

A Charter Guide for the Incorporation of Nonprofit Corporations Under the 1948 Act

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may be heard by a five man jury, or even by the judge without a jury. Also, the difficulty of proving actual value has often led the prosecutor to set a comparatively small value on the object stolen. This same difficulty of proof often causes juries to return verdicts of guilty of theft of a smaller amount than that charged in the indictment. Undoubtedly there are numerous cases where the prosecutor realized that the penalty was inappropriate to the seriousness of the theft, and reduced the charge accordingly. Frequently the judge, in sentencing, considers the *actual value* and the nature of the object stolen as well as its present day dollar value.

Penalty clauses, however, should not be predicated upon anticipated administrative or judicial leniency, and should be adjusted from time to time so as to provide a penalty as nearly as possible in keeping with the gravity of the offense. An important circumstance to be considered in establishing gradations of punishment for crimes against property is the existing dollar-commodity relationship.

GILLIS W. LONG

A CHARTER GUIDE FOR THE INCORPORATION OF NONPROFIT CORPORATIONS UNDER THE 1948 ACT*

By enacting "The Nonprofit Corporation Act"¹ the 1948 session of the legislature of Louisiana corrected a deficiency in our law, providing a method of incorporation for non-business corporations. The broad definition of a "nonprofit corporation" contained in the act² will bring under regulation many types of organizations and groups which hitherto have not clearly come under any applicable laws. The act abandoned the "nontrading corporation" test of the old statute³ and substituted a more simple and inclusive test. If the corporation falls outside the class of corporations organized for pecuniary profit or gain to their

* La. Act 455 of 1948 [La. R.S. (1950) § 12:101 et seq.]. For a short but excellent discussion of the outstanding features of the act and comparison with the business and the old "nontrading corporation act," the reader is referred to Louisiana Legislation of 1948 (1948) 9 LOUISIANA LAW REVIEW 18, 68.

1. Short title of La. Act 455 of 1948.

2. La. Act 455 of 1948, § 1, H [La. R.S.(1950) § 12:101, 8]: "Nonprofit Corporation' means a corporation organized for a purpose not involving pecuniary profit or gain to its shareholders or members, and not paying dividends or other pecuniary remuneration to its shareholders or members; provided that the corporation may pay reasonable compensation or salaries for services rendered."

3. La. Act 254 of 1914, as amended by La. Act 190 of 1924 and 146 of 1936.

shareholders or members and which pay dividends or other remuneration to its shareholders or members, it is covered by the act. Labor unions, fraternal orders, churches, charities, civic clubs, associations for the promotion and enjoyment of cultural activities, political parties or clubs, and groups of similar nature are examples of the types of organizations which are provided for. These may now assume corporate existence with its accompanying advantages without question as to how far they may go in engaging in business activities.⁴

Of major importance to drafters of corporate charters is the completeness and detail of the provisions of the new act. As members of the bar will find considerable use for the act in advising these organizations, the writer has attempted to supply a worksheet or guide for drafting articles of incorporation for nonprofit corporations.⁵ Those familiar with the Business Corporation Act⁶ will find that the new act for nonprofit corporations borrows heavily from it. Many sections of the new act follow verbatim the language of their counterparts in the Business Corporation Act. This similarity is intentional and has been carried throughout the act where possible. However, considering the differences in nature, purpose, and powers of the two corporate forms, it is obvious that many provisions of the Business Corporation Act are entirely inapplicable to nonprofit corporations. Similarly, the Nonprofit Corporation Act contains many provisions peculiar to that type of corporation.

The form or check list which follows attempts to arrange the provisions of the act pertinent to drafting a charter for a nonprofit corporation in logical sequence under appropriate articles. The purpose of such a guide is to permit the taking up of the usual component parts of a nonprofit charter in probable order with the applicable provisions of the act noted or commented upon immediately following each subject. The form presented does not cover every possible situation, for obviously every char-

4. But under La. Act 455 of 1948, § 52 [La. R.S. (1950) § 12:152, B], cooperative marketing associations and agricultural cooperative associations or corporations are excluded from coverage of the act and continue to be governed by their own special statutes.

5. The writer is indebted to the example of Messrs. Charles E. Dunbar, Jr., and Walker B. Spencer who previously have prepared a guide for the formation of business corporations, which is set out in Moses, *A Guide to the Formation of Corporations under the Business Corporation Act of Louisiana* (1945) 19 *Tulane L. Rev.* 566, 572.

6. La. Act 250 of 1928, as amended by La. Acts 65 of 1932, 34 of 1935 (4 E.S.), 304 of 1942, and 475 of 1948 [La. R.S. (1950) § 12:1 et seq.].

ter will have its own peculiar features requiring originality and reference to the act itself.

The user of this guide may easily refer to the Revised Statutes of 1950 by interpolating the numbered sections cited by adding 100 to any numbered section, for example, Section 1 of Act 455 of 1948 becomes Section 101, Title 12 of the Revised Statutes of 1950.

JIMMY M. STOKER

ARTICLES : UNITED STATES OF AMERICA
 OF :
 INCORPORATION : STATE OF LOUISIANA
 OF : PARISH OF _____
 : BE IT KNOWN, THAT ON THIS ____
 _____ DAY OF THE MONTH OF _____, IN THE
 : YEAR OF OUR LORD, ONE THOUSAND,
 _____ NINE HUNDRED AND _____:

BEFORE ME, _____, a
 NOTARY PUBLIC, IN AND FOR THIS PARISH AND STATE, PERSONALLY
 CAME AND APPEARED THE SEVERAL PARTIES⁸ (OF FULL AGE OF MA-
 JORITY) (RELIEVED BY EMANCIPATION OF ALL DISABILITY OF MINOR-
 ITY. SEE NOTE A) WHOSE SIGNATURES ARE HEREUNTO SUBSCRIBED,
 WHO DECLARED TO ME, NOTARY, IN THE PRESENCE OF THE UNDERSIGNED
 COMPETENT WITNESSES, THAT, AVAILING THEMSELVES OF THE PROVI-
 SIONS OF LOUISIANA REVISED STATUTES (1950) §§ 12:101-12:155,
 THEY DO HEREBY ORGANIZE THEMSELVES INTO A NONPROFIT CORPORA-
 TION UNDER AND IN ACCORDANCE WITH THESE ARTICLES OF INCORPORA-
 TION:

NOTE A. *If any one or more of the subscribers are minors, but fully emancipated, reference should be made to this fact, and date of decree, court, et cetera.*

NOTE B. *The Articles of Incorporation must specifically state that the corporation is a nonprofit corporation as defined in Section 1, H, of Act 455 of 1948. (Section 3, A (2))*

7. The Articles of Incorporation must be in authentic form. See La. Act 455 of 1948, § 3, A [La. R.S. (1950) § 12:103, A].

8. Three persons may form a corporation under this act, La. Act 455 of 1948, § 2 [La. R.S. (1950) § 12:102].

ARTICLE I. NAME

THE NAME OF THIS CORPORATION IS _____.

- NOTE A. *The name need not contain the word "Incorporated". (Section 4)*
- NOTE B. *Consult the Secretary of State prior to selection of name to be sure of its availability. The name shall not be the same or deceptively similar to that of (1) any other corporation, domestic, business, nonprofit, or foreign which is authorized to do business in this state or even to an unincorporated body (Section 4, B (1)); (2) the name of any administrative department, board, commission, or other agency of the state (Section 4, B (2)); (3) or any name to which another corporation has an exclusive right Section 4, B (3)).*
- NOTE C. *The corporate name shall not contain the word "bank," "banking," "banker," "savings," "trust," "deposit," "insurance," "mutual," "assurance," "indemnity," "casualty," "fiduciary," "homestead," "building and loan," "surety," "security," "guarantee," "cooperative," "state," or "parish." It may be in any language but must be in English letters or characters. It shall not imply that the nonprofit corporation is an administrative agency of any political subdivision. (Section 4, A)*

COMMENT: As in the case of business corporations the use of a name in violation of the provisions of the act⁹ does not vitiate the corporate existence but the state or any affected person may enjoin the use of the name.

ARTICLE II. PURPOSES

THE PURPOSES FOR WHICH THIS CORPORATION (ORGANIZATION, ASSOCIATION) IS ORGANIZED AND THE NATURE OF THE ACTIVITIES TO BE CARRIED ON BY IT, ARE DECLARED TO BE AS FOLLOWS:

- NOTE A. *If a corporation is formed to effectuate the purposes of a trust instrument, a certified copy of the trust instrument must be attached to and made a part of the articles. (Section 5, A)*

9. Id. at § 4, D [La. R.S. (1950) § 12:104, D].

NOTE B. *See Sections 13 and 14 on lawful activities.*

COMMENT: The act provides that the articles of incorporation shall state the "purpose or purposes" for which the corporation is formed.¹⁰ Hence, it is not limited to a single purpose. Inasmuch as the nonprofit corporate form is apt to be the form of existence assumed by a wide variety of associations it is well to include a broad definition of purpose. The articles should specifically include the power to own real estate (although the act provides that the corporation may hold property in trust)¹¹ or engage in other incidental activities of such an important nature. Otherwise the purpose should be sufficiently general to allow the organization to engage in whatever activities it might desire. The act provides that nonprofit corporations shall have the capacity of natural persons but authority to perform only those acts necessary or proper to accomplish the purposes expressed or implied in the articles, or that may be incidental thereto.¹²

ARTICLE III. DURATION

UNDER ITS CORPORATE NAME, THE CORPORATIONS SHALL ENJOY CORPORATE EXISTENCE FOR A PERIOD OF _____ YEARS FROM DATE HEREOF.

NOTE A. *Unless there is reason for some other time, designation of ninety-nine years is suggested.*

ARTICLE IV. REGISTERED OFFICE

THE LOCATION AND POST OFFICE ADDRESS OF ITS REGISTERED OFFICE IS _____
(SEE SEC. 3, A (5), AND SEC. 23, A)

NOTE A. *Under the act the corporation must maintain a registered office in the State of Louisiana, the location of which must be set out in the articles. Written notice of the location of the office must be filed with the clerk of the district court of the parish in which such office is located. (Section 3, A (4), and Section 23, A).*

COMMENT: After incorporation the location of the registered office may be changed by a vote of the board of directors.¹³ Within thirty days of such change a notice must be filed with the

10. Id. at § 3, A(1) [La. R.S. (1950) § 12:103, A(1)].

11. Id. at § 10 [La. R.S. (1950) § 12:110].

12. Id. at § 9 [La. R.S. (1950) § 12:109].

13. Id. at § 23, A [La. R.S. (1950) § 12:123, A].

Secretary of State and the clerk of the district court in the parish where the new office is located.¹⁴

ARTICLE V. REGISTERED AGENTS

THE FULL NAME AND POST OFFICE ADDRESSES OF ITS
REGISTERED AGENTS ARE _____.

(SEE SECTION 3, A (5), AND SECTION 23, B)

NOTE A. *At least two natural persons, of full age and residents of the parish in which the registered office is located must be designated upon either of whom legal process, et cetera, may be served. Their full names and post office addresses must be set out. (Section 3, A (5), Section 23, B)*

COMMENT: Notice of the appointment of registered agents must be filed with the clerk of the district court in the same manner as notice of the registered office. Notice of change in designation of registered agents must be sent to the Secretary of State and filed with the clerk of the district court in that parish certified in writing and signed in the name of the corporation by the president, vice-president, or secretary of the corporation accompanied by a copy of the resolution certified by one of the officers.¹⁵

Where through death, resignation, or removal from the parish of any of the registered agents, the number properly qualified falls below two, a new one, must be appointed by the board of directors within thirty days. Compliance with these provisions will render service of process on any one other than the registered agents invalid.¹⁶ Noncompliance with them will permit service of process upon any officer, director, or resident agent named in the articles,¹⁷ or in the last report previously filed with the Secretary of State, or on any employee over the age of sixteen years found in the corporation's registered office, or in any place where the business of the corporation is regularly conducted.¹⁸ If none of the persons referred to can be located service

14. *Ibid.*

15. *Id.* at § 23, B [La. R.S. (1950) § 12:123, B].

16. *Melat v. Cooper*, 150 So. 432 (La. App. 1933); *Mouton v. First National Life Ins. Co.*, 177 So. 431 (La. App. 1937).

17. *Holzer Sheet Metal Works v. Arch Const. Co. of La.*, 141 So. 872 (La. App. 1932).

18. La. Act 455 of 1948, § 23, C [La. R.S. (1950) § 12:123, C].

may be made upon the Secretary of State or Assistant Secretary of State.¹⁹

ARTICLE VI. BASIS OF ORGANIZATION.

A. THIS CORPORATION SHALL BE ORGANIZED* (WITHOUT CAPITAL STOCK AND MEMBERSHIP SHALL BE EVIDENCED BY CERTIFICATES OF MEMBERSHIP)²⁰ (ON A CAPITAL STOCK BASIS AND THE TOTAL AUTHORIZED NUMBER OF SHARES IS _____ OF A PAR VALUE OF _____ (\$ _____) DOLLARS EACH).²¹

*Select appropriate language

NOTE A. *The nonprofit corporation act provides that organization may be on either of two bases: stock or nonstock. Which of these bases is employed must be set forth in the articles (Section 3, A (8)), and if the corporation is to be organized on a stock basis the following information must be given: (1) the aggregate number of shares which the corporation shall have authority to issue and the par value of each of the shares; (2) a description of the several series or classes of shares, if the shares are classified or issued in series; (3) the number of shares in each class; (4) the designations, voting powers, and other rights or restrictions, limitations or qualifications granted to or imposed upon the shares of each class; and (5) the amount which has been paid into the treasury of the intended corporation. (Section 3, A (9))*

If the corporation is to be organized on a non-stock basis this section should list (1) the qualifications of its members, (2) the different classes of membership, if any, and (3) the designations, voting powers, and other rights or privileges, restrictions or limitations, granted to or imposed upon the members of each class. (Section 3, A (10))

NOTE B. *Charitable and religious corporations, and corporations for the execution of a trust must be organized on a nonstock basis. (Section 11) Under the nonstock*

19. Ibid.

20. Id. at § 3, A(8), (10), and § 12 [La. R.S. (1950) § 12:103, A(8), (10), § 12:112].

21. Id. at § 3, A(8), (9) and § 12 [La. R.S. (1950) § 12:103, A(8), (9), and § 12:112].

form of organization shares are not issued and membership is evidenced by certificates of membership. (Section 12, C) Upon the face of each membership certificate and each share certificate there must be printed in clear type a statement that the corporation is a nonprofit corporation. (Section 12, D)

B. THE AMOUNT OF PAID-IN-CAPITAL WITH WHICH THE CORPORATION SHALL BEGIN BUSINESS IS _____ DOLLARS. (OR IF MORE APPROPRIATE, THE FOLLOWING: THE ISSUANCE OF CERTIFICATES OF MEMBERSHIP TO EACH OF THE INCORPORATORS LISTED IN ARTICLE XIII OF THESE ARTICLES SHALL BE CONDITIONED ON THE PAYMENT OF A FEE OF \$_____ AND THIS ASSOCIATION SHALL BE AUTHORIZED TO BEGIN BUSINESS UPON THE ISSUANCE OF (NUMBER) CERTIFICATES.)

NOTE C. *No particular minimum amount of paid-in-capital is specified in the act but a statement of some amount would be appropriate. (Section 3, A (11)) Nor is there a prohibition against the corporation contracting any debts or transacting any business before the amount of paid-in-capital is received. Further, no provision is made for paying capital in the form of property taken at fair value as an alternative to cash, as there is in the Business Corporation Act.²²*

(Where the corporation is organized on a nonstock basis some limitation on the number of memberships authorized may be desirable, if so, the following clause is suggested:)

C. MEMBERSHIP IN THIS CORPORATION SHALL BE LIMITED TO _____ MEMBERS.

COMMENT: In this article may be included all general provisions relating to members and qualifications of share holders and members, the property, basis of voting, and other rights and privileges of the shareholders and members. Provisions dealing with the liability of the shareholders and members for dues or assessments and methods of collection thereof, and any other lawful provisions pertinent may also be included here, unless it is desired to place some or all of them in separate articles.

NOTE D. *Unless it is otherwise provided each share is entitled to one vote, or, where there are no shares, each mem-*

22. La. Act 250 of 1928, § 8, as amended [La. R.S. (1950) § 12:8].

ber shall be entitled to one vote. (Section 12, D, and Section 31, A) Membership may be of such classes and governed according as the articles provide, otherwise there shall be but one class of members whose rights and interests shall be equal. (Section 26, A and B) No dividends or similar pecuniary remuneration may be paid on any share or certificate of membership from corporate earnings or incidental increases in corporate property values. (Section 12, D) Shares shall be transferable by assignment or sale, or by inheritance or testament, upon the death of the owner, unless otherwise provided. Membership rights shall not be transferable by assignment or sale or by inheritance or testament upon the death of the owner unless the articles so provide. (Section 12, D) The power to exclude a member from further membership for failure to comply with reasonable and lawful requirements of the corporate government is provided in the act. (Section 12, D)

(Considering the matters contained in Note D above the following clauses may be appropriate:)

D. EACH SHAREHOLDER (HOLDER OF A CERTIFICATE OF MEMBERSHIP) SHALL BE ENTITLED TO ONE VOTE. SHARES SHALL (NOT) BE TRANSFERABLE BY ASSIGNMENT OR SALE, OR BY INHERITANCE OR TESTAMENT UPON THE DEATH OF THE OWNER AND (ALL) (NO) RIGHTS OF MEMBERSHIP BELONGING TO THE FORMER OWNER SHALL INURE TO THE ASSIGNEE, VENDOR, HEIR, OR LEGATEE.

NOTE E. Under appropriate procedure the capital stock of a nonprofit corporation may be reduced. Under Section 25, A, the shareholders by resolution in a meeting called for that purpose may reduce the capital stock by a two-thirds vote. However, the articles may provide for a larger or smaller vote but not less than a majority. Therefore a clause covering this matter may be placed here. See subsection B and C of Section 25 for the procedure required after the vote of the shareholders.

ARTICLE VII. DIRECTORS

A. THE NAMES OF THE FIRST DIRECTORS, THEIR POST OFFICE ADDRESS, AND THE TERMS OF OFFICE ARE AS FOLLOWS:

NOTE A. *There must be at least three directors who shall serve until the election of their successors. (Section 3, A (7))*

COMMENT: Subject to any limitation, restrictions, or reservation in the articles, the by-laws, or the act, the affairs of the corporation shall be managed by a board of directors of not less than three natural persons. These directors need not be residents of the state or members of the corporation unless the articles or by-laws so require.²³ Directors, other than those constituting the first board, shall be elected by the voting members, unless some other method is expressly provided in the articles.²⁴ Reasonable compensation may be allowed the directors for their services and a director may also be a salaried officer of the corporation.²⁵

B. THE DIRECTION AND ADMINISTRATION OF THIS CORPORATION SHALL BE VESTED IN A BOARD OF DIRECTORS OF (NUMBER) MEMBERS. THE METHOD OF ELECTION OF DIRECTORS SHALL BE AS FOLLOWS: _____
EACH DIRECTOR SHALL HOLD OFFICE FOR A TERM OF _____

(Considerable detail relative to the directors may be covered in by-laws as authorized in Section 18, A; if so, the following provision may be employed:)

C. THE NUMBER, QUALIFICATIONS, TERMS OF OFFICE, MANNER OF ELECTION, COMPENSATION, AND POWERS AND DUTIES OF THE DIRECTORS, THE TIME, PLACE AND MANNER OF CALLING, GIVING NOTICE OF AND CONDUCTING DIRECTOR'S MEETINGS, AND THE NUMBER OF DIRECTORS WHICH SHALL CONSTITUTE A QUORUM, SHALL BE PRESCRIBED BY THE BY-LAWS.

NOTE B. *Unless otherwise covered in the articles or by-laws the act provides: (1) a director shall be elected for a term of at least one year (Section 18, A (1);); (2) the office of a director shall become vacant if he dies or resigns (Section 18, A (2)); (3) the directors may declare vacant the office of a director if he is interdicted, adjudicated a bankrupt, or absents himself from the state continuously for six months without leave, or is incapacitated through illness or infirmity*

23. La. Act 455 of 1948, § 17, B [La. R.S. (1950) § 12:117, B].

24. Id. at § 17, C [La. R.S. (1950) § 12:117, C].

25. Id. at § 17, D [La. R.S. (1950) § 12:117, D].

for more than six months or if he ceases to be qualified (Section 18, A (3)); (4) remaining directors, though not a quorum, may fill a vacancy in the board by a majority vote (Section 18, A (4)); (5) meetings of the board may be at a place where a majority shall designate or which is designated in notice (Section 18, A (5)); (6) due notice of meetings must be given directors but provision for waiving notice for meetings actually held is provided (Section 18, A (6)); (7) notice of an adjourned meeting need not be other than that given at the meeting from which adjournment is taken (Section 18, A (7)); (8) a majority shall be a quorum and an act of a majority where a quorum is present shall be the act of the board; where a quorum is present subsequent withdrawals or refusals to vote shall not affect the power of the remaining directors to act officially (Section 18, A (8)); by resolution of a majority of the board a committee of not less than two of the directors may be appointed to manage the affairs of the corporation and exercise the powers of the board. (Section 18, A (9))

COMMENT: The articles or by-laws may provide that meetings of the directors may be held outside of the state.²⁶ They may provide that a particular class or classes of members or shareholders may elect all or a certain number or proportion of the directors.²⁷

NOTE C. See Section 19 for detailed provisions applicable to removal of directors in the absence of provisions on this subject in the articles or by-laws.

D. THE BOARD OF DIRECTORS SHALL ELECT THE FOLLOWING OFFICERS WHOSE DUTIES, RESPONSIBILITIES, AND AUTHORITY ARE HEREBY DECLARED TO BE: —.

NOTE D. The board must elect a president, a secretary, and a treasurer. Furthermore it appears that no one but the board may elect the officers (the language of the act does not leave room for any other interpretation). The president and secretary must be natural persons of full age or emancipated, but the treasurer may be a corporation. However, if the treasurer is a natural

26. Id. at § 18, A [La. R.S. (1950) § 12:118, A].

27. Id. at § 18, B [La. R.S. (1950) § 12:118, B].

person he must be of full age or emancipated. (Section 20).

COMMENT: The board may elect other officers, assistant officers, or agents as may be authorized in the articles or by-laws. If the articles or by-laws so provide, any two or more offices may be held by the same person, except that of president and secretary.²⁸ The authority of officers or agents of the corporation may be fixed in the articles or by-laws and in the absence of controlling provisions therein this authority may be determined by resolution of the board of directors.²⁹ The board may remove an officer or agent at any time the best interests of the corporation so require unless the articles or by-laws provide otherwise.³⁰

ARTICLE VIII. DUES AND ASSESSMENTS

A. EACH MEMBER (SHAREHOLDER) OF THIS CORPORATION SHALL PAY DUES, PAYABLE (ANNUALLY, SEMI-ANNUALLY, QUARTERLY, MONTHLY) AS THE (MEMBERSHIP, SHAREHOLDERS, BOARD OF DIRECTORS) SHALL FIX AND SHALL BE COLLECTED BY SUCH PROCEDURE AS MAY BE ESTABLISHED BY THE (BY-LAWS, BOARD OF DIRECTORS). THE CORPORATION THROUGH (ITS MEMBERSHIP, SHAREHOLDERS, BOARD OF DIRECTORS) MAY LEVY SPECIAL ASSESSMENTS WHICH SHALL BE PAYABLE AND COLLECTED IN THE SAME MANNER AS IS HEREIN PROVIDED FOR DUES.

B. THE NONPAYMENT OF DUES OR ASSESSMENTS UPON REASONABLE NOTICE SHALL AUTHORIZE THE CANCELLATION OR SUSPENSION OF MEMBERSHIP BY THE BOARD OF DIRECTORS, PROVIDED THAT THE BOARD OF DIRECTORS MAY ADOPT FROM TIME TO TIME SUCH POLICY FOR THE REINSTATEMENT OF MEMBERS EXPELLED OR SUSPENDED UNDER THIS ARTICLE AS IT MAY DEEM ADVISABLE.

NOTE A. *Nonprofit corporations may levy dues or assessments, or both, only in accordance with authority conferred either by the articles or the by-laws. (Section 27, A)*

NOTE B. *Dues or assessments, or both, may be imposed upon all classes of members alike, or in different amounts or proportions, or by a different basis upon different classes of members. Members of one or more classes may be made exempt from either dues or assess-*

28. Id. at § 20, A [La. R.S. (1950) § 12:120, A].

29. Id. at § 20, B [La. R.S. (1950) § 12:120, B].

30. Id. at § 21 [La. R.S. (1950) § 12:121].

ments, or both, in the manner and to the extent provided either in the articles or by-laws. (Section 27, B)

ARTICLE IX. MEETINGS OF SHAREHOLDERS
(VOTING MEMBERS)

A. AT LEAST ONE MEETING EACH CALENDAR YEAR SHALL BE HELD OF THE SHAREHOLDERS (VOTING MEMBERS), WHICH MEETING SHALL TAKE PLACE ON THE (FIRST MONDAY FOR EXAMPLE) OF THE MONTH OF _____, AND IT SHALL BE THE DUTY OF THE PRESIDENT, AND UPON HIS FAILURE OR NEGLECT, THEN OF THE SECRETARY OR ANY OFFICER OR MEMBER, TO MAIL NOTICE AT LEAST _____ DAYS PRIOR TO THIS ANNUAL MEETING TO ALL MEMBERS ENTITLED TO BE PRESENT.

B. SPECIAL MEETINGS OF THE SHAREHOLDERS (VOTING MEMBERS) MAY BE CALLED AT ANY TIME BY THE PRESIDENT, THE BOARD OF DIRECTORS AND ON THE FAILURE OR REFUSAL OF EITHER TO CALL A MEETING UPON THE WRITTEN REQUEST OF AT LEAST _____ SHAREHOLDERS (VOTING MEMBERS) ANY ONE OF THESE MEMBERS SHALL HAVE AUTHORITY TO CALL A MEETING, PROVIDED THAT NOTICE BY UNITED STATES MAIL SHALL BE GIVEN TO EACH VOTING MEMBER AT LEAST _____ DAYS PRIOR TO THE DAY NAMED FOR ANY MEETING CALLED AND THIS REQUIREMENT OF NOTICE SHALL APPLY TO EITHER REGULAR OR SPECIAL MEETINGS.

MEETINGS MAY BE HELD AT ANY PLACE WITHIN _____.

NOTE A. *At least one meeting must be held each calendar year which shall be fixed either in the articles or by-laws. (Section 28, B) If it is not desired to regulate the meeting of members or shareholders with the particularity set forth above, the provisions of the act set forth in Note B below govern.*

NOTE B. *Unless otherwise provided in the articles or by-laws:*

(1) *All meetings of the shareholders (voting members) shall be held in this state at the registered office of the corporation. (Section 28, A)*

(2) *If the annual meeting has not been called and held within six months after the designated time any voting member may call the meeting. (Section 28, B)*

(3) *Special meetings of the voting members may be called at any time by the president or the board of directors. (Section 28, C)*

(4) *Ten day written notice of the annual or spe-*

cial meetings of shareholders (voting members) shall be required of the person authorized to call the meeting. (Section 29, A)

(5) Notice of an adjourned meeting may be given at the meeting from which adjournment is taken. (Section 29, A)

COMMENT: Meetings of shareholders or voting members may be held at any place, within or without the State of Louisiana, which is provided in the articles or by-laws.³¹ Failure to hold the annual meeting at the designated time does not work any forfeiture or dissolution of the corporation under the act but in such an eventuality any voting member is empowered to call the meeting after six months has elapsed without the meeting being called or held.³² At any time upon written request by a person entitled to call a special meeting, the secretary must issue a call, fixing the date, not less than 10 nor more than 60 days after receipt of the request.³³ The mailing of notice by regular mail to the last known address of the voting member is deemed sufficient for the meeting notice requirements of the act.³⁴

C. NO BUSINESS TRANSACTED AT A STOCKHOLDERS' (MEMBERS') MEETING SHALL BE VALID UNLESS A QUORUM IS PRESENT. A QUORUM SHALL CONSIST OF _____ OF THE MEMBERSHIP PRESENT IN PERSON (OR BY PROXY).

NOTE C. *A quorum must be present under the act (Section 30) and unless otherwise provided the presence in person or by proxy of a majority of the voting members shall constitute a quorum.*

COMMENT. After a meeting is validly begun with a quorum present subsequent withdrawals reducing the number present below a quorum shall not invalidate the remainder of the proceeding, the meeting being deemed properly constituted until adjournment.³⁵ Members who convene where less than a quorum is present may adjourn the meeting to another time and place, and in the case of meetings called for the election of directors those present at the second meeting shall constitute a quorum regardless.³⁶

31. *Id.* at § 28, A [La. R.S. (1950) § 12:128, A].

32. *Id.* at § 28, B [La. R.S. (1950) § 12:128, B].

33. *Id.* at § 28, C [La. R.S. (1950) § 12:128, C].

34. *Id.* at § 29, A [La. R.S. (1950) § 12:129, A].

35. *Id.* at § 30, A [La. R.S. (1950) § 12:130, A].

36. *Id.* at § 30, B [La. R.S. (1950) § 12:130, B].

NOTE D. *Where the subject of voting has not been adequately treated elsewhere in other articles or sections it is suggested that such provisions as are desired may be inserted here or in a separate article at this point. Unless otherwise provided Section 31 of the act provides:*

(1) *Every member of the corporation shall be entitled to one vote. (Section 31, A)*

(2) *Voting may be in person or by proxy. (Section 31, A)*

(3) *The manner of voting may be by ballot, mail, or any reasonable means provided in the by-laws. (Section 31, A)*

(4) *Validity of any proxy shall cease eleven months after its execution without some period being stipulated. (Section 31, C)*

(5) *Proxy revocation shall not be effective until the secretary is given written notice or a new proxy is filed. (Section 31, C)*

(6) *Members shall have the right to have the books or records of membership produced to prove another member's right to vote. (Section 31, B)*

NOTE E. *The articles or by-laws may provide that a person entitled to vote for directors may multiply his vote by the number of directors to be elected and cast them all for one candidate or he may distribute them. (Section 31, B)*

ARTICLE X. BY-LAWS

THE (MEMBERS) (BOARD OF DIRECTORS) SHALL HAVE THE POWER TO MAKE, AMEND AND REPEAL BY-LAWS TO GOVERN THIS CORPORATION PROVIDED THEY ARE IN ACCORDANCE WITH AND DO NOT CONFLICT WITH THESE ARTICLES.

NOTE A. *The Non-Profit Corporation Act provides that the members of a corporation may make, amend, and repeal the by-laws of the corporation or that this power may be vested in the board of directors, subject to the power of the members to change their action. Unless there is provision to the contrary this power shall be exercised by a majority vote of the directors*

or voting members, as the case may be, at any regular or special meeting convened for the purpose after notice has been given. (Section 15, A)

The by-laws shall have only internal effect and may not affect contracts or other dealings with persons having no knowledge of their provisions.

ARTICLE XI. DISSOLUTION

NOTE A. *No article is necessary unless it is desired to make provision other than will be applicable under the provisions of the Nonprofit Corporation Act. (See Section 41 and following)*

NOTE B. *Voluntary dissolution requires a two-thirds vote. The articles may require a larger percentage. (Section 42, A)*

ARTICLE XII. AMENDMENTS

NOTE A. *No article is necessary unless provisions different from those provided in the Nonprofit Corporation Act are to be set up. Section 34 covers these matters.*

NOTE B. *No amendment shall be made which changes the type of corporation from a class which could not distribute surplus upon dissolution (religious or charitable or corporations for the execution of a trust) to a class which could distribute surplus upon dissolution. (Section 34, A)*

NOTE C. *The Nonprofit Corporation Act provides that voting members at meetings called for that specific purpose may amend the articles as follows:*

(1) A two-thirds vote is required of the voting members or by such larger or smaller vote as the articles may require. (Section 34, B)

(2) Change in the rights of shareholders of any class require that the shareholders of each class so affected shall be entitled to vote as a class upon the amendment, whether or not by the terms of the articles the class is entitled to vote. The affirmative vote of two-thirds of the shareholders of each class (the articles may require a larger or smaller vote in

each case) so affected by the amendment shall be necessary for its adoption. (Section 34, C)

(3) The term for which a corporation is created may be extended by amendment. (Section 34, A)

(4) Any amendment which might be adopted at a meeting may be adopted without a meeting if written consent to the amendment has been given by all members entitled to vote. (Section 34, E)

NOTE D. Section 35 requires the filing of articles of amendment with the parish recorders of mortgages and the Secretary of State, and sets forth the prescribed manner.

ARTICLE XIII. INCORPORATORS

THE NAMES AND ADDRESSES OF THE INCORPORATORS OF THIS CORPORATION ARE AS FOLLOWS:

SEE SECTION 3, A (6))

(The articles should conclude with the signatures of all incorporators, two witnesses and the notary's attestation of authenticity. See Section 3, A.)

JURISDICTION TO LEVY INHERITANCE TAXES

The problem of jurisdiction to tax is one of constitutional law. In the field of death taxes,¹ the jurisdictional question is of importance to the taxpayer, his estate planner, and the state legislator, especially in view of the possibility of multiple taxation.

Prior to the beginning of the present century, it was generally conceded in the United States that the entire movable estate² of a decedent would be taxed only by the domiciliary state. This practice was applied to tangibles as well as intangibles under the doctrine of *mobilia sequuntur personam*. How-

1. Forty-seven states have some form of death tax; Nevada is the only state that does not impose any such taxes. An inheritance tax is not a tax upon the property itself but on the privilege or right to inherit. Succession of Papp, 146 La. 464, 83 So. 765 (1919). Estate taxes are based on the power to transmit or the transmission from the dead to the living. Frick v. Lewelleyn, 298 Fed. 803 (W.D. Pa. 1924).

2. It is well settled that only the state where the land is located may collect an inheritance tax as applied to land. Therefore the taxability of real estate is not discussed. See Succession of Westfeldt, 122 La. 836, 48 So. 281 (1909) and authorities cited therein.