

## 950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

### 950 CMR 109.00: VOLUNTARY ASSOCIATIONS AND CERTAIN TRUSTS

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#### 109.01: Purpose

The regulations in 950 CMR 109.00 implement the responsibilities of the Secretary of the Commonwealth under M.G.L. c. 182, concerning voluntary associations and certain trusts.

#### 109.02: Definitions

For the purpose of 950 CMR 109.00 and the forms issued to implement it, unless the context otherwise indicates:

- (1) "Association" means a voluntary association under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares;
- (2) "Trust" means a trust under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares, other than a trust established for the sole purpose of exercising the voting rights pertaining to corporate stock or other securities in accordance with the terms of a written instrument;
- (3) "Declaration of trust" means the written instrument or declaration which creates a voluntary association or trust.

#### 109.03: Filing Declaration of Trust

The trustees of an association or trust shall file with the Division a copy of the Declaration of Trust. The clerks of the Division in their examination of the Declaration of Trust have been directed to check for the following information:

- (a) Name of association or trust;
- (b) Date of organization;
- (c) Names and addresses of the trustees;
- (d) Original signatures of all trustees;
- (e) Principle place of business;
- (f) Statement that beneficial interest is divided into transferable certificates of participation or shares;
- (g) Ability to merge (if ability is so desired).

If the association or trust is organized under the laws of a state other than Massachusetts, then the Declaration of Trust shall include a clause indicating the association or trust is in compliance and will continue to comply with Massachusetts Law.

If none of the trustees list their address as a Massachusetts address, then the Declaration of Trust shall further include the name and address of a resident agent.

#### 109.04: Amendments

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The trustees of an association or trust shall file a copy of any amendment of the Declaration of Trust with the Division within 30 days of the adoption of each amendment.

109.05: Annual Reports

The trustees of an association or trust must file an annual report with the Division on or before June 1st for each year of existence of the association or trust. 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 association or trust;
- (b) The principal place of business in Massachusetts and elsewhere if applicable;
- (c) The number of its issued and outstanding transferable shares;
- (d) The names and addresses of the trustees.

The trustee, or if more than one trustee, then at least two trustees shall sign the annual report under the penalties of perjury.

109.06: Trusts and Certain Public Utilities

Pursuant to M.G.L. c. 182, § 4, the trustees of an association or trust who own or control a majority of the capital stock of a railroad, street railway, electric railroad, elevated railway, gas, electric or water company, or corporation engaged in the common carriages of passengers by motor vehicle, shall file with the Division annually on or before April 1st a statement containing the following information:

- (a) Number of shares of such company or corporation;
- (b) The stockholders of record on the books of such company or corporation in whose name such shares are held.

109.07: Termination

In order to properly terminate an association or trust the trustees shall file with the Division a copy of their vote to terminate the trust which shall include the exact date of termination. The trustees must also file all the appropriate annual reports up to the date of termination.

109.08: Penalties For Failure To File

Any trustee who fails to file a declaration of trust as required by M.G.L. c. 182, § 2, and 950 CMR 109.03, shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than three months.

Any trustee who fails to file an annual report as required by M.G.L. c. 182, § 4, and 950 CMR 109.05, shall be punished by a fine of not more than \$500.00 or by imprisonment for three months.

Any trustee or association which fails to file an annual report as required by M.G.L. c. 182, § 12, and 950 CMR 109.05 within 30 days after notice of default sent by the Division, as provided in M.G.L. c. 182, § 14, shall forfeit to the Commonwealth not less than \$5.00 nor more than \$10.00 for each day during which the default continues. The Supreme Judicial Court in Suffolk County may issue an injunction restraining the further prosecution of the business of the trust or association until such forfeiture, with interest and costs, has been paid and until such annual report has been filed.

109.09: 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:

109.09: continued

Table 1

(a) Declaration of Trust (No form - See 950 CMR 101.03)	\$150.00
(b) Annual Report	\$ 50.00

The Division also issues certain certificates relative to associations or trusts in accordance with the following:

Table 2

(a) Certificate of Legal Existence	\$ 5.00
(b) Long Form Certificate of Legal Existence	\$ 15.00
(c) Certificate of Good Standing	\$ 10.00
(d) Certificate of Termination	\$ 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.

109.10: Public Inspection of Records

The records of the Division pertaining to associations or trusts shall be available for public inspection during regular business hours.

REGULATORY AUTHORITY

950 CMR 109.00: M.G.L. c. 182.