

## Key Changes from the New DC Nonprofit Corporation Act

Effective as of January 1, 2012, nonprofit corporations incorporated in the District of Columbia or doing business in the District are subject to a new nonprofit corporation statute, the Nonprofit Corporation Act of 2010 (2010 Act). As part of the effort to update and modernize the District's corporations statute, the 2010 Act replaces the District of Columbia Nonprofit Corporation Act, which was enacted in 1962 (1962 Act).

This Advisory highlights key provisions of the new law that nonprofit organizations should review to determine if their governing documents (articles of incorporation, bylaws, and policies) need to be revised or updated to conform to the new law or to take advantage of new provisions.

### Administrative Changes

**Two-Year Report Filing Deadline.** The deadline for filing the Two-Year Report is now April 1, instead of January 15 (D.C. Code § 29-102.11). All domestic and foreign nonprofit corporations that conduct business in the District of Columbia and are registered with the Corporation Division of the DC Department of Consumer and Regulatory Affairs must file a Two-Year Report.

**Filing Articles of Incorporation.** The 2010 Act simplifies the process of filing the articles of incorporation for a new nonprofit organization. Under the new law, the articles of incorporation do not have to be notarized and require only one incorporator to file, instead of three under the 1962 Act. In addition, an organization may now restate its articles of incorporation and file them with the DC Department of Consumer and Regulatory Affairs. Restatement is particularly useful for organizations that have amended their articles of incorporation numerous times over the years.

### Attorney General Oversight

Under the new law, a nonprofit corporation must provide advance notice to the Attorney General of the District of Columbia of its intention to dissolve, prior to filing articles of dissolution with the DC Department of Consumer and Regulatory

### Contacts



**James P. Joseph**  
+1 202.942.5355



**Andras Kosaras**  
+1 202.942.5271



**Bridget M. Weiss**  
+1 202.942.5839

#### US Treasury Circular 230 Notice

Any US federal tax advice included in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding US federal tax-related penalties or (ii) promoting, marketing, or recommending to another party any tax-related matter addressed herein.

Affairs (D.C. Code § 29-412.02). However, the Attorney General's approval is not required, and the new law expressly provides that the notice requirement shall not delay or otherwise affect the dissolution process.

## Governance Provisions

**Board Quorum.** Under the new law, the default quorum of a meeting of the board of directors is the majority of directors in office before a meeting begins. The articles of incorporation or bylaws may establish a different quorum, provided that it is not fewer than one-third of the directors in office or two directors, whichever is greater (D.C. Code § 29-406.24).

**Minimum Officers.** A minimum of two officers is required. One officer must be responsible for the "management of the corporation" and may, but is not required to, be called the "president." The other officer must be responsible for the "financial affairs of the corporation" and may, but is not required to, be called the "treasurer." One of the officers must be assigned the duties of a secretary. Under the new law, the president and the treasurer may not be the same person (previously, the president and secretary could not be the same person). To ensure compliance with the new law, all DC nonprofit corporations should confirm that the office of "president" and "treasurer" are not held by the same person.

**Fiduciary Duties.** The 2010 Act codifies the fiduciary duties of directors and officers found under common law, including the duties of care and loyalty (D.C. Code §§ 29-406.30-.31 and -.42). These duties require directors and officers to be informed before making a business decision and require directors and officers to make decisions in the best interest of the organization. In addition, an officer has an obligation to inform his or her superior officer (or another appropriate person within the organization) or the board (or an appropriate board committee) of any actual or probable material violation of the law or material breach of duty to the organization by an officer, employee, or agent of the

organization, that the officer believes has occurred or is likely to occur (D.C. Code § 29-406.42(b)).

**Designated Body.** The 2010 Act introduces a new concept called the "designated body." The articles of incorporation may authorize an individual or entity to exercise some, but not all, of the powers of the board. If the articles authorize a designated body to exercise such authority, the directors are relieved of their duties and liabilities with respect to the powers and functions vested in the designated body (D.C. Code § 29-406.12). A designated body may be comprised, in whole or in part, of individuals who are not members of the organization's board. Among other requirements, a designated body is distinguishable from a board committee, which may include only board members (the new law requires only one director to form a board committee), or an advisory committee, which may not exercise board powers or functions.

**Loans to Directors and Officers.** The new law provides limited exceptions to the prohibition on providing loans to directors and officers, including an advance to pay reimbursable expenses; loans made pursuant to an employee benefit plan; a loan secured by the principal residence of an officer; or a loan to pay relocation expenses of an officer (D.C. Code § 29-406.32).

**Indemnification.** The 2010 Act provides more detail regarding the standards for indemnification of directors and officers, including the procedures that an organization may follow when approving permissible indemnification (D.C. Code §§ 29-406.50-.56). The new law also mandates indemnification of a director or officer who is successful in defending a suit.

## Membership Organizations

Membership organizations should review changes to default rules related to member meetings, notice of meetings, quorum, and voting, if they are not otherwise addressed in an organization's articles of incorporation

or bylaws. Under the new law, members also have a right to adopt amendments to an organization's articles of incorporation without the board's approval. In addition, the new law expands members' rights to inspect an organization's records.

## **"Old Act Corporations"**

"Old act corporations" (formed before the 1962 Act) that have not previously elected to be subject to the 1962 Act, must file a notice with the mayor to opt out of the 2010 Act on or before December 31, 2013, in order to avoid being subject to the 2010 Act (D.C. Code § 29-107.01(b)). The exact process and filing requirements for opting out are not yet finalized.

---

*If you have any questions about any of the topics discussed in this Advisory, please contact your Arnold & Porter attorney or any of the following attorneys:*

**James P. Joseph**

+1 202.942.5355

James.Joseph@aporter.com

**Andras Kosaras**

+1 202.942.5271

Andras.Kosaras@aporter.com

**Bridget M. Weiss**

+1 202.942.5839

Bridget.Weiss@aporter.com

**Jennifer Tam\***

+1 202.942.5695

Jennifer.Tam@aporter.com

\*Admitted only in Maryland; not admitted to the practice of law in the District of Columbia.

---

© 2012 Arnold & Porter LLP. This Advisory is intended to be a general summary of the law and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific fact situation.