



DE Nonprofit Nonstock Corporation Bylaws: Initial Questionnaire

Name of Organization:

| Questions | Answers |
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| Board of Directors | |
| <p>1. How many Directors will serve on the Board of Directors?</p> <p>Under Delaware General Corporation Law (DGCL) §141(b), the Board must have at least one Director. The Bylaws may establish a set number, a minimum or a range.</p> | |
| 2. Will Directors have term limits? | |
| 3. Will the Board have any <i>ex officio</i> Directors, and if so, will they have voting rights? | |
| <p>4. Will the organization's Executive Director/CEO serve as an <i>ex officio</i> Director, and if so, will he or she have voting rights?</p> <p>Note: Review conflicts of interest, compensation and reporting issues.</p> | |
| 5. What is the length of each term of service? | |
| <p>6. Will Director terms be staggered? If so, how many classes of Directors will there be, and how many Directors will be in each class?</p> <p>Under DGCL §141(d), Directors may be divided into one, two or three classes with staggered terms.</p> | |
| 7. What is the procedure for Director resignations, vacancies and removal for cause? | |



| Questions | Answers |
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| <p>What constitutes "cause"?</p> <p>Under DGCL §141(b), any Director may resign at any time upon notice given in writing or by electronic transmission to the Corporation.</p> <p>Under DGCL §141(k), any Director or the entire Board of Directors may be removed, with or without cause, by a majority of the Members, with certain exceptions. However, if the board is classified, then the Members may only remove for cause unless the Certificate of Incorporation provides otherwise.</p> | |
| Board Meetings | |
| <p>1. How many Directors constitute a quorum for purposes of the Board conducting business?</p> <p>Under DGCL §141(b), the default requirement for a quorum is a majority of the Board. However, the Bylaws may provide for a lower quorum requirement which cannot be less than one-third of the Directors (unless the Certificate of Incorporation provides otherwise), or the the Certificate of Incorporation may provide for a quorum requirement of less than one-third of the Directors.</p> | |
| <p>2. Can Directors participate in Board or Committee meetings (and count for quorum) via telephone conference call or electronic video screen communication?</p> <p>Permissible under DGCL §141(i).</p> | |
| <p>3. What vote of the Board is required for Board action? Should certain circumstances require a greater vote of the Board?</p> <p>Under DGCL §141(b), the vote of a majority of the Directors present at a meeting is sufficient for Board action unless the Certificate of</p> | |



| Questions | Answers |
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| Incorporation or the Bylaws require a vote of a greater number. | |
| 4. Can the Board act by unanimous written consent? Under DGCL §141(f), any action of the Board of Directors may be taken by unanimous written or electronic (email) consent. | |
| Officers and Committees | |
| 1. Which Officers shall the organization have (e.g., President, Vice-President(s), Secretary, Treasurer, etc.)? Under DGCL §142, (a) one of the Officers shall have the duty to record the proceedings of the meetings of the Directors in a book to be kept for that purpose and (b) a single person may hold more than one office unless the Certificate of Incorporation or Bylaws otherwise provide. | |
| 2. What authority will each Officer have? | |
| 3. Will any salaried staff of the organization serve as an Officer? | |
| 4. What is the length of the term for Officers? Under DGCL §142, Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the Bylaws or determined by the Board of Directors. In the absence of such provision, any vacancy shall be filled by the Board of Directors. | |
| 5. What Committees (i.e., Executive Committee, Finance Committee, Audit Committee, Nominating Committee, etc.) will be established? | |



| Questions | Answers |
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| Under DGCL §141(c)(2), the Board of Directors may designate one or more Committees, each Committee to consist of one or more of the Directors of the Corporation; but no Committee shall have the power or authority to adopt, amend or repeal any Bylaw. The Board may designate one or more Directors as alternate Members of any Committee, who may replace any absent or disqualified member at any meeting of the Committee. | |
| 6. Who shall serve on each Committee, how shall Committee members be appointed and for what term? | |
| 7. What responsibilities will each Committee have? | |
| 8. Will the organization appoint advisory Committees (i.e., Committees without authority that may include non-Directors)? | |
| Members | |
| 1. How will Membership be defined? Under DGCL §§ 114(a) and 215, nonstock corporations are required to have Members. Note: The Bylaws may designate the Directors as the Members. | |
| 2. What will constitute a quorum for purposes of Member meetings? Under DGCL § 215(c), quorum is as set forth in the Certificate of Incorporation or Bylaws. In the absence of such specification, 1/3 of the Members will constitute a quorum. | |
| 3. What vote of the Members is required for the transaction of business? | |



| Questions | Answers |
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| <p>Under DGCL § 215(c), the number of votes necessary for the transaction of any business are as set forth in the Certificate of Incorporation or Bylaws. In the absence of such specification, a majority of votes present at the meeting is sufficient (with certain exceptions); provided that that the Directors will be elected by plurality. Note: Under DGCL § 215(b), Members can vote by proxy.</p> | |
| <p>4. When and where will the annual meeting be held, or shall it be fixed by the Board?</p> <p>Under DGCL § 211(a), meetings may be held at such place, either within or without DE as may be designated by or in the manner provided in the Certificate of Incorporation or Bylaws, or if not so designated, as determined by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication.</p> | |
| <p>5. Who may call for special meetings?</p> <p>Under DGCL § 211(d), special meetings of the Members may be called by the Board of Directors or by such person or persons as may be authorized by the Certificate of Incorporation or by the Bylaws.</p> | |
| Miscellaneous | |
| <p>1. Is the Board required to obtain Directors and Officers Liability Insurance? Recommended.</p> <p>DGCL § 145(g) permits the Corporation to obtain insurance for Directors, Officers, employees, or agents.</p> <p>DGCL § 145(c) requires indemnification of a present or former Director or Officer against expenses (including attorneys' fees) actually and reasonably incurred if such person is successful on the merits or otherwise.</p> | |



| Questions | Answers |
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| 2. What is the organization's fiscal year? | |
| 3. What is the registered office address of the organization? Where are the organization's books and records located? DGCL § 131 requires every Corporation to maintain in DE a registered office which may, but need not be, the same as its place of business. Any document filed with DE DOS must include the address of a registered office, which shall include the street, number, city, county and postal code. | |
| 4. Who may approve amendments to the Bylaws and what type of vote is required for amendments to the Bylaws? DGCL § 109 states that the Members have the power to amend the Bylaws, but the Certificate of Incorporation may confer this power on the Board of Directors as well. | |

The questions listed in this form and references to the Delaware General Corporation Law (DGCL) are meant to provide a general overview to assist in the preparation of new or revised Bylaws. This form does not contain an exhaustive list of topics that may be covered in Bylaws, and it does not contain a complete explanation of the DGCL or other applicable laws.

This alert is for general information purposes and should not be construed as legal advice. If you would like information about this alert, please contact one of the firm's attorneys: Deborah Buyer, 212-225-8483 x1, deborah@deborahbuyerlaw.com Lydia Fan Wong, 212-225-8483 x2, lydia@deborahbuyerlaw.com

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