

Florida Statutes

CHAPTER 617

CORPORATIONS NOT FOR PROFIT

617.01401 Definitions.--As used in this act, unless the context otherwise requires, the term:

(1) "Articles of incorporation" includes original, amended, and restated articles of incorporation, articles of consolidation, and articles of merger, and all amendments thereto, including documents designated by the laws of this state as charters, and, in the case of a foreign corporation, documents equivalent to articles of incorporation in the jurisdiction of incorporation.

(2) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated, including, but not limited to, managers or trustees.

(3) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(4) "Corporation" or "domestic corporation" means a corporation not for profit, subject to the provisions of this act, except a foreign corporation.

(5) "Corporation not for profit" means a corporation no part of the income or profit of which is distributable to its members, directors, or officers.

(6) "Electronic transmission" means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers.

(7) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(8) "Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(9) "Mail" means the United States mail, facsimile transmissions, and private mail carriers handling nationwide mail services.

(10) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws or the provisions of this act.

(11) "Person" includes individual and entity.

617.02011 Incorporators.--One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Department of State for filing.

617.0202 Articles of incorporation; content.--

(1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of s. [617.0401](#).

(b) The street address of the initial principal office and, if different, the mailing address of the corporation;

(c) The purpose or purposes for which the corporation is organized;

(d) A statement of the manner in which the directors are to be elected or appointed. In lieu thereof, the articles of incorporation may provide that the method of election of directors be stated in the bylaws;

(e) Any provision, not inconsistent with this act or with any other law, which limits in any manner the corporate powers authorized under this act;

(f) The street address of the corporation's initial registered office and the name of its initial registered agent at that address together with a written acceptance of appointment as a registered agent as required by s. [617.0501](#); and

(g) The name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) The names and addresses of the individuals who are to serve as the initial directors;

(b) Any provision not inconsistent with law, regarding the regulation of the

internal affairs of the corporation, including, without limitation, any provision with respect to the relative rights or interests of the members as among themselves or in the property of the corporation;

(c) The manner of termination of membership in the corporation;

(d) The rights, upon termination of membership, of the corporation, the terminated members, and the remaining members;

(e) The transferability or nontransferability of membership;

(f) The distribution of assets upon dissolution or final liquidation or, if otherwise permitted by law, upon partial liquidation;

(g) If the corporation is to have one or more classes of members, any provision designating the class or classes of members and stating the qualifications and rights of the members of each class;

(h) The names of any persons or the designations of any groups of persons who are to be the initial members;

(i) A provision to the effect that the corporation will be subordinate to and subject to the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, foundation, federation, or other corporation, society, organization, or association not for profit; and

(j) Any provision that under this act is required or permitted to be set forth in the bylaws. Any such provision set forth in the articles of incorporation need not be set forth in the bylaws.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this act.

617.0203 Incorporation.--

(1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed or on a date specified in the articles of incorporation, if such date is within 5 business days prior to the date of filing.

(2) The Department of State's filing of the articles of incorporation, and the original recorded charter or certified copy of the charter of a corporation which has not been reincorporated under s. [617.0901](#), is conclusive proof that the incorporators satisfied all conditions precedent to incorporation and that the

corporation has been incorporated under this act, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

617.0302 Corporate powers.--Every corporation not for profit organized under this act, unless otherwise provided in its articles of incorporation or bylaws, shall have power to:

- (1) Have succession by its corporate name for the period set forth in its articles of incorporation.
- (2) Sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.
- (3) Adopt, use, and alter a common corporate seal. However, such seal must always contain the words "corporation not for profit."
- (4) Elect or appoint such officers and agents as its affairs shall require and allow them reasonable compensation.
- (5) Adopt, change, amend, and repeal bylaws, not inconsistent with law or its articles of incorporation, for the administration of the affairs of the corporation and the exercise of its corporate powers.
- (6) Increase, by a vote of its members cast as the bylaws may direct, the number of its directors so that the number shall not be less than three but may be any number in excess thereof.
- (7) Make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, or income.
- (8) Conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this act in any state, territory, district, or possession of the United States or any foreign country.
- (9) Purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest therein, wherever situated.
- (10) Acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and any licenses and other rights or interests thereunder or therein.

(11) Sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(12) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with, shares and other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, municipality, or of any instrumentality thereof.

(13) Lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested except as prohibited by s. [617.0833](#).

(14) Make donations for the public welfare or for religious, charitable, scientific, educational, or other similar purposes.

(15) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(16) Merge with other corporations both for profit and not for profit, domestic and foreign, if the surviving corporation is a corporation not for profit.

617.0403 Registered name; application; renewal; revocation.--

(1) A foreign corporation may register its corporate name, or its corporate name with any addition required by s. [617.1506](#), if the name is distinguishable upon the records of the Department of State from the corporate names that are not available under s. [617.0401](#)(1)(e).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by s. [617.1506](#), by delivering to the Department of State for filing an application:

(a) Setting forth its corporate name, or its corporate name with any addition required by s. [617.1506](#), the state or country and date of its incorporation, and a brief description of the nature of its purposes and the affairs in which it is engaged; and

(b) Accompanied by a certificate of existence, or a certificate setting forth that such corporation is in good standing under the laws of the state or country wherein it is organized (or a document of similar import), from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use upon the effective date of the application and shall be effective until the close of the calendar year in which the application for registration is filed.

(4) A foreign corporation the registration of which is effective may renew it from year to year by annually filing a renewal application which complies with the requirements of subsection (2) between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation the registration of which is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this act or by another foreign corporation thereafter authorized to conduct its affairs in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

(6) The Department of State may revoke any registration if, after a hearing, it finds that the application therefor or any renewal thereof was not made in good faith.

617.08101 Compensation of directors.--Unless the articles of incorporation or the bylaws provide otherwise, the board of directors may fix the compensation of directors.

617.0834 Officers and directors of certain corporations and associations not for profit; immunity from civil liability.--

(1) An officer or director of a nonprofit organization recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, or of an agricultural or a horticultural organization recognized under s. 501(c)(5), of the Internal Revenue Code of 1986, as amended, is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

(a) The officer or director breached or failed to perform his or her duties as an officer or director; and

(b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:

1. A violation of the criminal law, unless the officer or director had reasonable

cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against an officer or director in any criminal proceeding for violation of the criminal law estops that officer or director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the officer or director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

2. A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or

3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term:

(a) "Recklessness" means the acting, or omission to act, in conscious disregard of a risk:

1. Known, or so obvious that it should have been known, to the officer or director; and

2. Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

(b) "Director" means a person who serves as a director, trustee, or member of the governing board of an organization.

(c) "Officer" means a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred.

617.1501 Authority of foreign corporation to conduct affairs required.--

(1) A foreign corporation may not conduct its affairs in this state until it obtains a certificate of authority from the Department of State.

(2) The following activities, among others, do not constitute conducting affairs within the meaning of subsection (1):

(a) Maintaining, defending, or settling any proceeding.

- (b) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.
 - (c) Maintaining bank accounts.
 - (d) Selling through independent contractors.
 - (e) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.
 - (f) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
 - (g) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
 - (h) Conducting its affairs in interstate commerce.
 - (i) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.
 - (j) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state or voting the stock of any corporation which it has lawfully acquired.
 - (k) Owning a limited partnership interest in a limited partnership that is doing business within this state, unless such limited partner manages or controls the partnership or exercises the powers and duties of a general partner.
 - (l) Owning, without more, real or personal property.
- (3) The list of activities in subsection (2) is not exhaustive.
- (4) This section has no application to the question of whether any foreign corporation is subject to service of process and suit in this state under any law of this state.

617.1601 Corporate records.--

- (1) A corporation shall keep as records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf

of the corporation.

(2) A corporation shall maintain accurate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members in alphabetical order by class of voting members.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect.

(b) Its bylaws or restated bylaws and all amendments to them currently in effect.

(c) The minutes of all members' meetings and records of all action taken by members without a meeting for the past 3 years.

(d) Written communications to all members generally or all members of a class within the past 3 years, including the financial statements furnished for the past 3 years under s. [617.1605](#).

(e) A list of the names and business street, or home if there is no business street, addresses of its current directors and officers.

(f) Its most recent annual report delivered to the Department of State under s. [617.1622](#).

[617.1803](#) Domestication of foreign not-for-profit corporations.--

(1) As used in this section, the term "not-for-profit corporation" includes any not-for-profit incorporated organization.

(2) Any foreign not-for-profit corporation may become domesticated in this state by filing with the Department of State:

(a) A certificate of domestication, executed in accordance with subsection (7) and filed in accordance with s. [617.01201](#); and

(b) Articles of incorporation, executed and filed in accordance with ss. [617.01201](#) and [617.0202](#).

(3) The certificate of domestication shall certify:

(a) The date on which and the jurisdiction in which the corporation was first formed, incorporated, or otherwise came into being;

(b) The name of the corporation immediately before the filing of the certificate of domestication;

(c) The name of the corporation, as set forth in its articles of incorporation; and

(d) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the corporation, or any other equivalent jurisdiction under applicable law, immediately before the filing of the certificate of domestication.

(4) Upon filing the certificate of domestication and articles of incorporation, the corporation shall be domesticated in this state and shall thereafter be subject to this section, except that notwithstanding s. [617.0203](#), the existence of the corporation shall be deemed to have commenced on the date it commenced its existence in the jurisdiction in which it was first formed, incorporated, or otherwise came into being.

(5) The domestication of any not-for-profit corporation in this state does not affect any obligations or liabilities that it incurred before its domestication.

(6) The filing of a certificate of domestication does not affect the choice of law applicable to the corporation, except that, after the date the certificate of domestication is filed, the law of this state, applies to the corporation to the same extent as if it had been incorporated as a not-for-profit corporation of this state on that date.

(7) The certificate of domestication shall be signed by any corporate officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director, however named or described, who is authorized to sign the certificate of domestication on behalf of the corporation.

[617.1805](#) Corporations for profit; when may become corporations not for profit.--Any corporation for profit incorporated under any of the laws of the state, engaged solely in carrying out the purposes and objects for which corporations not for profit are authorized under state law to carry out, may change its corporate nature from a corporation for profit to that of a corporation not for profit as defined in this act, by filing a petition in the

circuit court of the county wherein its principal place of business is located in the name of the corporation signed by an officer of the corporation and under its corporate seal setting forth the purposes and objects in which it is solely engaged, and requesting that the nature of the corporation be changed. However, any corporation for profit, which has transferred, or is in the process of transferring, its functions and assets to a corporation not for profit by proceedings under this act shall, upon the recital of the facts, circumstances, and intentions surrounding such transfer proceedings in a petition filed in accordance with s. [617.1806](#), and the subsequent approval thereof by the circuit judge to whom presented, be deemed to have acted under this act and such corporation not for profit shall succeed to the rights, liabilities, and assets of its corporate predecessor.

[617.2103](#) Exemptions for certain corporations.--

(1) No corporation described in s. 501(c) of the Internal Revenue Code of 1986, as amended, shall be subject to the provisions of s. [617.0808](#), s. [617.1601](#), s. [617.1602](#), s. [617.1603](#), s. [617.1604](#), s. [617.1605](#), or s. [617.2102](#), unless the articles of incorporation or bylaws provide otherwise. For purposes of this subsection, if a current determination letter issued under the authority of the internal revenue laws of the United States of America determines that a particular corporation is or is not exempt from federal income taxation under s. 501(c) of the Internal Revenue Code of 1986, as amended, that shall be conclusive on the question whether the corporation is or is not described in s. 501(c) of the Internal Revenue Code of 1986, as amended.

(2) As to such corporations which are exempt from s. [617.0808](#), a director may be removed from office pursuant to procedures provided in the articles of incorporation or the bylaws.

(3) As to such corporations which are exempt from ss. [617.1601](#), [617.1602](#), [617.1603](#), [617.1604](#), and [617.1605](#), the following shall apply:

(a) Each such corporation shall keep as permanent records correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors. If the corporation has members entitled to vote, it must keep at its registered office in this state a copy of its articles of incorporation and its bylaws and any amendments thereto and a record of the names and addresses of such members in alphabetical order. All books and records of such a corporation shall be kept in written form or in another form capable of conversion into written form within a reasonable time and may be inspected by any member, her or his agent or attorney, for any proper purpose

at any reasonable time.

(b) If a member resorts to an action or proceeding to enforce the rights of members provided in this subsection and if the member prevails in such action or proceeding, the court shall allow such member the cost of her or his action or proceeding, including reasonable attorney's fees.