
Nonprofit Corporation Act

**Code of District of Columbia
Title 29, Chapter 4. Nonprofit Corporation Act**

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**Code of
District of Columbia
Title 29. Business Organizations
Chapter 4
Nonprofit Corporation Act**

Subchapter I. General Provisions

§ 29–401.01. Short title.

This chapter may be cited as the “Nonprofit Corporation Act of 2010”.

§ 29–401.02. Definitions.

For the purposes of this chapter, the term:

(1) “Board” or “board of directors” means the group of individuals responsible for the management of the activities and affairs of the nonprofit corporation, regardless of the name used to refer to the group. The term includes a designated body to the extent:

(A) The powers, functions, or authority of the board has been vested in, or are exercised by, the designated body; and

(B) The provision of this chapter in which the term appears is relevant to the discharge by the designated body of its powers, functions, or authority.

(2) “Bylaws” means the code of rules, other than the articles of incorporation, adopted for the regulation and governance of the internal affairs of the nonprofit corporation, regardless of the name or names used to refer to those rules.

(3) “Charitable corporation” means a domestic nonprofit corporation that is operated primarily or exclusively for one or more charitable purposes.

(4) “Charitable purpose” means a purpose that:

(A) Would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. § 501(c)(3)) (“Internal Revenue Code”); or

(B) Is considered charitable under law other than this chapter or the Internal Revenue Code.

(5) “Conspicuous” means so written, displayed, or presented that a reasonable person against which it is to operate should have noticed it. Conspicuous terms include:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from

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surrounding text of the same size by symbols or other marks that call attention to the language[.]

(6) “Corporation”, “domestic corporation”, “domestic nonprofit corporation”, or “nonprofit corporation” means a corporation incorporated under or subject to this chapter that is not a foreign corporation.

(7) “Delegate” means a person elected or appointed to vote in a representative assembly for the election of directors or on other matters.

(8) “Designated body” means a person or group, other than a committee of the board of directors, that has been vested by the articles of incorporation or bylaws with powers that, if not vested by the articles or bylaws in that person or group, would be required by this chapter to be exercised by the board or the members.

(9) “Director” means an individual designated, elected, or appointed, by that or any other name or title, to act as a member of the board of directors, while the individual is holding that position. The term “director” shall not include a member of a designated body, as such.

(10) “Domestic unincorporated entity” means an unincorporated entity whose internal affairs are governed by the laws of the District.

(11) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(13) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign business corporation.

(14) “Eligible interests” means interests or shares.

(15) “Employee” does not include an individual serving as an officer or director who is not otherwise employed by the corporation.

(16) “Entitled to vote” means entitled to vote on the matter under consideration pursuant to the articles of incorporation or bylaws of the nonprofit corporation or any applicable controlling provision of law.

(17) “Foreign business corporation” means a corporation for profit incorporated under a law other than the law of the District that would be a business corporation if incorporated under the law of the District.

(18) “Foreign nonprofit corporation” means a corporation incorporated under a law other than the law of the District that would be a nonprofit corporation if incorporated under the law of the District.

(19) “Foreign unincorporated entity” means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than the District.

(20) “Fundamental transaction” means an amendment of the articles of incorporation or bylaws, merger, membership exchange, sale of all or substantially all of the assets, domestication, conversion, or dissolution of a nonprofit corporation.

(21) “Interest holder liability” means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(A) Solely by reason of the person’s status as a shareholder, interest holder, or member; or

(B) By the articles of incorporation, bylaws, or an organic record pursuant to a provision of the organic law authorizing the articles, bylaws, or an organic record to make one or more specified shareholders, interest holders, or members liable in their capacity as shareholders, interest holders, or members for all or specified debts, obligations, or liabilities of the entity.

(22) “Material interest” means an actual or potential benefit or detriment, other than one that would devolve on the nonprofit corporation or the members generally, that would reasonably be expected to impair the objectivity of an individual’s judgment when participating in the action to be taken.

(23) “Material relationship” means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of an individual’s judgment when participating in the action to be taken.

(24) “Member” means:

(A) A person that has the right, in accordance with the articles of incorporation or bylaws, and not as a delegate, to select or vote for the election of directors or delegates or to vote on any type of fundamental transaction; or

(B) A designated body to the extent:

(i) The powers, functions, or authority of the members has been vested in, or are exercised by, the designated body; and

(ii) The provision of this chapter in which the term “member” appears is relevant to the discharge by the designated body of its powers, functions, or authority.

(25) “Membership” means the rights and any obligations of a member in a nonprofit corporation.

(26) “Membership corporation” means a nonprofit corporation whose articles of incorporation or bylaws provide that it must have members.

(27) “Nonmembership corporation” means a nonprofit corporation whose articles of incorporation or bylaws do not provide that it must have members.

(28) “Nonregistered foreign corporation” means a foreign corporation that is not authorized to conduct activities in the District.

(29) “Officer” includes:

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(A) An individual who is an officer as provided in [§ 29-406.40](#); and

(B) If a nonprofit corporation is in the hands of a custodian, receiver, trustee, or other court-appointed fiduciary, that fiduciary or any person appointed by that fiduciary to act as an officer for any purpose under this chapter.

(30) “Organic record” means a public organic record or the private organic rules.

(31) “Record date” means the date established under [§ 29-405.07](#) on which a nonprofit corporation determines the identity of its members and the membership interests they hold for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(32) “Religious corporation” means a domestic nonprofit corporation that is a church or an integrated auxiliary of a church, as defined under the federal Internal Revenue Code or regulations promulgated thereunder, or any other such nonprofit corporation whose principal purpose is the advancement of religion.

(33) “Secretary” means the corporate officer to whom the articles of incorporation, bylaws, or board of directors has delegated responsibility under [§ 29-406.40\(b\)](#) for custody of the minutes of the meetings of the board of directors, any designated body, committees, and the members, and for authenticating records of the nonprofit corporation.

(34) “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(35) “Shares” means the units into which the proprietary interests in a business corporation are divided.

(36) “Unincorporated entity” means an organization that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not a domestic or foreign business or nonprofit corporation, an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government. The term “unincorporated entity” includes a general partnership, limited liability company, limited partnership, limited cooperative association, business or statutory trust, joint stock association, and unincorporated nonprofit association.

(37) “Vote”, “voting”, or “casting a vote” includes the giving of consent in the form of a record without a meeting. The term does not include either recording the fact of abstention or failing to vote for a candidate or for approval or disapproval of a matter, whether or not the person entitled to vote characterizes such conduct as voting or casting a vote.

(38) “Voting group” means one or more classes of members that under the articles of incorporation, bylaws, or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of members. All members entitled by the articles of incorporation, bylaws, or this chapter to vote generally on the matter are for that purpose a single voting group.

(39) “Voting power” means the current power to vote in the election of directors or delegates, or to vote on approval of any type of fundamental transaction.

§ 29–401.03. Notice.

(a) Unless the articles of incorporation or bylaws provide otherwise, notice under this chapter shall be in the form of a record.

(b) Notice may be communicated in person or by delivery. If these forms of communication are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Notice in the form of a record by a membership corporation to a member shall be effective:

(1) Upon deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member’s address shown in the corporation’s current record of members; or

(2) When given if the notice is delivered in any other manner that the member has authorized.

(d) Notice to a domestic or registered foreign nonprofit corporation may be delivered to its registered agent or to the corporation or its secretary at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of registration.

(e) Except as otherwise provided in subsection (c) of this section, notice shall be effective at the earliest of the following:

(1) When received;

(2) When left at the recipient’s residence or usual place of business;

(3) Five days after its deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed; or

(4) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, or by commercial delivery service.

(f) Oral notice shall be effective when communicated, if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

(h) With respect to electronic communications:

(1) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise agreed between the sender and the recipient, an electronic communication is received when:

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(A) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(B) It is in a form capable of being processed by that system.

(2) An electronic communication is received under paragraph (1) of this subsection even if no individual is aware of its receipt.

(3) Receipt of an electronic acknowledgment from an information processing system described in paragraph (1) of this subsection establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(i) An authorization by a member of delivery of notices or communications by email or similar electronic means may be revoked by the member by notice to the nonprofit corporation in the form of a record. The authorization shall be deemed revoked if:

(A) The corporation is unable to deliver 2 consecutive notices or other communications to the member in the manner authorized; and

(B) The inability becomes known to the secretary or other person responsible for giving the notice or other communication, but the failure to treat the inability as a revocation shall not invalidate any meeting or other action.

§ 29–401.04. Reference to extrinsic facts in plans or filed documents.

(a) For the purposes of this subsection, the term:

(1) “Filed record” means a record delivered to the Mayor for filing under any provision of this chapter except [§ 29-102.11](#).

(2) “Plan” means a plan of domestication, business conversion, entity conversion, merger or membership exchange.

(b) Whenever a provision of this chapter permits any of the terms of a plan or a filed record to be dependent on facts objectively ascertainable outside the plan or filed record, the following rules apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed record shall be set forth in the plan or filed record.

(2) The facts may include:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically:

(i) Statistical or market indices;

(ii) Market prices of any security or group of securities;

(iii) Interest rates;

- (iv) Currency exchange rates; or
- (v) Similar economic or financial data;
- (B) A determination or action by any person or body, including the corporation or any other party to a plan or filed record; or
- (C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or record.

§ 29–401.05. Restrictions and required approvals.

- (a) If a domestic or foreign nonprofit corporation or eligible entity may not be a party to a merger or sale of its assets without the approval of the Attorney General for the District of Columbia, the Mayor (or as may be formerly referred to as the Commissioner of the District of Columbia), the Department of Insurance, Securities, and Banking or the Public Service Commission, the corporation or eligible entity shall not be a party to a transaction under [Chapter 2 of this title](#) without the prior approval of that officer or agency.
- (b) Property held in trust by an entity or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by any transaction under [Chapter 2 of this title](#) unless the entity obtains an appropriate order of the Superior Court specifying the disposition of the property to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.
- (c) Unless an entity that is a party to a transaction under [Chapter 2 of this title](#) obtains an appropriate order of Superior Court under the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets, the transaction shall not affect:
 - (1) Any restriction imposed upon the entity by its organic records that may not be amended by its board of directors, governors, members, or interest holders or by a designated body;
 - (2) Any restriction imposed upon property held by the entity by virtue of any trust under which it holds that property; or
 - (3) The existing rights of persons other than members, shareholders, or interest holders of the entity.
- (d) A person that is a member, interest holder, or otherwise affiliated with a charitable corporation or an unincorporated entity with a charitable purpose shall not receive a direct or indirect financial benefit in connection with a transaction under [Chapter 2 of this title](#) to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation or unincorporated entity with a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.
- (e) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made before or after a transaction under [Chapter 2 of this title](#) to or for the entity that is the subject of the transaction, shall inure to the entity as it continues in existence after the transaction, subject to the express terms of the will or other instrument.

Part B. Review of Contested Corporate Action.

§ 29-401.20. Definition.

For the purposes of this part, the term “corporate action” means:

- (1) The election, appointment, designation, or other selection and the suspension, removal, or expulsion of members, delegates, directors, members of a designated body, or officers of a nonprofit corporation; or
- (2) The taking of any action on any matter that is required under this chapter or under any other provision of law to be, or which under the articles of incorporation or bylaws may be, submitted for action to the members, delegates, directors, members of a designated body, or officers of a nonprofit corporation.

§ 29-401.21. Proceedings prior to corporate action.

- (a) If, under applicable law or the articles of incorporation or bylaws of a nonprofit corporation, there has been a failure to hold a meeting to take corporate action and the failure has continued for 30 days after the date designated or appropriate therefor, the Superior Court may summarily order a meeting to be held upon the application of any person entitled, either alone or in conjunction with other persons similarly seeking relief under this section, to call a meeting to consider the corporate action in issue, or the Attorney General for the District of Columbia in the case of a charitable corporation.
- (b) The Superior Court may determine the right to vote at the meeting of persons claiming that right, may appoint an individual to hold the meeting under such orders and powers as the Superior Court may consider proper, and may take such action as may be required to give due notice of the meeting and convene and conduct the meeting in the interests of justice.

§ 29-401.22. Review of contested corporate action.

- (a) Upon petition of a person whose status as, or whose rights or duties as, a member, delegate, director, member of a designated body, or officer of a corporation are or may be affected by any corporate action, the Superior Court may hear and determine the validity of the corporate action.
- (b) The Superior Court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation and other evidence that may relate to the issue. The Superior Court shall provide for notice of the pendency of the proceedings under this section to all persons affected thereby. If it is determined that no valid corporate action has been taken, the Superior Court may order a meeting to be held in accordance with [§ 29-401.21](#).
- (c) Subsection (a) of this section shall not apply if a nonprofit corporation has provided in its articles of incorporation or bylaws for a means of resolving a challenge to a corporate action, but the Superior Court may enforce the articles or bylaws if appropriate.

§ 29–401.23. Notice to Attorney General.

The plaintiff in a proceeding under this part shall notify the Attorney General for the District of Columbia within 10 days after commencing the proceeding if it involves a charitable corporation. Notice to the Attorney General under this section shall not stay or otherwise affect the proceeding.

Part C. Religious Corporations**§ 29–401.40. Subordination to canon law or other religious doctrine.**

If religious doctrine or canon law governing the affairs of a religious corporation is inconsistent with this chapter on the same subject, the religious doctrine or canon law shall control to the extent required by the Constitution of the United States.

Part D. Member-Governed Corporations.**§ 29–401.50. Member-governed corporations.**

(a) For the purposes of this section, the term “member-governed corporation” means a membership corporation incorporated under or subject to this chapter which:

(1) Provides in its articles of incorporation or bylaws that it is a member-governed corporation; or:

(2) Meets the following conditions:

(A) It holds regular meetings not less frequently than annually;

(B) Its activities and affairs are governed by its members; and

(C) The board of directors, if any, has only those powers delegated by the articles of incorporation, bylaws, or members.

(b) This section shall apply only to member-governed corporations and shall not be construed to affect in any way the rights, duties, obligations, or other matters pertaining to other types of nonprofit corporations formed under or subject to this chapter or other entities formed under or subject to this title.

(c) Except as otherwise provided in the articles of incorporation or bylaws, the following rules shall apply to a member-governed corporation:

(1) A member shall vote only in person and not by proxy.

(2) A voting agreement shall not be enforceable.

(3) A fundamental transaction may be approved by a 2/3 vote of the members of the corporation without the approval of the board of directors, if any.

(4) The members may set a record date in the circumstances described in [§ 29-405.07\(c\)](#).

(5) The polls may be closed by a 2/3 vote of the members present and voting in the circumstances described in [§ 29-405.08\(d\)](#).

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- (6) At a meeting of a member-governed corporation, the members present and voting are the ultimate judge of the validity of ballots under §§ [29-405.23\(c\)](#) and [29-405.28](#).
- (7) The qualifications of a director under [§ 29-406.08\(c\)\(5\)](#) are determined by the members.
- (d) The articles of incorporation or bylaws of a member-governed corporation may contain any of the following provisions:
- (1) Providing that a meeting of the members under [§ 29-405.01](#) may be held biennially, and, if the articles of incorporation or bylaws establish an assembly of delegates, providing that instead of meetings of members the assembly of delegates shall meet with a regularity the articles of incorporation or bylaws specify, not less frequently than quinquennially;
 - (2) Establishing the number of mail ballots that constitute a quorum under [§ 29-405.09](#);
 - (3) Stating the circumstances under which a member who was present at a meeting but who leaves the meeting is or is not deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting under [§ 29-405.24\(b\)](#);
 - (4) Permitting cumulative voting for directors;
 - (5) Providing that the maximum term of a director under [§ 29-406.05](#) may be up to six years;
 - (6) Providing that the resignation of a director under [§ 29-406.07](#) is not effective until approved by the members;
 - (7) Establishing the quorum required for a meeting of the board of directors under [§ 29-406.24\(b\)](#);
 - (8) Providing that if a quorum is present when a vote is taken, the affirmative vote of a majority of the votes cast, rather than a majority of those present, is the act of the board of directors unless a greater vote is required by the articles of incorporation and bylaws;
 - (9) Stating the circumstances under which a director present at a meeting is not considered to have assented to a corporate action under [§ 29-406.24\(d\)](#);
 - (10) Creating and defining the membership and powers of committees under [§ 29-406.25\(b\)](#), (c)(2), and (h);
 - (11) Providing that the same person may not simultaneously hold more than one office in a member-governed corporation; and
 - (12) Providing that the resignation of an officer under [§ 29-406.43](#) is not effective until approved by the members.
- (e) If a member-governed corporation adopts a specified generally accepted parliamentary authority in its bylaws, rules in the specified parliamentary authority and in special rules of order adopted as provided in the parliamentary authority shall be treated as provisions of the bylaws for the purposes of this chapter, except to the extent such rules are inconsistent with explicit provisions of the articles of incorporation or the bylaws. The rules of any such adopted

parliamentary authority shall be presumed to be fair to the members pursuant to [§ 29-405.08\(c\)](#).

Part E. Attorney General

§ 29–401.60. Notice to Attorney General.

(a) The Attorney General for the District of Columbia shall be given notice of the commencement of any proceeding that this chapter authorizes the Attorney General to bring but that has been commenced by another person.

(b) Whenever any provision of this chapter requires that notice be given to the Attorney General for the District of Columbia before or after commencing a proceeding or permits the Attorney General to commence a proceeding:

- (1) If no proceeding has been commenced, the Attorney General may take appropriate action seeking injunctive relief; and
- (2) If a proceeding has been commenced by a person other than the Attorney General, the Attorney General, as of right, may intervene in the proceeding.

Subchapter II. Incorporation.

§ 29–402.01. Incorporators.

One or more persons may act as the incorporators of a nonprofit corporation by delivering articles of incorporation to the Mayor for filing.

§ 29–402.02. Articles of incorporation.

(a) The articles of incorporation shall set forth:

- (1) A name for the nonprofit corporation that satisfies the requirements of [§ 29-103.01](#);
- (2) The information required by [§ 29-104.04](#);
- (3) That the corporation is incorporated as a nonprofit corporation under this chapter;
- (4) The name and street address of each incorporator; and
- (5) Whether the corporation will have members.

(b) The articles of incorporation may set forth:

- (1) The names of the individuals who are to serve as the initial directors;
- (2) Provisions creating one or more designated bodies;
- (3) The names of the initial members of a designated body;
- (4) The names of the initial members, if any;
- (5) Provisions not inconsistent with law regarding:

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- (A) The purpose or purposes for which the nonprofit corporation is organized;
- (B) Managing the business and regulating the affairs of the corporation;
- (C) Defining, limiting, and regulating the powers of the corporation, its board of directors, any designated body, and the members, if any;
- (D) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; or
- (E) The distribution of assets on dissolution;
- (6) Any provision that this chapter requires or permits to be set forth in the articles or bylaws;
- (7) A provision permitting or making obligatory indemnification of a director for liability, as defined in [§ 29-406.50](#), to any person for any action taken, or any failure to take any action, as a director, except liability for:
 - (A) Receipt of a financial benefit to which the director is not entitled;
 - (B) An intentional infliction of harm;
 - (C) A violation of [§ 29-406.33](#); or
 - (D) An intentional violation of criminal law; and
- (8) Provisions required if the corporation is to be exempt from taxation under federal, state, or local law.
 - (c) The liability of a director of a nonprofit corporation that is not a charitable corporation may be eliminated or limited by a provision of the articles of incorporation that a director is not liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:
 - (1) The amount of a financial benefit received by the director to which the director is not entitled;
 - (2) An intentional infliction of harm;
 - (3) A violation of [§ 29-406.33](#); or
 - (4) An intentional violation of criminal law.
 - (d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.
 - (e) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with [§ 29-401.04](#).

§ 29-402.03. Incorporation.

- (a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The filing of the articles of incorporation by the Mayor is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the District to cancel or revoke the incorporation or involuntarily dissolve the nonprofit corporation.

§ 29–402.04. Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a nonprofit corporation, knowing there was no incorporation under this chapter, shall be jointly and severally liable for all liabilities created while so acting.

§ 29–402.05. Organization of corporation.

(a) After incorporation:

(1) If initial directors or members of a designated body are named in the articles of incorporation, those persons shall hold an organizational meeting, as appropriate, at the call of a majority of them, to complete the organization of the nonprofit corporation by electing directors, when the organization of the corporation is to be completed by a designated body, appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) If initial directors or members of a designated body are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect:

(A) Directors and complete the organization of the nonprofit corporation; or

(B) A board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more consents in the form of a record describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or outside of the District.

§ 29–402.06. Bylaws.

(a) The incorporators or the board of directors of a nonprofit corporation may adopt initial bylaws for the corporation.

(b) The bylaws of a nonprofit corporation may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Subchapter III. Purposes and Powers.

§ 29-403.01. Purposes.

(a) A nonprofit corporation may be formed for any lawful nonprofit purpose unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another statute of the District may incorporate under this chapter only if incorporating under this chapter is not prohibited by the other statute. The corporation is subject to all the limitations of the other statute.

§ 29-403.02. General powers.

Unless its articles of incorporation provide otherwise, every nonprofit corporation shall have perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including the power to:

- (1) Sue and be sued, complain, and defend in its corporate name;
- (2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of the District, for managing and regulating the affairs of the corporation;
- (4) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, property, or any legal or equitable interest in property, wherever located;
- (5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or income;
- (8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by [§ 29-406.32](#);
- (9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) Conduct its activities, locate offices, and exercise the powers granted by this chapter within or without the District;

(11) Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit, except as limited by [§ 29-406.32](#);

(12) Pay pensions and establish pension plans, pension trusts, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) Make donations for charitable purposes;

(14) Impose dues, assessments, admission, and transfer fees on its members;

(15) Establish conditions for admission of members, admit members, and issue memberships;

(16) Carry on a business; and

(17) Make payments or donations, or do any other act, not inconsistent with law, that furthers the purposes, activities, and affairs of the corporation.

§ 29-403.03. Emergency powers.

(a) If a nonprofit corporation authorizes the exercise of emergency powers in its articles of incorporation or bylaws, in the event of an emergency, the board of directors may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency, unless the articles of incorporation or bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner; and

(2) One or more officers of the nonprofit corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority.

(c) Corporate action taken in good faith during an emergency to further the ordinary affairs of the nonprofit corporation:

(1) Binds the corporation; and

(2) Shall not be used to impose liability on a director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the directors cannot readily be assembled because of some catastrophic event.

§ 29-403.04. Ultra vires.

(a) Except as otherwise provided in subsection (b) of this section, the validity of corporate action shall not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.

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(b) The power of a nonprofit corporation to act may be challenged in a proceeding by:

(1) A member, director, or member of a designated body against the corporation to enjoin the act;

(2) The corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director or member of a designated body, officer, employee, or agent of the corporation; or

(3) The Attorney General for the District of Columbia under [§ 29-412.20](#).

(c) In a derivative proceeding under [subchapter XI of this chapter](#) by a member, director, or member of a designated body under subsection (b)(1) of this section to enjoin an unauthorized corporate act, the Superior Court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

Subchapter IV. Memberships and Financial Provisions.

Part A. Admission of Members.

§ 29-404.01. No requirement of members; other persons designated by articles of incorporation or bylaws.

(a) A nonprofit corporation shall not be required to have members.

(b) If the articles of incorporation or bylaws of a nonprofit corporation do not provide that it must have members, or if a corporation has in fact no members entitled to vote on a matter, any provision of this chapter or any other provision of law requiring notice to, the presence of, or the vote, consent, or other action by members of the corporation in connection with the matter shall be satisfied by notice to, the presence of, or the vote, consent, or other action by the board of directors or a designated body of the corporation.

(c) The articles of incorporation or bylaws of a nonprofit corporation may designate a person as a member who is not within the definition of “member” under [§ 29-401.02\(24\)](#). Such a person, regardless of designation, shall not be deemed a member for purposes of this chapter but nevertheless shall have those rights and obligations set forth in the articles of incorporation or bylaws.

§ 29-404.02. Admission.

(a) The articles of incorporation or bylaws of a membership corporation may establish criteria or procedures for admission of members.

(b) A person shall not be admitted as a member without the person’s consent.

(c) If a membership corporation provides certificates of membership to the members, the certificates shall not be registered and shall not be transferable except as otherwise provided in the articles of incorporation or bylaws.

(d) A person shall not be a member of a nonprofit corporation unless the person meets the definition of a “member” in [§ 29-401.02](#), regardless of whether the corporation refers to the person as a member.

§ 29–404.03. Consideration.

Except as otherwise provided in its articles of incorporation or bylaws, a membership corporation may admit members for no consideration or for such consideration as is determined by the board of directors. The consideration may take any form, including promissory notes, intangible property, or past or future services. Payment of the consideration may be made at such times and upon such terms as are set forth in or authorized by the articles of incorporation, bylaws, or a resolution of the board.

Part B. Rights and Obligations of Members.

§ 29–404.10. Differences in rights and obligations of members.

Except as otherwise provided in the articles of incorporation or bylaws, each member of a membership corporation shall have the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and other matters.

§ 29–404.11. Transfers.

(a) Except as otherwise provided in the articles of incorporation or bylaws, a member of a membership corporation shall not transfer a membership or any right arising therefrom.

(b) If the right to transfer a membership has been provided, a restriction on that right shall not be binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the affected member.

§ 29–404.12. Member’s liability to third parties.

A member of a membership corporation shall not be as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

§ 29–404.13. Member’s liability for dues, assessments, and fees.

(a) A membership corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles of incorporation or bylaws. Dues, assessments, and fees may be imposed on members of the same class either alike or in different amounts or proportions, and may be imposed on a different basis on different classes of members. Members of a class may be made exempt from dues, assessments, and fees to the extent provided in the articles or bylaws.

(b) The amount and method of collection of dues, assessments, and fees may be fixed in the articles of incorporation or bylaws, or the articles or bylaws may authorize the board of directors or members to fix the amount and method of collection.

(c) The articles of incorporation or bylaws may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees.

§ 29–404.14. Creditor’s action against member.

(a) A proceeding shall not be brought by a creditor of a membership corporation to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless the proceeding would be useless. In this case, a member remains immune from liability for debts, obligations, and other liabilities of the corporation under [§ 29–404.12](#) and shall be liable only to the extent that the member’s failure to pay amounts owed to the corporation has resulted in damages to the creditor.

(b) All creditors of a membership corporation, with or without reducing their claims to judgment, may intervene in any creditor’s proceeding brought under subsection (a) of this section to reach and apply unpaid amounts due the corporation.

Part C. Resignation and Termination.

§ 29–404.20. Resignation.

(a) A member of a membership corporation may resign at any time.

(b) The resignation of a member shall not relieve the member from any obligations incurred or commitments made prior to resignation.

§ 29–404.21. Termination and suspension.

(a) A membership in a membership corporation may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.

(b) A proceeding challenging a termination or suspension for any reason shall be commenced within one year after the effective date of the termination or suspension.

(c) The termination or suspension of a member shall not relieve the member from any obligations incurred or commitments made prior to the termination or suspension.

§ 29–404.22. Purchase of memberships.

Except as otherwise provided in the articles of incorporation or bylaws, a membership corporation that is not a charitable corporation shall not purchase any of its memberships or any right arising therefrom.

Part D. Delegates.

§ 29–404.30. Delegates.

(a) A membership corporation may provide in its articles of incorporation or bylaws for delegates.

(b) The articles of incorporation or bylaws may set forth provisions relating to:

(1) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

- (2) Calling, noticing, holding, and conducting meetings of delegates; and
 - (3) Carrying on corporate activities during and between meetings of delegates.
- (c) An assembly or other organized group of delegates constitutes a designated body if it has been vested with powers of the board of directors under the articles of incorporation or bylaws.

Part E. Financial Provisions.

§ 29–404.40. Distributions prohibited.

- (a) Except as permitted under [§ 29-404.22](#) or [§ 29-404.41](#), a nonprofit corporation shall not pay dividends or make distributions of any part of its assets, income, or profits to its members, directors, delegates, members of a designated body, or officers.
- (b) This section shall not apply to a contract or transaction authorized pursuant to [§ 29-406.70](#).

§ 29–404.41. Compensation and other permitted payments.

- (a) A nonprofit corporation may pay reasonable compensation or reimburse reasonable expenses to members, directors, delegates, members of a designated body, or officers for services rendered.
- (b) A nonprofit corporation may confer benefits upon or make contributions to members or nonmembers in conformity with its purposes, repurchase its memberships only to the extent provided in [§ 29-404.22](#), or repay capital contributions, except when:
 - (1) The corporation is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes; or
 - (2) The fair value of the assets of the corporation remaining after the conferring of benefits, contribution, repurchase, or repayment would be insufficient to meet its liabilities.
- (c) A nonprofit corporation may make distributions of cash or property to members upon dissolution or final liquidation only as permitted by this chapter.

§ 29–404.42. Debt and security interests.

- (a) A nonprofit corporation shall not issue bonds or other evidences of indebtedness except for money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud, the judgment of the board of directors as to the value of the consideration received by the corporation shall be conclusive.
- (b) The board of directors may authorize a mortgage or pledge of, or the creation of a security interest in, all or any part of the property of the nonprofit corporation, or any interest therein. Unless otherwise restricted in the articles of incorporation or bylaws, the vote or consent of the members shall not be required to make effective such action by the board.

§ 29–404.43. Private foundations.

(a) Except as otherwise provided in subsection (b) of this section, a nonprofit corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986, approved December 30, 1969 (83 Stat. 496; 26 U.S.C. § 509(a)) (“Internal Revenue Code”), shall:

- (1) Distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;
- (2) Not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;
- (3) Not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;
- (4) Not make any investments in such manner as to subject the corporation to tax under section 4944 of the Internal Revenue Code; and
- (5) Not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

(b) Subsection (a) of this section shall not apply to a nonprofit corporation incorporated before January 1, 1970 that has been properly relieved from the requirements of section 508(e)(1) of the Internal Revenue Code by a timely judicial proceeding.

Subchapter V. Member Meetings.

Part A. Procedures.

§ 29–405.01. Annual and regular meetings.

- (a) A membership corporation shall hold a meeting of members annually at a time stated in or fixed in accordance with the articles of incorporation or bylaws.
- (b) A membership corporation may hold regular meetings on a regional or other basis at times stated in or fixed in accordance with the articles of incorporation or bylaws.
- (c) Except as otherwise provided in subsection (e) of this section, annual and regular meetings of the members may be held in or outside of the District at the place stated in or fixed in accordance with the articles of incorporation or bylaws. If no place is stated in or fixed in accordance with the articles or bylaws, annual and regular meetings shall be held at the nonprofit corporation’s principal office.
- (d) The failure to hold an annual or regular meeting at the time stated in or fixed in accordance with the articles of incorporation or bylaws shall not affect the validity of any corporate action.
- (e) The articles of incorporation or bylaws may provide that an annual or regular meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with

their occurrence, vote on matters submitted to the members, pose questions, and make comments.

§ 29-405.02. Special meeting.

(a) A membership corporation shall hold a special meeting of members:

(1) At the call of its board of directors or the persons authorized to do so by the articles of incorporation or bylaws; or

(2) If the holders of at least 10%, or such other amount up to 25% as the articles of incorporation or bylaws specify, of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more demands in the form of a record for the meeting describing the purpose for which it is to be held.

(b) Unless otherwise provided in the articles of incorporation or bylaws, a demand for a special meeting may be revoked by notice to that effect received by the membership corporation from the members calling the meeting prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(c) If not otherwise fixed under [§ 29-405.03](#) or [§ 29-405.07](#), the record date for determining members entitled to demand a special meeting shall be the date the first member signs a demand.

(d) Except as otherwise provided in subsection (f) of this section, special meetings of the members may be held in or outside of the District at the place stated in or fixed in accordance with the articles of incorporation or bylaws. If no place is stated or fixed in accordance with the articles or bylaws, special meetings shall be held at the corporation's principal office.

(e) Only business within the purpose or purposes described in the meeting notice required by [§ 29-405.05\(c\)](#) may be conducted at a special meeting of the members.

(f) The articles of incorporation or bylaws may provide that a special meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

§ 29-405.03. Court-ordered meeting.

(a) The Superior Court may summarily order a meeting to be held on application of:

(1) Any member entitled to participate in an annual or regular meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(2) A member who signed a demand for a special meeting under [§ 29-405.02](#), if:

(A) Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(B) The special meeting was not held in accordance with the notice.

(b) The Superior Court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose of the meeting.

§ 29–405.04. Action without meeting.

(a) Except as otherwise provided in the articles of incorporation or bylaws, action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting if the action is taken by all the members entitled to vote on the action. The action shall be evidenced by one or more consents in the form of a record bearing the date of signature and describing the action taken, signed by all the members entitled to vote on the action, and delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under [§ 29-405.03](#) or [§ 29-405.07](#), the record date for determining members entitled to take action without a meeting shall be the date the first member signs the consent under subsection (a) of this section. A consent shall not be effective to take the corporate action referred to therein unless, within 60 days after the earliest date appearing on a consent delivered to the membership corporation in the manner required by this section, consents signed by members entitled to cast the required number of votes on the action are received by the corporation. A consent may be revoked by a signed notice in the form of a record to that effect received by the corporation prior to receipt by the corporation of unrevoked consents sufficient in number to take corporate action.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such.

(d) If this chapter, the articles of incorporation, or the bylaws require that notice of proposed action be given to members not entitled to vote on the action and the action is to be taken by consent of the members entitled to vote, the membership corporation shall deliver to the members not entitled to vote notice of the proposed action at least 10 days before the action is taken. The notice shall contain or be accompanied by the same material that would have been required to be delivered to members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the members for action.

§ 29–405.05. Notice of meeting.

(a) A membership corporation shall give notice to the members of the date, time, and place of each annual, regular, or special meeting of the members. Except as otherwise provided in the articles of incorporation or the bylaws, the notice shall be given no fewer than 10 nor more than 60 days before the meeting date. Except as otherwise provided in this chapter, the articles, or the bylaws, the corporation shall give notice only to members entitled to vote at the meeting.

(b) Unless this chapter, the articles of incorporation, or the bylaws require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(c) Notice of a special meeting shall include a description of the purpose for which the meeting is called.

(d) If not otherwise fixed under [§ 29-405.03](#) or [§ 29-405.07](#), the record date for determining members entitled to notice of and to vote at an annual or special meeting of the members is the day before the first notice is given to members.

(e) Unless the articles of incorporation or bylaws require otherwise, if an annual, regular, or special meeting of the members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under [§ 29-405.07](#), notice of the adjourned meeting shall be given under this section to the members entitled to vote on the new record date.

§ 29-405.06. Waiver of notice.

(a) A member may waive any notice required by this chapter, the articles of incorporation, or the bylaws before or after the date and time stated in the notice or of the meeting or action. The waiver shall be in the form of a record, be signed by the member entitled to the notice, and be delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(b) The attendance of a member at a meeting waives objection to:

(1) Lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting at the meeting;

(2) Consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the member objects at the meeting to considering the matter.

§ 29-405.07. Record date.

(a) The articles of incorporation or bylaws may fix or provide the manner of fixing the record date to determine the members entitled to notice of a meeting of the members, to demand a special meeting, to vote, or to take any other action. If the articles or bylaws do not fix or provide for fixing a record date, the board of directors of the membership corporation may fix a future date as the record date.

(b) A record date fixed under this section shall not be more than 70 days before the meeting or action requiring a determination of members.

(c) A determination of members entitled to notice of or to vote at a meeting of the members shall be effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

§ 29–405.08. Conduct of meeting.

(a) At each meeting of members, an individual shall preside as chair. The chair shall be appointed:

- (1) As provided in the articles of incorporation or bylaws;
- (2) In the absence of a provision in the articles or bylaws, by the board of directors; or
- (3) In the absence of both a provision in the articles or bylaws and an appointment by the board, by the members at the meeting.

(b) Except as otherwise provided in the articles of incorporation or bylaws, the chair shall determine the order of business and has the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to the members.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes, or any otherwise permissible revocations or changes thereto, shall be accepted.

§ 29–405.09. Action by ballot.

(a) Except as otherwise restricted by the articles of incorporation or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the membership corporation delivers a ballot to every member entitled to vote on the matter.

(b) A ballot shall:

- (1) Be in the form of a record;
- (2) Set forth each proposed action;
- (3) Provide an opportunity to vote for, or withhold a vote for, each candidate for election as a director; and
- (4) Provide an opportunity to vote for or against each other proposed action.

(c) Approval by ballot pursuant to this section of action other than election of directors shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by ballot shall:

- (1) Indicate the number of responses needed to meet the quorum requirements;
 - (2) State the percentage of approvals necessary to approve each matter other than election of directors; and
 - (3) Specify the time by which a ballot must be received by the membership corporation in order to be counted.
- (e) Except as otherwise provided in the articles of incorporation or bylaws, a ballot shall not be revoked.

Part B. Voting.

§ 29-405.20. Members list for meeting.

- (a) After fixing a record date for a meeting, a membership corporation shall prepare an alphabetical list of the names of all its members that are entitled to notice of that meeting of the members. The list shall show the address of and number of votes each member is entitled to cast at the meeting.
- (b) The list of members shall be available for inspection by any member, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the membership corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member or the member's agent shall be entitled on demand in the form of a record to inspect and, subject to the requirements of [§ 29-413.02\(c\)](#), to copy the list, during regular business hours and at the member's expense, during the period it is available for inspection.
- (c) The membership corporation shall make the list of members available at the meeting, and a member or the member's agent is entitled to inspect the list at any time during the meeting or any adjournment.
- (d) If a membership corporation refuses to allow a member or the member's agent to inspect the list of members before or at the meeting, or copy the list as permitted by subsection (b) of this section, the Superior Court on application of the member, may:
- (1) Summarily order the inspection or copying at the corporation's expense;
 - (2) Postpone the meeting for which the list was prepared until the inspection or copying is complete;
 - (3) Order the corporation to pay the member's costs, including reasonable attorney's fees, incurred to obtain the order; and
 - (4) Order other appropriate relief.
- (e) Refusal or failure to prepare or make available the list of members shall not affect the validity of action taken at the meeting.
- (f) Instead of making the list of members available as provided in subsection (b) of this section, a membership corporation may state in a notice of meeting that the corporation has elected to

proceed under this subsection. A member of a corporation that has elected to proceed under this subsection shall state in the member's demand for inspection a proper purpose for which inspection is demanded. Within 10 business days after receiving a demand under this subsection, the corporation shall deliver to the member making the demand an offer of a reasonable alternative method of achieving the purpose identified in the demand without providing access to or a copy of the list of members. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in the demand relieves the corporation from making the list of members available under subsection (b) of this section, unless within a reasonable time after acceptance of the offer the corporation fails to do the things it offered to do. Any rejection of the corporation's offer shall be in the form of a record and shall indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand.

§ 29-405.21. Voting entitlement of members.

Except as otherwise provided in the articles of incorporation or bylaws, each member shall be entitled to one vote on each matter voted on by the members.

§ 29-405.22. Proxies.

(a) Except as otherwise provided in the articles of incorporation or bylaws, a member may vote in person or by proxy.

(b) A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form in the form of a record. An appointment form shall contain or be accompanied by information from which it can be determined that the member or the member's agent or attorney-in-fact authorized the appointment of the proxy.

(c) An appointment of a proxy shall be effective when a signed appointment in the form of a record is received by the inspectors of election, the officer or agent of the membership corporation authorized to tabulate votes, or the secretary. An appointment shall be valid for 11 months unless a longer period, which may not exceed 3 years, is expressly provided in the appointment form.

(d) The death or incapacity of the member appointing a proxy shall not affect the right of the membership corporation to accept the proxy's authority unless notice of the death or incapacity is received by the inspectors of election, the officer or agent authorized to tabulate votes, or the secretary before the proxy exercises his authority under the appointment.

(e) Subject to [§ 29-405.23](#) and to any express limitation on the proxy's authority stated in the appointment form, a membership corporation may accept the proxy's vote or other action as that of the member making the appointment.

§ 29-405.23. Acceptance of votes.

(a) If the name signed on a ballot, consent, waiver, or proxy appointment corresponds to the name of a member, the membership corporation if acting in good faith may accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a ballot, consent, waiver, or proxy appointment does not correspond to the name of its member, the membership corporation if acting in good faith may nevertheless accept the ballot, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, or proxy appointment;

(4) The name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the ballot, consent, waiver, or proxy appointment; or

(5) Two or more persons are the member as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The membership corporation may reject a ballot, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The membership corporation and its officer or agent that accepts or rejects a ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or [§ 29-405.22\(b\)](#) shall not be liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a ballot, consent, waiver, or proxy appointment under this section shall be valid unless a court of competent jurisdiction determines otherwise.

§ 29-405.24. Quorum and voting requirements for voting groups.

(a) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter. Except as otherwise provided in the articles of incorporation or bylaws, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a member is represented for any purpose at a meeting, the member shall be deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or bylaws require a greater number of affirmative votes.

(d) An amendment of the articles of incorporation or bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section shall be governed by [§ 29-405.26](#).

(e) If a meeting cannot be organized because a quorum is not present, those members present may adjourn the meeting to such time and place as they may determine. Except as otherwise provided in the articles of incorporation or bylaws, when a meeting that has been adjourned for lack of a quorum is reconvened, those members present, although less than a quorum as fixed in this section, the articles, or the bylaws, nonetheless constitute a quorum.

§ 29–405.25. Action by single and multiple voting groups.

(a) If this chapter, the articles of incorporation, or the bylaws provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in [§ 29-405.24](#).

(b) If this chapter, the articles of incorporation, or the bylaws provide for voting by 2 or more voting groups on a matter, action on that matter shall be taken only when voted upon by each of those voting groups counted separately as provided in [§ 29-405.24](#).

§ 29–405.26. Different quorum or voting requirements.

(a) The articles of incorporation or bylaws may provide for a higher or lower quorum or voting requirement for members, or voting groups of members, than is provided for by this chapter.

(b) An amendment to the articles of incorporation or bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

§ 29–405.27. Voting for directors.

(a) Except as otherwise provided in the articles of incorporation or bylaws, directors of a membership corporation shall be elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

(b) Unless permitted by the articles of incorporation or bylaws, members shall not have a right to cumulate their votes for directors.

§ 29–405.28. Inspectors of election.

(a) A membership corporation may appoint one or more inspectors to act at a meeting of members and make a report in the form of a record of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.

(b) The inspectors shall:

- (1) Ascertain the number of members and their voting power;
- (2) Determine the members present at a meeting;
- (3) Determine the validity of proxies and ballots;
- (4) Count all votes; and
- (5) Determine the result.

(c) An inspector may, but need not, be a director, member of a designated body, member, officer, or employee of the membership corporation. An individual who is a candidate for office to be filled at the meeting may not be an inspector.

Part C. Voting Agreements.**§ 29–405.40. Voting agreements.**

(a) Two or more members may provide for the manner in which they will vote by signing an agreement in the form of a record for that purpose. A voting agreement shall be valid for a period of up to 10 years. If no time is stated in the voting agreement, the agreement shall be valid for 5 years. The members who signed the voting agreement may, at any time, alter or terminate the agreement by signing a new agreement.

(b) A voting agreement created under this section shall be specifically enforceable, except that a voting agreement is not enforceable to the extent that enforcement of the agreement would violate the purposes of the membership corporation.

Subchapter VI. Directors, Officers, and Employees.**Part A. Board of Directors.****§ 29–406.01. Requirement for and functions of board of directors.**

(a) A nonprofit corporation shall have a board of directors.

(b) Except as otherwise provided in [§ 29-406.12](#), all corporate powers shall be exercised by or under the authority of the board of directors of the nonprofit corporation, and the activities and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, of its board of directors.

§ 29–406.02. Qualifications of directors.

A director of a nonprofit corporation shall be an individual. The articles of incorporation or bylaws may prescribe other qualifications for directors. A director need not be a resident of the District or a member of the corporation unless the articles or bylaws so prescribe.

§ 29–406.03. Number of directors.

(a) A board of directors shall consist of 3 or more directors, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased, but to no fewer than 3, by amendment to, or in the manner provided in, the articles of incorporation or bylaws.

§ 29–406.04. Selection of directors.

(a) The directors of a membership corporation, other than any initial directors named in the articles of incorporation or elected by the incorporators, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some or all of the directors are appointed by some other person or designated in some other manner.

(b) The directors of a nonmembership corporation, other than any initial directors named in the articles of incorporation or elected by the incorporators, shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors, other than any initial directors, shall be elected by the board.

§ 29–406.05. Terms of directors generally.

(a) The articles of incorporation or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, the term of a director is one year. Except for directors who are appointed by persons that are not members or who are designated in a manner other than by election or appointment, the term of a director shall not exceed 5 years. Except as otherwise provided in the articles or bylaws, a director shall be appointed, elected, or otherwise designated for additional terms.

(b) A decrease in the number of directors or term of office shall not shorten an incumbent director's term.

(c) Except as otherwise provided in the articles of incorporation or bylaws, the term of a director elected to fill a vacancy expires at the end of the unexpired term that the director is filling.

(d) Despite the expiration of a director's term, the director shall continue to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office, unless otherwise provided in the articles of incorporation or bylaws.

§ 29–406.06. Staggered terms for directors.

The articles of incorporation or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office and number of directors in each group do not need to be uniform.

§ 29–406.07. Resignation of directors.

(a) A director may resign at any time by delivering a signed notice in the form of a record to the chair of the board of directors or to an executive officer or the secretary of the corporation.

(b) A resignation shall be effective when the notice is delivered unless the notice specifies a later effective time.

§ 29–406.08. Removal of directors by members or other persons.

(a) Removal of directors of a membership corporation shall be subject to the following provisions:

(1) The members may remove, with or without cause, one or more directors who have been elected by the members, unless the articles of incorporation or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(2) Except as otherwise provided in the articles of incorporation or bylaws, if a director is elected by a voting group of members, by a chapter or other organizational unit, or by a region or other geographic grouping, only the members of that voting group or chapter, unit, region, or grouping may participate in the vote to remove the director.

(3) The notice of a meeting of members at which removal of a director is to be considered shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(4) The board of directors of a membership corporation shall not remove a director except as otherwise provided in subsection (c) of this section or in the articles of incorporation or bylaws.

(b) The board of directors may remove a director of a nonmembership corporation:

(1) With or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only for cause; provided, that articles or bylaws may specify what constitutes cause for removal; or

(2) As provided in subsection (c) of this section.

(c) The board of directors of a membership corporation or nonmembership corporation may remove a director who:

(1) Has been declared of unsound mind by a final order of court;

(2) Has been convicted of a felony:

(3) Has been found by a final order of court to have breached a duty as a director under [part C of this subchapter](#);

(4) Has missed the number of board meetings specified in the articles of incorporation or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or

(5) Does not satisfy at the time any of the qualifications for directors set forth in the articles of incorporation or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.

(d) A director who is designated in the articles of incorporation or bylaws may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a director who is appointed by persons other than the members may be removed with or without cause by those persons.

§ 29–406.09. Removal of directors by judicial proceeding.

(a) The Superior Court may remove a director from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(1) The director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(2) Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interests of the corporation.

(b) A member, individual director, or member of a designated body proceeding on behalf of the nonprofit corporation under subsection (a) of this section shall comply with all of the requirements of [subchapter XI of this chapter](#).

(c) The court, in addition to removing the director, may bar the director from being reelected, redesignated, or reappointed for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief.

(e) If a proceeding is commenced under this section to remove a director of a charitable corporation, the plaintiff shall give the Attorney General for the District of Columbia notice in record form of the commencement of the proceeding.

§ 29–406.10. Vacancy on board.

(a) Except as otherwise provided in subsection (b) of this section, the articles of incorporation, or the bylaws, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by a majority of the directors remaining in office even if they constitute less than a quorum.

(b) Except as otherwise provided in the articles of incorporation or bylaws, a vacancy in the position of a director who is:

(1) Elected by a voting group of members, by a chapter or other organizational unit of members, or by a region or other geographic grouping of members, shall be filled during the first 3 months after the vacancy occurs only by that voting group or chapter, unit, region, or grouping;

(2) Appointed by persons other than the members, may be filled only by those persons; or

(3) Designated in the articles of incorporation or bylaws shall not be filled by action of the board of directors.

(c) A vacancy that will occur at a specific later time, by reason of a resignation effective at a later time under [§ 29-406.07\(b\)](#) or otherwise, may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

§ 29-406.11. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

§ 29-406.12. Designated body.

(a) Some, but less than all, of the powers, authority, or functions of the board of directors of a nonprofit corporation under this chapter may be vested by the articles of incorporation or bylaws in a designated body. If a designated body is created:

(1) This subchapter and other provisions of law on:

(A) The rights, duties, and liabilities of the board of directors or directors individually shall also apply to the designated body and to the members of the designated body individually; and

(B) Meetings, notice, and the manner of acting of the board of directors shall also apply to the designated body in the absence of an applicable rule in the articles of incorporation, bylaws, or internal operating rules of the designated body;

(2) To the extent the powers, authority, or functions of the board of directors have been vested in the designated body, the directors shall be relieved from their duties and liabilities with respect to those powers, authority, and functions; and

(3) A provision of the articles of incorporation regarding indemnification of directors or limiting the liability of directors adopted pursuant to [§ 29-402.02\(b\)\(8\)](#) or (c) applies to members of the designated body, except as otherwise provided in the articles.

(b) Some, but less than all, of the rights or obligations of the members of a nonprofit corporation under this chapter may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:

(1) This subchapter and other provisions of law on:

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(A) The rights and obligations of members shall also apply to the designated body and to the members of the designated body individually; and

(B) Meetings, notice, and the manner of acting of members shall also apply to the designated body in the absence of an applicable provision in the articles of incorporation, bylaws, or internal operating rules of the designated body;

(2) To the extent the rights or obligations of the members have been vested in the designated body, the members shall be relieved from responsibility with respect to those rights and obligations.

(c) The articles of incorporation or bylaws may prescribe qualifications for members of a designated body. Except as otherwise provided in the articles or bylaws, a member of a designated body does not need to be:

(1) An individual;

(2) A director, officer, or member of the nonprofit corporation; or

(3) A resident of the District.

Part B. Meetings and Action of the Board.

§ 29–406.20. Meetings.

(a) The board of directors may hold regular or special meetings in or outside of the District.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be considered to be present in person at the meeting.

§ 29–406.21. Action without meeting.

(a) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent in the form of a record describing the action to be taken and delivers it to the nonprofit corporation.

(b) Action taken under this section shall be the act of the board of directors when one or more consents signed by all the directors are delivered to the nonprofit corporation. The consent may specify the time at which the action taken in the consent is to be effective. A director's consent may be withdrawn by a revocation in the form of a record signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

§ 29–406.22. Call and notice of meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors shall be held with notice of the date, time, place, or purpose of the meeting; provided, that at the beginning of each one-year period, the corporation may provide a single notice of all regularly scheduled meetings for that year, or for a lesser period, without having to give notice of each meeting individually.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

(c) Unless the articles of incorporation or bylaws provide otherwise, the chair of the board, the highest ranking officer of the corporation, or 20% of the directors then in office may call and give notice of a meeting of the board of directors.

(d) The articles of incorporation or bylaws may authorize oral notice of meetings of the board of directors.

§ 29–406.23. Waiver of notice.

(a) A director may waive any notice required by this chapter, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. Except as otherwise provided in subsection (b) of this section, the waiver shall be in the form of a record, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting shall waive any required notice to the director of the meeting, unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting at the meeting and does not thereafter vote for or assent to action taken at the meeting.

§ 29–406.24. Quorum and voting.

(a) Except as otherwise provided in subsection (b) of this section, the articles of incorporation, or the bylaws, a quorum of the board of directors shall consist of a majority of the directors in office before a meeting begins.

(b) The articles of incorporation or bylaws may authorize a quorum of the board of directors to consist of no fewer than the greater of $\frac{1}{3}$ of the number of directors in office or 2 directors.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present shall be the act of the board of directors unless a greater vote is required by the articles of incorporation or bylaws.

(d) A director who is present at a meeting of the board of directors when corporate action is taken shall be considered to have assented to the action taken unless one of the following applies:

- (1) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting at the meeting; or
- (2) The director dissents or abstains from the action and:
 - (A) The dissent or abstention is entered in the minutes of the meeting; or
 - (B) The director delivers notice in the form of a record of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation promptly after adjournment of the meeting.
- (e) The right of dissent or abstention shall not be available to a director who votes in favor of the action taken.

§ 29-406.25. Board and advisory committees.

- (a) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees of the board that consist of one or more directors.
- (b) Unless this chapter otherwise provides, the creation of a committee and appointment of directors to it shall be approved by the greater of:
 - (1) A majority of all the directors in office when the action is taken; or
 - (2) The number of directors required by the articles of incorporation or bylaws to take action under [§ 29-406.24](#).
- (c) Sections 29-406.20 through 29-406.24 shall apply both to committees of the board and to their members.
- (d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under [§ 29-406.01](#) except as limited by subsection (e) of this section.
- (e) A committee shall not:
 - (1) Authorize distributions;
 - (2) In the case of a membership corporation, approve or propose to members action that this chapter requires be approved by members;
 - (3) Fill vacancies on the board of directors or, subject to subsection (g) of this section, on any of its committees; or
 - (4) Adopt, amend, or repeal bylaws.
- (f) The creation of, delegation of authority to, or action by a committee shall not alone constitute compliance by a director with the standards of conduct described in [§ 29-406.30](#).

(g) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification.

(h) A nonprofit corporation may create or authorize the creation of one or more advisory committees whose members need not be directors. An advisory committee shall not:

- (1) Be a committee of the board; and
- (2) Exercise any of the powers of the board.

Part C. Directors.

§ 29–406.30. Standards of conduct for directors.

(a) Each member of the board of directors, when discharging the duties of a director, shall act:

- (1) In good faith; and
- (2) In a manner the director reasonably believes to be in the best interests of the nonprofit corporation.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed by law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(d) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted may rely on the performance by any of the persons specified in subsection (f)(1), (3), or (4) of this section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(e) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f) of this section.

(f) A director may rely, in accordance with subsection (d) or (e) of this section, on:

- (1) One or more officers, employees, or volunteers of the nonprofit corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence;

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence; or

(4) In the case of a religious corporation, religious authorities and ministers, priests, rabbis, imams, or other persons whose positions or duties the director reasonably believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(g) A director shall not be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

§ 29-406.31. Standards of liability for directors.

(a) A director shall not be liable to the nonprofit corporation or its members for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) None of the following, if interposed as a bar to the proceeding by the director, precludes liability:

(A) Subsection (d) of this section or a provision in the articles of incorporation authorized by [§ 29-402.02\(c\)](#);

(B) Satisfaction of the requirements in [§ 29-406.70](#) for validating a conflicting interest transaction; or

(C) Satisfaction of the requirements in [§ 29-406.80](#) for disclaiming a business opportunity; and

(2) The challenged conduct consisted or was the result of:

(A) Action not in good faith;

(B) A decision:

(i) Which the director did not reasonably believe to be in the best interests of the corporation; or

(ii) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

- (i) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and
 - (ii) After a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;
- (D) A sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or
- (E) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.
- (b) The party seeking to hold the director liable:
- (1) For money damages, also has the burden of establishing that:
 - (A) Harm to the nonprofit corporation or its members has been suffered; and
 - (B) The harm suffered was proximately caused by the director's challenged conduct;
 - (2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or
 - (3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.
- (c) Nothing contained in this section:
- (1) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the nonprofit corporation under [§ 29-406.70\(a\)\(3\)](#), alters the burden of proving the fact or lack of fairness otherwise applicable;
 - (2) Alters the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under [§ 29-406.33](#), a conflicting interest transaction under [§ 29-406.70](#), or taking advantage of a business opportunity under [§ 29-406.80](#); or
 - (3) Affects any rights to which the corporation or a director or member may be entitled under another statute of the District or the United States.
- (d) Notwithstanding any other provision of this section, a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

- (1) The amount of a financial benefit received by the director to which the director is not entitled;
- (2) An intentional infliction of harm;
- (3) A violation of [§ 29-406.33](#); or
- (4) An intentional violation of criminal law.

§ 29-406.32. Loans to or guarantees for directors and officers.

- (a) A nonprofit corporation shall not lend money to or guarantee the obligation of a director or officer of the corporation.
- (b) This section shall not apply to:
 - (1) An advance to pay reimbursable expenses reasonably expected to be incurred by a director or officer;
 - (2) An advance to pay premiums on life insurance if the advance is secured by the cash value of the policy;
 - (3) Advances pursuant to [part E of this subchapter](#);
 - (4) Loans or advances pursuant to employee benefit plans;
 - (5) A loan secured by the principal residence of an officer; or
 - (6) A loan to pay relocation expenses of an officer.
- (c) The fact that a loan or guarantee is made in violation of this section shall not affect the borrower's liability on the loan.

§ 29-406.33. Directors' liability for unlawful distributions.

- (a) A director who votes for or assents to a distribution made in violation of this chapter shall be personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter if the party asserting liability establishes that, when taking the action, the director did not comply with [§ 29-406.30](#).
- (b) A director held liable under subsection (a) of this section for an unlawful distribution shall be entitled to:
 - (1) Contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and
 - (2) Recoupment from each person of the pro-rata portion of the amount of the unlawful distribution the person received, whether or not the person knew the distribution was made in violation of this chapter.
- (c) A proceeding to enforce:

- (1) The liability of a director under subsection (a) of this section shall be barred unless it is commenced within 2 years after the date on which the distribution was made; or
- (2) Contribution or recoupment under subsection (b) of this section shall be barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection (a) of this section.

Part D. Officers.

§ 29–406.40. Officers.

- (a) The officers of a nonprofit corporation shall be the individuals who hold the offices described in its articles of incorporation or bylaws or are appointed or elected in accordance with the articles and bylaws or as authorized by the board of directors. At a minimum, a nonprofit corporation shall have 2 separate officers, one responsible for the management of the corporation, who may be referred to as the “President” or by any other term used in its articles of incorporation or bylaws and another responsible for the financial affairs of the corporation, who may be referred to as the “Treasurer”, or by any other term used in its articles of incorporation or bylaws.
- (b) The articles of incorporation or bylaws or the board of directors shall assign to one of the officers responsibility for preparing or supervising the preparation of the minutes of the meetings of the board of directors and the members, if any, and for maintaining and authenticating the records of the corporation required to be kept under [§ 29-413.01\(a\)](#) and (e).
- (c) The same individual may simultaneously hold more than one office in a nonprofit corporation.

§ 29–406.41. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the articles of incorporation or bylaws or, to the extent consistent with the articles and bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

§ 29–406.42. Standards of conduct for officers.

- (a) An officer with discretionary authority shall discharge his or her duties under that authority:
 - (1) In good faith;
 - (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) In a manner the officer reasonably believes to be in the best interests of the corporation.
- (b) The duty of an officer shall include the obligation to inform:
 - (1) The superior officer to whom, or the board of directors or the committee thereof to which, the officer reports of information about the affairs of the nonprofit corporation known to the

officer, within the scope of the officer's functions, and known to the officer to be material to the superior officer, board, or committee; and

(2) His or her superior officer, or another appropriate person within the nonprofit corporation, or the board of directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

(c) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the nonprofit corporation whom the officer reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence;

(3) In the case of a religious corporation, religious authorities and ministers, priests, rabbis, imams, or other persons whose positions or duties the officer reasonably believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

§ 29–406.43. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the nonprofit corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board of directors or the appointing officer accepts the future effective time, the board or the appointing officer may designate a successor before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(b) Except as otherwise provided in the articles of incorporation or bylaws, an officer may be removed at any time with or without cause by:

(1) The board of directors;

(2) The officer who appointed the officer being removed, unless the board provides otherwise; or

(3) Any other officer authorized by the articles, the bylaws, or the board.

(c) For the purposes of this section, the term "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

§ 29-406.44. Contract rights of officers.

- (a) The appointment of an officer shall not itself create contract rights.
- (b) An officer's removal shall not affect the officer's contract rights, if any, with the nonprofit corporation. An officer's resignation shall not affect the corporation's contract rights, if any, with the officer.

Part E. Indemnification and Advance for Expenses.**§ 29-406.50. Definitions.**

For the purposes of this part, the term:

- (1) "Corporation" includes any domestic or foreign predecessor entity of a nonprofit corporation in a merger, conversion, or domestication.
- (2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a nonprofit corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer shall be considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term "director" includes a member of a designated body. The term "director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.
- (3) "Disinterested director" means a director who, at the time of a vote referred to in [§ 29-406.53\(c\)](#) or a vote or selection referred to in [§ 29-406.55\(b\)](#) or (c), is not:
- (A) A party to the proceeding; or
- (B) An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.
- (4) "Expenses" include attorneys' fees.
- (5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.
- (6)(A) "Official capacity" means:
- (i) When used with respect to a director, the office of director in a nonprofit corporation; and
- (ii) When used with respect to an officer, as contemplated in [§ 29-406.56](#), the office in a corporation held by the officer; and.

(B) The term “official capacity” does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

(7) “Party” means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

(8) “Proceeding” includes a threatened, pending, or completed proceeding.

§ 29-406.51. Permissible indemnification.

(a) Except as otherwise provided in this section, a nonprofit corporation may indemnify an individual who is a party to a proceeding because he or she is or was a director against liability incurred in the proceeding if:

(1) The individual:

(A) Acted in good faith;

(B) Reasonably believed:

(i) In the case of conduct in an official capacity, that the conduct was in the best interests of the corporation; and

(ii) In all other cases, that the individual’s conduct was at least not opposed to the best interests of the corporation; and

(C) In the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful; or

(2) The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by [§ 29-402.02\(b\)\(7\)](#).

(b) A director’s conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and the beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(1)(B)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under [§ 29-406.54\(a\)\(3\)](#), a nonprofit corporation shall not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a) of this section; or

(2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in an official capacity.

§ 29-406.52. Mandatory indemnification.

A nonprofit corporation shall indemnify a director or officer to the extent the director or officer was successful, on the merits or otherwise, in the defense of any proceeding to which the director or officer was a party because the director or officer was a director or officer of the corporation against reasonable expenses incurred by the director or officer in connection with the proceeding.

§ 29-406.53. Advance for expenses.

(a) A nonprofit corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by an individual who is a party to a proceeding because he or she is or was a director if the individual delivers to the corporation:

(1) An affirmation in the form of a record of his or her good faith belief that he or she has met the relevant standard of conduct described in [§ 29-406.51](#) or that the proceeding involves conduct for which liability has been eliminated by [§ 29-406.31\(d\)](#) or under a provision of the articles of incorporation as authorized by [§ 29-402.02\(c\)](#); and

(2) An undertaking in the form of a record to repay any funds advanced if the individual is not entitled to mandatory indemnification under [§ 29-406.52](#) and it is ultimately determined under [§ 29-406.54](#) or [§ 29-406.55](#) that the individual has not met the relevant standard of conduct described in [§ 29-406.51](#).

(b) The undertaking required by subsection (a)(2) of this section shall be an unlimited general obligation of the director, but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(A) If there are 2 or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom will constitute a quorum for that purpose, or by a majority of the members of a committee of 2 or more disinterested directors appointed by such a vote; or

(B) If there are fewer than 2 disinterested directors, by the vote necessary for action by the board in accordance with [§ 29-406.24\(c\)](#), in which authorization directors who do not qualify as disinterested directors may participate; or

(2) By the members.

§ 29-406.54. Court-ordered indemnification and advance for expenses.

(a) A director who is a party to a proceeding because he or she is or was a director may apply for indemnification or an advance for expenses to the Superior Court. After receipt of an application and after giving any notice it considers necessary, the court shall order:

(1) Indemnification if the court determines that the director is entitled to mandatory indemnification under [§ 29-406.52](#);

(2) Indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by [§ 29-406.58\(a\)](#); or

(3) Indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to:

(A) Indemnify the director; or

(B) Advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in [§ 29-406.51\(a\)](#), failed to comply with [§ 29-406.53](#), or was adjudged liable in a proceeding referred to in [§ 29-406.51\(d\)\(1\)](#) or (d)(2), but if the director was adjudged so liable, his or her indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the Superior Court determines that the director is entitled to indemnification under subsection (a)(1) of this section or to indemnification or advance for expenses under subsection (a)(2) of this section, it shall also order the nonprofit corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (a)(3) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

§ 29-406.55. Determination and authorization of indemnification.

(a) A nonprofit corporation shall not indemnify a director under [§ 29-406.51](#) unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in [§ 29-406.51](#).

(b) The determination shall be made:

(1) If there are 2 or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom will constitute a quorum for that purpose, or by a majority of the members of a committee of 2 or more disinterested directors appointed by such a vote;

(2) By special legal counsel:

(A) Selected in the manner prescribed in paragraph (1) of this subsection; or

(B) If there are fewer than 2 disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

(3) By the members.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than 2 disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall

be made by those entitled under subsection (b)(2)(B) of this section to select special legal counsel.

§ 29-406.56. Indemnification of officers.

(a) A nonprofit corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he or she is or was an officer of the corporation:

(1) To the same extent as a director; and

(2) If he or she is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for:

(A) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(B) Liability arising out of conduct that constitutes:

(i) Receipt by the officer of a financial benefit to which the officer is not entitled;

(ii) An intentional infliction of harm on the corporation or the members; or

(iii) An intentional violation of criminal law.

(b) Subsection (a)(2) of this section shall apply to an officer who is also a director if the basis on which he or she is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director shall be entitled to mandatory indemnification under [§ 29-406.52](#), and may apply to a court under [§ 29-406.54](#) for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

§ 29-406.57. Insurance.

A nonprofit corporation may purchase insurance on behalf of an individual who is or was a director or officer of the corporation, or who, while a director or officer of the corporation, serves or served at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this part.

§ 29-406.58. Variation of indemnification.

(a) A nonprofit corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification as permitted by [§ 29-406.51](#) or advance funds to pay for or reimburse expenses as permitted

by [§ 29-406.53](#). An obligatory provision satisfies the requirements for authorization referred to in §§ [29-406.53\(c\)](#) and [29-406.55\(c\)](#). Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall obligate the corporation to advance funds to pay for or reimburse expenses in accordance with [§ 29-406.53](#) to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) of this section shall not obligate the nonprofit corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the organic records, articles of incorporation, bylaws, or a resolution of the governors, board of directors, members or interest holders of a predecessor of the corporation in a fundamental transaction, or in a contract to which the predecessor is a party, existing at the time the fundamental transaction takes effect, shall be governed by:

- (1) Section 29-407.05(a)(2) in the case of a domestication;
- (2) Section 29-204.06(a)(3) in the case of a for-profit conversion;
- (3) Section 29-204.06(a)(3) in the case of a foreign for-profit domestication and conversion;
- (4) Section 29-204.06(a)(3) in the case of an entity conversion; or
- (5) Section 29-409.07(a)(4) in the case of a merger involving only nonprofit corporations, or [§ 29-202.06\(a\)\(4\)](#) in the case of a merger involving another type of entity.

(c) A nonprofit corporation may, by a provision in its articles of incorporation or bylaws, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

(d) This part shall not limit a nonprofit corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with appearance as a witness in a proceeding at a time when the director or officer is not a party.

(e) A nonprofit corporation may indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee, agent, or volunteer.

Part F. Conflicting Interest Transactions.

§ 29-406.70. Conflicting interest transactions; voidability.

(a) A contract or transaction between a nonprofit corporation and one or more of its members, directors, members of a designated body, or officers or between a nonprofit corporation and any other entity in which one or more of its directors, members of a designated body, or officers are directors or officers, hold a similar position, or have a financial interest, shall not be void or voidable solely for that reason, or solely because the member, director, member of a designated body, or officer is present at or participates in the meeting of the board of directors that authorizes the contract or transaction, or solely because his or their votes are counted for that purpose, if:

- (1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors and the board in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors even though the disinterested directors are less than a quorum;
 - (2) The material facts as to the relationship or interest of the member, director, or officer and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of those members; or
 - (3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved, or ratified by the board of directors or the members.
- (b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board that authorizes a contract or transaction specified in subsection (a) of this section.
- (c) This section shall be applicable except as otherwise restricted in the articles of incorporation or bylaws.

Part G. Business Opportunities.

§ 29–406.80. Business opportunities.

- (a) The taking advantage, directly or indirectly, by a director of a business opportunity shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the nonprofit corporation on the ground that the opportunity should have first been offered to the corporation, if before becoming legally obligated or entitled respecting the opportunity the director brings it to the attention of the corporation and action by the members or the directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [§ 29-406.70](#), as if the decision being made concerned a conflicting interest transaction.
- (b) In any proceeding seeking equitable relief or other remedies, based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not support an inference that the opportunity should have been first presented to the nonprofit corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.
- (c) For the purposes of this section, the term “director” includes a member of a designated body.

Part H. Limitations on Liability of Volunteers and Employees.

§ 29–406.90. Immunity from civil liability for volunteer of corporation.

- (a) For the purposes of this section, the term “volunteer” means an officer, director, trustee, or other person who performs services for the corporation and who does not receive compensation other than reimbursement of expenses for those services.

(b) Any person who serves as a volunteer of the corporation shall be immune from civil liability except if the injury or damage was a result of:

(1) The willful misconduct of the volunteer;

(2) A crime, unless the volunteer had reasonable cause to believe that the act was lawful;

(3) A transaction that resulted in an improper personal benefit of money, property, or service to the volunteer; or

(4) An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this chapter or the corporate charter.

(c) This section shall apply only if the corporation maintains liability insurance with a limit of coverage of not less than \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence. This subsection shall not apply to any corporation having annual total functional expenses, exclusive of grants and allocations, of less than \$100,000, and which is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(d) This section shall not exempt the corporation from liability for the conduct of the volunteer, but the corporation shall be liable only to the extent of the applicable limit of insurance coverage it maintains.

§ 29–406.91. Limited liability for employee of corporation.

(a) For the purposes of this section, the term “employee” means a person regularly employed to perform a service for a salary or wages.

(b) Except as provided in subsections (c) and (d) of this section, an employee of the corporation shall not be held personally liable in damages for any acts or omissions in providing services or performing duties on behalf of the corporation in an amount greater than the amount of total compensation, other than reimbursement of expenses, received from the corporation for performing those services or duties during the 12 months immediately preceding the act or omission for which liability was imposed.

(c) The limitation of liability in this section shall not apply if the injury or damage was a result of:

(1) The willful misconduct of the employee;

(2) A crime, unless the employee had reasonable cause to believe that the act was lawful;

(3) A transaction that resulted in an improper personal benefit of money, property, or service to the employee;

(4) An act or omission that is not in good faith and is beyond the scope of authority of the corporation pursuant to this chapter or the articles of incorporation.

(d) The limitation of liability in this section does not apply to any licensed professional employee operating in his or her professional capacity.

(e) This section shall not exempt the corporation from liability, but the corporation is liable only to the extent of the applicable limit of insurance coverage it maintains.

Subchapter VII. Domestication.

§ 29–407.01. Definitions.

For the purposes of this subchapter, the term:

- (1) “Domesticated corporation” means the domesticating corporation as it continues in existence after a domestication.
- (2) “Domesticating corporation” means the domestic nonprofit corporation that adopts a plan of domestication pursuant to [§ 29-407.03](#) or the foreign nonprofit corporation that approves a domestication pursuant to its organic law.
- (3) “Domestication” means a transaction authorized by this subchapter.
- (4) “Surviving corporation” means the corporation as it continues in existence immediately after consummation of a domestication pursuant to this subchapter.

§ 29–407.02. Domestication.

(a) A foreign nonprofit corporation may become a domestic nonprofit corporation only if the domestication is authorized by the law of the foreign jurisdiction.

(b) A domestic nonprofit corporation may become a foreign nonprofit corporation if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication shall be approved by the adoption by the corporation of a plan of domestication in the manner provided in this subtitle [subchapter].

(c) The plan of domestication shall include:

- (1) A statement of the jurisdiction in which the corporation is to be domesticated;
 - (2) The terms and conditions of the domestication;
 - (3) The manner and basis of canceling or reclassifying the memberships of the corporation following its domestication into memberships, obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing; and
 - (4) Any desired amendments to the articles of incorporation or bylaws of the corporation following its domestication.
- (d) The plan of domestication may also include a provision that the plan may be amended prior to filing the document required by the laws of the District or the other jurisdiction to consummate the domestication; provided, that subsequent to approval of the plan by the members, the plan shall not be amended without the approval of the members to change:

(1) The amount or kind of memberships, obligations, rights to acquire memberships, cash, or other property to be received by the members under the plan;

(2) The articles of incorporation as they will be in effect immediately following the domestication, except for changes permitted by [§ 29-408.05](#) or by comparable provisions of the laws of the other jurisdiction; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(e) Terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with [§ 29-401.04](#).

(f) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic nonprofit corporation before the effective date of this chapter contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

§ 29-407.03. Action on plan of domestication.

In the case of a domestication of a domestic nonprofit corporation in a foreign jurisdiction:

(1) The plan of domestication shall be adopted by the board of directors.

(2) After adopting the plan of domestication, the board of directors shall submit the plan to the members for their approval if there are members entitled to vote on the plan. The board of directors shall also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination.

(3) The board of directors may condition its submission of the plan of domestication to the members on any basis.

(4) If the approval of the members is to be given at a meeting, the corporation shall notify each member, whether or not entitled to vote, of the meeting of members at which the plan of domestication is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the articles of incorporation and bylaws as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to paragraph (3) of this subsection, requires a greater vote or a greater number of votes to be present, the approval of the plan of domestication by the members shall require the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the plan, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

(6) Separate voting by voting groups shall be required by each class of members that:

(A) Are to be reclassified under the plan of domestication into a different class of memberships, or into obligations, rights to acquire memberships, cash, other property, or any combination of the foregoing;

(B) Would be entitled to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under [§ 29-408.04](#); or

(C) Is entitled under the articles of incorporation or bylaws to vote as a voting group to approve an amendment of the articles.

(7) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors, members of a designated body, or members are parties, adopted or entered into before the effective date of this chapter, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision shall be deemed to apply to a domestication of the corporation until such time as the provision is amended subsequent to that date.

§ 29-407.04. Articles of domestication.

(a) Articles of domestication shall be signed on behalf of the domesticating corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name and jurisdiction of incorporation of the domesticating corporation;

(2) The name and jurisdiction of incorporation of the domesticated entity; and

(3) If the domesticating corporation is a domestic nonprofit corporation, a statement that the plan of domestication was approved in accordance with this subtitle [subchapter] or, if the domesticating corporation is a foreign nonprofit corporation, a statement that the domestication was approved in accordance with the law of its jurisdiction of incorporation.

(b) If the domesticated corporation is a domestic nonprofit corporation, the articles of domestication shall either contain all of the provisions that [§ 29-402.02\(a\)](#) requires to be set forth in articles of incorporation and any other desired provisions that [§ 29-402.02\(b\)](#) and (c) permits to be included in articles of incorporation, or must have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted, except that the name and address of the initial registered agent of the domesticated corporation shall be included. The name of the domesticated corporation shall satisfy the requirements of [§ 29-103.01](#).

(c) The articles of domestication shall be delivered to the Mayor for filing and take effect at the effective time provided in [§ 29-102.03](#).

(d) If the domesticating corporation is a registered foreign nonprofit corporation, its certificate of registration shall be canceled automatically on the effective date of its domestication.

§ 29-407.05. Effect of domestication.

(a) When a domestication becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the domesticating corporation shall remain in the domesticated corporation without reversion or impairment;

(2) The liabilities of the domesticating corporation shall remain the liabilities of the domesticated corporation;

(3) An action or proceeding pending against the domesticating corporation shall continue against the domesticated corporation as if the domestication had not occurred;

(4) The articles of domestication, or the articles of incorporation attached to the articles of domestication, shall constitute the articles of incorporation of a foreign corporation domesticating in the District;

(5) The memberships in the domesticating corporation shall be reclassified into memberships, obligations, rights to acquire memberships, or cash or other property in accordance with the terms of the domestication, and the members shall be entitled only to the rights provided by those terms; and

(6) The domesticating corporation shall be deemed to be:

(A) Incorporated under and subject to the organic law of the domesticated corporation for all purposes; and

(B) The same corporation without interruption as the domesticating corporation.

(b) The interest holder liability of a member in a foreign nonprofit corporation that is domesticated in the District shall be as follows:

(1) The domestication shall not discharge any interest holder liability under the laws of the foreign jurisdiction to the extent any such interest holder liability arose before the effective time of the articles of domestication.

(2) The member shall not have interest holder liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of domestication.

(3) The laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any interest holder liability preserved by paragraph (1) of this subsection, as if the domestication had not occurred.

(4) The member has whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any interest holder liability preserved by paragraph (1) of this subsection, as if the domestication had not occurred.

§ 29–407.06. Abandonment of a domestication.

(a) Unless otherwise provided in a plan of domestication of a domestic nonprofit corporation, after the plan has been adopted and approved as required by this subtitle [subchapter], and at any time before the domestication has become effective, it may be abandoned by the board of directors without action by the members.

(b) If a domestication is abandoned under subsection (a) of this section after articles of domestication have been delivered to the Mayor for filing but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, shall be delivered to the Mayor for filing prior to the effective date of the domestication. The statement shall be effective upon filing and the domestication shall be abandoned and shall not become effective.

(c) If the domestication of a foreign nonprofit corporation in the District is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been delivered to the Mayor for filing, a statement that the domestication has been abandoned, signed by an officer or other duly authorized representative, shall be delivered to the Mayor for filing. The statement shall be effective upon filing and the domestication shall be abandoned and shall not become effective.

Subchapter VIII. Amendment of Articles of Incorporation and Bylaws.

Part A. Amendment of Articles of Incorporation.

§ 29–408.01. Authority to amend.

A nonprofit corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles.

§ 29–408.02. Amendment before issuance of memberships.

If a membership corporation has not yet issued memberships, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the articles of incorporation.

§ 29–408.03. Amendment of articles of membership corporation.

(a) An amendment to the articles of incorporation of a membership corporation shall be adopted in the following manner:

(1) Except as otherwise provided in paragraph (5) of this subsection, the proposed amendment shall be adopted by the board of directors.

(2) Except as otherwise provided in §§ [29-408.05](#), [29-408.07](#), and [29-408.08](#), a proposed amendment shall be submitted to the members entitled to vote for their approval.

(3) The board of directors shall transmit to the members a recommendation that the members approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.

(4) The board of directors may condition its submission of the amendment to the members on any basis.

(5) Except as otherwise provided in the articles of incorporation or bylaws, an amendment may be proposed by 10% or more of the members entitled to vote on the amendment or by such greater or lesser number of members as is specified in the articles. Paragraphs (1), (3), and (4) of this section shall not apply to an amendment proposed by the members under this paragraph.

(6) If the amendment is required to be approved by the members, and the approval is to be given at a meeting, the corporation shall give notice to each member entitled to vote on the amendment of the meeting of members at which the amendment is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment and shall contain or be accompanied by a copy of the amendment.

(7) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to paragraph (4) of this subsection, requires a greater vote or a greater number of members to be present, the approval of an amendment requires the approval of the members at a meeting at which a quorum exists, and, if any class of members shall be entitled to vote as a separate group on the amendment, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

(8) In addition to the adoption and approval of an amendment by the board of directors and members as required by this section, an amendment shall also be approved by a designated body whose approval is required by the articles of incorporation or bylaws.

(b) Unless the articles of incorporation provide otherwise, the board of directors of a membership corporation may adopt amendments to the corporation's articles of incorporation without approval of the members to:

(1) Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) Delete the names and addresses of the initial directors or members of a designated body;

(3) Change the information required by § 2-104.04;

(4) Change the corporation name by substituting or deleting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name; or

(5) Restate without change all of the then operative provisions of the articles.

§ 29-408.04. Voting on amendments by voting groups.

(a) Except as otherwise provided in the articles of incorporation or bylaws, if a nonprofit corporation has more than one class of members, the members of each class shall be entitled to vote as a separate voting group, if member voting is otherwise required by this chapter, on a proposed amendment to the articles of incorporation if the amendment would:

(1) Effect an exchange or reclassification of all or part of the memberships of the class into memberships of another class;

- (2) Effect an exchange or reclassification, or create the right of exchange, of all or part of the memberships of another class into memberships of the class;
 - (3) Change the rights, preferences, or limitations of all or part of the memberships of the class in a manner different than the amendment would affect another class;
 - (4) Change the rights, preferences, or limitations of all or part of the memberships of the class by changing the rights, preferences, or limitations of another class;
 - (5) Increase or decrease the number of memberships authorized for that class;
 - (6) Increase the number of memberships authorized for another class; or
 - (7) Authorize a new class of memberships.
- (b) If a class of members will be divided into 2 or more classes by an amendment to the articles of incorporation, the amendment shall be approved by a majority of the members of each class that will be created.

§ 29–408.05. Amendment of articles of nonmembership corporation.

Except as otherwise provided in the articles of incorporation, the board of directors of a nonmembership corporation may adopt amendments to the corporation’s articles. Except as otherwise provided in the articles of incorporation, an amendment adopted by the board of directors under this subsection shall also be approved:

- (1) By a designated body whose approval is required by the articles of incorporation or bylaws;
- (2) If the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group; and
- (3) If the amendment changes or deletes a provision regarding the designation of a director, by the individual designated at the time as that director.

§ 29–408.06. Articles of amendment.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the nonprofit corporation shall deliver to the Mayor, for filing, articles of amendment, which shall set forth:

- (1) The name of the corporation;
- (2) The text of the amendment adopted;
- (3) If the amendment provides for an exchange, reclassification, or cancellation of memberships, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with [§ 29-401.04](#);
- (4) The date of the amendment’s adoption; and
- (5) If the amendment:

(A) Was adopted by the incorporators, board of directors, or a designated body without member approval, a statement that the amendment was adopted by the incorporators or by the board of directors or designated body, as the case may be, and that member approval was not required; or

(B) Required approval by the members, a statement that the amendment was duly approved by the members in the manner required by this chapter and by the articles of incorporation and bylaws.

§ 29–408.07. Restated articles of incorporation.

(a) The board of directors of a nonprofit corporation may restate its articles of incorporation at any time, without approval by the members or any other person, to consolidate all amendments into a single document without substantive change.

(b) If restated articles of a membership corporation include one or more new amendments that require member approval, the amendments shall be adopted and approved as provided in §§ [29-408.03](#) and [29-408.04](#).

(c) A nonprofit corporation that restates its articles of incorporation shall deliver to the Mayor for filing articles of amendment under [§ 29-408.06](#) which include a statement that the articles of amendment are a restatement that consolidates all amendments into a single record.

(d) Duly adopted restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto.

(e) The Mayor shall certify restated articles of incorporation as the articles of incorporation currently in effect.

§ 29–408.08. Amendment pursuant to reorganization.

(a) A nonprofit corporation’s articles of incorporation may be amended without action by the board of directors, a designated body, or the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) An individual designated by the court shall deliver to the Mayor for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court’s order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section shall not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ 29–408.09. Effect of articles amendment.

(a) Except as otherwise provided in subsections (b), (c), and (d) of this section, an amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the nonprofit corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation or persons referred to in the articles. An amendment changing a corporation's name shall not abate a proceeding brought by or against the corporation in its former name.

(b) Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by an amendment of its articles of incorporation unless the corporation obtains an appropriate order of the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.

(c) Unless a nonprofit corporation obtains an appropriate order of the Superior Court under the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment of its articles of incorporation shall not affect:

(1) Any restriction imposed upon property held by the corporation by virtue of any trust under which it holds that property; or

(2) The existing rights of persons other than its members.

(d) A person that is a member or otherwise affiliated with a charitable corporation shall not receive a direct or indirect financial benefit in connection with an amendment of the articles of incorporation unless the person is itself a charitable corporation or an unincorporated entity with a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.

Part B. Amendment of Bylaws.

§ 29–408.20. Amendment by board of directors or members.

(a) Except as otherwise provided in the articles of incorporation or bylaws, the members of a membership corporation may amend or repeal the corporation's bylaws.

(b) The board of directors of a membership corporation or nonmembership corporation may amend or repeal the corporation's bylaws, unless the articles of incorporation or bylaws or [§ 29-408.21](#) or [§ 29-408.22](#) reserve that power exclusively to the members or a designated body in whole or part.

§ 29-408.21. Bylaw increasing quorum or voting requirement for board of directors or designated body.

(a) A bylaw that increases a quorum or voting requirement for the board of directors or a designated body may be amended or repealed:

(1) If originally adopted by the members, only by the members, unless the bylaws otherwise provide;

(2) If adopted by the board of directors or designated body, either by the members or by the board of directors or designated body.

(b) A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors or a designated body may provide that it can be amended or repealed only by a specified vote of either the members or the board of directors or designated body.

(c) Action by the board of directors or a designated body under subsection (a) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors or a designated body shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

§ 29-408.22. Bylaw amendments requiring member approval.

(a) Except as otherwise provided in the articles of incorporation or bylaws, the board of directors or designated body of a membership corporation that has one or more members at the time shall not adopt or amend a bylaw under:

(1) Section 29-404.10 providing that some of the members have different rights or obligations than other members with respect to voting, dissolution, transfer of memberships or other matters;

(2) Section 29-404.13 levying dues, assessments, or fees on some or all of the members;

(3) Section 29-404.21 relating to the termination or suspension of members;

(4) Section 29-404.22 authorizing the purchase of memberships;

(5) Section 29-406.08(a):

(A) Requiring cause to remove a director; or

(B) Specifying what constitutes cause to remove a director;

(6) Section 29-406.08(e) relating to the removal of a director who is designated in a manner other than election or appointment; or

(7) Section 29-406.12.

(b) The board of directors or designated body of a membership corporation shall not amend the articles of incorporation or bylaws to vary the application of subsection (a) of this section to the corporation.

(c) If a nonprofit corporation has more than one class of members, the members of a class shall be entitled to vote as a separate voting group on an amendment to the bylaws that:

(1) Is described in subsection (a) of this subsection if the amendment would affect the members of that class differently than the members of another class; or

(2) Has any of the effects described in [§ 29-408.04](#).

(d) If a class of members will be divided into 2 or more classes by an amendment to the bylaws, the amendment shall be approved by a majority of the members of each class that will be created.

§ 29-408.23. Effect of bylaw amendment.

(a) Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by an amendment of its bylaws unless the corporation obtains an appropriate order of the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.

(b) Unless a nonprofit corporation obtains an appropriate order of the Superior Court under the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment of its bylaws shall not affect:

(1) Any restriction imposed upon property held by the corporation by virtue of any trust under which it holds that property; or

(2) The existing rights of persons other than its members.

(c) A person that is a member or otherwise affiliated with a charitable corporation shall not receive a direct or indirect financial benefit in connection with an amendment of the bylaws unless the person is itself a charitable corporation or an unincorporated entity with a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.

Part C. Special Rights.

§ 29-408.40. Approval by third persons.

(a) The articles of incorporation may require that an amendment to the articles be approved in the form of a record by a specified person or group of persons in addition to the board of directors and members.

(b) The articles of incorporation or bylaws may require that an amendment to the bylaws be approved in the form of a record by a specified person or group of persons in addition to the board of directors and members.

(c) A requirement in the articles of incorporation or bylaws described in subsection (a) or (b) of this section shall only be amended with the approval in the form of a record of the specified person or group of persons.

Subchapter IX. Mergers and Membership Exchanges.

§ 29-409.01. Preliminary provisions and restrictions.

(a) For the purposes of this subchapter, the term:

(1) “Exchanging entity” means the domestic or foreign nonprofit corporation or eligible entity in which all of one or more classes of memberships or classes or series of eligible interests are to be acquired in a membership exchange.

(2) “Membership exchange” means a transaction pursuant to [§ 29-409.03](#).

(3) “Merger” means a transaction pursuant to [§ 29-409.02](#).

(4) “Party to a merger” or “party to a membership exchange” means any domestic or foreign nonprofit corporation or eligible entity that:

(A) Will merge under a plan of merger;

(B) Will acquire memberships or eligible interests of another corporation or an eligible entity in a membership exchange; or

(C) Is an exchanging entity.

(5) “Survivor” in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

(b) Property held in trust by an entity or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by a transaction under this subchapter unless the entity obtains an appropriate order of the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.

(c) Unless an entity that is a party to a transaction under this subchapter obtains an appropriate order of the Superior Court under the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets, the transaction shall not affect:

(1) Any restriction imposed upon the entity by its organic documents that may not be amended by its governors, members, or interest holders;

(2) Any restriction imposed upon property held by the entity by virtue of any trust under which it holds that property; or

(3) The existing rights of persons other than members, shareholders, or interest holders of the entity.

(d) A person that is a member, interest holder, or otherwise affiliated with a charitable corporation or an unincorporated entity with a charitable purpose shall not receive a direct or

indirect financial benefit in connection with a transaction under this subchapter to which the charitable corporation or unincorporated entity is a party unless the person is itself a charitable corporation or unincorporated entity with a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.

§ 29-409.02. Merger.

(a) One or more domestic nonprofit corporations may merge with one or more domestic or foreign nonprofit corporations pursuant to a plan of merger or 2 or more foreign nonprofit corporations or domestic nonprofit corporations may merge into a new domestic nonprofit corporation to be created in the merger in the manner provided in this subchapter.

(b) A foreign nonprofit corporation may be a party to a merger with a domestic nonprofit corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the organic law of the corporation.

(c) If the organic law of a domestic eligible entity shall not prohibit a merger with a nonprofit corporation but does not provide procedures for the approval of such a merger, a plan of merger may be adopted and approved, and the merger may be effectuated, in accordance with the procedures in this subchapter.

(d) The plan of merger shall be in the form of a record and include:

(1) The name of each domestic or foreign nonprofit corporation that will merge and the name of the domestic or foreign nonprofit corporation that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the memberships of each merging domestic or foreign nonprofit membership corporation into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;

(4) The articles of incorporation and bylaws of any corporation to be created by the merger, or if a new corporation is not to be created by the merger, any amendments to the survivor's articles or bylaws or organic records; and

(5) Any other provisions relating to the merger that the parties desire be included in the plan of merger.

(e) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the members of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan shall provide that subsequent to approval of the plan by such members the plan shall not be amended to change:

(1) The amount or kind of memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; or other property or other consideration to be received by the members of or owners of eligible interests in any party to the merger;

(2) The articles of incorporation or bylaws of any corporation, or the organic records of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by [§ 29-408.05](#) or by comparable provisions of the organic law of any such foreign nonprofit or business corporation or domestic or foreign unincorporated entity; or

(3) Any of the other terms or conditions of the plan, if the change would adversely affect such members in any material respect.

(f) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with [§ 29-401.04](#).

(g) A merger in which a nonprofit corporation and another form of entity are parties is governed by [Chapter 2 of this title](#).

§ 29-409.03. Membership exchange.

(a) Through a membership exchange:

(1) A domestic nonprofit corporation may acquire, pursuant to a plan of membership exchange, all of the memberships of one or more classes of another domestic or foreign nonprofit corporation, or all of the eligible interests of one or more classes or series of eligible interests of a domestic or foreign nonprofit corporation, in exchange for memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing; and

(2) All of the memberships of one or more classes of a domestic nonprofit corporation may be acquired by another domestic or foreign nonprofit corporation or eligible entity, in exchange for memberships, eligible interests, securities, obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing, pursuant to a plan of membership exchange.

(b) A foreign nonprofit corporation or eligible entity may be a party to a membership exchange only if the membership exchange is permitted by the organic law of the corporation or eligible entity.

(c) If the organic law of a domestic eligible entity does not prohibit a membership exchange with a nonprofit corporation but does not provide procedures for the approval of an exchange of interests similar to a membership exchange, a plan of membership exchange may be adopted and approved, and the membership exchange effectuated, in accordance with the procedures, if any, for a merger. If the organic law of a domestic eligible entity does not provide procedures for either an interest exchange or a merger, a plan of membership exchange may be adopted and approved, and the membership exchange effectuated, in accordance with the procedures in this subchapter. For the purposes of applying this subchapter:

- (1) The eligible entity, its interest holders, eligible interests, and organic documents shall be deemed to be a domestic nonprofit corporation, members, memberships, and articles of incorporation and bylaws, respectively, as the context may require; and
- (2) If the activities and affairs of the eligible entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.
- (d) The plan of membership exchange shall be in the form of a record and include:
- (1) The name of each domestic or foreign nonprofit corporation or eligible entity whose memberships or eligible interests will be acquired and the name of the corporation or eligible entity that will acquire those memberships or eligible interests;
- (2) The terms and conditions of the membership exchange;
- (3) The manner and basis of exchanging the memberships of a corporation or the eligible interests in an eligible entity whose memberships or eligible interests will be acquired under the membership exchange into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing;
- (4) Any changes desired to be made in the organic records of the exchanging entity; and
- (5) Any other provisions relating to the membership exchange that the parties desire be included in the plan of exchange.
- (e) The plan of membership exchange may also include a provision that the plan may be amended prior to filing articles of membership exchange, but if the members of a domestic nonprofit corporation that is a party to the membership exchange are required or permitted to vote on the plan, the plan shall provide that subsequent to approval of the plan by such members the plan shall not be amended to change:
- (1) The amount or kind of memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; or other property or other consideration to be issued by the domestic nonprofit corporation or to be received by its members, as the case may be; or
- (2) Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.
- (f) Terms of a plan of membership exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with [§ 29-401.04](#).
- (g) This section shall not limit the power of a domestic nonprofit corporation to acquire memberships in another corporation or eligible interests in an eligible entity in a transaction other than a membership exchange.
- (h) If any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic exchanging entity before the effective date of this chapter contains a provision

applying to a merger or change in control of the exchanging entity that does not refer to a membership exchange, the provision shall be deemed to apply to a membership exchange of the exchanging entity until such time as the provision is amended subsequent to that date.

§ 29-409.04. Action on a plan of merger or membership exchange.

In the case of a nonprofit corporation that is a party to a merger or membership exchange:

- (1) The plan of merger or membership exchange shall be adopted by the board of directors.
- (2) Except as otherwise provided in paragraph (8) of this section, [§ 29-409.05](#), or the articles of incorporation or bylaws, after adopting the plan of merger or membership exchange, the board of directors shall submit the plan to the members entitled to vote on the plan for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination.
- (3) The board of directors may condition its submission of the plan of merger or membership exchange to the members on any basis.
- (4) If the plan of merger or membership exchange is required to be approved by the members, and if the approval is to be given at a meeting, the nonprofit corporation shall give notice to each member entitled to vote on the merger or membership exchange of the meeting of members at which the plan is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation and bylaws or organic records of that corporation or eligible entity. If the corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation and bylaws or organic records of the new corporation or eligible entity.
- (5) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to paragraph (3) of this subsection, requires a greater vote or a greater number of votes to be present, the approval of the plan of merger or membership exchange by the members shall require the approval of the members at a meeting at which a quorum exists, and, if any class of memberships is entitled to vote as a separate group on the plan of merger or membership exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.
- (6) Separate voting by voting groups shall be required:
 - (A) On a plan of merger, by each class of memberships that:

- (i) Are to be converted into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing; or
 - (ii) Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under [§ 29-408.04](#);
- (B) On a plan of membership exchange, by each class of memberships included in the exchange, with each class constituting a separate voting group; and
- (C) On a plan of merger or membership exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or membership exchange.
- (7) If as a result of a merger or membership exchange one or more members of a domestic nonprofit corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or membership exchange shall require the signature, by each such member, of a separate record consenting to become subject to such owner liability.
- (8) If a domestic nonprofit corporation that is a party to a merger does not have any members entitled to vote thereon, a plan of merger shall be deemed adopted by the corporation when it has been adopted by the board of directors pursuant to paragraph (1) of this subsection.
- (9) In addition to the adoption and approval of the plan of merger by the board of directors and members as required by this section, the plan of merger shall also be approved in the form of a record by any person or group of persons whose approval is required under [§ 29-408.40](#) to amend the articles of incorporation or bylaws.

§ 29-409.05. Merger with controlled corporation or between controlled corporations.

- (a) A domestic or foreign entity that holds a membership in a domestic nonprofit corporation that carries at least 80% of the voting power of each class of membership of the controlled corporation that has voting power may merge the controlled corporation into itself or into another such controlled corporation, or merge itself into the controlled corporation, without the approval of the board of directors, designated body or members of the controlled corporation, unless the articles of incorporation or bylaws of any of the corporations or the organic records of a controlling unincorporated entity otherwise provide.
- (b) If, under subsection (a) of this section, approval of a merger by the members of a controlled corporation is not required, the controlling entity shall, within 10 days after the effective date of the merger, notify each of the members of the controlled corporation that the merger has become effective.
- (c) Except as otherwise provided in subsections (a) and (b) of this subsection, a merger between a controlling entity and a controlled corporation shall be governed by the provisions of this subchapter applicable to mergers generally.

(d) A merger pursuant to this section shall also be approved in a record by a designated body whose approval is required to amend the articles of incorporation of the controlled corporation.

§ 29-409.06. Articles of merger or membership exchange.

(a) After a plan of merger or membership exchange has been adopted and approved as required by this chapter, articles of merger or membership exchange shall be signed on behalf of each party to the merger or membership exchange by any officer or other duly authorized representative. The articles shall set forth:

- (1) The names of the parties to the merger or membership exchange;
- (2) If the articles of incorporation of the survivor of a merger or an exchanging nonprofit corporation are amended, or if a new corporation is created as a result of a merger, the amendments to the articles of incorporation of the survivor or exchanging corporation or the articles of incorporation of the new corporation;
- (3) If the plan of merger or membership exchange required approval by the members of a domestic nonprofit corporation that was a party to the merger or membership exchange, a statement that the plan was duly approved by the members and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this chapter and the articles of incorporation or bylaws;
- (4) If the plan of merger or membership exchange did not require approval by the members of a domestic nonprofit corporation that was a party to the merger or membership exchange, a statement to that effect; and
- (5) As to each foreign nonprofit corporation or eligible entity that was a party to the merger or membership exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

(b) Terms of articles of merger or membership exchange may be made dependent on facts objectively ascertainable outside the articles in accordance with [§ 29-401.04](#).

(c) Articles of merger or membership exchange shall be delivered to the Mayor for filing by the survivor of the merger or the acquiring corporation or eligible entity in a membership exchange and take effect at the effective time provided in [§ 29-102.03](#). Articles of merger or membership exchange filed under this section may be combined with any filing required under the organic law of any domestic eligible entity involved in the transaction if the combined filing satisfies the requirements of both this section and the other organic law.

§ 29-409.07. Effect of merger or membership exchange.

(a) Subject to [§ 29-409.01\(b\)](#), (c), and (d), when a merger becomes effective:

- (1) The domestic or foreign nonprofit corporation or eligible entity that is designated in the plan of merger as the survivor shall continue or come into existence, as the case may be;

- (2) The separate existence of every domestic or foreign nonprofit corporation or eligible entity that is merged into the survivor shall cease;
 - (3) All property owned by, and every contract and other right possessed by, each domestic or foreign nonprofit corporation or eligible entity that merges into the survivor shall be vested in the survivor without reversion or impairment;
 - (4) All liabilities of each domestic or foreign nonprofit corporation or eligible entity that is merged into the survivor shall be vested in the survivor;
 - (5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;
 - (6) The articles of incorporation and bylaws or organic records of the survivor shall be amended to the extent provided in the plan of merger;
 - (7) The articles of incorporation and bylaws or organic records of a survivor that is created by the merger shall become effective; and
 - (8) The memberships of each corporation that is a party to the merger, and the eligible interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing are converted.
- (b) Subject to [§ 29-409.01\(b\)](#), (c), and (d), when a membership exchange becomes effective:
- (1) The memberships or eligible interests in the exchanging entity that are to be exchanged under the plan of membership exchange into memberships, eligible interests, securities, or obligations; rights to acquire memberships, eligible interests, securities, or obligations; cash; other property or other consideration; or any combination of the foregoing are exchanged; and
 - (2) The articles of incorporation and bylaws or organic records of the exchanging entity shall be amended to the extent provided in the plan of membership exchange.
- (c) A person that becomes subject to owner liability for some or all of the debts, obligations, or liabilities of any entity as a result of a merger or membership exchange has owner liability only to the extent provided in the organic law of the entity and only for those debts, obligations, and liabilities that arise after the effective time of the articles of merger or membership exchange.
- (d) The effect of a merger or membership exchange on the owner liability of a person that had owner liability for some or all of the debts, obligations, or liabilities of a party to the merger or membership exchange shall be as follows:
- (1) The merger or membership exchange shall not discharge any owner liability under the organic law of the entity in which the person was a member, shareholder, or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or membership exchange.

(2) The person shall not have owner liability under the organic law of the entity in which the person was a member, shareholder, or interest holder prior to the merger or membership exchange for any debt, obligation, or liability that arises after the effective time of the articles of merger or membership exchange.

(3) The organic law of any entity for which the person had owner liability before the merger or membership exchange shall continue to apply to the collection or discharge of any owner liability preserved by paragraph (1) of this subsection, as if the merger or membership exchange had not occurred.

(4) The person has whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by paragraph (1) of this subsection, as if the merger or membership exchange had not occurred.

(e) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust or otherwise, made before or after a merger, to or for any of the parties to the merger, shall inure to the survivor, subject to the express terms of the will or other instrument.

§ 29–409.08. Abandonment of a merger or membership exchange.

(a) Unless otherwise provided in a plan of merger or membership exchange or in the organic law of a foreign nonprofit corporation that is a party to a merger or a membership exchange, after the plan has been adopted and approved as required by this subchapter, and at any time before the merger or membership exchange has become effective, it may be abandoned by a domestic nonprofit corporation that is a party thereto without action by its members, in accordance with any procedures set forth in the plan of merger or membership exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or membership exchange.

(b) If a merger or membership exchange is abandoned under subsection (a) of this section after articles of merger or membership exchange have been delivered to the Mayor for filing but before the merger or membership exchange has become effective, a statement that the merger or membership exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or membership exchange by an officer or other duly authorized representative, shall be delivered to the Mayor for filing prior to the effective date of the merger or membership exchange. Upon filing, the statement shall be effective and the merger or membership exchange shall be deemed abandoned and shall not become effective.

Subchapter X. Disposition of Assets.

§ 29–410.01. Disposition of assets not requiring member approval.

Approval of the members of a nonprofit corporation shall not be required, unless the articles of incorporation or bylaws otherwise provide, to:

(1) Sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets:

- (A) In the usual and regular course of its activities; or
- (B) If the corporation and its consolidated subsidiaries retain an activity that represented or was supported by at least 33% of total assets at the end of the most recently completed fiscal year;
- (2) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business its [sic] activities; or
- (3) Transfer any or all of the corporation's assets to one or more corporations or other entities all of the memberships or interests of which are owned by the corporation.

§ 29-410.02. Member approval of certain dispositions.

- (a) Except as otherwise provided in the articles of incorporation or bylaws, a sale, lease, exchange, or other disposition of assets, other than a disposition described in [§ 29-410.01](#), shall require approval of the nonprofit corporation's members.
- (b) A disposition that requires approval of the members under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of the resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation, in which case the board of directors shall transmit to the members the basis for that determination.
- (c) The board of directors may condition its submission of a disposition to the members under subsection (b) of this section on any basis.
- (d) If a disposition is required to be approved by the members under subsection (a) of this section, and if the approval is to be given at a meeting, the nonprofit corporation shall give notice to each member, whether or not entitled to vote, of the meeting of members at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.
- (e) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant to subsection (c) of this section, requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the members shall require the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the disposition, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.
- (f) After a disposition has been approved by the members under subsection (e) of this section, and at any time before the disposition has been consummated, it may be abandoned by the

nonprofit corporation without action by the members, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under [subchapter XII of this chapter](#) shall not be governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent nonprofit corporation for the purposes of this section.

(i) In addition to the approval of a disposition of assets by the board of directors and members as required by this section, the disposition shall also be approved in the form of a record by any person or group of persons whose approval is required under [§ 29-408.40](#) to amend the articles of incorporation or bylaws.

§ 29–410.03. Restrictions on dispositions of assets.

(a) Property held in trust or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by a transaction described in [§ 29-410.01](#) or [§ 29-410.02](#) unless the nonprofit corporation obtains an appropriate order from the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.

(b) A person that is a member or otherwise affiliated with a charitable corporation shall not receive a direct or indirect financial benefit in connection with a disposition of assets unless the person is a charitable corporation or an unincorporated entity that has a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.

Subchapter XI. Derivative Proceedings.

§ 29–411.01. Definition.

For the purposes of this subchapter, the term “derivative proceeding” means a civil action in the right of a domestic nonprofit corporation or, to the extent provided in [§ 29-411.08](#), in the right of a foreign nonprofit corporation.

§ 29–411.02. Standing.

(a) A derivative proceeding may be brought in the Superior Court by:

(1) A member or members having 5% or more of the voting power, or by 50 members, whichever is less; or

(2) Any director or member of a designated body.

(b) The plaintiff in a derivative proceeding shall be a member, director, or member of a designated body at the time of bringing the proceeding. A plaintiff that is a member shall also have been a member at the time of any action complained of in the derivative proceeding.

§ 29–411.03. Demand.

A person shall not commence a derivative proceeding until:

(1) A demand in the form of a record has been delivered to the nonprofit corporation to take suitable action; and

(2) Ninety days have expired from the date the demand was effective unless:

(A) The person has earlier been notified that the demand has been rejected by the corporation; or

(B) Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

§ 29–411.04. Stay of proceedings.

If the nonprofit corporation commences an inquiry into the allegations made in the demand or complaint, the Superior Court may stay any derivative proceeding for such period as the court considers appropriate.

§ 29–411.05. Dismissal.

(a) The Superior Court shall dismiss a derivative proceeding on motion by the nonprofit corporation if one of the groups specified in subsection (b) or (c) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by a majority vote of:

(1) Independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(2) A committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint shall allege with particularity facts establishing that:

(1) A majority of the board of directors did not consist of independent directors at the time the determination was made; or

(2) The requirements of subsection (a) of this section have not been met.

(d) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the nonprofit corporation shall have the burden of proving that the requirements of subsection (a) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff

shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

(e) The Superior Court may appoint a panel of one or more independent persons upon motion by the nonprofit corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff has the burden of proving that the requirements of subsection (a) of this section have not been met.

(f) A person is independent for purposes of this section if the person does not have:

- (1) A material interest in the outcome of the proceeding; or
- (2) A material relationship with a person that has such an interest.

(g) None of the following by itself causes a director to be considered not independent for purposes of this section:

- (1) The nomination, election, or appointment of the director by persons that are defendants in the derivative proceeding or against whom action is demanded;
- (2) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or
- (3) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

§ 29–411.06. Discontinuance or settlement.

A derivative proceeding shall not be discontinued or settled without the Superior Court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the members or a class of members of the nonprofit corporation, the court shall direct that notice be given to the members affected.

§ 29–411.07. Security for costs; payment of expenses.

(a) In any derivative proceeding brought under [§ 29-411.02\(a\)](#), the nonprofit corporation shall be entitled at any stage of the proceeding to seek an order requiring the plaintiffs to give security for reasonable expenses, including attorney fees and expenses, that may be incurred by the corporation in connection with the proceeding, to which security the corporation may have recourse in such amount as the Superior Court determines upon termination of the proceeding. The amount of security may be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or excessive. Security may be denied or limited in the discretion of the court upon a preliminary showing, by application and upon such types of proof as may be required by the court, establishing prima facie that the requirement of full or partial security would impose undue hardship on plaintiffs and serious injustice would result.

(b) On termination of the derivative proceeding the Superior Court may order:

- (1) The nonprofit corporation to pay the plaintiff's reasonable expenses, including attorneys' fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;
- (2) The plaintiff to pay any defendant's reasonable expenses, including attorneys' fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or
- (3) A party to pay an opposing party's reasonable expenses, including attorneys' fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

§ 29-411.08. Applicability to foreign corporations.

In any derivative proceeding in the right of a foreign nonprofit corporation, the matters covered by this subchapter shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for §§ [29-411.04](#), [29-411.06](#), and [29-411.07](#).

§ 29-411.09. Notice to Attorney General.

The plaintiff in a derivative proceeding shall notify the Attorney General for the District of Columbia within 10 days after commencing the proceeding if it involves a charitable corporation.

Subchapter XII. Dissolution.

Part A. Voluntary Dissolution.

§ 29-412.01. Dissolution by incorporators or directors.

A majority of the incorporators or directors of a nonprofit corporation that has not commenced activity, or of a membership corporation that has not admitted any members, may dissolve the corporation by delivering to the Mayor for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3)(A) That the corporation has not commenced activity; or
(B) That the corporation is a membership corporation and has not admitted any members;
- (4) That no debt of the corporation remains unpaid;
- (5) That, except as otherwise provided in the articles of incorporation or bylaws, the net assets of the corporation remaining after winding up have been distributed to the members, if members were admitted; and
- (6) That a majority of the incorporators or directors authorized the dissolution.

§ 29–412.02. Approval of dissolution.

(a) The board of directors of a membership corporation may propose dissolution for submission to the members.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors shall recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members; and

(2) The members entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The nonprofit corporation shall give notice to each member, whether or not entitled to vote, of the proposed meeting of members. The notice shall also state:

(1) That the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation; and

(2) How the assets of the corporation will be distributed after all creditors have been paid or how the distribution of assets will be determined.

(e) Unless the articles of incorporation, the bylaws, or the board of directors acting pursuant to subsection (c) of this section, requires a greater vote or a greater number of members to be present, the adoption of the proposal to dissolve by the members shall require the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the proposal, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

(f) If the nonprofit corporation does not have any members entitled to vote on its dissolution, a proposal to dissolve shall be adopted by the corporation when it has been adopted by the board of directors.

(g) A charitable corporation shall give the Attorney General for the District of Columbia notice in the form of a record that it intends to dissolve before the time it delivers articles of dissolution to the Mayor. Notice to the Attorney General under this section shall not delay or otherwise affect the dissolution process.

§ 29–412.03. Articles of dissolution.

(a) At any time after dissolution is authorized, the nonprofit corporation may dissolve by delivering to the Mayor for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized; and

(3) That the dissolution was approved in the manner required by this chapter and by the articles of incorporation and bylaws.

(b) A nonprofit corporation shall be dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this part, the term “dissolved corporation” means a nonprofit corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

§ 29–412.04. Revocation of dissolution.

(a) A nonprofit corporation may revoke its dissolution within 120 days of its effective date.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members.

(c) After the revocation of dissolution is authorized, the nonprofit corporation may revoke the dissolution by delivering to the Mayor for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized; and

(4) That the revocation of dissolution was approved in the manner required by this chapter and by the articles of incorporation and bylaws.

(d) Revocation of dissolution shall be effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the nonprofit corporation resumes carrying on its activities as if dissolution had never occurred.

§ 29–412.05. Effect of dissolution.

(a) A dissolved nonprofit corporation continues its corporate existence but shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

(1) Collecting its assets;

(2) Disposing of its properties that will not be distributed in kind;

(3) Discharging or making provision for discharging its liabilities;

(4) Distributing its remaining property as required by law and its articles of incorporation and bylaws, and otherwise as approved when the dissolution was approved or among the members per capita; and

(5) Doing every other act necessary to wind up and liquidate its activities and affairs.

(b) Dissolution of a nonprofit corporation shall not:

(1) Transfer title to the corporation's property;

(2) Subject its directors, members of a designated body, or officers to standards of conduct different from those prescribed in [subchapter VI of this chapter](#);

(3) Change:

(A) Quorum or voting requirements for its board of directors or members;

(B) Provisions for selection, resignation, or removal of its directors or officers, or both;

(C) Provisions for amending its bylaws;

(4) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(6) Terminate the authority of the registered agent of the corporation.

(c) Property held in trust or otherwise dedicated to a charitable purpose shall not be diverted from its purpose by the dissolution of a nonprofit corporation unless and until the corporation obtains an order of the Superior Court to the extent required by and pursuant to the law of the District on cy pres or otherwise dealing with the nondiversion of charitable assets.

(d) A person that is a member or otherwise affiliated with a charitable corporation shall not receive a direct or indirect financial benefit in connection with the dissolution of the corporation unless the person is a charitable corporation or an unincorporated entity that has a charitable purpose. This subsection shall not apply to the receipt of reasonable compensation for services rendered.

§ 29–412.06. Known claims against dissolved corporation.

(a) A dissolved nonprofit corporation may dispose of the known claims against it by delivering notice to its known claimants of the dissolution at any time after its effective date.

(b) The notice shall be in the form of a record and:

(1) Describe information that shall be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than 120 days from the effective date of the notice, by which the dissolved nonprofit corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved nonprofit corporation shall be barred if the claimant:

(1) That was given notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(2) Whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, the term “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§ 29-412.07. Other claims against dissolved corporation.

(a) A dissolved nonprofit corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice shall:

(1) Be published one time in a newspaper of general circulation in the District, or, if there was no office in the District, where its principal office is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim must be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

(c) If the dissolved nonprofit corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the publication date of the newspaper notice:

(1) A claimant that was not given notice under [§ 29-412.06](#);

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by [§ 29-412.06\(b\)](#) or [§ 29-412.07\(c\)](#) may be enforced:

(1) Against the dissolved nonprofit corporation, to the extent of its undistributed assets; or

(2) Except as otherwise provided in [§ 29-412.08\(d\)](#), if the assets have been distributed in liquidation, against any person, other than a creditor of the dissolved corporation, to whom the corporation distributed its property to the extent of the distributee’s pro rata share of the claim or the corporate assets distributed to the distributee in liquidation, whichever is less, but a distributee’s total liability for all claims under this section shall not exceed the total amount of assets distributed to the distributee.

§ 29–412.08. Court proceedings.

(a) A dissolved nonprofit corporation that has published a notice under [§ 29-412.07](#) may file an application with the Superior Court for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under [§ 29-412.07\(c\)](#).

(b) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved nonprofit corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The Superior Court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved nonprofit corporation.

(d) Provision by the dissolved nonprofit corporation for security in the amount and the form ordered by the Superior Court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and such claims shall not be enforced against a person that received assets in liquidation.

§ 29–412.09. Directors' duties.

(a) Directors shall cause the dissolved nonprofit corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets after payment or provision for claims.

(b) Directors of a dissolved nonprofit corporation that has disposed of claims under [§ 29-412.06](#), [§ 29-412.07](#), or [§ 29-412.08](#) shall not be liable for breach of [§ 29-412.09\(a\)](#) with respect to claims against the dissolved corporation that are barred or satisfied under [§ 29-412.06](#), [§ 29-412.07](#), or [§ 29-412.08](#).

Part B. Judicial Dissolution or Other Equitable Relief.

§ 29–412.20. Grounds for judicial dissolution or other equitable relief.

(a) The Superior Court may dissolve a nonprofit corporation, place a corporation in receivership, impose a constructive trust on compensation paid to a corporation's director, officer, or manager, or grant other injunctive or equitable relief with respect to a corporation:

(1) In a proceeding by the Attorney General for the District of Columbia if it is established that:

(A) The corporation obtained its articles of incorporation through fraud;

(B) The corporation has exceeded or abused and is continuing to exceed or abuse the authority conferred upon it by law; or

(C) The corporation has continued to act contrary to its nonprofit purposes;

(2) Except as otherwise provided in the articles of incorporation or bylaws, in a proceeding by 50 members or members holding at least 5% of the voting power, whichever is less, or by a director or member of a designated body, if it is established that:

(A) The directors or a designated body are deadlocked in the management of the corporate affairs, the members, if any, are unable to break the deadlock, and irreparable injury to the corporation or its mission is threatened or being suffered because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) The members are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;

(D) The corporate assets are being misapplied or wasted; or

(E) The corporation has insufficient assets to continue its activities and it is no longer able to assemble a quorum of directors or members;

(3) In a proceeding by a creditor, if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(B) The corporation has admitted in a record that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b)(1) If the Attorney General, in the course of an investigation to determine whether to bring a court action under this section, has reason to believe that a person may have information, or may be in possession, custody, or control of documentary material, relevant to the investigation, the Attorney General may issue in writing, and cause to be served upon the person, a subpoena requiring the person to give oral testimony under oath, or to produce records, books, papers, contracts, electronically-stored data, and other documentary material for inspection and copying.

(2) Information obtained pursuant to this authority to subpoena shall not be admissible in a later criminal proceeding against the person who provided the information.

(3) The Attorney General may petition the Superior Court for an order compelling compliance with a subpoena issued pursuant to this authority to subpoena.

§ 29–412.21. Procedure for judicial dissolution.

(a) It shall not be necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them individually.

(b) The Superior Court, in a proceeding brought to dissolve a nonprofit corporation, may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

§ 29–412.22. Receivership or custodianship.

(a) The Superior Court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The Superior Court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The Superior Court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended. Among other powers:

(1) The receiver:

(A) May dispose of all or any part of the assets of the nonprofit corporation wherever located, at a public or private sale, if authorized by the court; and

(B) May sue and defend in his or her own name as receiver of the corporation;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors and any designated body, to the extent necessary to manage the affairs of the corporation consistent with its mission and in the best interests of its members, if any, and creditors.

(d) During a receivership, the Superior Court may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is consistent with the mission of the nonprofit corporation and in the best interests of the corporation, its members, and creditors.

(e) The Superior Court during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and counsel from the assets of the nonprofit corporation or proceeds from the sale of the assets.

(f) This section does not apply to a religious corporation.

§ 29–412.23. Decree of dissolution.

(a) If, after a hearing, the Superior Court determines that one or more grounds for judicial dissolution described in [§ 29-412.20](#) exist, it may enter a decree dissolving the nonprofit corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Mayor, who shall file it.

(b) After entering the decree of dissolution, the Superior Court shall direct the winding-up and liquidation of the nonprofit corporation's affairs in accordance with [§ 29-412.05](#) and the notification of claimants in accordance with §§ [29-412.06](#) and [29-412.07](#).

Part C. Miscellaneous.**§ 29–412.30. Deposit with Mayor.**

Assets of a dissolved nonprofit corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Mayor for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the Mayor shall pay the amount held.

Subchapter XIII. Records and Reports.**Part A. Records.****§ 29–413.01. Corporate records.**

(a) A nonprofit corporation shall keep as permanent records minutes of all meetings of its members, board of directors, and any designated body, a record of all actions taken by the members, board of directors, or members of a designated body without a meeting, and a record of all actions taken by a committee of the board of directors or a designated body on behalf of the corporation.

(b) A nonprofit corporation shall maintain appropriate accounting records.

(c) A membership corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A nonprofit corporation shall maintain its records in written form or in any other form of a record.

(e) A nonprofit corporation shall keep a copy of the following records at its principal office:

(1) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) The minutes and records described in subsection (a) of this section for the past 3 years;

- (4) All communications in the form of a record to members generally within the past 3 years, including the financial statements furnished for the past 3 years under [§ 29-413.20](#);
- (5) A list of the names and business addresses of its current directors and officers; and
- (6) Its most recent biennial report delivered to the Mayor under [§ 29-102.11](#).

§ 29-413.02. Inspection of records by members.

(a) Subject to [§ 29-413.07](#), a member of a nonprofit corporation shall be entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in [§ 29-413.01\(c\)](#) if the member delivers to the corporation a signed notice in the form of a record at least 5 business days before the date on which the member wishes to inspect and copy.

(b) A member of a nonprofit corporation shall be entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and delivers to the corporation a signed notice in the form of a record at least 5 business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under [§ 29-413.01\(a\)](#), to the extent not subject to inspection under [§ 29-413.02\(a\)](#);

(2) Accounting records of the corporation; and

(3) Subject to [§ 29-413.07](#), the membership list.

(c) A member may inspect and copy the records described in subsection (b) of this section only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with this purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a nonprofit corporation's articles of incorporation or bylaws.

(e) This section shall not affect:

(1) The right of a member to inspect records under [§ 29-405.20](#) or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

§ 29-413.03. Scope of inspection right.

(a) A member's agent or attorney shall have the same inspection and copying rights as the member represented.

(b) The right to copy records under [§ 29-413.02](#) shall include, if reasonable, the right to receive copies. Copies may be provided through an electronic transmission if available and so requested by the member.

(c) The nonprofit corporation may comply at its expense with a member's demand to inspect the record of members under [§ 29-413.02\(b\)\(3\)](#) by providing the member with a list of members that was compiled no earlier than the date of the member's demand.

(d) The nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production, reproduction, or transmission of the records.

§ 29-413.04. Court-ordered inspection.

(a) If a nonprofit corporation does not allow a member who complies with [§ 29-413.02\(a\)](#) to inspect and copy any records required by that subsection to be available for inspection, the Superior Court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a nonprofit corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with [§ 29-413.02\(b\)](#) and (c) may apply to the Superior Court for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the Superior Court orders inspection and copying of the records demanded, it shall also order the nonprofit corporation to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the Superior Court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

§ 29-413.05. Inspection of records by directors.

(a) A director of a nonprofit corporation shall be entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation or law other than this chapter.

(b) The Superior Court may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to

such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the nonprofit corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable attorney's fees, incurred in connection with the application.

§ 29–413.06. Exception to notice requirement.

(a) Whenever notice would otherwise be required to be given under any provision of this chapter to a member, the notice need not be given if notice of 2 consecutive annual meetings, and all notices of meetings during the period between such 2 consecutive annual meetings, have been returned undeliverable or could not be delivered.

(b) If a member delivers to the nonprofit corporation a notice setting forth the member's then-current address, the requirement that notice be given to that member shall be reinstated.

§ 29–413.07. Limitations on use of membership list.

(a) Without consent of the board of directors, a membership list or any part thereof shall not be obtained or used by any person and shall not be:

- (1) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;
- (2) Used for any commercial purpose; or
- (3) Sold to or purchased by any person.

(b) Instead of making a membership list available for inspection and copying under this subpart, a nonprofit corporation may elect to proceed under the procedures set forth in [§ 29-405.20\(f\)](#).

Part B. Reports.

§ 29–413.20. Financial statements for members.

(a) Upon a demand in the form of a record from a member, a nonprofit corporation shall furnish that member with its latest annual financial statements, which may be consolidated or combined statements of the nonprofit corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the nonprofit corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis. A nonprofit corporation may impose a reasonable charge for copying the report.

(b) If the annual financial statements are reported upon by a certified public accountant, the accountant's report must accompany them. If not, the statements shall be accompanied by a

statement of the president or the person responsible for the nonprofit corporation's accounting records:

- (1) Stating the reasonable belief of the president or other person as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
 - (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.
- (c) The rights of a member under this section are in addition to the rights under [§ 29-413.02](#).

Subchapter XIV. Transition Provisions.

§ 29-414.01. Application to existing domestic corporations.

Except as otherwise provided by [§ 29-107.01](#), this chapter shall apply to all domestic nonprofit corporations in existence on its effective date that were incorporated under any general statute of the District providing for incorporation of nonprofit corporations.

§ 29-414.02. Application to registered foreign corporations.

A foreign nonprofit corporation authorized to do business in the District on the effective date of this chapter shall be subject to this chapter, but is not required to obtain a new certificate of registration to do business under this chapter.

§ 29-414.03. Entitlement to cumulate votes.

Members of a nonprofit corporation that were entitled to cumulate their votes for the election of directors on the effective date of this chapter shall continue to be entitled to cumulate their votes for the election of directors until otherwise provided in the articles of incorporation or bylaws of the corporation.

§ 29-414.04. Quorum requirement for existing nonprofit corporations.

With respect to a nonprofit corporation that was in existence on the effective date of this chapter, except as otherwise provided in the articles of incorporation or bylaws, one-tenth of the votes of members entitled to vote in person or by proxy shall constitute a quorum.