Domestic Nonprofit Corporations

Courtesy of South Dakota Secretary of State

The purpose of this guide is to assist nonprofit corporations which choose to have South Dakota be their corporate home. Tax-exempt status is not determined by this office. This guide is not a substitute for legal or accounting advice.

Domestic nonprofit corporations have no authority to issue stock and no part of the income or profit can be distributed to its members, directors or officers.

Three or more persons 18 years or older may file Articles of Incorporation to form a nonprofit corporation under South Dakota Codified Laws Chapter 47. The incorporators do not have to be residents of South Dakota.

If the articles are in compliance, the original will be filed and a duplicate copy will be returned to the corporation with a Certificate of Incorporation. Upon issuance of a Certificate of Incorporation, the corporate existence begins.

Bylaws

Bylaws are rules established for the regulation or management of the affairs of the corporation. Bylaws are not filed with the Secretary of State's office.

Name Availability

Under SDCL 47-22-8.1, a corporate name should be distinguishable upon the records of the Secretary of State from another corporate name on file. The law does provide that a similar name may be used provided one or more words are added to make the name distinguishable from the other name on file.

A name availability check can be made by calling the Secretary of State's office. A telephone search is only a preliminary check and does not guarantee that the name will be available when the articles are submitted for filing. A corporate name may be reserved for a period of 120 days by submitting an application for reservation of name and paying the $25 filing fee. An application for reservation of name is available from the Secretary of State's office.

Members

A nonprofit corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws.

Term of Existence

The term of existence may be stated as a specific number of years, or may be "perpetual" which will continue the corporation forever unless voluntarily dissolved or canceled by law.

Registered Agent

South Dakota law requires every corporation to maintain a registered agent. The registered agent must be an individual who has a physical address in South Dakota. A commercial registered agent is also acceptable and a list of commercial registered agents can be found at the Secretary of State's website. The registered agent will be designated to receive all legal service of process for that corporation.

The corporation's place of business does not have to be in South Dakota but the law requires that the registered agent's registered office be maintained in South Dakota. A post office box number can be added for mailing but it is necessary to list the full address including street address or rural route and box number.

In the event the registered agent and/or the registered address changes, the corporation must file a Statement of Change with the Secretary of State's office and pay the required $10 filing fee.

Purpose

The corporation may be formed for any lawful purpose. The purpose clause must contain sufficient information to determine the type of purpose and to determine whether the purpose is legally acceptable.

SDCL 47-22-4 lists some of the types of purposes used for nonprofit corporations. The most common purposes are civic, educational, and religious.

Annual Report

- Every domestic nonprofit corporation must file an Annual Report during the anniversary month of incorporation. The first annual report will be due one year after your qualification month.
- The Secretary of State's office will mail a reminder to the registered agent's address on file prior to the filing month.
- The Annual Report filing is extremely important as failure to file the report allows the Secretary of State to administratively dissolve the corporation.

Certificate of Good Standing

An active corporation that has completed all of the required filings including the Annual Report can obtain a Certificate of Good Standing or Certificate of Existence verifying that it is on file with the Secretary of State's office.

Directors / Incorporators

The affairs of the corporation shall be managed by a board of directors which shall not be less than three members. The number of directors shall be established in the bylaws but the number of the initial board of directors must be stated in the Articles of Incorporation.

Dissolution

A corporation may be voluntarily dissolved by the board of directors adopting a resolution to dissolve. If there are members entitled to vote, the dissolution may be adopted by a two-thirds vote.

If there are no members or no members entitled to vote, the dissolution may be adopted upon receiving a majority vote of the directors in office.

Articles of Dissolution must be filed with the Secretary of State's office accompanied by the $5 filing fee.

Amended Articles of Incorporation

Articles of Incorporation may be amended by the board of directors adopting a resolution stating the amendment. If there are members entitled to vote, the amendment may be voted on at either a special or annual meeting. A quorum of members must be present and the amendment must receive at least a majority vote of members present.

If there are no members, or no members entitled to vote, the amendment may be adopted upon receiving the vote of a majority of directors.

Articles of Amendment must be submitted to the Secretary of State's office for filing accompanied by the $15 filing fee.

Information Requests / Telephone Inquiries

All corporate filings are public record and information is available by telephone inquiry or letter request. There is no fee for information. Copies may be obtained for $2.00 per page. There is an additional $15.00 fee if certified copies are requested.

Filing Standards / Checklist

If filings are in proper order with the necessary information, they are usually processed the same day or next in order of which they are received. Any corporate documents may be expedited with an additional $50.00 fee. Some common problems that delay filings are:

- ✓ Failure to sign filings
- ✓ Failure to include the proper filing fee
- ✓ Registered Agent address not properly completed.
- ✓ The corporate name isn't available for incorporation.
- ✓ A full slate of officers and directors not set forth.

Questions?

Call corporations at (605) 773-4845

South Dakota Secretary of State
500 East Capitol Suite 204
Pierre, SD 57501
E-Mail: corpinfo@state.sd.us