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The Larned A. Waterman
Iowa Nonprofit Resource Center

**The Governing Board
for Iowa Charitable
Nonprofits**
Second Edition



**THE UNIVERSITY
OF IOWA**

*The Larned A. Waterman
Iowa Nonprofit Resource Center*

MONOGRAPH SERIES

The Governing Board for Iowa Charitable Nonprofits

Second Edition

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The Governing Board for Iowa Charitable Nonprofits

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THE GOVERNING BOARD FOR IOWA CHARITABLE NONPROFIT ORGANIZATIONS

LARNED A. WATERMAN
IOWA NONPROFIT RESOURCE CENTER
UNIVERSITY OF IOWA
MONOGRAPH SERIES

In America, private charitable nonprofit organizations are the essence of community. They are the means by which citizens on their own initiative address local needs, formulate values, and take action. Nonprofit organizations range across the broad spectrum of daily life including religion, health, social service, culture, education, environment, community development, housing, and human rights.

Public policy enables and encourages the creation of private charitable nonprofit organizations. Most such organizations are incorporated under special state incorporation laws. These laws are similar in many respects to the incorporation laws applicable to for-profit business organizations. Nevertheless, there are basic differences requiring that organizational resources must be reinvested in the nonprofit organization for the public good rather than distributed for private gain. Federal and state tax codes grant tax-exempt status to those nonprofit organizations that are deemed "charitable" and serving the public good. Thus, private charitable nonprofit organizations have a quasi-public responsibility that makes them publicly accountable.

The stewards of this public responsibility are the charitable nonprofit governing boards. These boards are usually comprised of volunteers committed to the improvement of their community. They are leaders of our American civic enterprise. They "tithe" their time and energy for the public good. In doing so, they continually invigorate and replenish community life combining practicality with aspiration. These volunteer board members are the builders of our communities.

Every charitable nonprofit organization regardless of size must do its best to perform effectively and efficiently. This monograph concentrates on the governing boards of Iowa charitable nonprofit organizations. It includes reference to the Revised Iowa Nonprofit Corporation Act,¹ Independent Sector, Draft Principles for Good Governance and Ethical Practice,² and reflects the *Iowa Principles and Practices for Charitable Nonprofit Excellence*.³ Relevant sections of the Revised Iowa Nonprofit Corporation Act are available in **Appendix 1**. The Panel on the Nonprofit Sector's Draft Principles are available on the web from the Independent Sector. The Iowa Principles and Practices are available in hard copy and on the web from the office of the Iowa Secretary of State and the Larned A. Waterman Iowa Nonprofit Resource Center. The Iowa Principles and Practices are not regulatory. They are an educational vehicle to improve the performance of charitable nonprofits organizations in Iowa. IT IS IMPERATIVE TO DO GOOD WELL.

¹ IOWA CODE Ch. 504.

² The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, available at http://www.nonprofitpanel.org/selfreg/All_Principles_Revised.pdf.

³ *Iowa Principles and Practices for Charitable Nonprofit Excellence*, available at <http://sos.state.ia.us/pdfs/Nonprofits/IAPP4CNE.pdf> and <http://inrc.continuetolearn.uiowa.edu/updates/P&Pweb.pdf>.

This monograph focuses on seven central issues for charitable nonprofit governing boards.

- I. What is the responsibility of the governing board?
- II. What does the governing board do?
- III. Who is the governing board?
- IV. How does the governing board function?
- V. What is the role of the governing board chair?
- VI. What is the role of the executive director and staff with the governing board?
- VII. How is the governing board accountable?

I. WHAT IS THE RESPONSIBILITY OF THE GOVERNING BOARD?

The public responsibility for the operation of a charitable nonprofit organization is vested in the governing board of directors (also called the board of trustees).

IOWA CODE § 504.801(1), (2) provides that: "Each corporation must have a board of directors. . . . [And, that] all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board."⁴ At the same time, however, § 504.801(3) states,

The articles of incorporation may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.⁵

To paraphrase President Truman, "the buck stops" with the charitable nonprofit governing board. GOVERNING is the operative word. A charitable nonprofit organization may have a number of support or advisory groups called "boards," but they do not have the same managerial or legal responsibility as the governing board designated in IOWA CODE § 504.801. Although the governing board can partially delegate some of its duties to committees composed of directors, it as a whole remains responsible for the governance of the charitable nonprofit organization.⁶

FIVE CAVEATS

In carrying out its governance role, there are a number of structural and definitional issues of which a board should be aware.

1. CORPORATE MEMBERS

The term "member" has two common uses in charitable nonprofit organizations. One use refers to members that have the right to elect directors and as such have legal standing. The other use refers to "friends" or "supporters" of the organization that have no statutory rights. The articles of incorporation for Iowa charitable nonprofit corporations incorporated after January 1, 2005, must state whether the organization will have legal "members."⁷ The Iowa Code does not require that a charitable nonprofit organization have legal members.⁸

Where there are legal members the IOWA CODE § 504.611 stipulates:

All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. A person that does not meet

⁴ IOWA CODE § 504.801(1), (2).

⁵ IOWA CODE § 504.801(3).

⁶ See IOWA CODE §§ 504.801(3), 504.826(6), and 504.831(3).

⁷ IOWA CODE § 504.202(1)(d).

⁸ See IOWA CODE § 504.603.

the qualifications for a member under section 504.141, subsection 22, and is identified as a member in the articles or bylaws of the corporation shall have only those rights set forth for such a member in the articles or bylaws of the corporation.⁹

In addition, when the organization has members with legal standing, the IOWA CODE allows “[t]he articles of incorporation [to] set forth . . . [p]rovisions not inconsistent with [the] law regarding . . . [d]efining, limiting, and regulating the . . . members, or any class of members. [This includes, t]he characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.”¹⁰ These provisions usually involve the voting rights to elect or remove members of the governing board; to amend the articles of incorporation and bylaws; and to make fundamental decisions concerning the organization including merger, sale of substantially all of the assets, and dissolution.¹¹

Where there are no legal members the term “member” can be used to designate “friends” and “support groups,” but membership will not carry with it any voting or other governance rights unless the articles of incorporation or bylaws provide otherwise.

Whatever the membership decision, “the affairs of the corporations [shall be] managed under the direction of, its board,” unless otherwise specified by the articles of incorporation or provided in the Revised Iowa Nonprofit Corporation Act.¹²

2. SPLIT BOARDS

A challenge for boards of directors occurs when board responsibility is “split” between two boards having different assigned duties.

In some limited instances, charitable nonprofit organizations have divided the “management” responsibility between two boards: one dealing with funding and one dealing with program. Board members are selected for either board according to their abilities for either role. Given the lack of legal authority for this split and the potential for conflict between two “governing” boards, it is preferable to have one governing board unless there are compelling reasons to split governance between two boards.

A few charitable nonprofit organizations have created separate support foundations for fundraising and endowment. The board for such a foundation is heavily weighted toward fundraising and investment management talent. While there is no legal doubt about this split because two different organizations are involved and each has a governing board, differences of opinion can arise between the two boards over the implementation of the common mission of the combined enterprise.

⁹ IOWA CODE § 504.611.

¹⁰ IOWA CODE § 504.202(2)(c)(2), (3).

¹¹ For specific statutory provisions covering the rights of members with legal standing, see Appendix 1, specifically IOWA CODE §§ 504.202, 504.206, 504.611, 504.701, 504.702, 504.705, 504.712 – 504.716, 504.1003 – 504.1004, 504.1022, and 504.1023.

¹² IOWA CODE § 504.801.

3. TRUSTEES/DIRECTORS

Although the Iowa nonprofit corporation law speaks of the board of directors, the board can be designated a board of trustees. There is no legal difference. The term "trustee" goes back to the time when charities were organized as charitable trusts. Today, most Iowa charities are organized as nonprofit corporations under the Revised Iowa Nonprofit Corporation Act. Nevertheless, the term "trustee" continues in use, particularly in the case of cultural and healthcare organizations. "Trustee" is also used to avoid confusing the paid executive director with members of the board of directors. Boards also can have other names such as "Board of Governors."

4. METHODS OF SELECTING DIRECTORS

If the articles of incorporation state that the organization does not have members with legal standing, then "all directors, except the initial directors, shall be elected, appointed, or designated as provided in the articles or bylaws."¹³ When "no method of designation or appointment is set forth in the articles or bylaws" the board will elect its own directors, and the board will be self-perpetuating.¹⁴ IOWA CODE § 504.804 specifies three methods for selecting directors: appointment, designation, and election. "Appointment" occurs when a person, pursuant to the articles of incorporation or bylaws, appoints a director or when the incorporators appoint the initial directors at the time of incorporation.¹⁵ "Designation" occurs when the articles of incorporation or bylaws name a specific individual or the holder of a non-board office as a director.¹⁶ The IOWA CODE does not directly address the use of non-board officers as directors. However, IOWA CODE § 504.842 states, "[e]ach officer of a corporation has the authority and shall perform the duties set forth in the bylaws"¹⁷ Therefore, this section can be interpreted as allowing bylaw authorization for the use of non-board officers as ex officio directors. Directors that are not appointed or designated are elected pursuant to IOWA CODE §§ 504.804 and 504.805.

5. BOARD CHAIR/PRESIDENT

It is important for charitable nonprofit organizations to make clear distinctions between officers of the board and officers at a staff level.

Until recently, the leader of the board was generally called the board president and the officers of the board were called vice-president(s), secretary, and treasurer. Indeed the board leader was the chief executive officer (CEO) of the nonprofit corporation, while the paid executive director was the chief operating officer (COO). Increasingly, the paid executive leader is being designated as president and CEO of the organization. As a result, the board leader is now often called the chairperson and the officers of the board are known as vice-chairs. While there have been changes in titles, that change is less relevant than the actual powers entrusted to the individuals in the bylaws of the organization. IOWA CODE § 504.841 gives the organization the flexibility to identify the officer positions; however, in the event the articles of incorporation or bylaws are silent, the statute spells out the required board level officer positions of president,

¹³ IOWA CODE § 504.804(2).

¹⁴ IOWA CODE § 504.804(2).

¹⁵ See IOWA CODE §§ 504.205 and 504.804.

¹⁶ See IOWA CODE § 504.804.

¹⁷ IOWA CODE § 504.842.

secretary, and treasurer. The offices of secretary and treasurer usually are board members in recognition of the crucial role of board minutes, documents, and finances in determining board accountability.

II. WHAT DOES THE GOVERNING BOARD DO?

The board's role is to set policy but not administer policy.

Board members have "fiduciary duties" in how they govern. Specifically, they have a duty of loyalty to the charitable nonprofit organization that requires acting "[i]n good faith" and "[i]n a manner . . . [they] reasonably believe [] to be in the best interests of the corporation."¹⁸ In addition, the board has a duty of care that requires that they "discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances."¹⁹ There is also a common law duty of obedience not expressly spelled out in the Iowa statutory nonprofit corporate law. The duty of obedience requires the board to function within the defined purposes and mission of the charitable nonprofit organization until otherwise modified by appropriate board action or amendment to the articles of incorporation and bylaws.²⁰

The board must act with knowledge and after adequate deliberation.

The board must carefully set organizational policy and regularly oversee its administration by competent staff. To exercise these fiduciary duties the board must:²¹

- A. Appoint and regularly review the chief executive officer of the organization, and
- B. Establish and monitor, without getting involved in day to day activities, basic organizational policies and procedures which:²²
 - 1. set and assure adherence to the purposes and mission of the organization and monitor effectiveness in achieving results — a copy of the articles of incorporation, bylaws, tax exemption letter, and mission statement should be available to board members;
 - 2. stipulate steps for compliance with those organizational policies and procedures;
 - 3. cover strategic planning, multi-year budgeting, and organizational evaluation;
 - 4. ensure financial resources necessary to conduct organizational activities;
 - 5. require board review, adoption, and monitoring of the annual budget;

¹⁸ IOWA CODE § 504.831(1).

¹⁹ IOWA CODE § 504.831(2).

²⁰ For further discussion of board member fiduciary duties, see "Fiduciary Duties" section.

²¹ See IOWA CODE § 504.831(2), as amended.

²² See IOWA CODE § 504.831(2), as amended.

6. require board review of the organization's financial performance as compared to previous and possible future years' performances;²³
7. require regular financial information and an annual audit of the organization's financial affairs;
8. provide sound investment and management of organizational funds and assets to yield a reasonable return without undue risk;
9. protect the organization's property, including a risk management policy and reasonable provision for safekeeping, replacement, and divestment procedures which will benefit the organization;
10. protect against fraud and embezzlement through the use of internal controls over the handling of the funds so that no single person is responsible for receiving, depositing, and expending funds;
11. assure a personnel program which provides competent staff and evaluation;
12. assure that staff compensation and professional consulting fees are reasonable;²⁴
13. assure compliance with applicable local, state, and federal laws, including timely filing of reports;
14. provide a confidential procedure for reporting misconduct and protecting individuals from retaliatory action for their involvement in whistleblower activities;²⁵
15. provide for regular meetings of the board and its committees with adequate reports on — and discussion of — organizational activities;
16. require keeping adequate minutes of board and committee meetings as well as other pertinent organizational records, this includes retaining and not destroying documents;²⁶
17. provide for careful selection and orientation of new board members;

²³ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 22.

²⁴ The authorized body should examine appropriate data to establish the 'fair market value' of the compensation offered, including:

- 1) compensation paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions;
- 2) the availability of similar services in the geographic area;
- 3) current compensation surveys compiled by independent firms or actual written offers from similar organizations competing for the disqualified person; [and]
- 4) actual written offers from similar organizations competing for the disqualified person.

The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Draft Principles for Good Governance and Ethical Practice," March (draft), 2007, § 11 (citing Treas. Reg. § 53.4958-6). See also *infra* the "Legal Accountability" section and in particular footnotes 61-66 and accompanying text (discussing intermediate sanctions).

²⁵ See Sarbanes-Oxley Act of 2002 §§ 301, 806, and 1107.

²⁶ See Sarbanes-Oxley Act of 2002 §§ 802 and 1102.

18. outline procedures for conducting review of board performance; and
19. provide a succession planning mechanism for the executive director, the board chair, and the board.

The responsibilities of the board should be outlined in a board member position description, made known to each potential board member when he or she is invited to serve on the board, and reemphasized during the orientation of new board members. For example of board member position description, see **Appendix 2**.

Since the board has the responsibility to set policy and monitor its application, the board should require that there be a policy handbook that includes organizational policies and statements. These organizational policies and statements should specify which policies are adopted and monitored by the board and which policies are administrative policies that are set and monitored by staff. All board members should have a copy of the policy manual. For a list of organizational policies and practices, see **Appendix 3**.

III. WHO IS THE GOVERNING BOARD?

The board is not an abstraction. The board is people who come together in public service. Organizations are people. Therefore, organizational successes are people successes; organizational failures are people failures.

What are the criteria for the recruitment of board members?

Needed Skills and Talents²⁷ —

- 1) Competence in administrative area — management, finance, investment, law, accounting, public relations, fund raising. Together board members should have a range of competencies needed to carry out the duties of the board. In particular, the board should include some members with financial literacy.²⁸
- 2) Competence in program area — knowledge of and informed insight on the organization's programs.
- 3) Bridge to constituencies — widespread community buy-in requires a diverse board, including representation from groups the organization directly serves.
- 4) Community leadership — access to resources, influence with organizations important to the charitable nonprofit organization.
- 5) Balance — age, sex, ethnicity, geography.
- 6) Commitment — give time and funds and participate in fund raising.

²⁷ See Hummel, *Starting and Running a Nonprofit Organization*, University of Minnesota Press (2nd ed 1996) pp. 16-17.

²⁸ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 11 (defining financial literacy as "the ability to understand financial statements, to evaluate the bids of accounting firms that may undertake an audit or review and to assist the board in making sound financial decisions.").

Outsider vs. Insider Directors — Unlike most for-profit corporation boards, charitable nonprofit corporation boards generally consist of “outside” volunteers. The board should consist primarily of independent persons who are not employees. Sometimes the paid executive director is also a board member. “Inside” board members should be held to a minimum. There ought to be a regular opportunity in the board meetings to excuse “insiders” who are subject to board review as employees.

Ex Officio Directors — An “ex officio” board member is a person who serves in a specified organizational office and serves on the board so long as that person occupies that specific organizational office. Examples are the paid CEO and the head of a friends support group. Unless otherwise provided in the articles of incorporation or the bylaws, ex officio board members have voting rights.²⁹

Compensation — In charitable nonprofit organizations there should be a strong commitment to boards serving in a voluntary capacity. If a charitable nonprofit organization wishes to compensate board members beyond reasonable expense reimbursement, it needs to have significant justification. Such compensation needs to be reasonable and comparable to that paid in comparable organizations.³⁰ “Unless the articles of incorporation or bylaws of a corporation provide otherwise, a board of directors may fix the compensation of directors.”³¹

Board Attitudes — Board members must be able and willing to work and contribute the strengths they have. Board members should have a positive attitude toward the organization!

Board members should be:

1. Knowledgeable
2. Interested
3. Enthusiastic
4. Accountable
5. Imaginative
6. Team players

Inform Board of Duties — Make it clear that board membership is not an honorary position. For example, the letter confirming election to the board should set forth expectations.

Dear Board Member:

The period just ahead will be an exciting and demanding one for the organization. The Board of Directors has important work to do.

As a Director, you are expected to attend board meetings, contribute your skills and play an active role in the development of resources through advice, personal contributions, suggestions of contacts, and solicitation of others. You are also expected to be an active member of one of the standing committees.

²⁹ For additional information on legal authority allowing for ex officio board members, see *supra* “Methods of Selecting Directors.”

³⁰ See *supra* note 24 and accompanying text; see also *infra* the “Legal Accountability” section and in particular footnotes 61-66 and accompanying text (discussing intermediate sanctions).

³¹ IOWA CODE § 504.812.

Active Board — Every board member should have a skill to contribute to the charitable nonprofit organization. Board members should not check their talents at the door of the board meeting. Every board member should have a committee assignment. Rotating committee assignments is a key way to broaden a board member's understanding and knowledge of the organization thereby enhancing competency in board governance. The quality of a board member's time should be emphasized.

Board Recruitment — The expanding number of charitable nonprofit organizations increases competition for "prominent" people to serve as board members. It is more effective to seek out people with talent and passion who are not overcommitted. People should be recruited who have potential. Good board members are difficult to recruit from the private sector because their careers are taking more time, and there are more charitable nonprofit organizations seeking them as board members. Use their time wisely and selectively so that they feel they have clear tasks to undertake and complete. Meeting attendance alone is not the sole criterion to judge performance by board members.

Board Orientation — Either individually or collectively, new board members should receive oral and written orientation to their responsibilities including fund raising and giving. All board members should receive an updated Board Manual annually. *See Appendix 4.*

Board Size —

1. Large — functions through an executive committee.
2. Small — functions as a committee of the whole.

"The board of directors of a corporation must consist of one or more individuals, with the number specified in or fixed in accordance with the articles or bylaws."³² Iowa charitable nonprofit organizations may specify a number range for the directors which allows the organization flexibility in its board size. A board should have at least five members to be viable.

Board size depends on the particular mission of the organization. If the geographic area served by the charitable nonprofit organization is large, it is desirable to have representatives on the board from all sections of the area. If the community served is ethnically diverse, that diversity should be represented in the board membership. Where the charitable nonprofit organization is particularly dependent on private contributions, such as religious and cultural institutions, boards tend to be larger because of the need to have many board members with a special ability to raise funds. It is also important and useful to have board representation from categories of persons served by the charitable nonprofit organization. The more complicated the service rendered by a charitable nonprofit organization, the more varied are the skills needed of board members who are knowledgeable about areas such as accounting, programming, marketing, and investing. Overall, the most important factor is that the board is the appropriate size to fulfill its fiduciary and other governance duties responsibly and effectively.³³

³² IOWA CODE § 504.803(1).

³³ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 10.

The role of the board varies between small and big charitable nonprofit organizations where there is staff. It is essential that all directors feel that their talents are needed and used effectively. The bigger the board, the greater the challenge to keep each board member engaged. In the case of a small board, it can function as a committee of the whole.

When the board is large and/or meets quarterly, there is usually an Executive Committee. The Executive Committee can take routine action between meetings of the full board but should report its actions at the next meeting of the full board.³⁴ Certain actions outlined in IOWA CODE § 504.826(5) can only be taken by the full board.³⁵ The Executive Committee sets the agenda for the board meetings and regularly reviews the work of board committees and staff. The Executive Committee is usually chaired by the board chair and ordinarily consists of the secretary, treasurer, and chairs of the standing board committees who are often described as vice chairs of the board.

An Executive Committee should not appear "exclusive." It is imperative to avoid an "inner circle mentality" which leaves the other board members feeling they are outsiders. The Executive Committee must not operate so that the full board considers itself an irrelevant body not privy to and actively involved in board affairs.

Length of Board Service — It is important to identify the length of the terms of directors in the bylaws. If they are silent, directors' terms cannot exceed 5 years.³⁶ Frequently, terms are for three years. The organization may stagger the terms of the directors in order to provide governance continuity with for example 1/3 of the terms expiring every year.³⁷ Additionally, if the charitable nonprofit organization uses staggered terms Iowa Code § 504.806 states that "[t]he terms of the several groups [of directors] need not be uniform."³⁸ Many charitable nonprofit organizations set a two consecutive term limit allowing a board member to return after being off the board for a year. This is an easy way of rotating off the board, members who are not sufficiently active or may not be functioning effectively. An alternative approach is to have no limit on the number of terms which a board member can serve. This approach enables you to retain good board members rather than losing them to other organizations during the lay off year. This latter approach requires a courageous nominating committee and board chair willing to notify board members who are not going to be re-nominated.

³⁴ See IOWA CODE § 504.826.

³⁵ A committee of the board shall not, however, do any of the following:

- a. Authorize distributions.
- b. Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets.
- c. Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees.
- d. Adopt, amend, or repeal the articles or bylaws.

IOWA CODE § 504.826(5).

³⁶ IOWA CODE § 504.805(1).

³⁷ See IOWA CODE § 504.806.

³⁸ IOWA CODE § 504.806.

Director Attendance Requirements — “The board should establish and implement an attendance policy that requires board members to attend meetings regularly[,]” unless excused.³⁹ The IOWA CODE provides:

If at the beginning of a director’s term on the board the articles or bylaws provide that a director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of directors then in office votes for the removal.⁴⁰

IV. HOW DOES THE GOVERNING BOARD FUNCTION?

The board is a team. It functions as a body rather than as individuals. The team leader is the board chair who works closely with the paid executive director to provide the team with information and involvement.

The IOWA CODE contemplates that the organizational structure of the board will be set in the articles of incorporation⁴¹ or the bylaws⁴² adopted by the board of directors. It is preferable to use the bylaws to set the organizational structure because the bylaws can be amended more easily than the articles of incorporation which require approval by the Secretary of State of Iowa. If no provision is made in the articles of incorporation or the bylaws, the IOWA CODE partially fills the void with statutes dealing with the number and election of directors, the terms of directors, board vacancies, quorum requirements, board committees, place and notice of board meetings, officers, books and records, and availability of information.⁴³

Once the organizational structure is in place, the continuing challenge for the board and its leadership is the fostering of a collegial environment that leads to appropriate and worthwhile involvement of the board in advancing the mission of the organization. Board members are usually volunteers whose time should be respected by staff. The board should focus on major issues and resolve them in a timely and knowledgeable manner. The effectiveness of the board depends in large measure on the leadership of the board chair working collaboratively with the executive director.

³⁹ The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Principles for Good Governance and Ethical Practice,” October, 2007, § 9.

⁴⁰ IOWA CODE § 504.808(9).

⁴¹ IOWA CODE § 504.202(2)(c).

⁴² IOWA CODE § 504.206.

⁴³ For the statutes dealing with the number and election of directors, see IOWA CODE §§ 504.803-504.804. For the statutes dealing with terms of directors, see IOWA CODE §§ 504.805-504.806. For the statutes dealing with the resignation and removal of directors, see IOWA CODE §§ 504.807-504.810. For the statute dealing with board vacancies, see IOWA CODE § 504.811. For the statute dealing with quorum requirements, see IOWA CODE § 504.825. For the statute dealing with board committees, see IOWA CODE § 504.826. For the statutes dealing with place and notice of board meetings, see IOWA CODE §§ 504.821-504.824. For the statutes dealing with officers, see IOWA CODE §§ 504.841-504.846. For the statute dealing with the requirement to keep books and records, see IOWA CODE § 504.1601. For the statutes dealing with the availability of information of the organization, see IOWA CODE §§ 504.1602-504.1607 and IOWA CODE §§ 504.1611-504.1613.

Board meetings are essential. They are a forum for group discussion. The number of board meetings necessary may vary depending on the circumstances of the nonprofit charitable organization, but the board should determine the appropriate number of meetings needed to fulfill the charitable nonprofit organization's mission and goals.⁴⁴ Board meeting attendance should be regular,⁴⁵ and the meetings themselves should be in person. In person meetings include meetings that use telecommunications technology such as conference calls and video conferencing in order to facilitate involvement of all the board members.⁴⁶ Notwithstanding the importance of in person director meetings, this meeting form is not required to take unanimous board action when "each director signs a consent describing the action to be taken and delivers it to the corporation."⁴⁷ However, action by unanimous written consent should be done sparingly.

Board and board committee meetings should be regular and engaging. They should last between one hour and one and one half hours. They should not consist of a series of boring reports. Committee and executive director reports should be attached to the agenda and sent to the board members for review prior to the board meeting. The reports should be informative and listed as a "consent" item on the agenda. At the beginning of each board meeting, the chair should ask if there are any questions about the reports and previous meeting's minutes and if the committee chair and executive director wish to bring any particular item to the attention of the board.

Following the "consent" item, the next agenda item should be a succinct and clear financial report in lay persons' terms which accurately presents the state of income and expenditures in the context of the adopted budget forecast for that month or quarter. The board needs to define and adopt the financial presentation format best suited to keep them fully apprised of the financial state of the charitable nonprofit organization. Very likely, that format is a simple income and expenditure forecast spread over the fiscal year. The formal accounting required by generally accepted accounting principles (GAAP) may not be clear enough as to the financial condition of the organization as the budget year progresses. For effective board oversight, budget projections should be tied to programs so that adjustments to programs can be made if income projections are not met. **IT IS ESSENTIAL THAT THE BOARD HAVE CURRENT KNOWLEDGE OF THE ORGANIZATION'S FINANCIAL SITUATION SO THAT IT CAN TAKE APPROPRIATE ACTION TO KEEP THE BUDGET BALANCED.**

After the "consent" and financial agenda items have been covered, it is desirable to concentrate on one major aspect of the charitable nonprofit organization's activities at each board meeting. This could be an emergency issue or a rotating in depth discussion of the work of the committees of the board. Open discussion should be encouraged. Pros and cons should be discussed. This is the opportunity to take advantage of the board members' skills. Too often board members check their skills at the door of the board meeting. Either they do not want to offend their peers or staff, or they are not at ease in group discussion. They need to realize that they were recruited to be on the board because of their particular skills.

⁴⁴ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 9.

⁴⁵ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 9.

⁴⁶ See IOWA CODE § 504.821(3).

⁴⁷ IOWA CODE § 504.822.

Some board chairs do not feel comfortable moderating debate. Moreover, the staff instinctively wants only board approval and not discussion. Both good board oversight and the board's fiduciary duties are served by thorough discussion of issues. Opinions other than those of the executive director and the board chairperson should be actively solicited from the board. It is desirable to gain the opinions of all board members around the table and to ask each board member to comment before voting on an issue. Open discussion is necessary to engage board interest, to make good decisions, and to discharge the fiduciary duty of care borne by both the board members and the executive director. Where else can you get so much good information and insight free? Where else will you get an external perspective? It is essential to listen to — and learn from — the board members at these meetings. It is important to reflect the discussion in the board minutes as evidence of the directors' duty of care.

When a decision has been taken by the board, all board members must honor the decision including those who voted against it. Reasonable people can agree to disagree reasonably and live by the decision of the majority of the board. It is important to note debate in the board minutes as evidence of the board's duty of care. Depending on the seriousness of the issue, where a board member feels strongly that the board is in error, such a member should resign from the board. The IOWA CODE states, "A director of a [nonprofit] corporation may resign at any time by delivering written notice to the board of directors, its presiding officer, or the president or secretary."⁴⁸ The remaining board members should be respectful and reflective of the resigning director's dissenting opinion.

Between board meetings, it is vital to provide the board additional information through regular written reports and letters to them. Board members should never hear anything about the charitable nonprofit organization first in the media or from someone other than the board chair or the executive director. Whenever there is bad news, it should be delivered immediately by the executive director, first to the board chair and then to the whole board through the board chair.

Charitable nonprofit boards may conclude their meetings with an executive session without staff including the executive director even if she or he is an ex officio member of the board. This should certainly be the case where the executive director is being evaluated or compensation set. An executive director also may desire to be excused regularly so that board concerns can be openly discussed and addressed and then conveyed by the board chair to the executive director.

Regardless of board size, most boards have committees which focus on the major activities of the charitable nonprofit organization. This is an excellent way to engage the skills and insights of the board. The board usually creates standing and ad hoc committees of the board and appoints members to them.⁴⁹ In particular, with respect to board committees IOWA CODE § 504.826 provides:

1. Unless prohibited or limited by the articles or bylaws of a corporation, the board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors, who serve at the pleasure of the board.

⁴⁸ IOWA CODE § 504.807 (1).

⁴⁹ See IOWA CODE §§ 504.825 and 504.826.

2. The creation of a committee and appointment of members to it must be approved by the greater of either of the following:
 - a. A majority of all the directors in office when the action is taken.
 - b. The number of directors required by the articles or bylaws to take action under section 504.825.
3. Sections 504.821 through 504.825, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.
4. To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 504.801.
5. A committee of the board shall not, however, do any of the following:
 - a. Authorize distributions.
 - b. Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets.
 - c. Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees.
 - d. Adopt, amend, or repeal the articles or bylaws.
6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 504.831.⁵⁰

Typical board committees include the following:

- Executive
- Program/Client Services
- Budget and Finance
- Audit
- Investment
- Personnel (Human Resources)
- Fund Raising
- Marketing/Public Relations
- Facilities
- Nominating (Governance)
- Legal Compliance
- Strategic Planning
- Risk Management

These listed committees are usually standing committees established in the bylaws. Some of these functions may be combined into fewer committees depending on the size of the board, but where possible the audit function should be separated from the budget, finance, and investment functions.⁵¹

As to committee charges, see **Appendix 5**.

⁵⁰ IOWA CODE § 504.826.

⁵¹ As to committee charges, see Appendix 5.

Often, a charitable nonprofit organization's bylaws empower the board chair to appoint the committee chairs. Both standing and ad hoc committees of the board should be chaired by a board member and the committee members should be board members. In addition, committees can have staff liaisons, which afford a setting in which important staff/board dialogue can take place.⁵²

As mentioned at the outset, there is only one governing board. However, an Iowa charitable nonprofit organization may also have support or advisory boards or committees. These are usually established in the bylaws or by resolution of the governing board, but they are not board committees with governance responsibilities. There should be at least one governing board member on the advisory boards or committees for liaison purposes. Indeed, the bylaws may provide that the appointed or elected leader of the advisory or support group is an ex officio member (with or without vote) of the governing board. Such advisory groups may be "friends of the organization;" groups interested in advancing the charitable nonprofit organization through volunteering, advocacy, fundraising, peer association, and/or specific programmatic interest groups. Sometimes the governing board or chair of the group selects the group members and officers. Usually, the group selects its own members and officers. It is also important to have a staff member, if one is available, to work actively with the group. These advisory groups are an excellent way to identify future board members or engage the talents of people who do not want the time requirement of board membership.

V. WHAT IS THE ROLE OF THE GOVERNING BOARD CHAIR?

The board chair is key in institutional dynamics. Institutional transition always flows through the board chair.

Whose responsibility is it to select the board chair? The responsibility lies with the board itself working through its nominating (governance) committee. The board chair, however, must not be selected by default. The board chair must have the skills and disposition needed for board leadership. If the board is sluggish in identifying and mentoring new board chairs, then it is the delicate responsibility of the executive director to nudge gently and unobtrusively, yet persistently, the incumbent board chair and nominating committee to start. At no time should the board feel that the executive director is selecting the next board chair. Discussion about moving board leadership transition forward should be between the board chair and the chair of the nominating committee. Those chairs need to seek the confidential assessment of the executive director as to the qualities of the various board members and as to the organizational challenges facing the next board chair.

Together the board chair and the executive director must chart the course of the board's work and the executive committee's work, if one exists. They must be sure that the appropriate committees are appointed and staffed. They must develop the meeting agenda. They must determine what policies should be adopted by the board in order to discharge the board's fiduciary responsibilities. Together the board chair and executive director must create a collegial atmosphere for the conduct of board and committee meetings.

⁵² See IOWA CODE § 504.831(3), (4), (5)(a).

In one sense, the board chair is the head coach and the executive director is the captain of the nonprofit team. The chairperson as the head coach consults with the board members who are like the assistant coaches. The coaches set the policies, and the captain with the staff players execute the policies. During execution of the plays, the coaches do not come on the field.

There are many kinds of successful board chair styles. No two board chairs are the same in performance. Yet, successful board chairs have certain common qualities. Successful board chairs must be:

1. enthusiastic about — and committed to — the organizational mission;
2. able to prioritize time and issues for the board;
3. available to orient board members to their role as members of a team which acts and speaks together as a board with respect to the staff and the public;
4. welcoming and friendly to all board members;
5. encouraging of board members actively applying their skills in the work of the board and the organization and in voicing their opinions in board meetings;
6. considerate and respectful of the views of other board members;
7. able to conduct an effective board meeting that stimulates debate and still reaches closure on issues in a timely fashion leaving board members with the feeling they have been encouraged to express their views and understanding the reasons why the board took the action it did;
8. open minded with respect to change;
9. farsighted as to conditions likely to affect the future of the organization;
10. collaborative with the executive director in all matters pertaining to the organization including the work of the board;
11. available to the executive director when needed;
12. counselor to — and confidant of — the executive director;
13. direct and candid in evaluating the executive director and individual board members;
14. friendly to — and respectful of — the organization's many constituencies including listening and responding to their views; and
15. a public advocate for the organization.

Different board chairs will function differently. It is, however, essential that board chairs know what their responsibilities are. As in the case of board members, there ought to be a position description for the board chair. *See Appendix 6.*

In sum, the board chair must recognize that she or he is a team builder. The board chair acts in concert with the board which elected the board chair. Board chairs must also recognize that they should stay out of administrative matters. If the executive director is not performing satisfactorily, the board chair and the board should replace the executive director rather than cross the line from policy making into policy administration.

Increasingly, charitable nonprofit boards engage in annual reviews of their performance as a board. These evaluations also focus on the effectiveness of the board chair and individual directors. Nonprofit board evaluations should be standard procedure given the public concerns for well-managed charitable nonprofit organizations. Board members authorized to conduct performance reviews "should be empowered to discuss problems of attendance or other aspects

of board performance with individual members to ascertain whether the problem can be corrected or the individual needs to resign or be removed from the board.”⁵³ For an illustrative nonprofit board self-evaluation form, see **Appendix 7**.

VI. WHAT IS THE ROLE OF THE EXECUTIVE DIRECTOR AND STAFF WITH THE GOVERNING BOARD?

Most governance discussion is from the governing board’s point of view rather than from the perspective of the executive director and the staff.

The relationship flowing from the board to the executive director is clear. The executive director is appointed, evaluated, and, if necessary, terminated by the board.⁵⁴ For a sample executive director position description evaluation form, see **Appendix 8**; and for an executive director evaluation, see **Appendix 9**.

The relationship to the board from the executive director’s point of view is less clear, both legally and psychologically. Regardless of whether or not the executive director is an ex officio member of the board, the executive director’s relationship with the board varies according to the personalities and the traditions of each charitable nonprofit organization. The board chair is the pivot around which these relationships revolve.

At best, there is a trusting and open relationship between the board chair and the executive director. The relationship between these two parties must be one of candor and mutual respect. They are the intersection between the board and the staff. The board must function as a board and convey information through the board chair to the executive director. The executive director then conveys this information to the staff. The staff must function as a staff and convey information through the executive director to the board chair. The board chair then conveys this information to the board. While individual members of the board and staff will work, converse, and learn together through committees and other organizational activities, it must always be remembered that “the buck stops” with the board chair and the executive director.

Both board and staff members chafe under a formal communication process. Therefore, it is imperative for the board chair and the executive director to be open with their colleagues so that there is no need for anybody to circumvent that process. Bad news and dissent must freely flow through these two communication conduits. Otherwise, protocol will be short circuited because basic relationships are fraying to the detriment of the organization.

There is impending disaster when relationships fray between the board chair and the executive director. When that happens, both must be careful as to whom they turn for counsel. First, they should talk it out between themselves. Second, and this is treacherous, if the executive director or the board chair needs the counsel of a third person, it is usually good to

⁵³ The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Principles for Good Governance and Ethical Practice,” October, 2007, § 16.

⁵⁴ IOWA CODE §§ 504.841(1) and 504.844 (2)(a).

speak to a prior board chair who enjoys the respect of both the staff and the board. Less desirable is involving a former executive director.

Former executive directors have the responsibility to support their successors in their difficult role as leaders. Of course, there are times of crisis when incumbent leadership fails and where the former executive director may need to be called upon for counsel. But, former executive directors should be careful to respond only in organizational crisis when asked by the board chair.

What is the role of the executive director in selecting board members, making board member committee assignments, and reelecting board members? Certainly, the executive director can make suggestions to the nominating committee when asked about persons with whom he or she has some insight or experience. Never should the executive director push hard for a candidate because resistance will build. It is important that there be a comfortable involvement of the executive director in the deliberations of the nominating committee and the board as they find new board members and assign them board responsibilities.

As stated previously, even where the executive director is an *ex officio* member of the board, it is important that the board be given a regular opportunity to meet without the executive director being present. That should be done at least once a year at the discussion of the annual evaluation and the compensation of the executive director.⁵⁵ It creates a positive environment for the board and the executive director if the executive director leaves every board meeting before it concludes. In this way the board never feels under total surveillance by the executive director, and the board feels comfortable in expressing any concerns they have or they may have heard from any source, particularly those outside the charitable nonprofit organization. Open discussion is the best way of assuring a good working relationship between the board and the executive director.

Staff Relations to Board—The staff goes through the executive director to the board unless a staff member serves as a liaison to a board committee. The executive director and the staff need to be open, patient, and not defensive with the board. The staff should return board telephone calls right away. The major burden of the daily operations of a charitable nonprofit organization falls on the professional staff. The staff must, however, work with the board in generating, adopting, and monitoring policy. The content of board and committee meetings should be regularly reported to the staff. Information will breed understanding. It is important to maintain personal as well as written contact with board members. Like all volunteers, board members are entitled to staff support and respect. The staff needs to express appreciation to board members as they work together. Similarly, board members need to express appreciation to the staff with whom they work.

The greatness of the American charitable nonprofit sector is due in large part to the tradition that its boards consist of citizen volunteers. While board members give generously of their time, talents, and funds they are part-time stewards. Nevertheless, under Iowa law the board is ultimately responsible for the organization. Executive directors serve at the pleasure of the board,

⁵⁵ For additional information concerning compensation of executive directors, see *supra* note 24 and accompanying text. For an example of an evaluation form of an executive director, see Appendix 9.

notwithstanding the fact that the executive director is the prime mover in the organization. Executive directors should always remember that while boards need an executive director, they do not necessarily need a particular person in that position. No executive director is indispensable. Executive directors are most effective when they are not proprietary and when they understand, respect, and foster the role of the board.⁵⁶

VII. HOW IS THE GOVERNING BOARD ACCOUNTABLE?

Because a private Iowa charitable nonprofit organization is a quasi-public institution, it is publicly accountable. The board is accountable for the actions of the charitable nonprofit organization since the board of directors has the ultimate responsibility for the organization. Being accountable is being answerable in the forum of public opinion and courts of law. Charitable nonprofit organizations no longer enjoy the "charitable immunity" of earlier eras which exempted them from many legal obligations. Nor do charitable nonprofit organizations enjoy unquestioning public confidence. Charitable nonprofit organizations can be sued.⁵⁷ Further, charitable nonprofit organizations are coming under increasing scrutiny in a "gotcha" media environment and a litigious society. Greater overall public concern for charitable nonprofit organizations creates an opportunity to strengthen the Iowa charitable nonprofit sector through continuing self-examination and self-regulation by establishing good operational practices and ethical standards, and by embracing transparency and openness with the public.⁵⁸

LEGAL ACCOUNTABILITY

The board and, therefore, its members have the basic responsibility for the charitable nonprofit organization. Unlike for-profit business board members, Iowa charitable nonprofit board members are usually unpaid volunteers. Legislatures, courts, and regulators are mindful of that difference, and they do not want to place heavy burdens on public spirited citizens who give generously and freely of their time in serving their community. Nevertheless, it is important to inform these volunteer board members of their responsibilities and what steps they should take as prudent stewards. Being a prudent steward is the best way to avoid individual board member liability.

Briefly stated charitable nonprofit board members should:

1. BE ACTIVE
2. ACT IN GOOD FAITH
3. RECEIVE NO MATERIAL PROFIT
4. AVOID CONFLICTS OF INTEREST
5. BE KNOWLEDGEABLE ABOUT THE ORGANIZATION'S AFFAIRS
6. EXERCISE REASONABLE JUDGMENT IN OVERSEEING THE ORGANIZATION'S AFFAIRS

⁵⁶ For a position description of the Executive Director/CEO which covers board relationships, see Appendix 8; and for a sample evaluation form, see Appendix 9.

⁵⁷ See IOWA CODE § 504.302(1).

⁵⁸ See *Iowa Principles and Practices for Charitable Nonprofit Excellence*, Principle XIII, "Accountability and Compliance" (2006).

7. ASSURE COMPLIANCE WITH APPLICABLE GOVERNMENTAL REGULATIONS

With the demise of “charitable immunity,” charitable nonprofit organizations and their boards can now be sued by third persons who allege that the organization has breached a contract with them or committed a tort against them.⁵⁹ Governments can also sue for failure to comply with applicable laws which carry penalties for noncompliance. While boards can be named as parties to such suits, individual liability of board members is significantly restricted by statutes in Iowa.⁶⁰

Additionally, board members must be aware of and protect themselves from the Internal Revenue Service assessments known as “intermediate sanctions,” which are assessed in relation to excessive benefit transactions occurring between the charitable nonprofit organization and the organization’s board members and key employees.⁶¹ These transactions may occur in a variety of ways, for example when a board member owns or has a stake in another company that contracts with the charitable nonprofit organization to perform work at a price above the market rate, or when a charitable nonprofit organization provides excessive compensation to its board members or key employees. Nonprofit charitable organizations may compensate board members, chief executive officers, and staff for their services;⁶² although, as stated previously nonprofit board members are not usually compensated.

The compensation level of these individuals must be reasonable and comparable to compensation levels paid by “similarly situated organizations.”⁶³ If the compensation paid by the charitable nonprofit organization is deemed unreasonable the organization may be subject to intermediate sanctions under Internal Revenue Code § 4958.⁶⁴ To avoid the possibility of intermediate sanctions because of excessive compensation, the board should establish an executive compensation committee that does not include board members that may have a conflict of interest.⁶⁵ When intermediate sanctions are assessed “[b]oard members . . . are generally jointly and severally liable for a tax of . . . 10 percent of the excess benefit [awarded to the compensated individual]. . . capped at \$20,000 per transaction, unless their participation is not willful and due to reasonable cause.”⁶⁶ Therefore, it is important that the board members exercise their duty of care when determining employment contract terms and other contract terms within a nonprofit charitable organization.

⁵⁹ See IOWA CODE § 504.302(1).

⁶⁰ See IOWA CODE §§ 504.202, 504.832, 504.901, and 613.19. For a discussion of the application of these statutes follows, see *infra* “Claims Against Directors,” “Volunteer Protection Statutes,” “Indemnification,” and “Director and Officers Insurance.”

⁶¹ The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Draft Principles for Good Governance and Ethical Practice,” March (draft), 2007, § 11 (citing I.R.C. §§ 4941, 4958). See I.R.C. § 4958(c)(1) for the definition of excess benefit transaction.

⁶² The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Principles for Good Governance and Ethical Practice,” October, 2007, § 13 (discussing compensation of chief executive officer and staff).

⁶³ The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Draft Principles for Good Governance and Ethical Practice,” March (draft), 2007, § 11.

⁶⁴ See I.R.C. §4958(a) for the amount of initial taxes that are levied if an excess benefit transaction occurs. In addition, see *supra* note 24 and the accompanying text for an explanation of reasonable compensation.

⁶⁵ The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Draft Principles for Good Governance and Ethical Practice,” March (draft), 2007, §11.

⁶⁶ The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Draft Principles for Good Governance and Ethical Practice,” March (draft), 2007, § 11. See I.R.C. §4958(a)(2).

FIDUCIARY DUTIES

There is potential personal liability for board members when they have breached **one** of their fiduciary duties. Board members have always had fiduciary duties toward the Iowa **charitable** nonprofit organization itself. This reflects the public obligation of a board member. Board members have three types of fiduciary duties: duty of loyalty, duty of care, and duty of obedience.

DUTY OF LOYALTY

Basically, the duty of loyalty requires board members to put the interests of the Iowa charitable nonprofit organization ahead of their personal interests. Specifically, they have a duty of loyalty to the organization that requires acting “in good faith” and “in a manner . . . [they] reasonably believe[] to be in the best interests of the corporation.”⁶⁷ One aspect of the duty of loyalty deals with transactions involving conflicting interests. “A conflict of interest transaction is a transaction with the corporation in which the director of the corporation has a direct or indirect interest.”⁶⁸

There are two major forms of conflicts of interests: self-dealing and organizational opportunity.

SELF-DEALING — A conflict exists where the board member as an individual enters into a transaction with the charitable nonprofit organization. For example, there is a conflict of interest where a board member buys from or sells to the charitable nonprofit organization land, buildings, products, or services.

ORGANIZATIONAL OPPORTUNITY — If an opportunity related to the purposes of the charitable nonprofit organization comes to the attention of a board member either in his individual capacity or as a board member, it must be first offered to the organization before the board member can take advantage of the opportunity for himself.

The best way of satisfying the duty of loyalty is to avoid a conflict of interest. Normally, conflicts of interest are not prohibited. Many charitable nonprofit organizations recruit able board members who offer the organization a service or good substantially below fair market value. However, there must be procedures for removing the conflicted director from decision making related to the conflict of interest transaction. One method of implementing these procedures is through a conflicts of interest policy that is consistent with IOWA CODE § 504.833.⁶⁹ To further minimize conflicts of interest, “all board . . . members should be required to sign [the policy] and to disclose any material conflicts of interest, both at the time they join the organization and at the beginning of each new board year.”⁷⁰

For an example of an annual board disclosure form, see **Appendix 10**.

⁶⁷ IOWA CODE § 504.831(1).

⁶⁸ IOWA CODE § 504.833(1).

⁶⁹ See The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Principles for Good Governance and Ethical Practice,” October, 2007, § 3.

⁷⁰ The Panel on the Nonprofit Sector’s Advisory Committee on Self-Regulation, “Principles for Good Governance and Ethical Practice,” October, 2007, § 3.

In the absence of additional requirements or a prohibition of a particular conflict of interest in the articles of incorporation, bylaws, or a board resolution,⁷¹ the procedure for handling conflicts of interest is set forth in IOWA CODE § 504.833(2). This code section states:

A transaction in which a director of a corporation has a conflict of interest may be approved if either of the following occurs:

- a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction.
- b. The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.⁷²

The law permits the interested board member to be present, and vote when the board of directors, pursuant to IOWA CODE § 504.833(2)(a), authorize, approve, or ratify a transaction.⁷³ Nevertheless, it is preferable that the board member not be present and not vote in order to assure an uninhibited discussion of the conflict by the board members who are not conflicted. If the organization has legal members then these members may also, pursuant to IOWA CODE § 504.833(2)(b), authorize, approve, or ratify a transaction involving an interested board member.⁷⁴

An example of bylaw language dealing with conflict disclosure states:

Any possible conflict of interest on the part of any Director or member of the Director's immediate family shall be disclosed to the other Directors and made a matter of record through an annual disclosure procedure. When any such interest becomes relevant to any matter requiring board or committee action, it shall be called to the attention of the board or committee and the Director shall not be present for the discussion or the vote on any matter on which the Director or a member of the Director's family has a possible conflict of interest. However, any Director who is excluded from discussion and voting because of such possible conflict of interest may provide at the board's or committee's request pertinent factual information in order to assist the board or committee. The minutes of the meeting shall reflect that a disclosure was made and that the interested Director was absent from the discussion and voting in the matter. The provisions of this bylaw shall also apply to any person other than a Director, who is at any time serving as a member of any committee.

Sometimes a statute may prohibit a specific conflict of interest transaction. For example, IOWA CODE § 504.834 provides that "[a] corporation shall not lend money to or guarantee the obligation of a director or officer of the corporation. [However, t]he fact that a loan or guarantee

⁷¹ See IOWA CODE § 504.833(6).

⁷² IOWA CODE § 504.833(2).

⁷³ IOWA CODE § 504.833(4).

⁷⁴ IOWA CODE § 504.833(5).

is made in violation of this section does not affect the borrower's liability on the loan."⁷⁵ Bylaws also may prohibit specific conflicts such as:

1. soliciting or accepting gifts for personal gain when the director might be perceived as in a position to confer an organizational benefit on the gift giver;
2. using the organization's name, property, or facilities for personal benefit;
3. using the director's affiliation with the organization for personal gain; or
4. using confidential information obtained as a director for personal benefit.

As to confidentiality of information, commentators have noted that directors should not disclose information about the corporation's legitimate activities unless they are already known by the public or are in the public record.⁷⁶ In addition, an individual director is not to be considered a spokesperson for the corporation unless the board delegates such responsibility to the individual.

DUTY OF CARE

Board members have a duty to care for the charitable nonprofit organization's affairs by discharging "their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances."⁷⁷

The duty of care relates to both the need for a director to be knowledgeable when making a decision as part of the board's actions as well as knowledgeable in the oversight of the charitable nonprofit organization's affairs. Board members have the duty to be knowledgeable about the board's business, which requires that board members attend board meetings and are informed about organizational activities. Board action needs to be reasonable at the time the action was taken in light of the then known circumstances. The court judges the reasonableness of the action as it appeared when taken rather than how it appears at a later time. Consequently, board minutes should be extensive and reflect the facts and alternative actions presented to and adequately discussed by the board at the time a board decision is made. The reporting of split votes with reasons for the differences of opinion should be recorded. This enables a court at a subsequent date to determine the reasonableness of the action at the time taken rather than judging reasonableness on the basis of current hindsight.

Further evidence of fulfilling the duty of care is the setting and monitoring of board policies and practices such as those enumerated in **Appendix 3**. An important organizational policy that the board implements and that is receiving increasing discussion is that of risk management. "Risk management generally includes a review of potential risks to the organization's significant assets, such as its property, its good will, and its key programs and activities, and decisions about the most appropriate ways to protect those assets from loss."⁷⁸ Securing the necessary insurance

⁷⁵ IOWA CODE § 504.834.

⁷⁶ See, e.g., G.W. Overton and J.C. Frey, *Guidebooks for Directors of Nonprofit Corporations* (ABA 2nd ed 2002).

⁷⁷ IOWA CODE § 504.831(2).

⁷⁸ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 6.

coverage should only be one aspect of a charitable nonprofit organization's overall risk management plan. "Other financial strategies should . . . be considered to protect an organization's assets, such as establishing reserve funds to absorb minor losses, borrowing from lenders, and negotiating with third parties to assume certain losses."⁷⁹ Additional methods for minimizing the charitable nonprofit organization's risks include avoidance, modification, retention, or sharing.⁸⁰

The Nonprofit Risk Management Center advises that the first two steps in implementing a risk management plan are (1) "to determine [the] . . . purpose of the risk management [plan]", and (2) "to designate an individual or team responsible for developing and implementing [the] . . . risk management program."⁸¹ Typically, this responsibility will fall on board members and will require the formation of a Risk Management Committee. The Risk Management Center outlines a five-step process for a Risk Management Committee to follow in order to implement the charitable nonprofit organization's risk management plan: (1) "[a]cknowledge and identify risk," (2) "[e]valuate and prioritize risk," (3) "us[e] risk management strategies" for managing risk, (4) "[i]mplement your risk management plan," and (5) "[r]eview and revise the plan as needed."⁸²

DUTY OF OBEDIENCE

The board has the duty to adhere to the fundamental purpose for which the charitable nonprofit organization was created. Within the basic organizational purposes, things can be done differently over time in order to carry out the purpose effectively. The ends must remain the same, but the means can change as long as they do not materially alter the organization's substantive mission. The duty of obedience requires periodically updating the bylaws, reviewing the mission statement, and reviewing and evaluating organizational goals.⁸³ The purpose of the charitable nonprofit organization is usually set forth in the articles of incorporation or bylaws. In many instances, the purpose clause in the articles of incorporation or bylaws can be altered by a significant vote of 2/3rds or 3/4ths of the board as prescribed in the articles of incorporation, the bylaws, or by statutory provisions dealing with fundamental organizational change.⁸⁴

Because purpose clauses usually contain generic language required by Iowa law of all charitable nonprofit organizations, it is essential for the board to adopt a mission statement separate from the articles of incorporation or bylaws. The mission statement should clearly

⁷⁹ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 6.

⁸⁰ Nonprofit Risk Management Center, *The Role of the Risk Management Committee* (1999), <http://www.riskinstitute.org/PERI/PTR/The+Role+of+the+Risk+Management+Committee.htm>.

⁸¹ Nonprofit Risk Management Center, *Risk Management Basics* (1999), <http://www.riskinstitute.org/PERI/PTR/Risk+Management+Basics.htm>.

⁸² Nonprofit Risk Management Center, *The Role of the Risk Management Committee* (1999), <http://www.riskinstitute.org/PERI/PTR/The+Role+of+the+Risk+Management+Committee.htm>.

⁸³ See The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007 § 18 (stating that the organizational and governing instruments should be reviewed, and updated if necessary, at least once every five years); see also The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007 § 19 (stating that the mission and goals should be reviewed and evaluated every 5 years).

⁸⁴ For statutes governing amendments to the articles of incorporation and bylaws, mergers, sale of assets, and dissolution, see IOWA CODE §§ 504.1001, 504.1002, 504.1003, 504.1005, 504.1006, 504.1008, 504.1022, 504.1031, 504.1103, 504.1104, 504.1201, 504.1202, 504.1402, 504.1403, and 504.1404.

indicate what the Iowa charitable nonprofit organization actually does. In order to ensure that the actions of the organization are consistent with its stated mission, a periodic review by the board of the organizational mission statement should be conducted. The review of the organizational mission statement is a key component of strategic planning.

In addition, the board has the duty to ensure that the charitable nonprofit organization follows the applicable state and federal statutes and regulations. These include completing requirements related to keeping records, reporting to members, and filing reports with the Secretary of State of Iowa.⁸⁵ These, also, include filing annual information returns, such as Form 990, with the Internal Revenue Service.⁸⁶ These information returns serve as the primary document for providing information about the charitable nonprofit organization's finances, governance, operations, and programs to governmental regulators and the public; in addition, the organization ought to provide an annual report to its constituencies.⁸⁷ For a Legal Compliance Checklist see **Appendix 11**.

CLAIMS AGAINST DIRECTORS

The law has traditionally protected board members from harassing lawsuits involving breach of fiduciary duties. It has done so by limiting the numbers of persons with legal standing to sue. Board members can sue other present or past board members for breach of fiduciary duties. Legal members have the power to bring derivative actions against directors in the name of an Iowa charitable nonprofit organization when they "represent [] five percent or more of the voting power of the corporation or [are a group of] fifty members, whichever is less."⁸⁸ It is less clear whether other parties with a specific connection to an Iowa charitable nonprofit organization can bring suit. Others must seek redress by appealing to the Iowa Attorney General to bring an action for breach of fiduciary duties.

The Attorney General has historically represented the public in providing oversight of charitable organizations. However, it is within the sole discretion of the Attorney General as to whether to initiate litigation. The exercise of that discretion by the Attorney General cannot be directed by a court. Most state attorneys general have a small staff and, therefore, cannot provide oversight of charitable nonprofit organizations except in the most egregious cases which become the subject of media and public concern.

Currently, IOWA CODE § 504.304(3) provides that "[a] corporation's power to act may be challenged in a proceeding against an incumbent or former director The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative, or in the case of a public benefit corporation, by the attorney general."⁸⁹

⁸⁵ See IOWA CODE §§ 504.1601, 504.1602, 504.1605, 504.1611, 504.1612, and 504.1613.

⁸⁶ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 7.

⁸⁷ The Panel on the Nonprofit Sector's Advisory Committee on Self-Regulation, "Principles for Good Governance and Ethical Practice," October, 2007, § 7.

⁸⁸ IOWA CODE § 504.632.

⁸⁹ IOWA CODE § 504.304(3).

Additionally, with the end of charitable immunity from breach of contract and tort liability, the expansion of government regulation, and increased public focus on fiduciary duties of for-profit and nonprofit board members, citizens are increasingly wary of serving as volunteer unpaid board members of charitable nonprofit organizations.

However, public policy encourages people to volunteer by protecting them against unjustified claims by:

1. statutes protecting volunteers from personal liability;
2. statutes, articles of incorporation, and bylaws authorizing indemnification of nonprofit directors; and
3. insurance policies for directors and officers.

VOLUNTEER PROTECTION STATUTES

IOWA CODE § 504.901 provides that:

a director, officer, employee, or member of a corporation is not liable for the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity to any person for any action taken or failure to take any action in the discharge of the person's duties except liability for any of the following:

1. The amount of any financial benefit to which the person is not entitled.
2. An intentional infliction of harm on the corporation or the members.
3. A violation of section 504.835[, dealing with unlawful distribution of organizational assets].
4. An intentional violation of criminal law.⁹⁰

IOWA CODE § 613.19 provides similar protections for these same individuals where the individuals receive no compensation or personal benefit from an unincorporated Iowa charitable nonprofit organization. The Iowa provisions parallel the federal Volunteer Protection Act, which provides immunity from liability where a director is unpaid.⁹¹

It is unclear whether these statutes protect the volunteer director from liability under IOWA CODE § 504.204, which provides for liability where a director acts on behalf of a charitable nonprofit organization knowing that the organization was not incorporated or under IOWA CODE § 504.304 where the director takes action which exceeds the authority of the charitable nonprofit organization.

INDEMNIFICATION

IOWA CODE §§ 504.852 (Permissible Indemnification), 504.853 (Mandatory Indemnification), and 504.855 (Court-Ordered Indemnification) allow for indemnification of directors and officers for expenses incurred in litigation on account of their positions with the charitable nonprofit organization. In addition, IOWA CODE § 504.854 allows a charitable nonprofit organization to advance costs and reimburse a director for costs incurred in defending

⁹⁰ IOWA CODE § 504.901.

⁹¹ 42 U.S.C. §§ 14501-505.

against a legal action when the director affirms in writing that the director in good faith has met the required standard of conduct for permissible indemnification and will repay the advanced funds if it is determined that the director has not met the standard for indemnity.⁹² Also, a charitable nonprofit organization may, through a provision in its articles of incorporation, alter the procedure for making decisions on granting indemnification and authorizing advances for expenses. In particular, a charitable nonprofit organization can include a provision in its articles of incorporation obligating itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with IOWA CODE § 504.852 or advance funds to pay for or reimburse expenses in accordance with IOWA CODE § 504.854. IOWA CODE § 504.202(e) authorizes such a provision to be included in the articles of incorporation. Also, the articles of incorporation can include provisions eliminating or limiting director liability for money damages.⁹³ This is in addition to the personal liability protection available to directors under IOWA CODE § 504.901.

DIRECTOR AND OFFICERS INSURANCE

It is highly desirable for a charitable nonprofit organization to purchase directors and officers insurance to assure adequate funds to reimburse a volunteer director for costs involved in litigation where the director has acted in good faith and with due care. While the statutory liability shield (discussed in IOWA CODE § 504.901) often will protect a director from liability for monetary damages, it does not preclude a lawsuit from being filed and a director or the corporation incurring significant expenses in litigating the matter. Director and organization insurance coverage usually covers such expenses.⁹⁴

GOOD PRACTICES AND ETHICAL CONDUCT

Because Iowa charitable nonprofit organizations hold a public trust, they have a duty of accountability. They have a duty to operate in both an effective and efficient manner. They also need to be ethical and transparent in their actions. In short, Iowa charitable nonprofit organizations need to:

DO GOOD WELL — effectively and efficiently (legal compliance and good management practices); and

DO WELL GOOD — ethically and openly (organizational values that build public trust).

DO GOOD WELL

1. Legal Compliance and Good Management Practices

In recent years there has been considerable public and governmental concern about the conduct and practices of charitable nonprofit organizations. There have been calls for greater government regulation of charitable nonprofit organizations at all levels of government. While some additional regulation may be appropriate, most transgressions committed by charitable nonprofit organizations are due to ignorance and inattention. These are better addressed by education and self-regulation.

⁹² IOWA CODE § 504.854.

⁹³ IOWA CODE § 504.202(d).

⁹⁴ See IOWA CODE § 504.858 (authorizing purchase of insurance by the charitable nonprofit organization).

In order to advance accountability of Iowa charitable nonprofit organizations, The Governor's Task Force on the Role of Charitable Nonprofit Organizations in Iowa in its 2005 report included as a major goal the setting of principles and practices to promote greater effectiveness and accountability. The Task Force proceeded to develop and adopt the *Iowa Principles and Practices for Charitable Nonprofit Excellence*. The Preamble of the Principles and Practices provides:

The purpose of the Iowa Principles and Practices for Charitable Nonprofit Excellence is to promote good management practices, ethical conduct, and public accountability for Iowa charitable nonprofit organizations as they perform their crucial community services. The Iowa Principles and Practices for Charitable Nonprofit Excellence recognize that good organizational practices are primarily implemented through education and self-regulation. The Principles and Practices are not regulatory. While many of the Principles and Practices will be helpful to all nonprofits, they are specifically written for 501(c)(3) organizations. The Iowa Principles and Practices for Charitable Nonprofit Excellence are intended to be primarily an educational process designed to improve efficiency and accountability. Iowa is enriched by the great diversity of kinds of nonprofits, and it is recognized that the implementation of these Principles and Practices will take different forms and occur at different levels given the resources of the nonprofits.⁹⁵

The Principles and Practices cover 13 general categories:

- I. Role of Charitable Nonprofit Organizations
- II. Starting the Charitable Nonprofit
- III. Mission Statement
- IV. Strategic Planning
- V. Board of Directors
- VI. Executive Director
- VII. Human Resources
- VIII. Financing and Funding
- IX. Communication
- X. Information Technology
- XI. Advocacy
- XII. Collaboration
- XIII. Accountability and Compliance

The focus of the Principles and Practices is good administrative and operational practices regardless of the Iowa charitable nonprofit organization's field of endeavor. In other words, these are the practices best suited to ensure that every Iowa charitable nonprofit organization operates efficiently and effectively.

The Task Force also designated the Larned A. Waterman Iowa Nonprofit Resource Center as the host for the Iowa Register of Accountability. The Iowa Register of Accountability on the Larned A. Waterman Iowa Nonprofit Resource Center website is a voluntary listing of Iowa

⁹⁵ *Iowa Principles and Practices for Charitable Nonprofit Excellence*, "Preamble" (2006).

charitable nonprofit organizations that have committed themselves to continuous improvement through the Principles and Practices as general guidelines. The purpose of the Register is to show Iowa and the nation that Iowa charitable nonprofit organizations make a concerted effort to operate efficiently, effectively, and ethically. There are three ways to be listed on the Principles and Practices Register:

- 1) board adoption of the Principles and Practices by resolution;
- 2) training in the Principles and Practices; or
- 3) licensure or accreditation.

2. Board Accountability and Compliance

It is the duty of the governing board to assure that the charitable nonprofit organization satisfies all of the legal requirements set by governmental authorities as well as the policies and procedures set by the board. The board should have a compliance committee which regularly reviews whether or not the organization is complying with its legal and internal requirements. For a Legal Compliance Checklist, see **Appendix 11**.

In addition, the board should be knowledgeable about good nonprofit management practices. It should be familiar with the *Iowa Principles and Practices for Charitable Nonprofit Excellence*. It should consider adopting a resolution stating that the board in a regular meeting reviewed the Principles and Practices, affirms that the organization is committed to being guided by the Principles and Practices, and affirms that the organization is actively engaged in good faith efforts to meet each of the Principle and Practices. Furthermore, the board should enable representatives of its membership, its staff, and its volunteers to complete the Principles and Practices training program which will result in a certificate of completion for a stated period.

DO WELL GOOD

Legal compliance and good management practices should be pursued in an ethical manner, which builds public trust.

1. Moving Beyond a Legal Obligation:

At the most basic level, Iowa charitable nonprofit organizations should uphold high ethical standards that exceed the minimums of the law because they exist to serve the public. Iowa charitable nonprofit organizations must uphold high ethical standards because a charitable nonprofit organization cannot function without the public's trust. People donate their resources to a charitable nonprofit organization because they believe in the organization's mission and have confidence that their time or money will further that purpose. Inherent in this trust relationship is a commitment that employees, volunteers, and board members of the charitable nonprofit organization will act as capable stewards of their resources and work in pursuit of the organization's mission. Ultimately, it is the responsibility of the individuals who represent the charitable nonprofit organization to foster this trust relationship between the community and the organization.

2. Adopt a Code of Ethics

While each board member, staffer, and volunteer has the responsibility to act with honesty, integrity, and respect, all Iowa charitable nonprofit organizations should have a formal code of ethics that provides a clearly defined set of individual expectations and articulates an organization wide commitment to ethical conduct. Creating a code of ethics defines the standard of appropriate behavior by which board members, staff, and volunteers conduct themselves. However, simply defining standards is not sufficient. A charitable nonprofit organization's ethical obligations are two-fold: the organization must embrace a principled spirit and it must ensure that a culture of accountability permeates the organization.

3. Create an Ethical Culture of Compliance

A charitable nonprofit organization cannot function in an ethical manner unless the organization's leaders act with integrity and accountability in all that they do. Ethical conduct requires leaders to put service to others ahead of their own needs and interests. Without individuals first embracing this principle, a charitable nonprofit organization cannot hope to implement any standard of ethical conduct. An Iowa charitable nonprofit organization should conduct a yearly audit to assess the organization's compliance with its own ethical standards. This assessment should evaluate "ethics" in the broadest sense in an effort to assure an organization wide commitment to accountability and principled conduct.

The Sarbanes-Oxley legislation directed at "for-profit" corporations also requires that nonprofit organizations provide whistleblower identity and job protection. Unfortunately, we are taught early in life to shun people who report ethical and legal violations. We derisively call them "tattletales," "informers," or "snitches." However, the charitable nonprofit organization's responsibility as a public servant requires that each nonprofit board member, staffer, or volunteer report ethical misconduct within its ranks. Each charitable nonprofit organization needs an ethics officer, regardless of whether this person is a board member or a paid or volunteer staff member. Such an officer can provide information on a regular basis and provide confidential and supportive counsel in specific situations.

Examples of codes of ethics of charitable nonprofit organizations can be found at the following websites:

1. Center for Nonprofit Excellence, Accountability Polices: "Generic Code of Ethics Policy," <http://www.cfnpe.org/site.cfm/accountability-policy.cfm>;
2. National Council of Nonprofit Associations: <http://www.ncna.org/index.cfm?fuseaction=Page.viewPage&pageID=441>; and
3. Independent Sector: http://www.independentsector.org/members/code_main.html;
4. Code of Ethics for Museums: <http://www.aam-us.org/museumresources/ethics/coe.cfm>; and
5. National Human Services Assembly: <http://www.nassembly.org/nassembly/documents/CodeofEthics.pdf>;

Additional, useful examples of various standards and guidelines on how to create ethical codes and other standards can be found at the following websites:

1. Independent Sector, "Compendium of Standards, Codes, and Principles of Nonprofit and Philanthropic Organizations,"
<http://www.independentsector.org/issues/accountability/standards2.html>;
2. Chris MacDonald, Ph.D. , "Guidance for Writing a Code of Ethics":
<http://www.ethicsweb.ca/codes/coe3.htm>;
3. Richard Male & Associates, "Tips on Nonprofit Ethics":
<http://www.richardmale.com/richtipsfeb262004.htm>; and
4. Carter McNamara, MBA, PhD, Authenticity Consulting, LLC, "Complete Guide to Ethics Management: An Ethics Toolkit for Managers,"
<http://www.managementhelp.org/ethics/ethxgde.htm#anchor43623>.

EPILOGUE

This monograph has briefly explored details of the role of the governing board in the operation of Iowa's charitable nonprofit organizations. Those details are important in helping governing boards be good stewards of the unique and great American tradition of voluntary community associations.

Even in a global society, we live our lives locally. Now more than ever, we need to exercise our freedom to associate together as private citizens to advance our home communities. Rather than going it alone, we need to exercise our right of association for the common good. Volunteer board leadership is the lynchpin of our community action. We must continually nourish in all generations a commitment to community through service on the governing boards of our local voluntary associations. By doing so we assure a brighter future for all of us.

Appendix 1: Revised Iowa Nonprofit Corporation Act, relevant sections

The full version of the Revised Iowa Nonprofit Corporation Act is available from the Iowa General Assembly at the following webpage: <http://nxtsearch.legis.state.ia.us/NXT/gateway.dll/moved%20code/2005%20Iowa%20Code/1?f=templates&fn=default.htm>.

Once at the webpage look toward the upper hand of the left side of the split screen under the HTML and Java tabs for the folder entitled 2007 Iowa Code. Then in order to access the Revised Iowa Nonprofit Corporation Act do the following:

1. Click on the Document tab to the right of the Java tab.
2. Expand the folder entitled 2007 Iowa Code;
3. Expand the sub-folder entitled Statutes (Code Chapters & Sections);
4. Expand the sub-folder entitled 2007 Iowa Code;
5. Expand the sub-folder entitled Title XII Business Entities;
6. Expand the sub-folder entitled Subtitle 5 Nonprofit Corporations; and then
7. Expand the sub-folder entitled Chapter 504 Revised Iowa Nonprofit Corporation Act.

This will open up a listing of all the sections of the Revised Iowa Nonprofit Corporation Act, which then can be individually viewed by selecting the desired section on the right side of the split screen.

Another useful search method is available at the following link for the Iowa General Assembly 2007 Code Quick Retrieval webpage, which allows the user to retrieve any Iowa state statute by entering in the appropriate chapter and section (e.g., 504.111): <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode>.

Subchapter I. General Provisions

Part 2. Filing Documents

504.111 Filing requirements

1. A document must satisfy the requirements of this section and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.
2. The document must be executed by one of the following:
 - a. The presiding officer of the board of directors of a domestic or foreign corporation, its president, or by another of its officers.
 - b. If directors have not been selected or the corporation has not been formed, by an incorporator.
 - c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

504.120 Penalty for signing false document

1. A person commits an offense by signing a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine not to exceed one thousand dollars.

Part 4. Definitions

504.141 Chapter Definitions

1. "Approved by the members" or "approval by the members" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present, which affirmative votes also constitute a majority of the required quorum, or by a written ballot or written consent in conformity with this chapter or by the affirmative vote, written ballot, or written consent of such greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.
2. "Articles of incorporation" or "articles" includes amended and restated articles of incorporation and articles of merger.
3. "Board" or "board of directors" means the board of directors of a corporation except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to section 504.801.
4. "Bylaws" means the code or codes of rules other than the articles adopted pursuant to this chapter for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.
5. "Class" means a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For purposes of this section, rights shall be considered the same if they are determined by a formula applied uniformly.
7. "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.
9. "Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.
22. "Member" means a person who on more than one occasion, pursuant to the provisions of a corporation's articles or bylaws, has a right to vote for the election of a director or directors of a corporation, irrespective of how a member is defined in the articles or bylaws of the corporation. A person is not a member because of any of the following:
 - a. The person's rights as a delegate.
 - b. The person's rights to designate a director.
 - c. The person's rights as a director.
23. "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.
24. "Mutual benefit corporation" means a domestic or foreign corporation that is required to be a mutual benefit corporation pursuant to section 504.1705.
31. "Religious corporation" means a domestic or foreign corporation that engages in religious activity as one of the corporation's principal purposes.

Subchapter II. Organization

504.201 Incorporators

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

504.202 Articles of incorporation

1. The articles of incorporation shall set forth all of the following:
 - a. A corporate name for the corporation that satisfies the requirements of section 504.401.
 - b. The address of the corporation's initial registered office and the name of its initial registered agent at that office.
 - c. The name and address of each incorporator.
 - d. Whether the corporation will have members. A corporation incorporated prior to January 1, 2005, may state whether it will have members in either the articles of incorporation or in the corporate bylaws.
 - e. For corporations incorporated after January 1, 2005, provisions not inconsistent with law regarding the distribution of assets on dissolution.
2. The articles of incorporation may set forth any of the following:
 - a. The purpose for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity.
 - b. The names and addresses of the individuals who are to serve as the initial directors.
 - c. Provisions not inconsistent with law regarding all of the following:
 - (1) Managing and regulating the affairs of the corporation.
 - (2) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members.
 - (3) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.
 - d. A provision eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:
 - (1) The amount of a financial benefit received by a director to which the director is not entitled.
 - (2) An intentional infliction of harm on the corporation or its members.
 - (3) A violation of section 504.835.
 - (4) An intentional violation of criminal law.A provision set forth in the articles of incorporation pursuant to this paragraph shall not eliminate or limit the liability of a director for an act or omission that occurs prior to the date when the provision becomes effective. The absence of a provision eliminating or limiting the liability of a director pursuant to this paragraph shall not affect the applicability of section 504.901.
 - e. A provision permitting or requiring a corporation to indemnify a director for liability, as defined in section 504.851, subsection 5, to a person for any action taken, or any failure to take any action, as a director except liability for any of the following:
 - (1) Receipt of a financial benefit to which the person is not entitled.
 - (2) Intentional infliction of harm on the corporation or its members.
 - (3) A violation of section 504.835.
 - (4) Intentional violation of criminal law.
 - f. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

3. An incorporator named in the articles must sign the articles.
4. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

504.204 Liability for preincorporation transactions

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

504.205 Organization of corporation

1. After incorporation:
 - a. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.
 - b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:
 - (1) Elect directors and complete the organization of the corporation.
 - (2) Elect a board of directors who shall complete the organization of the corporation.
2. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.
3. An organizational meeting may be held in or out of this state in accordance with section 504.821.

504.206 Bylaws

1. The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.
2. The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Subchapter III. Purposes and Powers

504.301 Purposes

1. Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.
2. A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

504.302 General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including without limitation all of the following powers:

1. Sue and be sued, complain, and defend in its corporate name.
2. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing, affixing, or in any other manner reproducing it.

3. Make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation.
4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located.
5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of, any entity.
7. Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.
8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 504.833.
9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.
10. Conduct its activities, locate offices, and exercise the powers granted by this chapter in or out of this state.
11. Elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation.
12. Pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents.
13. Make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest.
14. Impose dues, assessments, and admission and transfer fees upon its members.
15. Establish conditions for admission of members, admit members, and issue memberships.
16. Carry on a business.
17. Do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

504.304 Ultra Vires

1. Except as provided in subsection 2, the validity of corporate action shall not be challenged on the ground that the corporation lacks or lacked power to act.
2. A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, a director, or by a member or members in a derivative proceeding.
3. A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative, or in the case of a public benefit corporation, by the attorney general.

Subchapter VI. Members and Memberships

Part 1. Admission of Members

504.603 No requirement of members

A corporation is not required to have members.

Part 2. Types of Memberships – Members' Rights and Obligations

504.611 Differences in rights and obligations of members

All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws. A person that does not meet the qualifications for a member under section 504.141, subsection 22, and is identified as a member in the articles or bylaws of the corporation shall have only those rights set forth for such a member in the articles or bylaws of the corporation.

504.613 Member's liability to third parties

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

Part 4. Derivative Proceedings

504.632 Standing

A derivative proceeding may be brought by any of the following persons:

1. A member or members of the corporation representing five percent or more of the voting power of the corporation or by fifty members, whichever is less.
2. A director of the corporation.

Subchapter VII. Members' Meetings and Voting

Part 1. Meetings and Action Without Meetings

504.701 Annual and regular meetings

1. A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.
2. A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.
3. Annual or regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.
4. At the annual meeting all of the following shall occur:
 - a. The president and chief financial officer shall report on the activities and financial condition of the corporation.
 - b. The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of sections 504.705 and 504.713, subsection 4.
5. At regular meetings, the members shall consider and act upon such matters as may be raised consistent with the notice requirements of sections 504.705 and 504.713, subsection 4.
6. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

504.702 Special meeting

1. A corporation with members shall hold a special meeting of members when either of the following occurs:
 - a. At the call of its board or the person or persons authorized to do so by the corporation's articles or bylaws.
 - b. Except as provided in the articles or bylaws of a corporation, if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose for which it is to be held. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.
2. The close of business on the thirtieth day before delivery of the demand for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent requirement of subsection 1, paragraph "b", has been met.
3. If a notice for a special meeting demanded under subsection 1, paragraph "b", is not given pursuant to section 504.705 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection 4, a person signing the demand may set the time and place of the meeting and give notice pursuant to section 504.705.
4. Special meetings of members may be held in or out of this state at a place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.
5. Only those matters that are within the purpose described in the meeting notice required by section 504.705 may be considered at a special meeting of members.

504.704 Action by written consent

1. Unless limited or prohibited by the articles or bylaws of the corporation, action required or permitted by this chapter to be approved by the members of a corporation may be approved without a meeting of members if the action is approved by members holding at least eighty percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporation action.
2. If not otherwise determined under section 504.703 or 504.707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection 1.
3. A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the secretary of state.
4. Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after such written notice is given.

504.705 Notice of meeting

1. A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.
2. Any notice which conforms to the requirements of subsection 3 is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. However, notice of matters referred to in subsection 3, paragraph "b", must be given as provided in subsection 3.
3. Notice is fair and reasonable if all of the following occur:
 - a. The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members not more than sixty days and not less than ten days, or if notice is mailed by other than first class or registered mail, not less than thirty days, before the date of the meeting.
 - b. The notice of an annual or regular meeting includes a description of any matter or matters which must be considered for approval by the members under sections 504.833, 504.859, 504.1003, 504.1022, 504.1104, 504.1202, and 504.1402.
 - c. The notice of a special meeting includes a description of the purpose for which the meeting is called.
4. Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 504.707, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.
5. When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if requested in writing to do so by a person entitled to call a special meeting and if the request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

504.706 Waiver of notice

1. A member may waive any notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.
2. A member's attendance at a meeting does all of the following:
 - a. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.
 - b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects to considering the matter when it is presented.

504.708 Action by written ballot

1. Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.
2. A written ballot shall do both of the following:
 - a. Set forth each proposed action.

- b. Provide an opportunity to vote for or against each proposed action.
3. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. All solicitations for votes by written ballot shall do all of the following:
 - a. Indicate the number of responses needed to meet the quorum requirements.
 - b. State the percentage of approvals necessary to approve each matter other than election of directors.
 - c. Specify the time by which a ballot must be received by the corporation in order to be counted.
5. Except as otherwise provided in the articles or bylaws, a written ballot shall not be revoked.
6. Unless prohibited by the articles or bylaws, a written ballot may be delivered and a vote may be cast on that ballot by electronic transmission. An electronic transmission of a written ballot shall contain or be accompanied by information indicating that a member, a member's agent, or a member's attorney authorized the electronic transmission of the ballot.

Part 2. Voting

504.712 Voting entitlement generally

1. The right of the members of a corporation, or any class or classes of members, to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or, if the articles of incorporation so provide, by the bylaws. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.
2. Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, the persons' acts with respect to voting shall have the following effect:
 - a. If only one votes, such act binds all.
 - b. If more than one votes, the vote shall be divided on a pro rata basis.

504.713 Quorum requirements

1. Unless this chapter or the articles or bylaws of a corporation provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.
2. A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.
3. A bylaw amendment to increase the quorum required for any member action must be approved by the members.
4. Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

504.714 Voting requirements

1. Unless this chapter or the articles or bylaws of a corporation require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, which affirmative votes also constitute a majority of the required quorum, is the act of the members.

2. A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

504.715 Proxies

1. Unless the articles or bylaws of a corporation prohibit or limit proxy voting, a member or the member's agent or attorney in fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which it can be determined that the member, the member's agent, or the member's attorney in fact authorized the electronic transmission.
2. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of an appointment form is received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided for in the appointment. However, a proxy shall not be valid for more than three years from its date of execution.
3. An appointment of a proxy is revocable by the member.
4. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.
5. Appointment of a proxy is revoked by the person appointing the proxy if either of the following occurs:
 - a. The person appointing the proxy attends any meeting and votes in person.
 - b. The person appointing the proxy signs and delivers or sends through electronic transmission to the secretary or other officer or agent authorized to tabulate proxy votes either a writing or electronic transmission stating that the appointment of the proxy is revoked or a subsequent appointment form.
6. Subject to section 504.718 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

504.716 Cumulative voting for directors

1. If the articles or bylaws of a corporation provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and casting the product for a single candidate or distributing the product among two or more candidates.
2. A director elected by cumulative voting may be removed by the members without cause if the requirements of section 504.808 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast or, if such action is taken by written ballot, all memberships entitled to vote were voted, and the entire number of directors authorized at the time of the director's most recent election were then being elected.
3. Members shall not cumulatively vote if the directors and members are identical.

Subchapter VIII. Directors and Officers

Part 1. Board of Directors

504.801 Requirement for and duties of board

1. Each corporation must have a board of directors.
2. Except as otherwise provided in this subchapter or subsection 3, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.
3. The articles of incorporation may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

504.802 Qualifications of directors

All directors of a corporation must be individuals. The articles or bylaws may prescribe other qualifications for directors.

504.803 Number of directors

1. The board of directors of a corporation must consist of one or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.
2. The number of directors may be increased or decreased from time to time by amendment to or in the manner prescribed in the articles or bylaws.

504.804 Election, designation, and appointment of directors

1. If the corporation has members, all the directors, except the initial directors, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.
2. If a corporation does not have members, all the directors, except the initial directors, shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors other than the initial directors shall be elected by the board.

504.805 Terms of directors generally

1. The articles or bylaws of a corporation must specify the terms of directors. Except for designated or appointed directors, and except as otherwise provided in the articles or bylaws, the terms of directors shall not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.
2. A decrease in the number or term of directors does not shorten an incumbent director's term.
3. Except as provided in the articles or bylaws, both of the following apply:
 - a. The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members.
 - b. The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

4. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed, and qualifies, or until there is a decrease in the number of directors.

504.806 Staggered terms for directors

The articles or bylaws of a corporation may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of the several groups need not be uniform.

504.807 Resignation of directors

1. A director of a corporation may resign at any time by delivering written notice to the board of directors, its presiding officer, or the president or secretary.
2. A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

504.808 Removal of directors elected by members or directors

1. The members of a corporation may remove one or more directors elected by the members without cause.
2. If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.
3. Except as provided in subsection 9, a director may be removed under subsection 1 or 2 only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.
4. If cumulative voting is authorized, a director shall not be removed if the number of votes, or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.
5. A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is the removal of the director.
6. For the purpose of computing whether a director is protected from removal under subsections 2 through 4, it should be assumed that the votes against removal are cast in an election for the number of directors of the group to which the director to be removed belonged on the date of that director's election.
7. An entire board of directors may be removed under subsections 1 through 5.
8. A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not by the board.
9. If at the beginning of a director's term on the board the articles or bylaws provide that a director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office votes for the removal.
10. The articles or bylaws of a corporation may do both of the following:

- a. Limit the application of this section.
- b. Set forth the vote and procedures by which the board or any person may remove **with** or without cause a director elected by the members or the board.

504.809 Removal of designated or appointed directors

1. A designated director of a corporation may be removed by an amendment to the articles or bylaws deleting or changing the designation.
2. a. Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.
 - b. The person removing the appointed director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary.
 - c. A removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

504.810 Removal of directors by judicial proceeding

1. The district court of the county where a corporation's principal office is located or if there is no principal office located in this state, where the registered office is located, may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation by a member or director if the court finds both of the following apply:
 - a. A director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation.
 - b. Upon consideration of the director's course of conduct and the inadequacy of other available remedies, the court determines that removal is in the best interest of the corporation.
2. A member or a director who proceeds by or in the right of a corporation pursuant to subsection 1 shall comply with all of the requirements of section 504.631 and sections 504.633 through 504.638.
3. The court, in addition to removing a director, may bar the director from serving on the board for a period of time prescribed by the court.
4. This section does not limit the equitable powers of the court to order other relief that the court determines is appropriate.
5. The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

504.811 Vacancy on board

1. Unless the articles or bylaws of a corporation provide otherwise, and except as provided in subsections 2 and 3, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, any of the following may occur:
 - a. The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members.
 - b. The board of directors may fill the vacancy.
 - c. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

2. Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.
3. If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy shall be filled by the board.
4. A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 504.807, subsection 2, or otherwise, may be filled before the vacancy occurs, but the new director shall not take office until the vacancy occurs.

504.812 Compensation of directors

Unless the articles or bylaws of a corporation provide otherwise, a board of directors may fix the compensation of directors.

Part 2. Meetings and Action of the Board

504.821 Regular and special meetings

1. If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.
2. A board of directors may hold regular or special meetings in or out of this state.
3. Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

504.822 Action without meeting

1. Except to the extent the articles or bylaws of a corporation require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.
2. Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken is to be effective. A director's consent may be withdrawn by revocation signed by the director and delivered to the corporation prior to the delivery to the corporation of unrevoked written consents signed by all of the directors.
3. A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

504.823 Call and notice of meetings

1. Unless the articles or bylaws of a corporation, or subsection 3, provide otherwise, regular meetings of the board may be held without notice.
2. Unless the articles, bylaws, or subsection 3 provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.
3. In corporations without members, any board action to remove a director or to approve a matter which would require approval by the members if the corporation had members shall not be valid unless each director is given at least seven days' written notice that the matter will be voted upon

at a directors' meeting or unless notice is waived pursuant to section 504.824.

4. Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or twenty percent of the directors then in office may call and give notice of a meeting of the board.

504.824 Waiver of notice

1. A director may at any time waive any notice required by this chapter, the articles, or bylaws. Except as provided in subsection 2, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

2. A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected-to action.

504.825 Quorum and voting

1. Except as otherwise provided in this chapter, or the articles or bylaws of a corporation, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. The articles or bylaws shall not authorize a quorum of fewer than one-third of the number of directors in office.

2. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this chapter, the articles, or bylaws require the vote of a greater number of directors.

504.826 Committees of the board

1. Unless prohibited or limited by the articles or bylaws of a corporation, the board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors, who serve at the pleasure of the board.

2. The creation of a committee and appointment of members to it must be approved by the greater of either of the following:

a. A majority of all the directors in office when the action is taken.

b. The number of directors required by the articles or bylaws to take action under section 504.825.

3. Sections 504.821 through 504.825, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

4. To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 504.801.

5. A committee of the board shall not, however, do any of the following:

a. Authorize distributions.

b. Approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets.

c. Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees.

d. Adopt, amend, or repeal the articles or bylaws.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 504.831.

Part 3. Standards of Conduct

504.831 General standards for directors

1. Each member of the board of directors of a corporation, when discharging the duties of a director, shall act in conformity with all of the following:
 - a. In good faith.
 - b. In a manner the director reasonably believes to be in the best interests of the corporation.
2. The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making functions **or when devoting attention to their oversight functions**, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.
3. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 5, paragraph "a", to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.
4. In discharging board or committee duties, a director **who does not have knowledge that makes reliance unwarranted**, is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the persons specified in subsection 5.
5. A director is entitled to rely, in accordance with subsection 3 or 4, on any of the following:
 - a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided by the officer or employee.
 - b. Legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following:
 - (1) Matters within the particular person's professional or expert competence.
 - (2) Matters as to which the particular person merits confidence.
 - c. A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.
 - d. In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.
6. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

504.832 Standards of liability for directors

1. A director shall not be liable to the corporation or its members for any decision to take or not to take action, or any failure to take any action, as director, unless the party asserting liability in a proceeding establishes both of the following:
 - a. That section 504.202, subsection 2, paragraph "d", or section 504.901 or the protection afforded by section 504.833, if interposed as a bar to the proceeding by the director, does not preclude liability.

- b. That the challenged conduct consisted or was the result of one of the following:
 - (1) Action not in good faith.
 - (2) A decision that satisfies one of the following:
 - (a) That the director did not reasonably believe to be in the best interests of the corporation.
 - (b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.
 - (3) A lack of objectivity due to the director's familial, financial, or business relationship with, or lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct which also meets both of the following criteria:
 - (a) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation.
 - (b) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.
 - (4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor.
 - (5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.
2. a. A party seeking to hold a director liable for money damages shall also have the burden of establishing both of the following:
 - (1) That harm to the corporation or its members has been suffered.
 - (2) The harm suffered was proximately caused by the director's challenged conduct.
- b. A party seeking to hold a director liable for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever burden of persuasion that may be called for to establish that the payment sought is appropriate in the circumstances.
- c. A party seeking to hold a director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever burden of persuasion that may be called for to establish that the equitable remedy sought is appropriate in the circumstances.
3. This section shall not do any of the following:
 - a. In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 504.833, alter the burden of proving the fact or lack of fairness otherwise applicable.
 - b. Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of a transactional interest under section 504.833 or an unlawful distribution under section 504.835.
 - c. Affect any rights to which the corporation or a member may be entitled under another statute of this state or the United States.

504.833 Director conflict of interest

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation on the basis of the director's interest in the transaction if the transaction was fair at the time it was entered into or is approved as provided in subsection 2.
2. A transaction in which a director of a corporation has a conflict of interest may be approved if either of the following occurs:
 - a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction.
 - b. The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.
3. For the purposes of this section, a director of the corporation has an indirect interest in a transaction under either of the following circumstances:
 - a. If another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction.
 - b. If another entity of which the director is a director, officer, or trustee is a party to the transaction.
4. For purposes of subsection 2, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on a committee of the board who have no direct or indirect interest in the transaction, but a transaction shall not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 2, paragraph "a", if the transaction is otherwise approved as provided in subsection 2.
5. For purposes of subsection 2, paragraph "b", a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection 3, paragraph "a", shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 2, paragraph "b". The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.
6. The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

504.834 Loans to or guarantees for directors and officers

1. A corporation shall not lend money to or guarantee the obligation of a director or officer of the corporation.
2. The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

504.835 Liability for unlawful distributions

1. Unless a director complies with the applicable standards of conduct described in section 504.831, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.
2. A director held liable for an unlawful distribution under subsection 1 is entitled to contribution from both of the following:
 - a. Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 504.831.
 - b. Each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

Part 4. Officers

504.841 Required officers

1. Unless otherwise provided in the articles or bylaws of a corporation, a corporation shall have a president, a secretary, a treasurer, and such other officers as are appointed by the board. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.
2. The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.
3. The same individual may simultaneously hold more than one office in a corporation.

504.842 Duties and authority of officers

Each officer of a corporation has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

504.843 Standards of conduct for officers

1. An officer, when performing in such capacity, shall act in conformity with all of the following:
 - a. In good faith.
 - b. With the care that a person in a like position would reasonably exercise under similar circumstances.
 - c. In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.
2. In discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on any of the following:
 - a. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated.
 - b. Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

- c. Legal counsel, public accountants, or other persons retained by the corporation as to matters involving the skills or expertise the officer reasonably believes are within the person's professional or expert competence, or as to which the particular person merits confidence.
 - d. In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.
3. An officer shall not be liable as an officer to the corporation or its members for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of sections 504.832 and 504.901 that have relevance.

504.844 Resignation and removal of officers

1. An officer of a corporation may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective time. If a resignation is made effective at a future time and the board or appointing officer accepts the future effective time, its board or appointing officer may fill the pending vacancy before the effective time if the board or appointing officer provides that the successor does not take office until the effective time.
2. An officer may be removed at any time with or without cause by any of the following:
 - a. The board of directors.
 - b. The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise.
 - c. Any other officer if authorized by the bylaws or the board of directors.
 - d. In this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

504.845 Contract rights of officers

1. The appointment of an officer of a corporation does not itself create contract rights.
2. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Part 5. Indemnification

504.851 Definitions

As used in this part, unless the context otherwise requires:

1. "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.
2. "Director" or "officer" means an individual who is or was a director or officer of a corporation or an individual who, while a director or officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A "director" or "officer" is considered to be serving an employee benefit plan at the corporation's request if the director's or officer's duties to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in

or beneficiaries of the plan. "Director" or "officer" includes, unless the context otherwise requires, the estate or personal representative of a director or officer.

3. "Disinterested director" means a director who at the time of a vote referred to in section 504.854, subsection 3, or a vote or selection referred to in section 504.856, subsection 2 or 3, is not either of the following:
 - a. A party to the proceeding.
 - b. An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, 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.
4. "Expenses" includes attorney fees.
5. "Liability" means the obligation to pay a judgment, settlement, penalty, or fine including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.
6. "Official capacity" means either of the following:
 - a. When used with respect to a director, the office of director in a corporation.
 - b. When used with respect to an officer, as contemplated in section 504.857, the office in a corporation held by the officer. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.
7. "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.
8. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

504.852 Permissible indemnification

1. Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if all of the following apply:
 - a. The individual acted in good faith.
 - b. The individual reasonably believed either of the following:
 - (1) In the case of conduct in the individual's official capacity, that the individual's conduct was in the best interests of the corporation.
 - (2) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation.
 - c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.
 - d. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by section 504.202, subsection 2, paragraph "e".
2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection 1, paragraph "b", subparagraph (2).
3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

4. Unless ordered by a court under section 504.855, subsection 1, paragraph "b", a corporation shall not indemnify a director under this section under either of the following circumstances:
 - a. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1.
 - b. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

504.853 Mandatory indemnification

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

504.854 Advance for expenses

1. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the person is a director if the person delivers all of the following to the corporation:
 - a. A written affirmation of the director's good faith belief that the director has met the relevant standard of conduct described in section 504.852 or that the proceeding involved conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 504.202, subsection 2, paragraph "d".
 - b. The director's written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 504.853 and it is ultimately determined under section 504.855 or 504.856 that the director has not met the relevant standard of conduct described in section 504.852.
2. The undertaking required by subsection 1, paragraph "b", must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.
3. Authorizations under this section shall be made according to one of the following:
 - a. By the board of directors as follows:
 - (1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such vote.
 - (2) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with section 504.825, subsection 2, in which authorization directors who do not qualify as disinterested directors may participate.
 - b. By the members, but the director, who at the time does not qualify as a disinterested director, shall not vote as a member or on behalf of a member.

504.855 Court-ordered indemnification

1. A director who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, and after giving any notice the court considers necessary, the court shall do one of the following:

- a. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 504.853.
 - b. Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 504.859, subsection 1.
 - c. Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:
 - (1) To indemnify the director.
 - (2) To indemnify or advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 504.852, subsection 1, failed to comply with section 504.854, or was adjudged liable in a proceeding referred to in section 504.852, subsection 4, paragraph "a" or "b", but if the director was adjudged so liable the director's indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.
2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph "a", or to indemnification or advance for expenses under subsection 1, paragraph "b", it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph "c", it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

504.856 Determination and authorization of indemnification

1. A corporation shall not indemnify a director under section 504.852 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the standard of conduct set forth in section 504.852.
2. The determination shall be made by any of the following:
 - a. If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such vote.
 - b. By special legal counsel under one of the following circumstances:
 - (1) Selected in the manner prescribed in paragraph "a".
 - (2) If there are fewer than two disinterested directors, selected by the board in which selection directors who do not qualify as disinterested directors may participate.
 - c. By the members of a corporation, but directors who are at the time parties to the proceeding shall not vote on the determination.
3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection 2, paragraph "b", to select special legal counsel.

504.857 Indemnification of officers

1. A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because the person is an officer, according to all of the following:
 - a. To the same extent as to a director.

- b. If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for either of the following:
 - (1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.
 - (2) Liability arising out of conduct that constitutes any of the following:
 - (a) Receipt by the officer of a financial benefit to which the officer is not entitled.
 - (b) An intentional infliction of harm on the corporation or the members.
 - (c) An intentional violation of criminal law.
2. The provisions of subsection 1, paragraph "b", shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an act or omission solely as an officer.
3. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 504.853, and may apply to a court under section 504.855 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

504.858 Insurance

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to that individual against the same liability under this part.

504.859 Application of part

1. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 504.852 or advance funds to pay for or reimburse expenses in accordance with section 504.854. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 504.854, subsection 3, and in section 504.856, subsection 2 or 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 504.854 to the fullest extent permitted by law, unless the provision specifically provides otherwise.
2. Any provision pursuant to subsection 1 shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or members of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 504.1104.
3. A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

4. This part does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.
5. This part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

Subchapter IX. Personal Liability

504.901 Personal liability

1. Except as otherwise provided in this chapter, a director, officer, employee, or member of a corporation is not liable for the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity to any person for any action taken or failure to take any action in the discharge of the person's duties except liability for any of the following:
 - a. The amount of any financial benefit to which the person is not entitled.
 - b. An intentional infliction of harm on the corporation or the members.
 - c. A violation of section 504.835.
 - d. An intentional violation of criminal law.
2. A provision set forth in the articles of incorporation eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken, or any failure to take any action, pursuant to section 504.202, subsection 2, paragraph "d", shall not affect the applicability of this section.

Subchapter X. Amendment of Articles of Incorporation and Bylaws

Part 1. Articles of Incorporation

504.1001 Authority to amend

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

504.1002 Amendment by directors

1. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without member approval for any of the following purposes:
 - a. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.
 - b. To delete the names and addresses of the initial directors.
 - c. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.
 - d. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name.
 - e. To make any other change expressly permitted by this subchapter to be made by director action.

2. If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to section 504.1031. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

504.1003 Amendment by directors and members

1. Unless this chapter, the articles or bylaws of a corporation, the members acting pursuant to subsection 2, or the board of directors acting pursuant to subsection 3 require a greater vote or voting by class, or unless the articles or bylaws impose other requirements, an amendment to the corporation's articles must be approved by all of the following to be adopted:
 - a. The board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected.
 - b. Except as provided in section 504.1002, subsection 1, by the members by two-thirds of the votes cast by the members or a majority of the members' voting power that could be cast, whichever is less.
 - c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031.
2. The members may condition the adoption of an amendment on receipt of a higher percentage of affirmative votes or on any other basis.
3. If the board initiates an amendment to the articles or board approval is required by subsection 1 to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.
4. If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.
5. If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

504.1004 Class voting by members on amendments

1. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.
2. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would do any of the following:

- a. Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class.
 - b. Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.
 - c. Increase or decrease the number of memberships authorized for that class.
 - d. Increase the number of memberships authorized for another class.
 - e. Effect an exchange, reclassification, or termination of the memberships of that class.
 - f. Authorize a new class of memberships.
3. The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.
 4. Unless the articles or bylaws of the corporation provide otherwise, if a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.
 5. Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of the corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

504.1005 Articles of amendment

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation or bylaws, the corporation amending its articles shall deliver to the secretary of state, for filing, articles of amendment setting forth:

1. The name of the corporation.
2. The text of each amendment adopted.
3. The date of each amendment's adoption.
4. If approval by members was not required, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that member approval was not required.
5. If approval by members was required, a statement that the amendment was duly approved by the members in the manner required by this chapter, the articles of incorporation, and bylaws.
6. If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section 504.1031, a statement that the approval was obtained.

504.1006 Restated articles of incorporation

1. A corporation's board of directors may restate the corporation's articles of incorporation at any time with or without approval by members or any other person, to consolidate all amendments into a single document.
2. If the restated articles include one or more new amendments that require approval by the members or any other person, the amendments must be adopted as provided in section 504.1003.
3. If the restatement includes an amendment requiring approval pursuant to section 504.1031, the board must submit the restatement for such approval.
4. A corporation that restates its articles of incorporation shall deliver to the secretary of state for

filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate stating that the restated articles consolidate all amendments into a single document. If a new amendment is included in the restated articles, the corporation shall include the statement required in section 504.1005.

5. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.

6. The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection 4.

504.1008 Effect of amendment and restatement

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which such property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Part 2. Bylaws

504.1021 Amendment by directors

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to section 504.1031. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must be given in accordance with section 504.823, subsection 3. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

504.1022 Amendment by directors and members

1. Unless this chapter, the articles, bylaws, the members acting pursuant to subsection 2, or the board of directors acting pursuant to subsection 3, require a greater vote or voting by class, or the articles or bylaws provide otherwise, an amendment to a corporation's bylaws must be approved by all of the following to be adopted:

- a. By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected.
- b. By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less.
- c. In writing by any person or persons whose approval is required by a provision of the articles authorized by section 504.1031.

2. The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

3. If the board initiates an amendment to the bylaws or board approval is required by subsection 1 to adopt an amendment to the bylaws, the board may condition the amendment's adoption on

receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 504.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

504.1023 Class voting by members on amendments

1. Unless the articles or bylaws of the corporation provide otherwise, the members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

2. Unless the articles or bylaws of the corporation provide otherwise, members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would do any of the following:

a. Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class.

b. Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

c. Increase or decrease the number of memberships authorized for that class.

d. Increase the number of memberships authorized for another class.

e. Effect an exchange, reclassification, or termination of all or part of the memberships of that class.

f. Authorize a new class of memberships.

3. The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

4. Unless the articles or bylaws of the corporation provide otherwise, if a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

5. Unless the articles or bylaws of the corporation provide otherwise, if a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

Part 3. Articles of Incorporation and Bylaws

504.1031 Approval by third persons

The articles of a corporation may require that an amendment to the articles or bylaws be approved in writing by a specified person or persons other than the board. Such a provision in the articles may only be amended with the approval in writing of the person or persons specified in the provision.

Subchapter XI. Merger

Subchapter XII. Sale of Assets

Subchapter XIV. Dissolution

Part 1. Voluntary Dissolution

Part 2. Administrative Dissolution

Part 3. Judicial Dissolution

Part 4. Miscellaneous

Subchapter XVI. Records and Reports

Part 1. Records

504.1601 Corporate records

1. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by section 504.826, subsection 4.
2. A corporation shall maintain appropriate 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, showing the number of votes each member is entitled to vote.
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 all 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. Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members.
 - d. The minutes of all meetings of members and records of all actions approved by the members for the past three years.
 - e. All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 504.1611.
 - f. A list of the names and business or home addresses of its current directors and officers.
 - g. Its most recent biennial report delivered to the secretary of state under section 504.1613.

504.1602 Inspection of records by members

1. Subject to subsection 5, a member is entitled to inspect and copy, at a reasonable time and

- location specified by the corporation, any of the records of the corporation described in section 504.1601, subsection 5, if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.
2. Subject to subsections 5 and 6, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection 3 and gives the corporation written notice at least ten business days before the date on which the member wishes to inspect and copy:
 - a. Excerpts from any records required to be maintained under section 504.1601, subsection 1, to the extent not subject to inspection under subsection 1 of this section.
 - b. Accounting records of the corporation.
 - c. The membership list.
 3. A member may inspect and copy the records identified in subsection 2 only if all of the following apply:
 - a. The member's demand is made in good faith and for a proper purpose.
 - b. The member describes with reasonable particularity the purpose of the demand and the records the member desires to inspect.
 - c. The records are directly connected to the purpose described.
 - d. The board consents, if consent is required by section 504.1605.
 4. This section does not affect either of the following:
 - a. The right of a member to inspect records under section 504.711 or, if the member is in litigation with the corporation, to the same extent as any other litigant.
 - b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.
 5. The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.
 6. A corporation may, within ten business days after receiving a demand for inspection of a membership list under section 504.711 or subsection 2 of this section, respond to the demand with a written proposal offering a reasonable alternative to the demand for inspection that will achieve the purpose of the demand without providing access to or a copy of the membership list. A proposal offering an alternative that reasonably and in a timely manner accomplishes a proper purpose identified in a demand for inspection shall be considered to offer a reasonable alternative. A proposal for a reasonable alternative that has been accepted by the person making the demand for inspection shall cease to be considered a reasonable alternative if the terms of the proposal are not carried out by the corporation within a reasonable time after acceptance of the proposal. For the purposes of this subsection, a reasonable alternative may include, but is not limited to, a communication prepared by a member and mailed by the corporation at the expense of the member.

504.1605 Limitations on use of corporate records

Without consent of the board, no corporate record may be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board, corporate records, including without limitation a membership list or any part thereof, shall not be used for any of the following:

1. To solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation.
2. For any commercial purpose.

3. For sale to or purchase by any person.
4. For any purpose that is detrimental to the interests of the corporation.

504.1606 Inspection of records by directors

1. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.
2. The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.
3. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

Part 2. Reports

504.1611 Financial statements for members

1. Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish that member the corporation's latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for that year.
2. If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them.

504.1612 Report of indemnification to members

If a corporation indemnifies or advances expenses to a director under section 504.852, 504.853, 504.854, or 504.855 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

504.1613 Biennial report for secretary of state

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report on a form prescribed and furnished by the secretary of state that sets forth all of the following:
 - a. The name of the corporation and the state or country under whose law it is incorporated.
 - b. The address of the corporation's registered office and the name of the corporation's registered agent at that office in this state, together with the consent of any new registered agent.
 - c. The address of the corporation's principal office.

- d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.
- e. Whether or not the corporation has members.
2. The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.
3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following odd-numbered calendar years.
4. a. If a biennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to the corporation for correction.
 - b. A filing fee for the biennial report shall be determined by the secretary of state.
 - c. For purposes of this section, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.
5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 504.502 or 504.503. If the secretary of state determines that a biennial report does not contain the information required by this section but otherwise meets the requirements of section 504.502 or 504.503 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 504.114, before returning the biennial report to the corporation as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

Subchapter XVII. Transition Provisions

504.1705 Public benefit, mutual benefit, and religious corporations

For the purposes of this chapter, each domestic corporation shall be deemed a public benefit, mutual benefit, or religious corporation as follows:

1. A corporation designated by statute as a public benefit corporation, a mutual benefit corporation, or a religious corporation is deemed to be the type of corporation designated by that statute.
2. A corporation that does not come within subsection 1 but is organized primarily or exclusively for religious purposes is a religious corporation.
3. A corporation that does not come within subsection 1 or 2 but which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation.
4. A corporation that does not come within subsection 1, 2, or 3, but which is organized for a public or charitable purpose and which upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation.
5. A corporation that does not come within subsection 1, 2, 3, or 4 is a mutual benefit corporation.

Title XV. Judicial Branch and Judicial Procedures

Subtitle 3. Civil Procedure

Chapter 613. Parties – Causes of Action – Liability

613.19 Personal Liability

A director, officer, employee, member, trustee, or volunteer, of a nonprofit organization is not liable on the debts or obligations of the nonprofit organization and a director, officer, employee, member, trustee, or volunteer is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, "nonprofit organization" includes an unincorporated club, association, or other similar entity, however named, if no part of its income or profit is distributed to its members, directors, or officers.

Appendix 2: Member Position Description of Board of Directors adapted from the Independent Sector and the American Voluntary Institution

The following description is taken from Kenneth N. Dayton's *Governance is Governance*, published by Independent Sector (1828 L Street NW, Washington, DC, 20036, 202/223-8100).

FUNCTION

Provide governance to the organization, represent it to the community, and accept ultimate legal authority for it.

RESPONSIBILITY

Planning

Determine the organization's mission and purpose, and review management's performance in achieving it.

Approve strategic plan and monitor its implementation.

Annually assess the ever-changing environment and approve the organization's strategy in relation to it.

Be assured that the organizational strength and planning are equal to the requirements of the long range goals.

Annually review and approve the organization's plans for funding its strategy.

Review and approve the organization's 3-year financial goals.

Annually review and approve organization's budget, and regularly review its implementation.

Approve and monitor implementation of major policies.

Organization

Elect, monitor, appraise, advise, stimulate, support, reward and, if deemed necessary or desirable, change executive director. In board meetings discuss with the CEO matters that are of concern to the CEO or the Board.

Be assured that board leadership and management succession is properly being provided.

Annually approve the performance review of the CEO and establish his/her compensation.

Approve appropriate personnel compensation and benefit policies and practices.

Propose slate of directors to fill vacancies as needed.

Determine eligibility for and appoint Board Committees in response to recommendations of the Nominating Committee.

Annually review the performance of the Board and take steps (including its composition, organization and responsibilities) to improve its performance.

Operations

Gather and manage resources effectively.

Review the results achieved by management as compared with the organization's mission, annual and long range goals, and the performance of similar organizations.

Be certain that the financial structure of the organization is adequate for its current need

and its long-range strategy.

Provide candid and constructive criticism, advice and comments.

Approve major actions of the organization, such as: capital expenditures on all projects over authorized limits and major changes in programs and services.

Enhance the organization's public image.

Audit

Be assured that the Board and its committees are adequately and currently informed — through reports and other methods — of the condition of the organization and its operations.

Be assured that published public reports properly reflect the operating results and financial condition of the organization.

Establishes appropriate policies to define and identify conflicts of interest throughout the organization and be assured that the CEO and staff are diligently administering and enforcing those policies.

Appoint independent auditors to approval by members.

Be assured that there are adequate controls in place and in operation to prevent fraud.

Review compliance with relevant laws and policies affecting the organization.

Appendix 3: Types of Nonprofit Organizational Policies and Practices

Administrative/Operations

- Organization chart
- Administrative position descriptions
- Administration practices and policies

Advocacy

- Who can speak publicly for the organization
- When, what, and how are public positions determined
- Description of 501(c)(3) restrictions on lobbying

Audit

- Policies
- Preparation
- Timing
- Distribution
- External audit review

Board

- Eligibility and duties
- Attendance
- Minutes and records
- Policy on adoption of policies and practices
- Oversight and evaluation topics and processes
- Role and duties of board chair and board members
- Board members and chair relationship to chief executive officer, staff, volunteers, donors, other constituencies, media and the public
- Role in selection, evaluation and termination of Chief Executive Officer
- Succession Planning

Budget

- Elements
- Adoption
- Procedures
- Format
- Monitoring

Collaboration

- Outsourcing
- Partnerships
- Networks
- Merger
- Consolidation
- For profit subsidiaries

Committee Structure and Responsibility

- Executive
- Program/Client Services
- Budget and Finances
- Audit
- Investment
- Personnel (Human Resources)
- Fund Raising (Development)
- Marketing/Public Relations
- Facilities
- Nominating (Governance)
- Legal Compliance
- Strategic Planning
- Risk Management

Communication

Internal

- Policy and Practices Manual
- Newsletter
- Meetings
 - Schedule
 - Agenda
 - Minutes

External

- Marketing
- Constituencies relations
- Media and public relations
- News Releases
- Handling adverse publicity
- Website
- Annual report distribution

Compensation policies

- Board
- Staff
- Consultants
- Benefits
- Payroll

Confidentiality/disclosure/transparency

- Donors
- Whistleblower Protection — For an example, see National Council of Nonprofit Associations, Sample Whistleblower Policy, *available at* <http://www.ncna.org/>

Conflicts of Interest

- Disclosure
 - Annual disclosure
 - Specific disclosure
- Prohibition
- Recusal

Controls

- Financial Controls
 - Check writing authority
 - Supervision of expenditures, bank reconciliation, deposits and withdrawals
 - Expense authorization reporting and reimbursement policies
 - Travel Policy
 - Purchasing policies
 - Physical assets
 - Purchase
 - Sale
 - Protection
 - Insurance
 - Maintenance
 - Use of facilities, supplies, and names
 - By insiders
 - By outsiders
 - Facilities
 - Accessibility
 - Maintenance

Emergency

Finance

- Internal control procedures
- Reserve funds
- Accounting
- Tax filings
- Financial Statements

Fundraising/Development

- Appropriateness
- Naming policy
- Application according to donor's intent
- Acceptance policies — type, donor, appropriateness, size, conditions or timing of gift
- Fund raising and special events
- Sponsorships
- Grant writing, management, and accounting

Inclement Weather

Information Technology

- Plan
- Protection
- Backup
- Hardware
- Software
- Website

Investment

- Cash
- Endowment

Planning

- Scope — program, finance
- Timing
- Creating
- Implementing
- Evaluating
- Yearly/monthly required actions and review
- Reporting on stages of accomplishment

Record management

Retention

Destruction – For an example, see National Council of Nonprofit Associations, Document Destruction, *available at* <http://www.ncna.org/>

Risk management/insurance

Safety

Staff-employment/human resources

Interview standards

Terms and conditions of employment

Position description

Appointment

Termination

Nondiscrimination/equal opportunity

Harassment

Training and development

Performance review

Promotions, raises and awards

Disciplinary grounds

Grievance procedure

Code of conduct

Volunteers

Recruiting

Eligibility

Screening

Background checks

Position Description

Responsibilities

Placement

Training

Evaluation

Termination

Recognition and awards

Appendix 4: Board of Directors Manual, Table of Contents

1. Welcome from the Chair

2. Organizational Mission and Brief History

Includes statement of mission, vision and values.

3. Your Role as a Director

General description of the role of a director, relationship of staff, expectation of financial support; expectations for service on committee(s); response form to indicate the committees on which the director is interested.

4. Accountability of Board

- a. Fiduciary Duties
- b. Iowa Principles and Practices for Charitable Nonprofit Organizations
- c. Ethics Code

There is some very helpful information at the following website:
www.managementhelp.org/boards/boards.htm

5. Articles of Incorporation and Bylaws

6. Conflicts of Interests Policy

7. Board of Directors

Names; information on terms; and contact information including length of service, work address, home address, and email address.

8. Committees

Board Organization Chart/Committee structure; charges to each committee; committee membership

9. Staff Organization

Organization chart, staff directory; policies on appointment and termination, as appropriate.

10. Strategic Plan

11. Annual Operational Plan, Budget and Audit

12. Fundraising Plan

Summary of current fundraising strategies, timeline, costs; case statement if appropriate

13. Investment Policy

The guidelines for the investment of organization funds.

14. Policy on Receiving Gifts

15. Recognition Policies

Acknowledgment of significant service for donors, staff and volunteers.

16. Risk Management Policy

How the organization assesses and manages risks associated with its programs.

17. Important Relationships

Overview of relationships to constituents, to other organizations, and the public.

18. Ensuring Successful Meetings

Include a sample meeting agenda, sample meeting minutes, board attendance policy.

19. Evaluating the Board

Include a sample board self-evaluation form.

20. Evaluating Executive Director

Guidelines for the Board's evaluation of the Chief Executive; include a sample evaluation form.

Appendix 5: Board Committees and Charges

Section 1: Committees of Directors

The Board of Directors by resolutions adopted by a majority of the full Board of Directors, may designate an Executive Committee and one or more other committees each of which to the extent provided in such resolution, shall have and may exercise all authority of the Board of Directors; provided, however, that no such committee shall have the authority of the Board of Directors in reference to:

- (a) amending the articles of incorporation;
- (b) adopting a plan of merger or consolidation;
- (c) recommending the sale, lease, exchange or other disposition of all or substantially all the property and assets of the Corporation;
- (d) recommending a voluntary dissolution of the Corporation or a revocation thereof;
- (e) amending, altering or repealing the bylaws of the Corporation;
- (f) electing, appointing or removing any director or officer of the Corporation; or
- (g) amending, altering or repealed by the committee.

The designation of any such committee and the delegation of authority to the committee shall not operate to relieve the Board of Directors, or any director, of any responsibility imposed by law.

Section 2: Other Committees

Other committees not having and exercising the authority of the Board of Directors may be designated by a resolution adopted by a majority of the directors present at the meeting at which a quorum is present. Except as otherwise provided in the resolution and the Board Chair shall appoint the members of the committees. Any member may be removed by persons authorized to appoint the member whenever in their judgment the best interests of the organization would be served by removing the member. The Board of Directors may terminate any committee so designated as the Board of Directors deems appropriate.

Section 3: Executive Committee

Membership

The Executive Committee shall consist of the Board Chair, the immediate past Chair of the Board, the Vice Chairs, the Treasurer, and the Secretary.

Chairman

The Board Chair shall serve as Chair of the Executive Committee.

Duties

The Executive Committee shall advise and assist the Board Chair generally, and shall coordinate the activities of the standing committees, receive and review their reports, and make recommendations to the Board based upon such reports. Further, the Executive Committee shall be called together from time to time as the Board Chair may consider necessary, or as he or she

may be requested to do by three members of the Committee, to act upon such matters affecting the organization as cannot await consideration at the regular meetings of the board of Directors. Before the beginning of each fiscal year, the Executive Committee shall receive from the Chief Executive Officer of the organization an itemized budget and submit it to the Board. Upon adoption of the budget by the Board, the expenditures stated therein shall be deemed authorized, subject to revisions.

Section 4: Finance, Budget and Investment Committee

The Treasurer is the chair of the Finance Budget and Investment Committee, which includes three other board members. The Committee is responsible for developing and reviewing fiscal procedures, fundraising plans, and the annual budget with staff and other board members. The board must approve the budget and all expenditures must be within budget. Any major change in the budget must be approved by the board or the Executive Committee. The fiscal year shall be the calendar year. Monthly reports are required to be submitted to the board showing income and expenditures. The financial records of the organization are public information and shall be made available to board members and the public. The Committee will supervise the investment of the organization's funds.

Section 5: Audit Committee

The Audit Committee shall submit recommendations to the Board of Directors with respect to the selection of the organization's independent public accountants and on any other matters it deems appropriate. It shall review the financial statements with the independent public accountants, the procedures adopted by the organization in the preparation of such statements and the audit plan adopted by such accountants. It shall assure that such financial statements have been prepared in accordance with generally accepted accounting principles and fairly present the financial condition and operating results of the organization. The Audit Committee shall determine that the internal controls of the organization are reliable and provide adequate safeguards of the organization's assets and the proper recording of its transactions. The Audit Committee shall meet at least annually with the independent public accountants and at any other time deemed appropriate by such Committee, by the independent public accountants or when requested by the Chair of the Board of Directors. The Committee shall report at least annually to the Board of Directors.

Section 6: Facilities & Administrative Services

This Committee shall recommend, review, and monitor policies which affect the facilities and administrative services of the organization. The Committee will be concerned with facility planning, grounds, safety, security and other support services.

Section 7: Funding (Development, Institutional Advancement) Committee

The Funding Committee shall be charged with the leadership and direction of funding the organization. It shall define and develop programs seeking private and government support of both operational and capital funds. Committee members will actively assist in soliciting funds. The Committee will assure compliance with funding restrictions, report regularly on use of

funds, and maintain positive relations with donors. The Committee will assure proper fundraising activities, proper acknowledgement and administration of gifts and grants, maintain adequate records, and assure deposit, proper usage and accounting of funds. The Committee shall fulfill public reporting requirements, such as the preparation of Internal Revenue Service documents, required in the conduct of solicitation and acceptance of funds of any type.

Section 8: Human Resources (Personnel) Committee

The Human Resource Committee assists the Board of Directors in fulfilling its oversight responsibilities relating to overall staff member and volunteer relations and morale, human resources policy and regulatory issues, compensation and benefits programs, and assessment of staff and volunteer performance in the advancement of the organizational mission.

Section 9: Governance (Nominating) Committee

The Governance Committee shall make nominations for board officers, chairs of standing committees, and board membership. It shall make recommendations with respect to the creation or dissolution of committees. The Governance Committee shall administer the annual evaluation of the board. It shall also be responsible for succession planning and recruitment of the Board officers, committee chairs, and board membership.

Section 10: Program and Service Committee

The Program and Service Committee shall recommend, review, evaluate, and monitor policies and programs designed to achieve the organization's community service mission including the quantity, quality, and effectiveness of its service.

Section 11: Marketing and Public Relations (Communication) Committee

The Marketing and Public Relations Committee monitors and evaluates the organization's overall external communications. The Committee is concerned with advertising, website, media relations as well as governmental and community relations. The Committee focuses on the organizational identity and message and the methods of transmission through both print and electronic vehicles.

Section 12: Risk Management

For a discussion about Risk Management and a Risk Management Committee, see subsection on Duty of Care in text Section VII "How Is The Governing Board Accountable?"

For additional information on committees and their charges see the following websites:

Compass Point Nonprofit Services-Board Café
Board Source "knowledge center" link Q & A's
National Council of Nonprofits Associations
Minnesota Council of Nonprofits-Handbook for Starting a Successful Nonprofit
Center for Community Based and Nonprofit Organizations at Austin Community College
Non-Profit Sector Leadership Program, Dalhousie University

Appendix 6: Position Description of Chair of the Board adapted from the Independent Sector and the American Voluntary Institution

FUNCTION

Ensure that the Board of Directors fulfills its responsibilities for the governance of the organization.

Be a partner to the CEO, helping him/her to achieve the mission of the organization.

Strengthen the relationship of the Board with staff, volunteers, donors and other constituencies.

RESPONSIBILITY

Provide Leadership to the Board

Chair Meetings of the Board.

Develop board-meeting agendas with the CEO.

Begin and end each meeting on time.

Conduct the discussion, voting, and decision making required by each agenda item.

Keep discussion focused and relevant assuring active participation by board members.

See that appropriate and accurate minutes are kept.

Informally evaluate board members.

Periodically present to the board an evaluation of the pace, direction, and organizational strength of the organization including the strategic and financial plans.

Annually lead the board in reviewing of organizational governance relating to its own structure.

Actively participate in enlisting financial support.

Serve as a spokesperson for the board.

Board Committees

Serve as an ex-officer member of board committees.

Coordinate reporting.

Recommend committee compositions.

Recommend committee chairs.

Board-CEO Relations

Serve as a liaison between the board and CEO.

Meet and coordinate with the CEO.

Ensure formal CEO performance reviews are conducted.

Participate in hiring and formally evaluating the CEO.

Reflect concerns of the board and other constituencies to the CEO.

Assist in recruiting board members, volunteers, supports, and other needed constituencies.

Communicate CEO and staff concerns to the board.

Appendix 7: Board Self-Evaluation Questionnaire adapted from the Nonprofit Sector Leadership Program, Dalhousie University

Name _____ For period from _____ to _____

Questions should be answered by all board members. When completed individually the results of Sections A, B and C should be compiled, shared and discussed by the whole board to determine a group answer to each question. Section D should be answered by board members individually but not shared with the group. Sections A, B and C should also be completed by the Executive Director.

A. How well has the board done its job?

Have we clarified or reviewed the mission of the organization? ___ Yes ___ No

Have we identified the short-term and long-term organizational objectives, results, and outcomes? ___ Yes ___ No

Have we identified the strategic issues, internal or external, affecting the future of our organization? ___ Yes ___ No

Have we given direction to staff primarily by setting and reviewing policies? ___ Yes ___ No

Have we communicated our mission externally, sought constituencies' reaction on our work and consulted with others on changes in the environment? ___ Yes ___ No

Have we reported as an organization and to our constituencies' on how we have used financial and other resources? ___ Yes ___ No

Other:

Overall rating:

___ Excellent ___ Very Good ___ Good ___ Satisfactory ___ Poor

B. How well has the board conducted itself?

- Have we had regular meetings? Yes No
- Has there been a quorum for every meeting? Yes No
- Have our meeting agendas been engaging and relevant? Yes No
- Have our meetings finished on time? Yes No
- Have our bylaws and other policies that relate to the board's own practices been followed? Yes No
- Have we received written staff or committee reports in advance? Yes No
- Have we received adequate and timely financial, operational, and programmatic information? Yes No
- Is participation at the meetings reasonably balanced in that we hear from everyone? Yes No
- Have we done a good job recruiting new board members? Yes No
- Have we spent adequate time on Board member orientation and education? Yes No

Other:

Overall rating:

Excellent Very Good Good Satisfactory Poor

C. Board Relationship with Executive Director

Is there a clear understanding of where the board's role ends and the Executive Director's begins? Yes No

Has there been good two-way communication between the Board and the Executive Director? Yes No

Does the Executive Director seek direction from the Board by making policy recommendations? Yes No

Does the Board consult with the Executive Director when it sees a need for policy? Yes No

Do we as a Board know what information is needed to evaluate the organization's performance? Yes No

Do we have in place formal criteria and processes for evaluating the Executive Director? Yes No

Did we formally evaluate the Executive Director on his/her performance? Yes No

Other:

Overall rating:

Excellent Very Good Good Satisfactory Poor

D. Performance of Individual Board Members

Did I have a good record of board meeting attendance? Yes No

Did I usually read the reports and other materials in
advance of our Board meetings? Yes No

Am I familiar with what is in the organization's by-laws
and governing policies? Yes No

Am I familiar with the organization's finances, operations,
and programs? Yes No

Do I feel I have been encouraged by other board members
to express my opinions at board meetings? Yes No

Have I followed through on things I have said I would do? Yes No

Did I maintain the confidentiality of all board decisions
and support them once made? Yes No

Did I promote the work of the organization in the
community whenever I had a chance to do so? Yes No

Did I bring external information relevant to the mission of
the organization to the attention of the Board? Yes No

Other:

Overall rating:

Excellent Very Good Good Satisfactory Poor

Some Guidelines on How Best to Use the Board Self-Evaluation Questionnaire

Use it as a source of ideas to inform the development of your own board self-evaluation tool.

Have the board review this tool before using it initially as an “experiment” and then develop a better tool based on your experience of using this one.

Remember that this tool is designed more as a discussion starter than as a scientific instrument. This intent should be part of how it is introduced.

Keep in mind that the “yes” and “no” answers will be difficult for many. A broader scale is not necessary if the intent is to generate discussion. Encourage board members to write their qualifications or explanations for their answers in the spaces between the questions.

This tool is designed to be used as an “annual” board evaluation.

Ask that board members complete the questionnaire at home before bringing it to the meeting.

Consider assigning different weights to each question depending on what your board values most.

Consider evaluation of other matters such as board teamwork, effectiveness or committees or board “follow-through.”

Avoid questions that compare individual board member performance; keep the focus on the whole board.

If board members have individual roles such as chair or secretary or have particular “assignments” for which they have specific responsibilities, consider adding another self evaluation page similar to section D.

Consider bringing in an independent person to conduct the evaluation and compile/summarize and report the results. This will ensure that individual response are kept confidential and may result in more honest answers. If you choose to do this then completed copies of section D could be passed to that person to compile.

Appendix 8: Position Description of President and CEO adapted from the Independent Sector and the American Voluntary Organization

FUNCTION

Serve as Chief Executive Officer of the organization, reporting to the Board of Directors, responsible for the success or failure of the enterprise.

With the Board Chair, enable the Board of Directors to fulfill its governance function and facilitate the optimum interaction between staff and the Board.

Give leadership with the Board of Directors to the formulation of the organization's philosophy, mission and strategy, and to its annual objectives and goals.

RESPONSIBILITY

Relations with Board of Directors

With the Board Chair, develop agendas for meetings so that the Board can fulfill all responsibilities effectively. Develop an annual calendar to cover all crucial issues in a timely fashion.

Provide reports to the Board and the Committees.

Execute and supervise agreements and legal instruments together with other appropriate officers and staff as required by law and/or policies of the organization.

Keep the Board Chair and the Board fully informed on the state of the organization and on all important factors influencing it.

Stimulate thinking and involvement of Board members.

Work with the Board Chair to make the Board committee structure and members function effectively.

Be responsible for and report on organizational operations to the Board of Trustees.

Regularly report to the Board on organizational finances, programmatic operations, and strategic planning.

Relations to Staff

Inform staff regarding the activities and progress of the Board.

Be responsible for the organization's consistent achievement of its mission and financial objectives.

Make certain that the organization's philosophy and mission statements are pertinent and practiced throughout the organization.

Assure that the organization has a long-range strategy that achieves its mission and that the organization makes consistent and timely progress to achieve strategic goals and objectives.

Assure adequate financial and programmatic controls and supervision.

Assure compliance with the Board policies, ethics code, and legal requirements.

Appendix 9: Evaluation of Executive Director

Rating Method

- A. Outstanding
- B. Good
- C. Average
- D. Poor
- E. Unacceptable

1. Knowledge of the constituencies
 - a. clients _____
 - b. related organizations _____
 - c. related government departments _____
 - d. legislative and executive branches of government _____
 - e. funders _____
2. Administrative ability
 - a. ability to initiate, organize, and execute _____
 - b. promptness in responding and acting _____
 - c. delegates to and motivates staff _____
 - d. fosters excellence in congenial manner _____
3. Judgment
 - a. good sense of priorities _____
 - b. open minded and fair _____
 - c. careful and deliberate _____
4. Dependability
 - a. completes task _____
 - b. accurate in oral and written statements _____
 - c. discrete in handling confidential information _____
 - d. dedicated to organization's mission _____
5. Fiscal ability
 - a. effective fundraiser _____
 - b. controls expenditures _____
 - c. balances budget _____
6. Flexibility
 - a. can handle a number of tasks at the same time _____
 - b. response to changing circumstances _____
 - c. adaptability to different kinds of people and perspectives _____
7. Relation with others
 - a. willingness and ability to reach out to other organizations _____
 - b. respect for others with different points of view _____
 - c. ability to communicate orally and in writing _____

CONCLUSION

1. What are the Director's outstanding qualities?

2. Where is strengthening needed?

Based on an evaluation form contained in *The Effective Nonprofit Executive Handbook*, Public Management Institute, pp. 182-183 (1982).

Appendix 10: Board of Directors Conflict of Interest Disclosure

To: Members of the Board of Directors and
Members of the Committees of the Board of Directors

Re: Conflicts of Interest Disclosure

Dear Board Member:

In order to assure compliance with the organizational bylaws, each Board member and each member of a Board Committee must annually file a Conflict of Interest Statement.

Generally, you should disclose anything that will result in or have the appearance of (1) competing with the organization, (2) using one's affiliation with the organization for private gain, or (3) giving preferential treatment to a family member or significant other.

The following should be disclosed as conflicts of interest: (1) personal use of the organization's confidential information, (2) solicitation or acceptance of personal gifts in connection with an organizational transaction, (3) personal use of the organization's name or property, (4) purchasing or selling organizational property, and (5) doing business with the organization.

The form attached is part of the Conflicts of Interest Policy adopted by the Board of Directors. Upon completion of the form, please return it in the business reply envelope enclosed for your convenience. Please return the form by December 31.

Should you have any questions, please call.

Thank you.

Sincerely,

Enclosure

Conflict of Interest Disclosure

This statement is made pursuant to the Organization's Conflict of Interest Policy which provides that actual or potential conflicts of interest must be disclosed. The following is a list of all conflicts of interest of which I am aware, including those which arise as a result of a family relationship.

I certify that the above is true and accurate to the extent of my personal knowledge.

Name

Date

Appendix 11: Legal Compliance Checklist for Iowa Nonprofits

Governance

(For all nonprofits)

- _____ Is the organization's activity consistent with the purpose stated in the articles of incorporation (or declaration of trust)?
- _____ Does the organization have bylaws?
- _____ Is board activity carried out consistent with the provisions of the bylaws?

(For Iowa nonprofit corporations)

- _____ Has the organization incorporated under IOWA CODE § 504?
(If not, is it a trust? An association?)
- _____ Does the organization have a certificate of existence? *See* IOWA CODE § 504.119.
- _____ Is the current number of board members the same as that stated in the bylaws pursuant to IOWA CODE § 504.803?
- _____ Are the current board committees the same as those stated in the bylaws?
- _____ Are the current officer positions the same as those stated in the bylaws pursuant to IOWA CODE § 504.841?
- _____ Is a fiscal year defined in the articles of incorporation or the bylaws?
(If so, is the current fiscal year consistent with that defined in the governing documents?)
- _____ Does the organization regularly file a biennial report with the Secretary of State pursuant to IOWA CODE § 504.1613?
- _____ Is the registered agent and the registered office stated in the articles of incorporation correct?
(If not, has the organization filed a Statement of Change of Registered Office and /or Registered Agent form with the Secretary of State pursuant to IOWA CODE § 504.502?)
- _____ Has the corporation been administratively dissolved pursuant to IOWA CODE § 504.1421?
(If so, has the corporation filed for reinstatement with the Secretary of State within two years of the dissolution pursuant to IOWA CODE § 504.1423?)
- _____ Does the organization keep written minutes of its board meetings pursuant to IOWA CODE § 504.1601?
- _____ Are board member conflicts of interest disclosed and made part of the board minutes?
- _____ Does the organization refrain from making loans to its board members pursuant to IOWA CODE § 504.834?
- _____ Is the corporation conducting programs in states other than Iowa?
(If so, has the corporation registered as a "foreign corporation" in those states?)

Human Resources

- _____ Does the organization avoid reference to age, gender, race, religion, national origin and citizenship in its job descriptions, interviewing and hiring decisions pursuant to Title VII of the Civil Rights Act (42 U.S.C. § 2000(e)) and the Iowa Civil Rights Act of 1965 (IOWA CODE § 216)?
- _____ Does the organization get the job applicant's written permission before criminal background checks are done?
- _____ Does the organization have a written sexual harassment policy and procedure?
- _____ Does the organization regularly withhold taxes from employee income?
- _____ Does the organization make accommodations for persons with disabilities pursuant to the Americans with Disabilities Act (42 U.S.C. § 12101)?
- _____ Does the organization provide protection of employees from exposure to hazardous substances pursuant to Occupational Safety and Health Act (29 U.S.C. § 651)?
- _____ Does the organization allow unpaid leave of up to 12 weeks when employee family members or the employee have serious health conditions pursuant to the Family and Medical Leave Act (29 U.S.C. § 601)?
- _____ Does the organization pay minimum wage, keep required records, and follow the child labor standards set out in the Fair Labor Standards Act (29 U.S.C. § 2011)?
- _____ Does the organization avoid polygraphs of job applicants or employees pursuant to the Employee Polygraph Protection Act (29 U.S.C. § 2002) and the Polygraph Examination law in Iowa (IOWA CODE § 730.4)?
- _____ Does the organization allow employees time off for jury duty pursuant to IOWA CODE § 607A.45?
- _____ Does the organization pay unemployment taxes, or reserve amounts for reimbursement pursuant to IOWA CODE § 96.7(8)?
- _____ Does the organization allow employees time to vote pursuant to IOWA CODE § 49.109?
- _____ Does the organization allow an employee access to his or her employment records pursuant to IOWA CODE § 91.8?
- _____ Is there a written policy in place regarding "whistle blowers" under Sarbanes-Oxley Act §§ 301, 806, and 1107 providing for no reprisals against employees who raise concerns about the operation of the organization?
- _____ Is there a written policy regarding document retention and destruction under Sarbanes-Oxley Act of 2002 §§ 802 and 1102?
- _____ Do the organization's employees have required licenses (Nurses, psychologists, social workers, etc.)?
- _____ Is the compensation of the five highest paid employees (if over \$50,000) reported on I.R.S. Form 990, Schedule A, Part I?
- _____ Is compensation of upper level employees not an "excess benefit," but within the limits described in I.R.C. § 4958?

Fundraising

_____ Is the organization prepared to disclose on request the percentage of fundraising costs for the last complete fiscal year pursuant to IOWA CODE § 13C.2(2)?

_____ If the organization has hired a professional fundraiser, is that professional fundraiser registered with the Attorney General pursuant to IOWA CODE § 13C.2(1)?

_____ If the organization is fundraising in states other than Iowa, has the organization registered in those other states if required by those states' laws?

_____ Does the organization provide gift substantiation to donors who make gifts of any dollar value? (See I.R.C. § 170(f)(17)).

_____ Does the organization provide gift substantiation to donors who made gifts of \$250 or more pursuant to I.R.C. § 170(f)(8)?

_____ Does the organization provide disclosure of quid pro quo gifts to donors when the gift was in excess of \$75 and the organization gave a return benefit, pursuant to I.R.C. § 6115?

_____ Does the organization give the donor of non-cash gifts with a value in excess of \$500 a signed I.R.S. Form 8283?

_____ Does the organization decline to appraise non-cash gifts for donors?

_____ Does the organization report names and addresses of donors of non-cash gifts on I.R.S. Form 990, Schedule B, Part II?

_____ If the organization sells a non-cash gift with a value in excess of \$5,000 within two years of receipt of the gift, does the organization file I.R.S. Form 8282?

_____ Does the organization use gifts within the specific restrictions set forth by the donor?

_____ Does the organization report names and addresses of donors and aggregate amounts given (when over \$5,000) on I.R.S. Form 990, Schedule B, Part I?

_____ Does the organization acknowledge gifts from businesses with the businesses' usual advertising copy?

(If so, is the gift reported as revenue under the corporate sponsorship rules in I.R.C. § 513(i)?)

_____ Does the organization raise funds through gambling activities?

(If so, does the organization have the license(s) required by Iowa Code § 99B?)

_____ Does the organization collect sales tax on the sale of gambling tickets?

Finance

_____ Are all assets and liabilities of the organization being fully reported on I.R.S. Form 990, Part IV?

_____ Does the organization have an endowment?

_____ Does the board of directors (or board of trustees), as part of fulfilling its fiduciary duties, regularly review the budget and investment of the organization's assets?

_____ Does the board spend from the endowment or other investments in a reasonable manner?

_____ Does the board follow a "total return" process in expenditures from the investments, considering "long-term and short-term needs of the institution in

- carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions,” pursuant to IOWA CODE § 540A.7?
- _____ Does the board manage the investments as a prudent investor, considering “a. General economic conditions, b. The possible effect of inflation or deflation, c. The expected tax consequences of investment decisions or strategies, d. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property, e. The expected total return from income and the appreciation of capital, f. Other resources of the beneficiaries, g. Needs for liquidity, regularity of income, and preservation or appreciation of capital, h. An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries,” pursuant to IOWA CODE § 6333.4302?
- _____ Are the organization’s investments “passive investments” (dividends, interest, annuity, rents, etc.) as defined in I.R.C. § 512(b)(1)?
- _____ Does the organization have earned income?
(If so, is the earned income from a “trade or business regularly carried on” as described in I.R.C. § 513?)
- _____ Is the earned income from programs, services, and products substantially related to the exempt purposes of the organization?
- _____ Is all earned income being reported on I.R.S. Form 990, Part VII?
- _____ If the organization has unrelated business income over the credit amount of \$1,000 is the taxable revenue being reported on I.R.S. Form 990-T?
- _____ Are the organization’s assets used for the charitable purposes and not for pecuniary profit?
- _____ Does the organization limit the distribution of its assets on dissolution pursuant to IOWA CODE § 504.1408?
- _____ Are there outstanding tax exempt municipal bond issues for the organization pursuant to Iowa Code § 419?
- _____ Are less than 2% of the bond proceeds being used for the cost of issuance?
- _____ Will the average maturity of the bonds not exceed 120% of the average reasonably expected life of the facility being financed?
- _____ Were any of the for-profit parties involved in the bond financed project instrumental in creating or substantially influencing the affairs of the organization?
- _____ Is the organization a party to a fiscal agent agreement?
(If so, are all transactions covered by the agreement being approved by the fiscal agent?)
- _____ Does the organization have an Employer Identification Number (“E.I.N.”)?

Tax Exemption

- _____ Does the organization have tax exemption under I.R.C. § 501(c)(3)?
- _____ Is the organization a church or does it have revenue below \$5,000 annually?
(If neither, did the organization file Form 1023 with the I.R.S.?)

- _____ Does the organization have "public charity" status?
(If not, is the organization a private foundation?)
- _____ Does the organization have public charity status under the public support test?
(If so, are at least a third of the funds received by the organization coming from public sources? *See* I.R.S. Form 990, Part I)
- _____ Does the organization have an I.R.S. determination letter?
- _____ Is the organization in an advanced ruling period?
- _____ Does the organization have at least \$25,000 of gross receipts a year?
(If so, does it file Form 990 or Form 990-EZ? If not, does it furnish an electronic annual notification to the IRS pursuant to the Pension Protection Act of 2006 §1223?)
- _____ Did the organization file I.R.S. Form 990 within five months of the end of its fiscal year?
(If not, did it file an extension of time to file on I.R.S. form 8868?)
- _____ Does the organization disclose I.R.S. Form 1023 and the last three years' Form 990 upon request?
- _____ Does the organization have a membership?
- _____ If the organization owns real property in Iowa does it pay Iowa property tax?
- _____ Has the organization applied for and been granted tax exemption on the property pursuant to Iowa Code § 427.1(8)?
- _____ Is the Iowa property tax exemption a partial exemption?

Political Activity

(For 501(c)(3) organizations)

- _____ Does the organization engage in lobbying?
- _____ Is the amount of lobbying "insubstantial?"
(If so, are records kept of all facts and circumstances relevant to that determination of "insubstantial:" amount of direct contact with legislators, employee and volunteer time for lobbying, cost of advertising about lobbying, etc.?)
- _____ Has the organization made an election under I.R.C. § 501(h)?
(If so, is lobbying activity below the expenditures levels set forth in I.R.C. § 501(h) -- 20% of the first \$500,000 of the budget, etc.?)
- _____ Does the organization engage in grass roots lobbying, that is, attempt to get the general public to ask their legislators to support or oppose a pending bill?
(If so, are the calculations of what is "insubstantial lobbying" set at ¼ the amount that would be "insubstantial" if the lobbying were direct?)
- _____ Does the organization avoid engaging in political campaign activity?
- _____ Does the organization engage in "voter education" in the campaign?

(For all nonprofit entities)

- _____ Has any federal money been used by the organization for political activity contrary to the Byrd Amendment (31 U.S.C. § 1352)?
- _____ Has any money granted to the organization by a private foundation been used for political activity contrary to the terms of the grant or I.R.C. § 4945?

- _____ Has lobbying activity been reported on Form 990, Schedule A, Part VI?
- _____ Does the organization have a paid employee lobbyist and has it used more than \$20,000 within six months for federal lobbying?
(If so, is there compliance with the reporting requirements of the Lobbying Disclosure Act (2 U.S.C. § 1601)?)
- _____ Is the organization's lobbying activity in Iowa in compliance with Iowa Code § 68B?

Relationship with Other Entities

- _____ Is the organization involved in a joint venture with a for-profit entity?
(If so, does it further the charitable purpose, and does it permit the organization to act exclusively for its exempt purpose and only incidentally benefit the for-profit entity? *See Rev. Rul. 98-15*)
- _____ Is the organization a parent with a subsidiary or a subsidiary with a parent?
(If so, does the parent exercise too much control over the subsidiary – commingling funds, sharing employees and/or board members, sharing office space and equipment, etc.?)

Other regulations

- _____ Does the organization have the required license(s)?
Iowa Department of Health, Bureau of Substance Abuse
http://www.idph.state.ia.us/bhpl/substance_abuse.asp
_____ Substance abuse programs
- Iowa Department of Elder Affairs
<http://www.state.ia.us/elderaffairs/services/aliving.html>
_____ Adult day services programs (27 Iowa Administrative Code 321 - 27)
_____ Assisted Living programs (27 Iowa Administrative Code 321 - 27)
- Iowa Department of Agriculture and Land Stewardship Animal Welfare Bureau
<http://www.agriculture.state.ia.us/pdfs/new.app.form.pdf>
_____ Animal Shelter (IOWA CODE § 162.4)

Appendix 12: Websites - The Best for Iowa Nonprofits

The web is an incredible asset for Iowa's nonprofit organizations, providing a good deal of resources. Here are ten extremely helpful sites for Iowa nonprofits.

Iowa Secretary of State

Nonprofit corporations in Iowa are all listed on a database on the Secretary of State's website, <http://www.sos.state.ia.us/>. From the home page click on the phrase, "Search databases" on the left of the screen. Once the nonprofit's name is searched, there is a summary document of information about the individual nonprofit corporation. Above that is a bar with the word "filings" in it. Clicking that bar, a nonprofit can find copies of its initial articles of incorporation, all amendments to the articles, biennial reports filed, and any other miscellaneous filings with the Secretary of State. All nonprofit operations are required to file biennial reports in odd-numbered years, and this filing is electronic only. From the home page, a nonprofit can see on the left side of the screen the phrase, "Online Filing." Before the biennial report is due, there is a letter that comes from the Secretary of State's office giving a pin number to log onto the biennial report filing area.

Iowa Attorney General, Professional Fundraiser registration form

http://www.state.ia.us/government/ag/consumer/credit_code_forms/pfrregistrationformweb.pdf

Independent Sector

Independent Sector is an important national organization for nonprofits. Its website, <http://www.independentsector.org/>, has reports on self-regulation. There is a good deal of research and statistical data on the nonprofit sector on the site. Federal legislation is followed and summarized for nonprofits. Members of the organization have additional resources, such as a job posting and search site.

Alliance for Justice

Alliance for Justice, <http://www.afj.org>, follows important developments in the law and provides guidelines for nonprofits that wish to engage in political activity. Click on "Nonprofit Advocacy" at the bar at the top of the home page, and you will find workshops on advocacy for nonprofits and written guidelines on political activity such as "Election Activities of Individuals Associated with 501(c)(3) Organizations" that can be downloaded. Alliance for justice also has helpful publications on a number of political activity areas. You can also find summaries of pending federal legislation that has an impact on nonprofits.

Nonprofit Risk Management Center

The Nonprofit Risk Management Center website at <http://www.nonprofitrisk.org/>, has interactive risk management software online, "Nonprofits CARES." Its series of articles on "Risk Management Essentials" is posted on the site. Free technical assistance on risk issues is provided via e-mail, and the free newsletter can be signed up for online.

National Center for Charitable Statistics

The National Center for Charitable Statistics (NCCS), <http://nccs.urban.org/>, is the national repository of data on the nonprofit sector in the United States including Iowa by counties. Its mission is to develop and disseminate high quality data on nonprofit organizations and their

activities for use in research on the relationships between the nonprofit sector, the government, the commercial sector, and the broader civil society. Working closely with the IRS and other government agencies, private sector service organizations, and the scholarly community, NCCS builds compatible national, state, and regional databases and develops uniform standards for reporting on the activities of charitable organizations.

TechSoup

TechSoup.org, the Technology Place for Nonprofits, <http://www.techsoup.org/>, has a vast wealth of information on IT issues for nonprofits. The website has a series of articles on subjects such as accessible technology, hardware, the internet, and technology planning. There is an FAQ on the new Windows Vista and a section on donated and discounted products for nonprofits.

GuideStar

GuideStar, <http://www.guidestar.org/>, has posted on its site the Form 990 for every nonprofit that files one. The site also has a series of articles that are helpful, such as "Making Your 990 Work for You" and "Bridging the Gap between Volunteers and Coordination." There are also GuideStar products for sale on the site, such as the compensation report, giving information on compensation levels for over 100,000 different kinds of positions.

BoardSource

BoardSource, <http://www.boardsource.org/>, is a web site addressing nonprofit governance issues. Its "Knowledge Center" has a variety of FAQ's. An e-newsletter can be signed up for online. A consulting service for nonprofit boards can also be obtained over the web site. BoardSource also produces a series of inexpensive publications addressing a wide variety of board issues.

Iowa Nonprofit Resource Center

The Larned A. Waterman Iowa Nonprofit Resource Center website, <http://inrc.continuetolearn.uiowa.edu/>, provides information on what is going on with nonprofits in Iowa. A series of Frequently Asked Questions, spell out a variety of answers to questions on such topics as fundraising, board governance, and legal issues. A calendar lets Iowa nonprofits know what training sessions are available throughout the state to assist nonprofits. *Iowa Principles and Practices for Charitable Nonprofit Excellence*, as well as, the Register of Accountability are on the site.

The Chronicle of Philanthropy

The national journal covering nonprofit issues, *The Chronicle of Philanthropy*, is available online at <http://philanthropy.com/>. It regularly has articles on such things as fundraising, legal developments, book reviews, foundation grants, governance, and management. Job posting for nonprofits can be purchased from *The Chronicle of Philanthropy*.

Iowa Department of Revenue, "Iowa Tax Issues for Nonprofit Entities"

Available at: <http://www.state.ia.us/tax/educate/78595.html>.

Internal Revenue Services

“Successful governing boards include individuals not only knowledgeable and passionate about the organization’s programs, but also those with expertise in critical areas involving accounting, finance, compensation, and ethics.”

1. IRS On-Line Workshop for Exempt Organizations

Available at: <http://www.stayexempt.org/>.

This On-Line Workshop provides five training topics: Tax-Exempt Status, Unrelated Business Income, Employment Issues, Form 990, and Required Disclosures. Each tutorial is further subdivided into separate parts that the user can review individually. For example, the tutorial on Tax-Exempt Status has four parts: Becoming/Staying a 501(c)(3), Becoming a Public Charity, Jeopardizing Tax-Exempt Status, and Conclusion. The training tutorials involve the use of five characters to lead the trainee through the tutorial. These characters “keep the sessions lively with questions and answers, and challenge [the trainee’s] mastery of the subject with games and exercises.” Each tutorial presents the applicable law, legal tests, exceptions, possible problem areas, and reporting procedures in a manner that is logical and incremental. Overall, the tutorials provide sometimes-complicated tax related material in a manner that is to the point and is easy to understand. The only real drawback is that the tutorials do not reference the statutes, regulations, revenue rulings, cases, etc. that are the basis for the standards being presented. The website also provides two page summaries that cover the highpoints of each of the five training topics, a glossary, and a list of the related forms and publications available at http://www.stayexempt.org/resource_library/index.html.

2. Life Cycle of a Public Charity/Private Foundation

Available at: <http://www.irs.gov/charities/charitable/article/0,,id=136459,00.html>.

The Life Cycle of a Public Charity/Private Foundation IRS Resource explains the necessary steps for an entity to become a public charity/private foundation and then continue its existence as a public charity/private foundation. The tutorial provides information on the following steps: Starting Out, Applying to IRS, Annual Filings, Ongoing Compliance, and Significant Events.

3. e-file for Charities and Non-Profits

Available at: <http://www.irs.gov/efile/article/0,,id=108211,00.html>.

The IRS provides e-File for the following forms: Form 990, Form 990-EZ, Form 990-PF, Form 8868, Form 1120-POL, and Form 7004. “For tax years ending on or after December 31, 2006, ... [the IRS requires e-Filing for] exempt organizations with \$10 million or more in total assets (\$100 million in 2005) if the organization files at least 250 returns in a calendar year, including income, excise, employment tax and information returns. Private foundations and charitable trusts will be required to file Forms 990-PF electronically regardless of their asset size, if they file at least 250 returns annually.” This IRS Resource also has a FAQ link, which may be useful in determining why the organization should e-File, how to e-File, and if the organization is required to e-File.

4. Frequently Asked Questions about Tax-Exempt Organizations

Available at: <http://www.irs.gov/charities/content/0,,id=96986,00.html>.

This IRS Resource provides a variety of sets of FAQ that cover such topic areas as application for tax-exemption, annual reporting and filings, operation, public disclosure requirements, and disaster relief assistance.

5. TY 2006 EO Returns

Available at: <http://www.irs.gov/charities/article/0,,id=167156,00.html>.

This IRS Resource provides brief explanations of the changes made in the instructions for 2006 Forms 990 and 990-EZ and Schedule A, and presumably is updated annually. According to the website changes were made to the 2006 Forms and Instructions in the following areas: Family and Business Relationships of Officers, Directors, Trustees and Key Employees, Compensation of Officers, Directors, Trustees, and Key Employees from Related Organizations, Supporting Organizations, Organizations Maintaining Donor Advised Funds, Organizations with Controlled Entities, Organizations Paying Travel and Entertainment Expenses for Government Officials, and Organizations with Conservation Easements.

6. Exempt Organizations Forms and Instructions

Available at: <http://www.irs.gov/charities/article/0,,id=159930,00.html>.

This IRS Resource contains links to PDF versions of all of the possible Forms and Instructions (when separate instructions are available) that a tax exempt organization may need for filing with the IRS.

7. Exempt Organizations Publications

Available at: <http://www.irs.gov/charities/article/0,,id=159929,00.html>.

This IRS Resource provides links to PDF versions of tax guides for employers, churches and religious organizations, and veterans' organizations. As well as, publications for general tax guidance concerning tax-exempt status, unrelated business income, substantiation and disclosure requirements, and compliance.

8. Good Governance Practices for 501(c)(3) Organizations

Available at: http://www.irs.gov/pub/irs-tege/good_governance_practices.pdf.

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