Summary of Some of the Critical Provisions Of the D.C. Nonprofit Corporation Code

The D.C. Nonprofit Corporation Act of 2010 (the “Nonprofit Code”) overhauled laws regarding the formation and operation of nonprofits organized under D.C. law. It was the first substantial change to the D.C. Nonprofit Code since 1962. The new law became effective January 1, 2012. It also applies to nonprofits formed under the pre-1962 D.C. law who have not elected to be covered by the 1962 Nonprofit Code (so-called “Old Act Companies”). Old Act Companies were given more time to transition to the new law, but it became applicable to them effective January 1, 2014. The new law generally applies only to those organizations incorporated under D.C. law. For organizations incorporated in another state, such as Maryland or Virginia, their governance and internal operations are still governed by the laws of that state.

The following is only a general summary of some of the law’s principal provisions, and each organization’s situation is unique. Therefore, to ensure that your nonprofit is in compliance with the Nonprofit Code, you should consult with an attorney to determine what provisions apply to your organization and what steps it should take in order to comply.

A. Membership Organizations

**Purpose.** Nonprofit corporations may have members. Members are intended to serve functions similar to shareholders of for-profit corporations. The goal is to increase organizational accountability. Under the articles of incorporation or bylaws, members may have the right to elect directors at the annual membership meeting and approve major corporate transactions, such as mergers, dissolutions and a sale of substantially all of the organization’s assets. For an organization with no members, the existing board elects the directors, and the board approves all corporate transactions.

**Member – Defined.** A nonprofit’s articles of incorporation and bylaws are often intentionally vague regarding who is a member. Some nonprofits will use definitions such as “whoever supports the work of the organization.” As a result, it can be difficult to develop accurate membership lists and hold membership meetings. Some nonprofits limit membership to people who pay dues. Others provide that the board of directors shall constitute the membership of the organization. In general, to be recognized as a membership organization under the Nonprofit Code, organizations must give members the right to vote for directors or delegates, or on fundamental transactions, such as mergers, transfers of substantially all the organization’s assets or an amendment to the organization’s articles of incorporation or bylaws. Members are not liable for organizational debts, except in limited cases like unpaid dues.

**Membership Lists.** The Nonprofit Code requires that the nonprofit maintain accurate membership lists. Section 29.413.01 requires the nonprofit to maintain a “record of its members, in a form that permits preparation of a list of names and addresses of all members, in alphabetical order, by class, showing the number of votes each member is entitled to cast.” A member is entitled to inspect and copy the membership list upon giving the nonprofit five (5) business days’ notice.
Developing Membership Criteria. It is important for the nonprofit to develop specific criteria for determining who is a member and keeping its membership list current. The articles of incorporation or bylaws should establish either the criteria for membership or the procedures to be used for admitting members. If a nonprofit wishes to extend membership to “all individuals supporting the mission of the organization,” the organization should treat such provision as simply allowing such people to apply for membership, and not as actually conferring membership benefits.

Consent to be a Member. A person must consent to being a member. Therefore, for example, it is not permissible to state that all donors are members, unless the donors consent to being members. A member's consent may be express or implied, for example, by an individual accepting membership benefits knowing that the benefits are only offered to members.

Members Must Have Voting Rights. If an organization has “members,” but the members do not have the right to vote on any matters, then, notwithstanding the use of the term “members,” for purposes of the Nonprofit Code, the organization is a non-membership organization.

Classes of Members. The nonprofit can have more than one class of members, and each class may have different rights. For example, one class may have the right to vote for a specific slate of directors and another class may have the right to vote for a different slate. One class could have the right to vote on proposed mergers, and another class would not. A typical two-class structure would involve one class of members comprised of the nonprofit’s clients and a second class comprised of the public.

Annual Meeting. The members meet annually to hear reports about the organization, to elect directors, and conduct any other necessary business. The failure to hold an annual meeting does not affect the validity of any corporate transaction.

Special Meeting. The Nonprofit Code provides that the Board of Directors or a person designated in the articles or bylaws may call a special meeting of the members. In addition, the members may call a special meeting. The articles of incorporation or bylaws should set forth the number of members needed to call a special meeting. The number must be at least 10% and not more than 25% of the members entitled to vote at such meeting. The members calling the special meeting may revoke the demand for a meeting, unless the articles of incorporation or bylaws provide otherwise.

Unanimous Consent of the Members. Unless the articles of incorporation or bylaws provide otherwise, any action required to be taken at a meeting of the members may be taken without a meeting if all the members entitled to vote on the action agree to it. The notice must specify the action to be taken and signed by all the members entitled to vote.

Record Date. The record date is the date used for determining who is a member entitled to vote on a particular matter. The articles of incorporation or bylaws may specify the manner for determining the record date. If not, then the Board of Directors may fix the record date. The record date may not be more than 70 days before the meeting. The record date for a special meeting of the members called by the members is the date the first member signs the petition. The determination of who is a member eligible to vote is made as of the close of business on the record date. If no record date is fixed, then the record date is the day before the date that notice of the meeting is first given to the members.

Notice of Meeting. The Nonprofit Code provides that, unless the articles of incorporation or bylaws provide otherwise, notice of a membership meeting must be given at least 10 and not more than 60 days prior to the
meeting. The notice need only be given to those members entitled to vote on the matter that is the subject of the meeting. Notice of a special meeting must include a description of the purpose for which the meeting is called.

**Form of Notice.** The Nonprofit Code gives the organization considerable latitude in specifying how notice will be given. In general, unless the articles of incorporation or bylaws provide otherwise, notice must be given in the form of a record – that is information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form. Notice via email is valid if authorized by the member, but email authorization is considered revoked if two consecutive notices are returned undeliverable. Under the Nonprofit Code, notice is effective when given in a manner authorized by the member or when deposited with the US Postal Service or commercial delivery service. With electronic communications, notice is received when it enters the information processing system that the recipient has designated for receipt of notices and it is in a form capable of being processed. The notice is received even if the recipient is unaware of it.

**Quorum for Meeting.** The Nonprofit Code does not provide for a minimum quorum for member meetings. It is left to the discretion of the organization, as specified in the articles of incorporation or bylaws. If no quorum is specified, the quorum shall be a majority of the members entitled to vote on the matter. Unless the articles or bylaws provide otherwise, a resolution is adopted if a majority of the quorum votes in favor of its adoption.

**Meetings via Electronic Equipment.** The articles of incorporation or bylaws may provide that special meetings be held by means of the Internet or other technology provided the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions and make comments.

**Presiding Officer.** The articles or bylaws should specify who the presiding officer at the meeting is. In lieu of such a provision, the Board may designate who the presiding officer should be. If the Board fails to do so, the members must elect the presiding officer. Unless the articles or bylaws provide otherwise, the presiding officer determines the order of business and establishes rules of conduct for the meeting, including the closing of the polls for voting.

**Proxy Voting, Cumulative Voting & Voting Agreements.** Members may vote by proxy unless the articles of incorporation or bylaws provide otherwise. In addition, unless the articles of incorporation or bylaws say otherwise, cumulative voting is not permitted. Voting agreements are enforceable, except as provided in the articles of incorporation or bylaws.

**Voting by Ballot.** Unless the articles or bylaws provide otherwise, any action that may be taken at a meeting of the members may be taken without a meeting if the organization delivers a ballot to every member entitled to vote on the matter. The ballot must be in the form of a record, meaning information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in a perceivable form. The approval of any action (other than the election of directors) is valid only when the number of votes cast by ballot at least equals the quorum requirement for a meeting and the number of approvals at least equals the number of approvals that would be required at a meeting. (For example, if an action requires a 2/3rds approval at a meeting, it must be approved by 2/3rds of the ballots cast.) Directors are most commonly elected by a plurality of the votes cast.

**Contents of Ballot.** The ballot must set forth each proposed action, the number of responses needed to meet the quorum requirements, the percentage of approvals necessary to approve each matter other than the
election of directors, and the date by which the ballot must be returned. The ballot must provide the opportunity to vote for or withhold a vote for each candidate for election as the director or each proposed action. This is in addition to the provision permitting actions to be taken by the unanimous consent of the members.

B. Board of Directors

**Board of Directors – Number and Class.** Under the Nonprofit Code, a nonprofit corporation must have at least three directors. In addition, the organization may want to have staggered terms for its directors, so no more than a specified number of directors are new to the Board. The most common solution is to have three classes of directors. If an existing organization has a staggered board, the current bylaws do not have to provide for staggered terms. However, for new organizations, the language should read as follows:

*The Board of Directors shall elect directors by the affirmative vote of a majority of the directors at the annual meeting of the Board. The terms of directors shall be staggered. The initial Board members shall be divided into three equal classes and they shall serve staggered terms of one, two, and three years, respectively. Thereafter, each director shall hold office until the third annual meeting subsequent to his or her election with approximately one-third of the Directors elected at each annual meeting.*

**Election.** The Nonprofit Code provides that member-elected directors be elected by a plurality of the votes unless the articles or bylaws provide otherwise. For example, the bylaws could require a majority vote. Under such a provision, if there are more than two candidates for office, after each round the person with the lowest vote total is stricken from the ballot until someone receives a majority of the votes. For non-member organizations, directors are elected by a majority of the directors present and voting, unless the bylaws provide otherwise.

**Term and Term Limits.** Under the Nonprofit Code, the maximum length of a single term is five years. If no term is specified in the bylaws, then the term is for one year. There is no limit on the number of terms an individual may serve as a director.

**Resignation and Removal – Membership Organizations.** The Nonprofit Code provides limits on who can remove a member-elected director from office. If some or all of the members elect a director, only those members may vote to remove a director. They may remove the director with or without cause, unless the articles of incorporation or bylaws provide otherwise. The Board of Directors may also vote to remove a member-elected director only if the director:

1. Has been declared of unsound mind by a final court order;
2. Has been convicted of a felony;
3. Has been found by a final court order to have breached a duty as a director;
4. Has missed the number of meetings in any twelve-month period specified in the articles or bylaws without being excused; or
5. No longer meets the qualifications for office set forth in the articles of incorporation or bylaws at the beginning of the person’s term and he or she is removed by a vote of the directors who meet all of the qualification requirements.

For example, if a director is one of four directors who represent the client population that the organization serves, and the director is no longer a client of the organization, he or she may be removed by a vote of the three remaining client-directors.
The articles of incorporation and bylaws may also authorize the Board to remove a member-elected director for other reasons specified in the governing documents.

**Resignation and Removal – Non-Membership Organizations.** In the case of a director not elected by members, the Board may vote to remove the director with or without cause, unless the articles of incorporation or bylaws provide otherwise.

**Vacancy.** Unless the articles of incorporation or bylaws provide otherwise, if the position of a member-elected director becomes vacant, the members must be given the exclusive opportunity to fill the vacancy for the first three months after the vacancy occurs. The Board then has the opportunity to fill the vacancy if the members do not act. A vacancy caused by a director who is appointed to the Board by a specified individual or entity can only be replaced by the individual or entity that made the initial appointment. For example, if a denomination has the right to appoint someone to serve as a director on a local church’s board, and the director resigns, then only the denomination may fill such vacancy.

**Meetings.** The Board may schedule regular meetings of the Board (i.e., monthly, quarterly). In addition, the Board may, by resolution, call special, non-regular meetings. In addition, unless the governing documents provide otherwise, the chair, the highest-ranking officer of the corporation, or 20% of the directors then in office may call a special meeting.

**Notice.** Unless the governing documents provide otherwise, at least two days’ notice must be given for a special meeting. Under the Nonprofit Code, notice is effective when received, when left at the recipient’s residence or usual place of business, five days after it is deposited with the US Postal Service or commercial delivery service, or on the date shown as being received, in the case of certified mail. With electronic communications, notice is received when it enters the information processing system that the recipient has designated for receipt of notices and it is in a form capable of being processed.

**Quorum.** The bylaws may provide for a quorum of no fewer than the greater of: one-third of the number of directors in office or two directors. If no quorum is specified, a majority of the directors constitutes a quorum.

**Unanimous Consent.** The Nonprofit Code provides that a Board may act without a meeting if each director then serving signs a consent describing the action to be taken and forwards it to the organization.

**Meeting via Conference Call.** Unless the articles of incorporation or bylaws provide otherwise, directors may participate in a meeting via conference call provided the director may simultaneously hear the other directors, vote on matters submitted to the Board, pose questions and make comments. A director participating in a meeting by this means is considered present for at the meeting.

**Directors: Standard of Conduct.** Directors must act in good faith and in a manner the director reasonably believes to be in the best interests of the nonprofit. The director must act with the care that a person in a like position would reasonably believe appropriate under the circumstances. A director must disclose to the other board members all material information not already known to them, unless the director has a legally enforceable responsibility of confidentiality. A director may rely on committees acting within the scope of their charter, employees acting within the scope of their authority, and professionals such as attorneys or CPAs unless there is reason not to rely on them.
Liability of Directors. Directors of charitable organizations are not liable to the nonprofit or its members for monetary damages for any act or failure to act, except liability for:

- The amount of a financial benefit received by the director and to which the director is not entitled;
- An intentional infliction of harm;
- An unlawful distribution of the nonprofit’s assets; or
- An intentional violation of criminal law.

Volunteers of nonprofit corporations such as directors who perform services for the nonprofit without compensation are given limited immunity from civil liability to third parties in connection with their volunteer service, except if the injury or damage was a result of:

1. The willful misconduct of the volunteer;
2. A crime, unless the volunteer had reasonable cause to believe that the act was lawful;
3. A transaction that resulted in an improper personal benefit of money, property, or service to the volunteer; or
4. An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this chapter or the corporate charter.

This limitation on liability applies if the nonprofit maintains liability insurance at least equal to $200,000 per individual claim and $500,000 per total claims arising from the same occurrence. Organizations exempt under Section 501(c)(3) of the Internal Revenue Code do not have to maintain insurance in order for its volunteers to qualify for the immunity for liability if the organization has annual total functional expenses, exclusive of grants and allocations, of less than $100,000.

C. Board Committees, Designated Bodies and Advisory Committees

Board Committees. The Nonprofit Code provides that the Board may create one or more committees of the Board. These are committees, such as audit, finance and compensation committees, that are authorized to carry out the duties that only Board members may perform. However, the Board cannot delegate to a committee the authority to authorize distributions; fill vacancies on the board or a committee; adopt, amend or repeal the bylaws; or place something before the members for a vote. Because the Board is delegating some of its fiduciary responsibilities to the committee, the creation of the committee and the appointment of its members must be approved by the greater of the majority of the directors then in office or a quorum authorized to vote on the matter. The Nonprofit Code makes clear that only directors may serve on Board committees. A committee may consist of one director.

Designated Bodies. Designated bodies are those bodies that play a role in the governance of the organization. The Nonprofit Code authorizes the articles of incorporation or bylaws to create designated bodies that are vested with some, but not all, of the functions that would normally be reserved to the board of directors. An entity or individual may be a member of a designated body.

Examples of Designated Bodies. Designated bodies are most commonly found in church organizations and professional associations. For example, some actions of a local church, such as hiring a minister, may be subject to the approval of a diocese or denomination. If the diocese or denomination has final approval of such decisions, it would be a designated body. Professional associations, such as a bar association, often have a separate board that handles licensing and discipline, and whose decisions are not subject to the approval of the board of directors. That separate body would be considered a designated body. To the extent the powers, authority or functions of the board are vested in the designated body, the directors are
relieved any liability with respect to those powers, authority or functions. An example of a designated body (outside of a church or professional association) suggested by the drafters of the model act could be the following:

**Compensation Committee.** The Compensation Committee shall be composed of the Chair of the Board, the Vice Chair of the Board, two other members of the Board and two non-Board members. The two other members of the Board and the two non-Board members shall be selected by a vote of a majority of the members of the Board present at a meeting of the Board at which a quorum is present. The Compensation Committee each year shall conduct an annual review of the CEO's performance and assure the reasonableness of his or her total compensation in relation to the marketplace; solicit Board input regarding the CEO's performance; decide on any changes in the CEO's total compensation or in his or her employment agreement; severance and/or retention agreement, if any; and review with the CEO, comment on and determine the CEO's annual performance goals for the year. In addition, the Compensation Committee shall review and approve decisions made by the CEO as to the compensation of other employees of the Corporation. Decisions by the Compensation Committee shall be made within total amounts approved by the Board in the Corporation's annual budget.

**Treatment of Designated Body Members.** When acting within the scope of their authority, members of the designated body are treated in the same manner as directors under the Nonprofit Code, including the provisions relating to the indemnification of directors.

**Advisory Committee.** The Board of Directors may appoint advisory committees. An advisory committee may be made up of directors and non-directors. Under the Nonprofit Code, advisory committees cannot be given the authority to exercise any of the powers of the Board. However, an advisory committee can have the authority to exercise the duties of officers, employees or agents. Common examples of such committees carrying out non-Board functions:

- Fundraising committee
- Public relations committee
- Program committee

**D. Officers**

**Officers – Number and Duties.** Under the Nonprofit Code, the corporation must have two officers:

1. One responsible for the management of the organization, and
2. One responsible for its financial affairs.

The governing documents must assign to an officer the responsibility for preparing the minutes of the meetings of the board of directors and for maintaining and authenticating the minutes and governing documents.

**Appointment.** Under the Nonprofit Code, officers may be elected or appointed in accordance with the bylaws. They may be removed with or without cause by a vote of the Board of Directors. It does not require the vote of a majority of the directors then in office, although many consider it a best practice to require a majority of the whole.
Officers: Standard of Conduct – Duty to Inform. Officers are subject to the same standard of care as directors. In addition, an officer has a duty to provide the Board with all the information the officer has learned while performing his or her duties that is material to the Board in carrying out its responsibilities. An officer also has an obligation to inform a superior officer or the Board if the officer believes that another person has or is likely to engage in a material breach of duty to the nonprofit or in a material violation of the law involving the nonprofit.

E. Indemnification

Indemnification. The Nonprofit Code provides for:

- Mandatory indemnification of directors
- Permissive indemnification of directors
- Court-ordered indemnification of officers and directors
- Indemnification of officers

Mandatory Indemnification. The Corporation must indemnify any director (including members of a designated body) to the extent the director was successful in the defense of any proceeding to which the director was a party because the director was a director of the nonprofit against reasonable expenses incurred by the director in connection with the proceeding.

Permissive Indemnification. A nonprofit may also indemnify director if the director:

- Acted in good faith;
- Reasonably believed:
  - In the case of conduct in an official capacity, that the conduct was in the best interests of the nonprofit; and
  - In all other cases, that the individual’s conduct was at least not opposed to the best interests of the nonprofit;
  - In the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
  - In the case of an employee benefit plan, reasonably believed such actions to be in the interests of the plan participants.

Articles of Incorporation May Authorize Additional Indemnification. If the articles of incorporation so provide, the nonprofit may provide additional indemnification to a director for liability to a third party if the director’s conduct does not involve:

- The unlawful distribution of the nonprofit’s assets;
- Receipt of a financial benefit to which the director is not entitled;
- An intentional infliction of harm on the nonprofit, or
- An intentional violation of criminal law.

Impact of Certain Actions on Indemnification. The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere is not determinative that the director did not meet the standard of conduct.

When Indemnification is Not Permitted. Unless ordered by a court, the nonprofit may not indemnify a director in connection with:
A proceeding by or in the right of the nonprofit unless for expenses reasonably incurred because of a proceeding if it is determined that the director met the relevant standard of conduct; or

- Receipt financial benefit to which the director is not entitled.

**Authorization of Indemnification.** Any indemnification must be specifically authorized by a vote of the Board of Directors if it determines that the director has met the relevant standard of conduct. The determination may be made:

- By a majority vote of the disinterested directors or a committee of two or more disinterested directors appointed by such a vote;
- By special legal counsel:
  - Selected by a majority vote of the disinterested directors, or a committee of two or more disinterested directors appointed by such a vote; or
  - If there are fewer than two disinterested directors, selected by the board of directors in which selection directors who do not qualify as disinterested directors may participate; or
- By the members.

Once the Board makes such a determination, it must then authorize the indemnification by a majority vote of the disinterested directors or a committee of two or more disinterested directors; or if there are fewer than two disinterested directors, by the Board, in which case directors who do not qualify as disinterested directors may participate. The nonprofit can obligate it to pay indemnification in advance through the articles of incorporation, bylaws or contract. This satisfies the requirement of authorization.

**Director and Officer Defined.** A “director” or “officer” includes a director or officer who, while a director or officer of the corporation, is or was serving at the corporation’s request as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other entity. An officer or director also includes the estate or personal representative of a director or officer.

**Disinterested Director Defined.** A “disinterested director” means a director who is not:

- A party to the proceeding; or
- An individual having a familial, financial, professional, or employment relationship with the director whose indemnification is being decided, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director’s judgment when voting on the decision being made.

**Advancement of Expenses.** The Board may advance funds to pay for reasonable expenses incurred by an individual who is a party to a proceeding provided:

- It is approved by a vote of the disinterested directors or the members; and
- If the individual gives the nonprofit:
  - A written statement signed by the individual setting forth his or her good faith belief that he or she has met the relevant standard of conduct; and
  - An unlimited general obligation promise to repay any funds advanced if the individual is not entitled to indemnification.
**Court-ordered Indemnification.** The court may order indemnification and advance expenses if it determines:

- The individual is entitled to mandatory indemnification;
- The individual qualifies for permissible indemnification under the nonprofit’s governing documents; or
- The court believes that in view of the relevant circumstances, it is fair and reasonable.

**Officer Indemnification.** Officers are entitled to mandatory indemnification and may receive additional indemnification in the same manner as directors, including the advancement of expenses. If an officer is not also a director, the nonprofit may provide indemnification beyond what a director is entitled to receive except an officer may not be indemnified for:

- A proceeding by or in the right of the nonprofit unless for expenses reasonably incurred because of the proceeding;
- Receipt of financial benefit to which the officer is not entitled;
- An intentional infliction of harm on the nonprofit; or
- An intentional violation of criminal law.

Officers who are also directors may receive the additional indemnification if the basis for the indemnification is an act or omission committed solely as an officer.

**F. Loans to Officers or Directors.** A nonprofit may loan money or guarantee a loan to an officer or director only if it is:

- An advance to pay reimbursable expenses;
- An advance to pay the premiums on a life insurance policy if the loan is secured by the cash value of the policy;
- An advance under the indemnification provisions of the bylaws;
- A loan or advance from an employee benefit plan to a participant;
- A loan to an officer to help with relocation expenses; or
- A loan to an officer that is secured by the officer’s principal residence.

**G. Conflict of Interest Transactions.** A conflict of interest transaction is a transaction involving officer or director and another entity for which such officer or director holds a similar position or has a financial interest. A conflict of interest transaction may be void or voidable unless:

- The material facts are disclosed or are known to the Board, and a majority of the disinterested directors approves the transaction, even though the disinterested directors are less than a quorum;
- The facts are disclosed/known to the members and they approve the transaction; or
- The transaction is fair to the nonprofit when it is approved or ratified by the Board or the members.

A director may avoid liability for taking, directly or indirectly, a business opportunity in which the nonprofit corporation may be interested, provided the director first brings the opportunity to the corporation’s attention and the corporation disclaims its interest in the opportunity.

The IRS has a more stringent standard with respect to conflicts of interest, and an exempt organization should be careful to follow the IRS standards.
H. Amendment of Governing Documents. The Board of Directors must approve amendments to the articles of incorporation. In the case of a membership organization, the members must also approve the amendment. As part of the membership approval process, the Board must take the first step of recommending approval of the amendment, unless it would be a conflict of interest to do so. Notice of the membership meeting at which the amendment is to be voted on must include notice of the proposed amendment. If adopted, the amendment must be filed with DCRA.

The Board may amend the bylaws, unless the governing documents provide otherwise. In the case of a membership organization, the members may also amend the bylaws. The Board may not amend the bylaws without members’ consent if the amendment would: (1) provide that some of the members have different rights from other members; (2) relate to the termination or suspension of membership rights; (3) require cause or change the definition of cause with respect to the removal of a director elected by the members; or (4) levy dues or assessments on the members. The Board may not amend the bylaws to delete the requirement of member consent. In addition, the Board may not amend the quorum requirements for Board meetings if the members set the quorum requirements, unless the bylaws provide that the Board may do so.

I. Registered Agents. A nonprofit must have a registered agent. The agent may be a commercial or noncommercial agent. If the nonprofit uses a noncommercial agent, then the person must be:

- An officer or director of the nonprofit;
- An individual or entity that serves in DC as an agent for service of process; or
- An attorney licensed in DC and with an office in DC.

The registered agent no longer must be a resident of DC.

J. Books and Records. A nonprofit must keep minutes of meetings of the Board and its members, and a record of all actions taken by the Board through unanimous written consent. In addition, the nonprofit must file a biennial report with the Department of Consumer and Regulatory Affairs by April 1st of every other year. In addition, the organization must maintain at its principal offices, copies of the following:

- Articles of Incorporation and Bylaws
- Minutes and accounting records for the past three years
- Communications to the membership for the past three years
- Names and business addresses of officers and directors
- Most recent biennial report
- If a membership organization, an accurate membership list that includes names, addresses, and voting class of all members.
- Last three IRS Form 990s, IRS Form 1023 and IRS determination letter (not required by DC law, but by IRS).

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