

## Organizational Requirement

Federal tax law requires specific wording that limits a 501(c)(3)'s purposes and what will happen to the assets if the group dissolves. This is known as the Organizational Test. These "magic words" must be in the primary governing document of your 501(c)(3) organization. For corporations, this means the Articles of Incorporation. For other groups, such as unincorporated entities, this means the Constitution, Articles of Association, or other document that created your group. Wording in the Bylaws will not meet this requirement unless the IRS considers your Bylaws to be your group's primary governing document.

### **\* \* \* Sample wording for Articles of Incorporation \* \* \***

(footnotes can be found on the page after next)

This corporation<sup>1</sup> is organized exclusively for religious, charitable, scientific, literary and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, [including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future United States Internal Revenue law.]<sup>2</sup>

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, any of its members, trustees, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the exempt purposes.<sup>3</sup>

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in any political campaign on behalf of or in opposition to any candidate for public office.<sup>3</sup>

## Organizational Requirement, cont.

Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future United States Internal Revenue law, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code or the corresponding section of any future United States Internal Revenue law.<sup>3</sup>

{A} Upon the winding up and dissolution of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or the corresponding section of any future United States Internal Revenue law, [or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations as said court shall determine, which are organized and operated exclusively for such purposes.]<sup>4</sup>

Many organizations wait until the time of dissolution to choose a recipient for their assets. However, the IRS does permit an organization to designate a recipient in its governing document. To designate a recipient in the governing document, make certain that the chosen organization is currently exempt under section 501(c)(3) by checking IRS Publication 78 or Search for Charities on the IRS website, and replace the suggested wording in {A} above, with {B.}

{B} Upon the winding up and dissolution of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be distributed to (insert recipient name or names) . However, if the named recipient is not then in existence, or is no longer exempt from Federal income tax, or is unwilling or unable to accept the distribution, then the assets shall be distributed to an organization which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code to be selected by the Board of Directors.

## Organizational Requirement, cont.

### Notes:

1. Unincorporated associations would use "association," "club," "society," or some similar word in place of "corporation."
2. One or more of the underlined words may be used. Organizations may also be organized "to test for public safety," "to prevent cruelty to children or animals," or "to foster national or international amateur sports competition ." The [bracketed] section is optional.
3. Although Form 1023 only asks about a purpose clause and a dissolution clause, in past years many 501(c)(3) applicants were asked to include this wording, which appears in IRS Publication 557, in their sample organizing documents.
4. The [bracketed] section is optional.