

BASICS OF YOUR ALUMNI AND VOLUNTEER CORPORATION

MANAGEMENT & SHAREHOLDERS

Responsibility for the overall management of the corporation is entrusted to a *board of directors*, which is elected by the shareholders. The board of directors selects corporate officers and others to run the daily business operations of the corporation. A director or officer need not be a shareholder of the corporation. Many of SigEp's best alumni and volunteer corporations have non-SigEp's as directors and officers. These volunteers offer a valuable perspective.

When an individual purchases a share of stock (or in the case of SigEp, when a member graduates and becomes an alumnus), that person typically becomes a shareholder and an owner of the corporation. Each corporate charter or set of corporate bylaws defines who is a shareholder.

For SigEp, the *shareholders* are usually defined as the alumni from a particular chapter. Shareholders may also include alumni from other chapters. The alumni and volunteer corporation does have the ability to remove a shareholder. The alumni and volunteer corporation has the authority to expel an alumnus using SigEp's Trial Procedure, effectively removing a shareholder from corporation ownership.

FORMING YOUR CORPORATION

Exact procedures for incorporation differ from state to state, but the basic requirements are similar.

STATE CHARTERING

The first step in the incorporation procedure is to contact the Secretary of State in your state to obtain the specific incorporation requirements, and if you do not have an attorney working with you already, select one to help you through the rest of the process.

ARTICLES OF INCORPORATION

The primary document needed to begin the incorporation process is called the *articles of incorporation*. The articles include basic information about the corporation and serve as a primary source of authority for its future organization and business functions. Generally, the following information should be included in the articles of incorporation:

Corporate Name

- The choice of a corporate name is subject to state approval to ensure against duplication or deception. All corporate statutes require the corporation name to include the word Corporation, Incorporated, or Company.

Nature & Purpose

- The intended business activities of the corporation must be specified in the articles of incorporation. Stating the general corporate purpose is usually sufficient to give rise to all the powers necessary or convenient to the purpose of the organization.

Duration

- A corporation can have perpetual existence under the corporate statutes of most states. A few states, however, prescribe a maximum duration, after which the corporation must formally renew its existence.

Capital Structure

- The capital structure of a corporation is generally set forth in the articles.

Internal Organization

- The articles should describe the internal management structure of the corporation, although this can be included in bylaws adopted after the corporation is formed. Bylaws are subject to, and cannot conflict with, the incorporation statute or the corporation's charter.

The board of directors may amend or repeal bylaws. Typical bylaw provisions describe voting procedures and requirements for the election of the board of directors, the methods of replacing directors, and the manner and time of the shareholders' meetings and board meetings.

2003 Grand Chapter Conclave Legislation Impacts Content of Bylaws

- ❑ Important legislation was passed at the 2003 Grand Chapter Conclave. If, for any reason, the assets of the Alumni and Volunteer Corporation are turned over to the national Fraternity, the Delegates of the 2003 Grand Chapter Conclave directed that the assets be placed in a “trust” relationship. The national Fraternity would hold these assets in a trust, which has strict fiduciary responsibilities, for the return of those assets to the local Alumni and Volunteer Corporation at the appropriate time. The national Fraternity has the ability to replace a local AVC (but only temporarily) in the event the AVC is not acting in the best interests of the chapter or Sigma Phi Epsilon. The power to replace the AVC temporarily only lasts until such time as the alumni of that chapter can get involved and make a decision on how the entire alumni group would like to proceed. It is important that each AVC’s bylaws are in accord with these mandates. This does not limit the AVC from having additional bylaws as long as they are not inconsistent with these legislative mandates.

Registered Office & Agent

- ❑ The corporation must indicate the location and address of its registered office within the state. Usually, the registered office is also the principal office of the corporation. The corporation must give the name and address of the specific person who has been designated as an agent and who can receive legal documents on behalf of the corporation.

Incorporators

- ❑ Each incorporator must be listed by name and must indicate an address. The incorporator is a person who applies to the state on behalf of the corporation to obtain its corporate charter. The incorporator need not be a shareholder and need not have any interest at all in the corporation. Incorporators are required to sign the articles of incorporation when they are submitted to the state; often this is their only duty.

The Bylaws should be used as an aid to the AVC.

CERTIFICATE OF INCORPORATION

Once the articles of incorporation have been prepared, signed, and authenticated by the incorporators, they are sent to the appropriate state official, usually the secretary of state, along with the appropriate filing fee. In many states, the secretary of state will then issue a certificate of incorporation representing the state’s authorization for the corporation to conduct business. A copy of the Articles of Incorporation must be on file with Headquarters. Please mail a copy to SigEp Headquarters in Richmond, Virginia.

FIRST ORGANIZATIONAL MEETING

The first organizational meeting is often provided for in the articles of incorporation but is held after the charter is actually granted. At this meeting, the incorporators elect the first board of directors and complete the routine business of incorporation. Adoption of bylaws—the internal rules of management for the corporation—is probably the most important function of the first organizational meeting. The shareholders, directors, and officers must abide by the bylaws in conducting corporate business.

IMPROPER INCORPORATION

The procedures for incorporation are very specific. (For this reason, alumni and volunteer corporations are advised to secure the help of an experienced attorney.) If they are not followed precisely, others may be able to challenge the existence of the corporation. On the basis of improper incorporation, the plaintiff could seek to make the would-be shareholders, directors, or officers personally liable.

To prevent injustice, courts will sometimes attribute incorporated existence to an improperly formed corporation by holding it to be a *de jure* corporation or a *de facto* corporation.

YOUR RESPONSIBILITY AS DIRECTORS & OFFICERS

Corporate directors, officers, and shareholders all play different roles within the corporate entity. The directors play a key role, because they control the firm. They decide on corporate policy and appoint corporate officers to manage the day-to-day affairs of the firm. Because they bear responsibility for running the corporation, directors and officers are charged with fiduciary duties, including a duty of loyalty to the corporation and its shareholders and a duty to exercise reasonable care in corporate decision making. The shareholders also play a vital role, albeit a less direct one. They indirectly exercise control over the corporation because they elect the board of directors.

ELECTION OF DIRECTORS

The first board of directors is usually appointed by the incorporators. Thereafter, directors are elected by the shareholders. Directors usually serve a one-year term, although the term can be longer. Few qualifications are required. A director can be a shareholder but is not required to be.

BOARD OF DIRECTORS' MEETINGS

The board of directors conducts the business by holding formal meetings with recorded minutes. The date of regular meetings is usually established in the corporate articles or bylaws. Special meetings can be called, with notice sent to all the directors. Quorum requirements vary from state to state. Usually, a quorum is the majority of the corporate directors. Voting must usually be done in person, and in ordinary matters only a majority vote is required.

RIGHTS TO DIRECTORS

Directors' rights include the rights of participation, inspection, compensation, and indemnification.

MANAGEMENT RESPONSIBILITIES

Directors are responsible for authorizing major corporate decisions—such as appointing, supervising, and removing corporate officers and other managerial employees. Determining compensation, and making financial decisions necessary to the management of corporate affairs are also responsibilities of the directors. Directors may delegate some of their responsibilities to committees and officers.

Directors have responsibility for all policymaking decisions. Just as shareholders cannot act individually to bind the corporation, the directors must act as a body in carrying out routine corporate business. The general areas of responsibility are as follows:

Policy Decisions

- ❑ Authorization of major corporate decisions such as entering into purchase, sale, or lease of corporate assets outside the regular course of business, overseeing major contract negotiations, and management of employment decisions.

Election of Officers

- ❑ Appointment, supervision, and removal of corporate officers and other managerial employees and determination of their compensation.

Financial Decisions

- ❑ Financial decisions such as budgeting, savings, and collection of assets.

Most states permit the board of directors to elect an executive committee from among the directors to handle the interim management decisions between board meetings as provided in the bylaws. The executive committee is limited to making management decisions about ordinary business matters.

ROLE OF OFFICERS

Corporate officers and other employees are normally selected by the board of directors. In most states, a person can hold more than one office and can be both an officer and a director of the corporation.

DUTIES OF DIRECTORS & OFFICERS

Directors and officers are deemed *fiduciaries* of the corporation because their relationship with the corporation and its shareholders is one of trust and confidence. As fiduciaries, directors and officers owe ethical—and legal—duties to the corporation and the shareholders. These fiduciary duties include the following.

Duty of Care

- ❑ Directors and officers are obligated to act in good faith, to use prudent business judgement in the conduct of corporate affairs, and to act in the corporation's best interests. If a director or officer fails to exercise this duty of care, he may be answerable to the corporation and the shareholders for breaching the duty of care.

Directors and officers are expected to make ***informed and reasonable*** decisions on corporate matters and to do what is necessary to be informed—such as attend meetings, visit a chapter property, read reports, and review other pertinent materials.

Directors are also expected to exercise a ***reasonable supervision*** when they delegate work and responsibilities. A corporate director may be held liable to the corporation for losses or injury resulting from unsupervised actions or management of assets.

Directors are expected to attend board meetings, and their votes should be entered into the minutes. Unless a dissent is entered, the director is presumed to have assented. ***Dissenting directors*** are rarely held individually liable for mismanagement.

Duty of Loyalty

- ❑ Directors and officers have a fiduciary duty to subordinate their own interests to those of the corporation in matters relating to the corporation.

Conflict of Interest

- ❑ To fulfill their duty of loyalty, directors and officers must make a full disclosure of any potential conflict between their personal interests and those of the corporation.

LIABILITY OF DIRECTORS & OFFICERS

Directors and officers may be exposed to liability if they fail in their responsibilities. Directors' and officers' liability coverage is available through Headquarters. It protects the chapter and AVC, their directors, officers, and volunteers from claims arising out of allegations of negligence in carrying out their fiduciary responsibilities.

Business Judgment Rule

- ❑ This rule immunizes a director or officer from liability for corporate decisions as long as the decision 1) is within the powers of the corporation and the authority of the director or officer to make, and 2) is an informed, reasonable, and loyal decision.

ROLE OF SHAREHOLDERS

Shareholders' powers include approval of all fundamental changes affecting the corporation and election of the board of directors. Shareholder powers are indirect.

Shareholders' Meetings

- ❑ Shareholders' meetings must occur at least annually. Special meetings can be called when necessary. Notice of the time and place of a meeting (and its purpose, if the meeting is specially called) must be sent to shareholders.
 1. A quorum of shareholders must be present at the meeting, and resolutions are normally passed by a majority vote.
 2. A voting list of shareholders on record must be prepared by the corporation prior to each shareholders' meeting.
 3. A shareholder may appoint a proxy to vote his or her shares.

Shareholders' Rights

- ❑ Shareholders have numerous rights such as voting rights, the right to inspect the corporate records, and the right to sue on behalf of the corporation.

Shareholders' Liability

- ❑ In certain situations, shareholders may be regarded as having a fiduciary duty.

YOUR CORPORATE POWERS

Under modern law, except as limited by charters, statutes, or constitutions, a corporation can engage in any act and enter into any contract available to a natural person in order to accomplish the purposes for which it was created. When a corporation is created, the express and implied powers necessary to achieve its purpose also come into existence.

EXPRESS AND IMPLIED POWERS

The express powers of a corporation are found in its **articles of incorporation** (a document containing information about the corporation, including the corporation's organization and functions), in the law of the state of incorporation, and in the state and federal constitutions. Corporate **bylaws** (rules of management adopted by the corporation at its first organizational meeting) and the resolutions of the corporation's board of directors also grant or restrict certain powers. The following order of priority is used when conflicts arise among documents involving corporations:

1. U.S. Constitution
2. State Constitution
3. State statutes
4. Articles of incorporation
5. Bylaws
6. Resolutions of the board of directors

Certain implied powers arise when a corporation is created. For this reason, a corporation has the implied power to borrow money within certain limits, to lend money, and to extend credit to those with whom it has a legal or contractual relationship.

To borrow money, the corporation acts through its board of directors to authorize the loan. Most often, the President or chief executive officer of the corporation will execute the necessary papers on behalf of the corporation. Corporate officers such as these have the implied power to bind the corporation in matters directly connected with the ordinary business affairs of the enterprise. A corporate officer does not have the authority to bind the corporation in matters of great significance to the corporate purpose or undertaking, such as the sale of substantial corporate assets.

ULTRA VIRES DOCTRINE

The term *ultra vires* means "beyond the powers." In corporate law, acts of a corporation that are beyond its express or implied powers are *ultra vires* acts. For example, it is difficult to see how a contract made by a housing corporation for the purchase of alcohol is reasonably related to the conduct and furtherance of the corporation's stated purpose of providing property management. Hence such a contract would probably be held *ultra vires*.

Typical remedies for *ultra vires* acts are:

1. Shareholders may sue the corporation.
2. The corporation may sue the officers and directors responsible for the transaction.
3. The attorney general of the state may institute proceedings to obtain an injunction against the transactions or institute proceedings to dissolve the corporation.