

# Louisiana Revised Statutes

## Revised Statute 12 - NONPROFIT CORPORATION LAW

### **§201. Terms defined**

As used in this Chapter, unless the context requires otherwise,

(1) "Address" means street and municipal number, or other definite and ascertainable physical location if street and municipal number are not available; and, if a building not wholly occupied by the addressee, the location in the building.

(2) "Allocated value" means (1) the par value of par-value shares, plus any amounts in excess of par value transferred from surplus to stated capital in respect of such shares, less any part of such amounts transferred from stated capital to capital surplus as permitted by this Chapter, and (2) the amount allocated to stated capital upon issuance of shares without par value, plus any amounts thereafter transferred from surplus to stated capital in respect of such shares, less any part of such amounts transferred from stated capital to capital surplus as permitted by this Chapter.

(3) "Articles" means the original articles of incorporation, and all amendments thereto including those contained in merger agreements, or if restated, the latest restatement thereof, except in those instances in which the context expressly refers to the original articles of incorporation only.

(4) "Assets" means all of a corporation's property and rights of every kind. Treasury shares are not assets.

(5) "Business corporation" means a corporation for profit formed under the laws of this state.

(6) "Capital surplus" means the aggregate of:

(a) The amount of the consideration received on issuance of issued shares in excess of the aggregate allocated value thereof; and

(b) Amounts transferred to capital surplus as permitted by this Chapter; and

(c) Surplus arising from revaluation to reflect unrealized appreciation in value of assets; less

(d) Transfers from, or other reductions in, capital surplus required or permitted by this Chapter.

(7) "Corporation" or "nonprofit corporation" means a corporation formed under this Chapter, as well as a corporation formed under the laws of this state before January 1, 1969 but of a class of corporations that might be formed under this Chapter.

(8) "Court" means any court of competent jurisdiction where the registered office of the corporation is located.

(9) "Directors" means persons designated in the articles as such, and persons designated, elected or appointed by any other name or title to act as directors, and their successors. The term, when used in relation to any power or duty requiring collective action, means "board of directors".

(10) "Earned surplus" means the excess of surplus over capital surplus.

(11) "Fiduciary" means any person, firm, partnership, association or corporation, including a usufructuary, who or which occupies a position of peculiar confidence toward any person, firm, association, partnership, trust or estate.

(12) "Foreign corporation" means a corporation formed under the laws of any jurisdiction other than this state.

(13) "Incorporator" means one of the signers of the original articles of incorporation.

(14) "Insolvency" means the inability of a corporation to pay its debts as they become due in the usual course of business.

(15) "Issued shares" means outstanding shares and treasury shares.

(16) "Member" means each natural or artificial person admitted to membership in a corporation, and, unless the context indicates otherwise, includes shareholders.

(17) "Membership" means an interest in a corporation entitling the holder thereof to participate in the control of the corporation or to a pro rata share of its net assets upon dissolution.

(18) "Net assets" means the excess of assets over liabilities.

(19) "Reclassification of stock" means amendment of the articles to change the authorized number of shares of an existing class or series; to authorize shares of a new class or series; to change the designation, par value (including change of par-value shares to shares without par value or vice versa), preferences, limitations or relative rights, including cancellation or modification of the right to receive accumulated dividends which have not been declared, or variations in relative rights, of the issued, and authorized but unissued, shares of any existing class or series; or to change the issued shares of any existing class or series into a greater or smaller number of shares of the same class or series (subject to such changes as the reclassification may make in the designation, par value, preferences, limitations or relative rights, or variations in relative rights, thereof) or of another class or series, and to cancel any issued shares in connection with a reduction in the number thereof.

(20) "Registered office" means that office maintained by the corporation in this state, the address of which is kept on file in the office of the Secretary of State in the manner required by this Chapter.

(21) "Share" means an interest in a corporation, represented by a stock certificate issued after payment for the shares represented thereby, entitling the holder thereof to participate in the control of the corporation or to a pro rata share of its net assets upon dissolution.

(22) "Shareholder" means a natural or artificial person who is the owner of a property interest in a corporation represented by a certificate for shares of stock.

(23) "Stated capital" means the aggregate amount of:

(a) The aggregate allocated value of the issued shares; and

(b) Any other amounts transferred from surplus to stated capital; less

(c) Transfers from, or other reductions in, stated capital required or permitted by this Chapter.

(24) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(25) "Surplus" means the excess of assets over liabilities plus stated capital.

(26) "Total voting power" means the entirety of the voting power.

(27) "Treasury shares" means issued shares which have been acquired by and belong to the corporation, if not required by the articles to be cancelled, or if not cancelled by order of the board of directors.

(28) "Trust instrument" includes any lawful act, agreement, donation, testament or other document, by which the donor, settlor or testator transfers any property in trust, for any charitable, religious, benevolent, educational, scientific or literary purpose, or public benefaction of whatever name or nature.

(29) "Voting member" means a person entitled to vote in accordance with the articles or by-laws.

(30) "Voting member present" means a person who is a voting member, and who is present or represented, and entitled to vote on a particular question or matter, at a meeting of members.

(31) "Voting power" means the right vested, by law or by the articles or the by-laws, in the members, or in one or more classes of members, to vote in the determination of any particular question or matter coming before meetings of the members.

## **§202. Incorporation**

One or more natural or artificial persons capable of contracting may form a nonprofit corporation under this Chapter.

**§203. Articles of incorporation**

A. The articles shall be written in the English language, and shall be signed by each incorporator, or by an agent of each incorporator duly authorized by a document attached to the articles. The articles shall be acknowledged by one of the persons who signed the articles, or may instead be executed by authentic act.

B. The articles shall set forth:

- (1) The name of the corporation.
- (2) In general terms, the purpose or purposes for which the corporation is to be formed, or that its purpose is to engage in any lawful activity for which corporations may be formed under this Chapter.
- (3) The duration of the corporation, if other than perpetual.
- (4) That it is a nonprofit corporation.
- (5) The location and address of its registered office, not a post office box only.
- (6) The full name and address of each registered agent, not a post office box only.
- (7) The full name and address of each incorporator.
- (8) The names, addresses, and terms of office of the initial directors, not a post office box only.
- (9) Whether the corporation is to be organized on a stock basis or a non-stock basis, or both.
- (10) If organized in whole or in part on a stock basis:
  - (a) The aggregate number of shares which the corporation shall have authority to issue.
  - (b) If the shares are to consist of one class only, the par value of each share, or a statement that all of the shares are without par value.
  - (c) If the shares are to be divided into classes or series, the number of shares of each class or series; the par value of the shares of each class or series, or a statement that such shares are without par value; the designation of each class or series; and a statement of the preferences, limitations and relative rights of the shares of each class, and of the variations therein as between series.
- (11) If organized in whole or in part on a non-stock basis:
  - (a) The qualifications of its members;
  - (b) The different classes of membership, if any;
  - (c) The designations, voting powers, and other rights or privileges, restrictions or limitations, granted to or imposed upon the members of each class.
- (12) The taxpayer identification number of the corporation. The failure to include the taxpayer identification number of the corporation shall not invalidate nor cause the secretary of state to reject the articles.

C. The articles may also contain provisions dealing generally with the authorized number and qualifications of the shareholders and members, the property rights, basis of voting and other rights and privileges of the shareholders and members, the liability of the shareholders and members for dues or assessments and the methods of collection thereof, and any other lawful provision desired for the regulation of the affairs of the corporation, including any provision authorized by R.S. 12:24(C).

D. The articles of every corporation heretofore formed, unless they contain a provision enlarging, limiting or denying the preemptive right of shareholders, shall be deemed to provide that "Shareholders shall have preemptive rights".

**§205. Filing and recording articles; issuance and effect of certificate of incorporation; commencement of corporate existence**

A. The articles shall be filed with the secretary of state. The articles may be delivered to the secretary of state in advance for filing as of any specified date and, if specified upon such delivery, as of any given time on such date, within thirty days after the date of delivery.

B. If the secretary of state finds that the articles are in compliance with the provisions of this Chapter and after all fees have been paid, the secretary of state shall record the articles in his office, endorse thereon the date and, if requested, the hour of filing thereof with him, and issue a certificate of incorporation which shall show the date and, if endorsed on the articles, the hour of filing of the articles with him. The certificate of incorporation shall be conclusive evidence of the fact that the corporation has been duly incorporated, except that in any proceeding brought by the state to annul, forfeit, or vacate a corporation's franchise, the certificate of incorporation shall be only prima facie evidence of due incorporation.

C. Upon the issuance of the certificate of incorporation, the corporation shall be duly incorporated, and the corporate existence shall begin, as of the time when the articles were filed with the secretary of state, except that, if the articles were so filed within five days, exclusive of legal holidays, after acknowledgment thereof or execution thereof as an authentic act, the corporation shall be duly incorporated, and the corporate existence shall begin, as of the time of such acknowledgment or execution.

D. A multiple original of the articles, or a copy certified by the secretary of state, with a copy of the certificate of incorporation, shall within thirty days after filing of the articles with the secretary of state, be filed for record in the office of the recorder of mortgages of the parish in which the registered office of the corporation is located.

E. (1) If the corporation contracts with the state, a statement acknowledging such contract shall be filed with the secretary of state, and shall include the names and addresses of the board of directors, officers, and all persons or corporate entities who hold an ownership interest of five percent or more in the corporation or who hold by proxy the voting power of five percent or more in the corporation and, if anyone is holding stock in his own name that actually belongs to another, the name of the person for whom held, including stock held pursuant to a counterletter. The statement acknowledging a state contract and ownership and voting interest shall be duly acknowledged, or executed by authentic act.

(2) The provisions of this Subsection shall not apply to any charitable or religious nonprofit corporation which is organized and existing on a "nonstock basis".

CHAPTER 3. FOREIGN CORPORATION LAW

**§301. Condition precedent to transacting business**

No foreign corporation or association, except one which has before January 1, 1969, been granted a certificate of authority to do business in this state which is still valid, shall have the right to transact business in this state until it shall have procured a certificate of authority to do so from the secretary of state. No foreign corporation shall be entitled to procure such a certificate of authority to transact in this state any business which a corporation organized under Chapter 1 or 2 of this Title is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized, governing its organization and internal affairs, differ from the laws of this state.