

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 106.00: NON-PROFIT CORPORATIONS

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106.01: Purpose

The regulations in 950 CMR 106.00 implement the responsibilities of the Secretary of the Commonwealth under M.G.L. c. 180, concerning corporations organized for non-profit purposes.

106.02: Definitions

For the purposes of 950 CMR 106.00 and the forms issued to implement it, unless the context otherwise indicates: "non-profit corporation" means all corporations organized for a purpose consistent with M.G.L. c. 180, § 4, except for corporations organized prior to March 11, 1831.

106.03: Articles of Organization; Issuance of Charter

A non-profit corporation shall be formed in the same manner as provided in M.G.L. c. 156B, §§ 11, 12, and 13, and 950 CMR 106.03. However, the clerks of the Division in their examination of the Articles of Organization have been directed to check for the following additional information:

- (a) The non-profit corporation shall have no capital stock and the Articles of Organization shall omit references to stock and stockholders;
- (b) The purposes for which the non-profit corporation is formed shall be clearly stated subject to the provisions of M.G.L. c. 180, § 4;
- (c) The non-profit corporation may not assume a name that is misleading as to its corporate purposes, thus, the names shall include the word "incorporated" or "corporation" or an abbreviation thereof; except that a church, religious society, or other body organized for religious purposes, shall be exempt from this requirement;
- (d) A sworn statement relative to certain criminal convictions must be signed by the incorporators (See 950 CMR 106.06);
- (e) Any date for an annual meeting shall be acceptable to the Division.

The Division shall send a copy of the approved Articles of Organization to the corporation within 30 days of approval. This copy of the Articles shall be sent in place of the previously used special charter. However, special charters are available to the incorporators upon request and payment of an additional ten dollar fee.

106.04: Purposes

A non-profit corporation may be formed for any one or more of the following purposes pursuant to M.G.L. c. 180, § 4:

106.04: continued

- (a) For any civic, educational, charitable, benevolent, or religious purpose;
- (b) For the prosecution of any antiquarian, historical, literary, scientific, medical, chiropractic, artistic, monumental, or musical purpose;
- (c) For establishing and maintaining libraries;
- (d) For supporting any missionary enterprise having for its object the dissemination of religious or educational instruction in foreign countries;
- (e) For promoting temperance or morality in the Commonwealth;
- (f) For fostering, encouraging, or engaging in athletic exercises or yachting;
- (g) For encouraging the raising of choice breeds of domestic animals and poultry;
- (h) The association and accommodation of societies of Free Masons, Odd Fellows, Knights of Pythias or other charitable or social bodies of a like character and purpose;
- (i) For the establishment and maintenance of places for reading rooms, libraries, or social meetings;
- (j) For establishing boards of trade, chambers of commerce and bodies of like nature;
- (k) For providing non-profit credit counseling services, as defined in M.G.L. c. 180, § 4A;
- (l) For encouraging agriculture or horticulture; for improving and ornamenting the streets and public squares of any city or town by planting and cultivating ornamental trees therein and also otherwise improving the physical aspects of such city or town and furthering the recreation and enjoyment of the inhabitants thereof.

106.05: Applicability of M.G.L. c. 156B

M.G.L. c. 180 does not set out in full the various provisions of M.G.L. c. 156B which are made applicable to non-profit corporations. However, M.G.L. c. 180, § 10A, specifically states that non-profit corporations shall be subject to the following sections of M.G.L. c. 156B: 6, 8, 10, 11, 14, 32, 35, 37, 38, 43, 49, 56, 57, 58, 59, 68, 69, 102, 104, 105, and 115 except that the provisions of M.G.L. c. 156B pertaining to stock, stockholders, and the like, shall be applicable as nearly as possible to members of a non-profit corporation.

106.06: Local Investigation; Incorporators; Change of Location

Under the provisions of M.G.L. c. 180, § 5, the Secretary may initiate a local investigation of incorporators relative to certain criminal convictions, and in the past the Division has chosen to follow such a policy. In the future, the Division shall dispense with such local investigation provided that the incorporators sign the following statement:

"I/We the below signed INCORPORATORS, do hereby certify under the pains and penalties of perjury that I/We have not been convicted of any crimes relating to alcohol or gaming within the past ten years; I/We do hereby further certify that to the best of my/our knowledge the above named principal officers have not been similarly convicted. If so convicted, explain."

The Division shall, however, continue the practice of notifying local authorities as to the original location or change of location of any non-profit corporation as set out in M.G.L. c. 180, §§ 5 and 26. If the local authorities do not object to the location within 30 days of the date of the notice sent by the Division, the corporation's location or change of location shall be approved. The local authorities may, however, request in writing that such 30 day period be extended, and the Director in his discretion may agree to a reasonable extension prior to approval.

106.07: Reservation of Name

The name of non-profit corporation, available for corporate use under the laws of the Commonwealth, may be reserved for a period of 30 days by the filing of a written application or request to reserve a specific name signed by the applicant. The fee shall be ten dollars for such a reservation. The reservation may be extended by the Division for an additional 30 days upon the written request of the applicant and the payment of an additional ten dollar fee.

106.07: continued

A name may be checked relative to its availability for use by telephone but a name may NOT be reserved by a telephone request, and any such attempted reservation shall be considered INVALID by the Division. The reservation of a name becomes effective only upon the receipt by the Division of a written request and the payment of the proper fee.

106.08: Number of Directors

It shall be a policy of the Division to accept for filing and approve non-profit corporations which may have only one director.

106.09: Amendments; Restatement of Articles of Organization

A non-profit corporation may amend its Articles of Organization at a meeting duly called for the purpose by a vote of two thirds of its members legally qualified to vote. Such amendments may include a change of purposes, or a change of name, or a restatement of the Articles of Organization. Amendments must be filed with the Division in conformity with the requirements of M.G.L. c. 156B, § 72, and 950 CMR 104.09, and restated Articles of Organization must conform to M.G.L. c. 156B, § 74, and 950 CMR 104.11. However, no such amendment or restatement shall be approved and filed by the Division:

- (a) If as a result thereof the name of a non-profit corporation subject to the provisions of M.G.L. c. 180, § 26 would be changed, until after approval of such change by the Division;
- (b) If the purposes change so as to require the approval of another department or officer of the Commonwealth, until after such approval.

106.10: Consolidation and Merger

As in the case of Articles of Organization, amendments and restated Articles, the requirements relative to consolidation and merger of a nonprofit corporation are based substantially on M.G.L. c. 156B. The applicable sections of M.G.L. c. 156B relative to consolidation and merger are §§ 78, 79, and 80. However, no such consolidation or merger shall be approved and filed by the Division:

- (a) If as a result thereof the name of a constituent corporation subject to the provisions of M.G.L. c. 180, § 26, would be changed, until after approval of such change by the Division;
- (b) If the purposes of the resulting or surviving corporation are such so as to require the approval of another department or officer of the Commonwealth, until after such approval.

Under the provisions of M.G.L. c. 180, § 10, corporations organized under the laws of state other than the Commonwealth may merge into a non-profit corporation organized under M.G.L. c. 180.

However, a corporation organized under M.G.L. c. 180 may not merge into a corporation organized under the laws of another state.

106.11: Petition for Amendment; Restatement; Consolidation or Merger

A non-profit corporation that is unable to comply with the requirements of M.G.L. 180, §§ 7, or 10, relative to an amendment, restatement of its Articles of Organization, consolidation or merger, may petition the Division for such approval under the terms of M.G.L. c. 180, § 7A. The petition shall contain the following information:

- (a) Statement of the relief sought and the reason for inability to comply;
- (b) A list of the officers and members of the non-profit corporation so far as they are known;
- (c) Signature under penalties of perjury of an officer or member.

The Director may require the petitioner to supply additional information. Once all the requirements of M.G.L. c. 180, § 7A are satisfactorily met by the non-profit corporation the document shall be approved and filed and treated in all respects as an amendment to or restatement of the Articles of Organization, or as articles of consolidation or merger as the case may be.

106.12: Evidence of Corporate Existence

Under the provisions of M.G.L. c. 180, § 9, any civic, educational, charitable, benevolent, church, or cemetery organization organized under the General Laws, the evidence of corporate existence of which is not on file in the Division, by reason of the destruction of the records or because it was organized before such recording was required, may file such evidence with the Division. Once satisfied of its corporate existence the Division shall approve the evidence submitted, and upon payment of a five dollar (\$5.00) fee, issue a certificate of incorporation.

106.13: Annual Reports

Under the provisions of M.G.L. c. 180, § 26A, every non-profit corporation shall, annually on or before November 1st, file an Annual Report with the Division. The clerks of the Division in their examination of the Annual Report have been directed to check for the following information:

- (a) The name of the non-profit corporation;
- (b) The location, with street address, of its principal office;
- (c) The date of its last preceding annual meeting;
- (d) The names and addresses of all the officers and directors, or officers having the powers of directors, of the non-profit corporation, and the date at which the term of office of each expires.

The Annual Report of a non-profit corporation shall be signed and sworn to by its president and treasurer, or its presiding and financial officers having the powers of president and treasurer, and a majority of its directors, or officers having the powers of directors but if such a majority is more than five, then by five at least. The requirement to file such an Annual Report shall not apply to the following:

- (a) Church or religious organization;
- (b) Non-profit school or college;
- (c) Corporation organized prior to January 1, 1923 under the General Laws and having the name of a political party as a part of its name;
- (d) Charitable hospital;
- (e) Library association whose real or personal property is exempt from taxation.

106.14: Failure to File Annual Report; Revocation of Charter

If a non-profit corporation fails to file its Annual Report for two successive years, the Division shall notify the delinquent corporation by mail of such default. If such a non-profit corporation then fails to file its Annual Report within 90 days after the notice of default has been given, its charter may be revoked by the Secretary under the provisions of M.G.L. c. 180, § 26A.

106.15: Forms and Fees

All fees for filing the particular forms to which they pertain shall be paid, prior to filing, by cash, check, draft, or money order made payable to the "Commonwealth of Massachusetts" in accordance with the following:

Table 1

(a) Articles of Organization	\$30.00
(b) Restated Articles of Organization	\$30.00
(c) Petition Pursuant to Section 7A	\$30.00
(d) Amendment	\$10.00
(e) Consolidation or Merger	\$30.00
(f) Annual Report	\$10.00
(g) Reservation of Name	\$10.00
(h) Certificate of Evidence (Rule 4.12)	\$ 5.00
(i) Revival	\$35.00

The filing fee for all other certificates, statements, or reports required by M.G.L. c. 180 shall be ten dollars for each certificate, statement, or report unless another filing fee is specifically provided therefor.

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106.15: continued

The Division also issues certain certificates relative to non-profit corporations in accordance with the following:

Table 2

(1) Certificate of Legal Existence (short form) (up to one name change)	\$ 5.00
(2) Certificate of Legal Existence (2 or more name changes or listing officers)	\$ 10.00
(3) Long Form Certificates of legal Existence	\$ 15.00
(4) Certificate of Merger	\$ 15.00
(5) Certificate of Good Standing	\$ 10.00

For purposes of this fee schedule, "Item" is defined as any single unit of information listed on a certificate, for example, a change of name or a date of amendment.

106.16: Public Inspection of Records

The records of the Division pertaining to non-profit corporations shall be available for public inspection during regular business hours.

REGULATORY AUTHORITY

950 CMR 106.00: M.G.L. c. 180.