

SC NONPROFIT CORPORATION ACT



The **Nonprofit Corporation Act** (Act) applies to a business, including homeowners associations (HOA), that have filed its nonprofit articles of incorporation with the Secretary of State. The law provides details on meetings (including notice & quorum requirements), rules for the board of directors, access to records and more.

Below are highlights of the law. It does not serve as a substitute for reviewing the actual statute.

SETTING UP A NONPROFIT CORPORATION:

Filing Requirement — To become a nonprofit corporation, Articles of Incorporation (“articles”) must be filed with the South Carolina Secretary of State. For filing forms and more information on what is required, visit <https://businessfilings.sc.gov/businessfiling>. To see if an HOA is registered as a nonprofit corporation, visit sos.sc.gov/searches and click “Business Entities Search.”

Bylaws — The incorporators or board of directors must adopt the corporation’s initial bylaws. The bylaws set out how the business will operate, including what it can and cannot do. A corporation can put what they wish in the bylaws so long as it doesn’t conflict with the law or the business’ articles. Amendments to the bylaws can be made by either the board of directors, or the members, depending on (1) the topic and (2) what the law, articles and bylaws provide.

DIRECTORS & OFFICERS:

A nonprofit corporation must either have a board of directors or someone named in the articles who has powers normally held by the board. When the business chooses a board, it must consist of 3 or more people either elected by members or appointed through the bylaws for a term of five years or less.

Unless otherwise provided in the articles or bylaws, a corporation must have a president, a secretary, a treasurer. One officer must be given the duty to take minutes at directors’ and members’ meetings.

MEMBERS:

The articles or bylaws must set out how someone becomes a member of the corporation. All members have the same voting rights and obligations unless the articles or bylaws lay out different member classes.

ACCESS TO DOCUMENTS:

Members of the HOA have the right to inspect and copy records held by the corporation. The law requires nonprofit corporations to keep certain items, including:

- Minutes of director’s and members’ meetings, including committees of the board;
- Articles and any current amendments;
- Names and addresses of its current directors and officers;
- Written communications to members made within the past three years, including financial statements;
- Records of all actions approved by members for the past three years;
- Copies of reports filed with the Secretary of State.

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MEETINGS - TYPES, NOTICE AND VOTING:

Meeting Types — Nonprofit corporations must have an annual meeting each year where the President and Chief Financial Officer report on activities and the financial condition of the corporation. Regular membership meetings and special-called meetings are allowed.

Notice — The Act sets rules for giving notice. One requirement is that notice must be “fair and reasonable.” If the corporation notifies members of the following, the notice is considered “fair and reasonable.”

1. The place, date, and time of each annual, regular and special meeting at least 10 days ahead of time, but no sooner than 60 days before the meeting (if using first-class or registered mail);
2. Any matter the members must approve if an annual or regular meeting or if a special-called meeting, a description of what will be discussed; and
3. Issues a member intends to raise at the meeting, if certain requirements are met.

VOTING:

Unless the Act, articles or bylaws say otherwise: (1) each member is entitled to one vote, (2) a quorum is 10% of votes entitled to be cast and (3) proxies are allowed.

COMPLAINT PROCESSING AND REPORTING — DEPARTMENT OF CONSUMER AFFAIRS:

The Department of Consumer Affairs is to take and collect specific data on [HOA complaints](#), compile and share the data with the Governor and the General Assembly each year. The law specifically prohibits the agency from serving as an arbiter of disputes.

FOR MORE HOA INFORMATION, VISIT CONSUMER.SC.GOV.



Please note, this material is for informational purposes only, is general in nature, and is not intended to and should not be relied upon or construed as a legal opinion or legal advice regarding any specific issue or factual circumstance.



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