in place a number of statutes permitting the formation of nonprofit corporations. The choice among the various options will depend on the purposes and activities of the corporation to be established. Despite the repeal of a number of different types of nonprofit corporations when the Washington Legislature adopted the Nonprofit Corporation Act, several options still remain. These include:

A. The Washington Nonprofit Corporation Act (Chapter 24.03 RCW). Most nonprofit corporations, particularly those that qualify as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, are incorporated under the Washington Nonprofit Corporation Act (the “Act”). A fuller description of the Act appears in Section II below.

B. Nonprofit, Miscellaneous and Mutual Corporation Act (Chapter 24.06 RCW). Organizations can be incorporated under this statute for any lawful purpose, including, but not limited to, mutual, social, cooperative, fraternal, beneficial, service, labor organization and other purposes. Corporations may not be organized under this chapter for any purposes which by law are restricted to corporations organized under other statutes. RCW 24.06.015. These include insurance companies, banks, savings and loan associations and credit unions.

While similar to Chapter 24.03 RCW, this chapter contains some significant differences. Chapter 24.06 RCW does not contain the limitations on activities and protections contained in the Act which serve to protect charitable assets, indicating the intent of the Legislature that charitable organizations be organized under the Act. Additionally, unlike a corporation organized under the Act, a corporation organized under Chapter 24.06 RCW may issue shares to shareholders and may distribute surplus funds to members or shareholders. RCW 24.06.025, .070. However, Chapter 24.06 RCW specifically prohibits a corporation from engaging in any business, trade, vocation or profession for profit, although a corporation may accumulate reserves, equity, surplus or other funds through subscriptions, fees, dues or assessments or from charges made to its members or other persons for services rendered or supplies or benefits furnished or from distributing surplus funds to its members, stockholders or other persons in accordance with the provisions of the corporation’s articles of incorporation. RCW 24.06.035.

C. Fraternal Societies (Chapter 24.20 RCW) and Building Corporations Composed of Fraternal Society Members (Chapter 24.24 RCW). Under Chapter 24.20 RCW, fraternal societies, lodges or chapters may incorporate by filing articles of incorporation with the Secretary of State in accordance with RCW 24.20.010. Members of fraternal societies (at least ten) and fraternal societies themselves may form a separate corporation under Chapter 24.24 RCW to construct, maintain and operate a building for fraternal and social purposes.

D. Employee Cooperative Corporations (Chapter 23.78 RCW). This statute facilitates the ownership and control of a business by employees of the business. Under this chapter, a corporation can engage in any business in which it could engage under the Washington Business Corporation Act, RCW 23B. A corporation organized under this chapter is governed in large part by provisions of the Washington Business Corporation Act.

E. Cooperative Associations (Chapter 23.86 RCW). Under this chapter, any number of persons may associate themselves together as a cooperative association to operate any lawful business on the cooperative plan. Although the chapter does not define the “cooperative plan,” an agricultural cooperative probably presents the best example of such a corporation.

F. Other Nonprofit Corporations. Washington law provides for a number of other kinds of nonprofit corporations, many for particular kinds of activities. For example, Chapter 24.76 RCW provides for the formation of granges, Chapter 24.36 RCW permits the formation of a corporation to market fishery products, and Chapter 48.09 RCW provides for the incorporation of mutual insurance companies.

II. The Washington Nonprofit Corporation Act (Chapter 24.03 RCW)

Most nonprofit corporations, particularly those that also qualify as exempt from federal taxation, incorporate under the Act. The Act is an enabling statute; it provides the legal framework for the formation and operation of a nonprofit corporation in Washington State. As with corporations formed under the Washington Business Corporation Act, governmental control of the activities of nonprofit corporations is accomplished through other statutes, regulations and ordinances.

A. Corporate Powers; Limitations.

1. The Act gives nonprofit corporations a broad range of powers. The governing documents of the corporation, its articles of incorporation and bylaws, may not grant powers in addition to those granted by the Act, although they may limit such powers. Within certain limitations described below, the powers described in the Act are as broad as those conferred on for-profit corporations. Powers include the power to purchase, own, lease, sell, convey, mortgage and otherwise deal in real and personal property, lend money or credit (except to officers and directors), make contracts, incur liabilities and borrow money, lend money for corporate purposes and invest funds, be involved in legal actions and make donations for the public welfare or for charitable, scientific or educational purposes. RCW 24.03.035.

2. The Act places several significant limitations upon nonprofit corporations. A nonprofit corporation subject to the Act may not (a) have or issue shares of stock or (b) make any disbursement of income to its members, directors or officers or (c) loan money or credit to its directors or officers. RCW 24.03.030, .140. At dissolution or final liquidation, charitable assets must be appropriately distributed. RCW 24.03.225.

B. Permitted Purposes.

1. Nonprofit corporations may be organized under the Act for any lawful purpose or purposes, including, but not limited to, charitable, benevolent, eleemosynary, educational, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial or trade association. RCW 24.03.015.

2. The Act prohibits certain organizations from being organized under it. These include labor unions, cooperative organizations and organizations subject to any of the provisions of the banking or insurance laws of the State. Id.

C. Public Benefit Corporation. In 1989, the Washington Legislature amended the Act to incorporate the concept of a “public benefit” nonprofit corporation, defined as a nonprofit corporation organized under the Act which holds a current tax-exempt status under Section 501(c)(3) of the Code. A corporation satisfying these conditions may receive designation as a “public benefit nonprofit corporation.” RCW 24.03.490. This option is not commonly used in Washington.

III. Organizational Issues

Before moving into the practical legal discussion of how to incorporate, nonprofit organizers and counsel should be aware of several organizational issues that may arise. It would be beneficial to the organizational process to address these issues earlier in the planning stage rather than during the actual drafting of documents. These issues fall into three categories: membership, board of directors and decision-making style.

A. Membership. Under the Act, a nonprofit organization may have members or it may be a nonmembership corporation. Members may be persons or entities and, under the Act, have the right to vote on such issues as the election of directors to the board of directors, amendments to the articles of incorporation or any other matter that requires membership approval by law. The corporation can give members the right to vote for all or some purposes and not others or not give members the right to vote at all. There may be classes of members with different rights given to members in different classes.

The organizational decision whether to have members pertains to the nature and purposes of the corporation. Membership is often considered when an organization plans to raise funds from its supporters or seeks active participation by a large group of people. Membership may help

encourage volunteer participation in the organization. However, some organizations may find that the burden of obtaining a membership vote to carry out certain organizational actions such as the election of directors outweighs the benefits. Decisions of whether to have a membership and what rights to give members are significant organizational issues.

B. Board of Directors. Unlike members, directors may be individuals only. The board of directors manages the business affairs of the corporation. Usually, this means that the board sets policy, adopts and oversees the budget, ensures the sufficiency of funds needed to operate the organization, has responsibility for planning, hires the executive director and makes other major decisions for the organization. Organizational decisions with respect to the board of directors include the number of directors to have on the board, the length of term directors will serve, and the composition of the board. Factors in making these decisions include:

1. Whether the board is intended to represent the community the organization proposes to serve and/or the community in which the organization is active. For example, if the organization will provide educational programs for nurses, it may wish to have one or more nurses serve as directors.

2. Whether the board will participate in fund-raising and what its role will be. Will individual directors be asked to make a contribution and will the contribution be a significant one? Will the organization rely upon board members for connections into the community or funding sources such as businesses or foundations? Will the board be planning and putting on fundraisers for the organization?

3. Whether the organization will rely on particular expertise of directors that the organization cannot afford to purchase, such as legal or accounting.

4. Whether the board will be setting policies on substantive issues that will become important to the organization's mission or functioning in its community.

5. Whether there is a particularly long "learning curve" to become involved in the organization.

C. Decision-Making Style. While focusing on the role of members and directors in an organization, it is important to consider how decisions will be made. This issue involves factors such as the quorum requirement and the number of votes needed to take action. Factors to be considered include whether process and consensus decision making is important to organizers, the level of formality that will be expected in meetings or the numbers of persons expected to participate in membership and/or board meetings. More formality and larger numbers of persons may recommend adoption of Robert's Rules of Order or similar rules to help keep the meetings running smoothly and to address other procedural issues.

V. Nuts and Bolts of Incorporation

The actual creation of a nonprofit corporation under Washington law is a fairly straightforward process. It comprises three basic steps: (1) one or more incorporators write and sign articles of incorporation which satisfy the statutory requirements; (2) the incorporator(s) file the articles with the Secretary of State, with the appropriate filing fee; and (3) the Secretary of State accepts the articles, stamps and files the document, returning a copy to you.

The following discusses these steps in more detail, providing information on both the legal requirements and the practical tasks involved.

A. Prepare Governing Documents. The articles of incorporation and the bylaws constitute the organizational and governing documents of a nonprofit corporation. The articles and bylaws should not have provisions which conflict with one another and, at best, should interrelate with one another. Except with respect to the number of directors, provisions of the articles will control over provisions of the bylaws where such provisions are inconsistent. RCW 24.03.025. Because it is the most commonly used statute for nonprofit corporations, this discussion will focus on the requirements for the governing documents under the Act.

1. Articles of Incorporation.

a. Required Provisions. RCW 24.03.025 requires that articles of incorporation include the following:

i. Name. The name of the corporation must be listed.

(A) Legal Requirements of a Name. The Act contains several legal requirements with respect to the name given to a nonprofit organization:

(1) It cannot contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in the articles;

(2) It must be distinguishable from an existing or reserved name of a corporation, limited partnership, limited liability company or limited liability partnership. The name will not be considered distinguishable because there is a variation in a designation for the same name (such as “corporation,” “incorporated,” “company” or abbreviations for such designations), the use of punctuation or capitalization or the use of an abbreviation or plural form of the same word;

(3) It must be transliterated into letters of the English alphabet, if it is not in English; and

(4) It cannot include or end with “incorporated,” “company,” “corporation,” “partnership,” or any similar term designating a for-profit enterprise; however, it may include “club,” “association,” “services,” “committee,” “fund,” “foundation,” or any such name. RCW 24.03.045.

(B) Reservation of Name. You may wish to determine whether the name you have chosen is available before you file the articles of incorporation. To do so, you must check with the Corporations Division of the Secretary of State. This search can be conducted on the Secretary of State’s website. If it is available, you may reserve the exclusive right to use the name for a period of 180 days by filing an application with the Secretary of State and paying a reservation fee. RCW 24.03.046.

(C) Note that after incorporation, the organization may register its name with the Secretary of State by filing an application and an annual registration fee. RCW 24.03.047; 048.

ii. Period of Existence. You must list the period of duration of the corporation. The period is usually perpetual, but it may be limited to a specific number of years.

iii. Purpose of Organization. You must describe the purpose or purposes of the organization. Under the Act, a nonprofit corporation may be organized for any lawful purpose. However, if you plan to seek tax-exempt status, you must ensure that the purposes are consistent with requirements of federal tax law.

iv. Registered Agent and Office. You must give the name of the initial registered agent and the address of the initial registered office. In addition, a statement should be attached to or included with the articles in which the registered agent agrees to serve as registered agent of the corporation. RCW 24.03.050.

(A) The registered office may be the same as or different from the organization’s principal office. The registered office must be a particular location in Washington State with a street or other geographic address. The Secretary of State does permit use of a post office box for communication purposes, but only if organization also keeps a geographic address for the registered office.

(B) The registered agent may be either (1) an individual resident of the state whose business address is the same as the registered office address, or (2) a corporation, nonprofit or for profit, having offices the same as the registered office address.

v. Directors. You must provide the number of directors constituting the initial board of directors and the names and addresses of the persons who will serve as the initial directors. The board of directors must consist of one or more individuals. RCW 24.03.095. The number of directors constituting the board can be provided in the articles or bylaws. RCW 24.03.100. Usually the number of directors is provided in the bylaws, because the bylaws are more easily amended to accommodate for changes an organization may decide to make in the number of directors on its board over time.

vi. Incorporators. You must also provide the names and addresses of each incorporator of the corporation. A nonprofit corporation must have at least one incorporator and may have more than one. An individual or an entity may act as an incorporator. If an individual, the individual must be at least eighteen years of age. RCW 24.03.020.

vii. Dissolution. Finally, you must provide the name of any person or corporation to whom net assets are to be distributed in the event the corporation is dissolved. "Net assets" are the funds and other property remaining after payment of all the debts and other liabilities of the corporation and appropriate conveyance of charitable assets. RCW 24.03.225. Additional requirements apply to this provision if the organization will be exempt from taxation under federal law. Federal tax law requires that upon dissolution of a 501(c)(3) organization, any remaining assets be distributed to another 501(c)(3) organization for one or more exempt purposes and the IRS requires that this be stated in the articles. Reg. § 1.501(c)(3)-1(b)(iii).

b. Recommended Provisions. Your organization may want to include one or more of the following provisions in its articles of incorporation:

i. Director Liability Limitations. This provision eliminates or limits the personal liability of directors of the corporation or its members, if any, for monetary damages for conduct as a director. See RCW 4.24.264 with respect to liability limitations as to third parties. The Act forbids eliminating or limiting liability for acts or omissions that involve intentional misconduct by a director or officer or a knowing violation of law by such director or officer or for any transaction from which the director or officer will personally receive a benefit of money, property or

services to which such person is not legally entitled. RCW 24.03.025(4)(c). See also RCW 23B.17.030.

ii. Indemnification. Under an indemnification provision, the corporation covenants to pay expenses, liabilities and losses incurred by a director, officer or agent of the corporation in defending him or herself in any legal action in which such person becomes involved because of their official capacity as a director, officer or agent of the corporation. A nonprofit corporation may not indemnify a director or officer found by a court to be liable to the corporation. See RCW 24.03.035(14); 24.03.043; 23B.17.030.

iii. 501(c)(3) Requirements. An organization seeking federal tax-exempt status under Section 501(c)(3) of the Code must satisfy several additional requirements in its articles. In addition to ensuring that the purposes and dissolution provisions meet federal tax law requirements, the articles must prohibit the distribution of any net earnings to members, directors, officers or other private persons and must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes. In addition, many practitioners recommend that articles contain appropriate language with respect to political action and lobbying activities.

2. Bylaws. While it is not required that bylaws be adopted prior to filing the articles of incorporation with the Secretary of State, it is recommended that a draft at least be prepared before articles are filed to ensure that the documents are not inconsistent and that the particular purposes, mission and manner of acting of the organization is reflected consistently in its governing documents.

a. General. The Act requires that the board of directors of a nonprofit corporation adopt bylaws for the corporation. RCW 24.03.070. Unless otherwise provided in the articles or bylaws, the board has the power to amend or repeal the bylaws or adopt new bylaws. The bylaws contain the provisions for the regulation and management of the corporation. Provisions in the bylaws may not be illegal or inconsistent with the articles. Bylaws are not filed with the Secretary of State, but are provided to the IRS with an application for tax-exempt status.

b. Statutory Provisions. Bylaws can be highly individual documents, geared to the type of nonprofit organization, as well as the organization's governing structure and style. As stated earlier, the Act serves as an enabling act. As such, it provides rules on such topics as time and place of members' and directors' meetings, voting rights, quorum, qualifications and duties of directors and removal of directors and officers. These statutory provisions will govern the organization if the bylaws (or articles) do not address a particular subject area

which is addressed in the Act. In addition, the Act contains certain requirements that must be met by all corporations subject to it. These requirements will govern over any inconsistent provisions on the same subject in the bylaws or articles. Therefore, it is recommended that legal counsel and organizers review the statutory provisions, as well as other sample bylaws provisions in developing bylaws that will both suit the purposes, activities and governing structure of the organization and meet statutory requirements. Sample bylaws can be found in the book “How to Form and Maintain a Nonprofit Corporation in Washington State” which is available on the King County Bar Association website. Sample bylaws can also be found in other resources on nonprofit organizations. Organizations with similar or related purposes may also be willing to share their bylaws with you.

To assist in drafting bylaws, the following provides a description of the provisions in the Act that will govern an organization unless otherwise specified in the organization’s bylaws (or articles of incorporation). That is, there are the “fall back” provisions, which are used in the event that an organization’s bylaws do not address a particular topic, such as the number of members needed to call a special meeting.

i. Members. If a nonprofit corporation has no members, it must state the fact in the articles or bylaws. RCW 24.03.065. If an organization does have members, unless otherwise provided in the bylaws:

(A) An individual, domestic or foreign profit or nonprofit corporation, a general or limited partnership, an association or other entity may be a member of the organization. RCW 24.03.065.

(B) Meetings of members must be held at the registered office of the corporation in the State. RCW 24.03.075.

(C) A special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting. RCW 24.03.075.

(D) Members of the organization may participate in a meeting of members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. RCW 24.03.075.

(E) Notice of regular meetings other than annual need only be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after

the annual meeting and ten days prior to the next succeeding regular meeting and at any time when requested by a member. RCW 24.03.080.

(F) Each member, regardless of class, has one vote on each matter submitted to members for a vote. RCW 24.03.085.

(G) Members must vote in person. RCW 24.03.085.

(H) Members holding one-tenth of the votes entitled to be cast represented in person or by proxy (if permitted in the bylaws) shall constitute a quorum. RCW 24.03.090.

(I) A vote of the majority of the votes entitled to be cast by members present, or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members. RCW 24.03.090. (Note: A greater proportion may be required by the bylaws or articles and is required by the statute for certain actions.)

ii. Board of Directors. Unless otherwise specified in the bylaws:

(A) Directors need not be residents of Washington or members of the corporation. RCW 24.03.100.

(B) Initial directors (those named in the articles of incorporation) hold office until the first annual election of directors. RCW 24.03.100.

(C) If the articles or bylaws provide for the election of any director or directors by members, then any directors elected by members may be removed, with or without cause, by two-thirds of the votes cast by members having voting rights with regard to the election of any director, represented in person or by proxy (if permitted by the bylaws) at a meeting of members at which a quorum is present. (Note: There are some special rules with respect to cumulative voting which should be reviewed if the organization is considering cumulative voting to elect directors.) RCW 24.03.103.

(D) A vacancy in the board and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining

directors even though less than a quorum is present. RCW 24.03.105.

(E) A majority of directors constitutes a quorum. RCW 24.03.110. (Note: While the bylaws or articles may fix another number for a quorum, it can never be less than one-third of the number of directors.)

(F) The act of a majority of directors present at a meeting at which a quorum is present shall be the act of the board. RCW 24.03.110. (Note: (1) The bylaws or articles may provide for a greater vote only, and (2) The Act requires a greater vote for certain actions, such as a merger.)

(G) Directors may participate in board meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. RCW 24.03.120. (Note: This right is also permitted to committee members for committee meetings.)

(H) The board has the power to alter, amend or repeal the bylaws or adopt new bylaws. RCW 24.03.070.

iii. Committees. Unless specified in bylaws (or articles), the board does not have authority to create committees of the corporation to which it may delegate its authority to manage the corporation. The board cannot delegate authority to manage the corporation to a committee unless at least two members of the board serve on the committee. In addition, the Act contains several statutory prohibitions that cannot be changed in the bylaws or articles:

(A) No committee shall have the authority of the board in reference to amending, altering or repealing the bylaws; electing, appointing or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or consolidation with another organization; authorizing the sale, lease, or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the corporation's assets; or amending, altering or repealing any resolution of the board which by its terms provides that it shall not

be amended, altered or repealed by such committee. RCW 24.03.115.

(B) The designation or appointment of any committee and delegation to it of authority shall not operate to relieve the board or any director of any responsibility imposed by law. RCW 24.03.115.

iv. Officers. Unless otherwise specified in the bylaws:

(A) The officers of a corporation consist of a president, one or more vice-presidents, a secretary and a treasurer. RCW 24.03.125.

(B) Officers are elected or appointed annually by the board. RCW 24.03.125.

(C) Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. RCW 24.03.130.

(D) No person may hold two or more offices. RCW 24.03.125.

v. Electronic Communication Authorized. Legislation (ESB 6188) amending the Washington Nonprofit Corporation Act (the “Act”), chapter 24.03 RCW, became effective on June 10, 2004. The legislation authorizes nonprofit corporations organized under the Act to use of electronic communication for notices, consents, waivers and other communications with members and directors.

(A) *Electronic transmission defined.* Generally, the amendments provide that, upon the appropriate consent of the member or director of a nonprofit corporation, such person may receive notices, demands, consents or waivers by electronic transmission. An “electronic transmission” is an electronic communication (a) not directly involving the physical transfer of a record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

(B) *Consent required.* Before a corporation may deliver notices, demands, consents or waivers by electronic transmission,

the member or director must consent to receive such electronically transmitted communications. In order to be effective, a consent must designate the message format accessible to the member or director and the address, location or system to which the notices or other document may be electronically transmitted.

(C) *Revocation of consent.* A person can revoke consent to receive electronically transmitted notices by delivering a revocation to the corporation. In addition, consent is revoked if the corporation is unable to electronically transmit two consecutive notices given by the corporation in accordance with the consent and this inability becomes known to the secretary of the corporation or other person responsible for giving the notice. However, the inadvertent failure by the corporation to treat this inability as a revocation will not invalidate any meeting or other action.

(D) *Posting to electronic network.* Members or directors who have consented to receipt of electronically transmitted notices may be provided notice by posting the notice on an electronic network and delivering to such member or director a separate record of the posting, together with comprehensible instructions regarding how to obtain access to the posting.

(E) *Members.* The amendments provide that notice of members' meetings may be given by facsimile transmission, a medium was not previously permitted, as well as by electronic transmission. Nonprofit membership corporations may, if specifically permitted in their bylaws or articles of incorporation, conduct membership votes on proposals or the election of directors or officers by mail or electronic transmission. The corporation must set forth in a record accompanying or contained in the meeting notice the name of each candidate and the text of each proposal to be voted upon and designate an address, location or system to which the ballot may be electronically transmitted. The ballot must then be electronically transmitted to such designated address, location or system. Under the amendments, members voting by mail or electronic transmission are present for all purposes of quorum, count of votes and percentages of total voting power present. In addition, the amendments permit electronic proxies for those membership corporations in which voting by proxy is permitted.

(F) *Board of Directors.* The amendments permit notice of a corporation's initial organization meeting of the board of

directors to be given by mail, fax or electronic transmission. Notices, dissents or abstentions, waivers and consents may all be given by electronic transmission. An electronically transmitted consent, waiver or other record is considered executed under the Act if it is electronically transmitted with sufficient information to determine the sender's identity.

c. Topics Not Specifically Covered in the Act. Here are several of the areas for which the Act does not specifically provide and which should probably be covered in bylaws:

i. There is no procedure for removal of directors if the organization is a nonmembership corporation or does not have voting members.

ii. There are no required specifications for notices to directors for regular or special board meetings or for who may call special meetings of the board.

iii. There is no requirement of an annual meeting if the organization is a nonmembership corporation or does not have voting members.

iv. The board has no authority to create committees to which the board may delegate the authority of the board in the management of the corporation.

v. The creation of committees, their formation, composition and operation, are not provided for.

vi. There is no specified manner or timing of attaining office for officers.

vii. The bylaws should fix a day and time for the annual meetings of directors and members (if applicable).

B. File Articles with Secretary of State.

1. Filing. The articles of incorporation must be filed with the Secretary of State. RCW 24.03.145. The articles must be signed by all of the incorporators and the consent signed by the registered agent. A filing fee must accompany the articles. Currently, the filing fee is \$30. You may mail the documents to the Secretary of State, file them in person at the Secretary of State's office in Olympia or have a records or messenger service file them for you. The Secretary of State's website now accepts electronic filing; the filing fee for online filing must be paid with a credit card. If you

wish to have the filing effective quickly, you must pay an additional fee (currently \$50 for expedited service by mail or in person; \$20 for online) for expedited filing. To receive expedited service by mail, you must also write "EXPEDITE" in bold letters on the outside of the envelope.

2. Secretary of State's Actions. If the Secretary of State finds that the articles of incorporation conform to law, the Secretary shall, when all fees have been paid:

- a. Endorse on the articles the word "filed" and the effective day of the filing;
- b. File the articles;
- c. Issue a certificate of incorporation to which a conformed copy of the articles are affixed; and
- d. Return the certificate of incorporation and the articles affixed to it to the incorporators or their representative.

3. Effect of Filing. Corporate existence of a nonprofit corporation begins upon the filing of the articles. RCW 24.03.150. The date stamped on the articles by the Secretary of State is the effective date of incorporation.

C. Hold Initial Organizational Meeting.

1. Call and Notice of Organizational Meeting. After the issuance of the certificate of incorporation, a majority of the initial directors of the corporation must call an organizational meeting of the board of directors by giving at least three days' notice to the initial directors named in the articles of incorporation. The notice must state the time and place of the meeting. RCW 24.03.155. If this notice is waived by all of the directors, the board may meet sooner.

2. The Organizational Meeting. The initial board of directors should cover the following business items, at a minimum, at the initial organizational meeting:

- a. Adopt Bylaws. The board should adopt bylaws of the corporation. It is helpful to directors and increases the efficiency of the meeting if draft bylaws are provided to directors well in advance of the meeting for review and comment. Many groups have found it helpful to hold a study session prior to the organizational meeting to collect comments and discuss draft documents.
- b. Elect Officers. The board should then elect officers of the corporation. Pursuant to the Act, the officers of a nonprofit corporation consist of a president, one or more vice-presidents, a secretary and a treasurer. If so

provided in the bylaws, the same person may hold one or more offices, except the offices of president and secretary. RCW 24.03.125.

c. Elect Additional Board Members. If you intend to increase the number of the initial directors appointed in the articles, and the organization has no members or voting members, then the board may wish to elect additional directors at the organizational meeting.

d. Decide on a Fiscal Year. If the bylaws do not contain a provision designating a fiscal year, it is recommended that the board designate one by resolution. Generally, this will coincide with the calendar year.

e. Select a Bank. The board should choose a bank for the corporation's bank account and authorize signatories for the account. It is helpful to prepare for this in advance by obtaining forms from the bank in advance of the meeting. A resolution authorizing the opening of the account and signatories for the account must be adopted by the board of directors; usually the form of this resolution is provided by the bank.

f. Approve Any Legal Documents.

i. Approve initial leases and contracts, if any.

ii. Approve the application for tax-exempt status, if prepared, and authorize execution of the form and payment of application fee.

g. Reimbursement of Expenses. Frequently the founders of organizations have spent their personal funds to meet the initial expenditures necessary to incorporate and establish the corporation. The board can approve reimbursement of such expenses upon submittal of appropriate evidence of expenditures. Generally, salaries or payment for services are not reimbursable expenditures.

3. Unanimous Consent. The organizational meeting can occur by unanimous consent. RCW 24.03.465.

VI. Other Steps

Once incorporated, the organizers will need to ensure that the corporation registers with and obtains licenses or certifications from appropriate governmental agencies. While many of these governmental requirements are identical to requirements for for-profit corporations, there are some registrations unique to nonprofit corporations. A list of some of commonly required registrations follow:

A. Federal Employer Identification Number. A federal employer identification number is required for the application for tax-exempt status, as well as by most banks in order to open a bank account for the corporation. The IRS Form SS-4 must be completed and filed with the IRS. The forms can be downloaded from the IRS' web site. Completed forms can be mailed or faxed to the IRS or filed electronically.

B. Master Business Application. This form is provided by the Secretary of State with the new corporation packet provided to all newly-formed corporations. The application provides for the basic state tax registration and employer registration for the corporation.

C. Charitable Solicitations Act Registration. If the organization intends to seek contributions from the public, it should register under the Charitable Solicitations Act, Chapter 19.09 RCW.

1. The purpose of the Charitable Solicitation Act is to provide "citizens of the state of Washington with information relating to persons and organizations who solicit funds from the public for public charitable purposes in order to prevent (1) deceptive and dishonest practices in the conduct of soliciting funds for or in the name of charity; and (2) improper use of contributions intended for charitable purposes. RCW 19.09.010. The Act requires that charitable organizations register and report annually and make certain required disclosures with respect to solicitations and prohibits misleading contributors. With few exceptions, all charitable organizations who plan to conduct solicitations must register. "Solicitation" is broadly defined to include any oral or written request for a contribution. RCW 19.09.020.

2. The Secretary of State has an application form which must be completed, signed by the president, treasurer or comparable officer of the corporation and notarized and filed with the Secretary of State's office with the appropriate filing fee. Registration is renewed annually, by completing the form provided by the Secretary of State's office.

3. Failure to register brings liability for a late filing fee. It is a criminal misdemeanor or gross misdemeanor to violate the Act. RCW 19.09.275. In addition, violations may be deemed unfair practices under the Consumer Protection Act. RCW 19.09.340.

4. Exemptions:

a. Grant applications are not charitable solicitations and are not covered by the Charitable Solicitations Act. WAC 434-120-025(6)(a). Therefore, if the corporations sole method of seeking funds will be grant applications, it need not register under the Charitable Solicitations Act.

b. Organizations that solicit only from their members are exempt, but only if their membership is a real membership. "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and

confers a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to the right to vote, elect officers or hold office. The term “membership” does not include persons granted a membership upon making a contribution as a result of solicitation. RCW 19.09.020(9).

c. Fundraising to support religious activities is exempt. The religious organization must be eligible for recognition by the IRS as a 501(c)(3) organization for religious proposes. RCW 19.09.020(13).

d. Charitable organizations that meet the following conditions are exempt from the Charitable Solicitations Act:

- i. Raise less than \$25,000 per year. WAC 434-120-100(2)(c);
- ii. Do not hire a commercial fundraiser; and
- iii. Do not pay any officers, employees, fundraisers, contractors or anyone else any money or other compensation for performing services. RCW 19.09.076 and WAC 434-120-100(2)(c).

D. Washington Charitable Trust Act.

1. The Washington Charitable Trust Act applies to all entities, including corporations that meet the definition of “trustee.” This occurs when a corporation is either (a) formed for the administration of a charitable trust, or (2) holds assets that can only be used for charitable, religious, eleemosynary, benevolent, educational or similar purposes. RCW 11.110 RCW.

2. The Charitable Trust Act requires that trustees register and report annually to the Secretary of State when the trustee holds assets that are invested for income producing purposes, all or part of the principle or income of the trust is presently available for charitable purposes and the assets have a value of at least \$250,000. A trustee is not required to register if the trust’s terms require that the assets be entirely expended for charitable purposes within one year. The Secretary of State provides a form for registration.