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[CHAPTER] 6
MEMBERSHIPS AND FINANCIAL PROVISIONS

A. Admission of Members
B. Rights and Obligations of Members
C. Resignation and Termination
D. Delegates
E. Financial Provisions

[Subchapter] A
ADMISSION OF MEMBERS

§ 6.01601. No requirement of members.

§ 6.02602. Admission.

§ 6.03603. Consideration.

§ 6.01601. NO REQUIREMENT OF MEMBERS

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

(b) Where the articles of incorporation or bylaws of a nonprofit corporation do not
provide that it shall have members, or where a corporation has in fact no members entitled to
vote on a matter, any provision of this [act] 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.
NONPROFIT CORPORATION ACT

§ 6.02602. ADMISSION

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

(b) A person may 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 or transferable except as provided in the articles of incorporation or bylaws.

(d) A person is not a member of a nonprofit corporation unless the person meets the definition of a “member” in Section 4.40102 (Act definitions), regardless of whether the corporation designates or refers to the person as a member.

Source Note: Subsections (a) and (b) are substantially a reenactment of Model Nonprofit Corporation Act (1987) § 6.01. As to subsection (c), compare 15 Pa.C.S. § 5753. Subsection (d) is patterned in part after Cal. Corps. Code, 3rd Ed. (2008), § 53326.02.

CROSS-REFERENCES
Conditions and procedures for admission of members, § 302(14).
Consideration for admission, see § 6.03603.
“Membership corporation” defined, see § 1.40102.
Resignation and termination of members, see Subch. 6C.
Rights and obligations of members, see Subch. 6B.

OFFICIAL COMMENT

Section 3.02302(1514) allows corporations to “establish conditions for admission of members” and “admit members.” The requirements for admission are normally set forth in the articles, bylaws or a resolution adopted by the board. These requirements will be upheld unless they conflict with federal or state law.

Any person may be admitted as a member if they qualify under the established criteria and procedures. See Section 1.40(36102 (“member”). As the definition of “person” contained in Section 1.40(46102 is all encompassing, minors, corporations, partnerships, governmental subdivisions and any other person without limitation may be admitted to membership. See New York Not-for-Profit Corporation Law § 601.

Subdivision (b Section 602(a) prevents nonprofit corporations from admitting people persons as members unless they consent to becoming members. Consent may be express or implied, and thus the consent does not have to be in the form of a record. For example, consent may be implied by acceptance of membership benefits knowing that the benefits are only offered to members.

Nonprofit corporations sometimes name people persons as members without knowing or having the ability to identify individual members. For example, a corporation’s bylaws may provide that “all poor people within one mile of city hall are members entitled to vote for directors.” In many instances there is no way to prepare a list of these “members” or meet the notice or other requirements of the act as to them, unless they identify themselves to the corporation. As a result of Section 6.02602(ab), the above bylaw provision simply authorizes poor people in the area to become members. Before they became members they would have to apply for membership or consent to join by attending a meeting, voting, or otherwise evidencing consent. Until they had manifested this consent they would not be “members” as that term is defined in Section 1.40(36102.

A membership corporation may provide certificates to its members that indicate their membership in the corporation. Subsection (e Section 602(b) makes those certificates non-transferable, with the result that the only way a membership may be transferred is in compliance with Section 6.11611.

§ 6.03603. CONSIDERATION

Except as 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.

Source Note: The first sentence is substantially a reenactment of Model Nonprofit Corporation Act (1987) § 6.02. The second sentence is derived from the Official Comment to Model Nonprofit Corporation Act (1987) § 6.02, 3rd Ed. (2008), § 6.03.

CROSS-REFERENCES

Admission of members, see § 6.02602.
“Board of directors” defined, see § 1.40102.
“Member” defined, see § 1.40102.
“Membership corporation” defined, see § 1.40102.

OFFICIAL COMMENT

Issuance of a membership, unlike the sale of stock, does not necessarily confer something of value. Nonprofit corporations need the ability to issue memberships for no consideration or such consideration as is set forth in or determined by their articles, bylaws, or board. Section 6.03603 provides this flexibility.

If memberships are to be issued for consideration, the board of directors has wide discretion to fix the consideration. It may be a stated amount or based on a formula. For example, in some trade associations the cost of joining is based on the sales, net worth, or other characteristics of the applicant.

Provisions regarding the amount, nature and time of payment may be set forth in the articles of incorporation, bylaws, or a resolution adopted by action of the board. To the extent the articles or bylaws do not deal with those subjects, the board has the authority to act as it considers appropriate. When determining the nature, timing, and amount, if any, of payments, board members must act consistently with their duties of care and loyalty. The obligation of members to make payments to their corporation is dealt with in Section 6.13613.

The provisions of this section also apply to a designated body under Section 8.12812. Thus a designated body may determine the consideration for memberships and how the consideration is to be paid.

[Subchapter] B

RIGHTS AND OBLIGATIONS OF MEMBERS
§ 6.10. Differences in rights and obligations of members.

§ 6.11. Transfers.

§ 6.12. Member’s liability to third parties.

§ 6.13. Member’s liability for dues, assessments, and fees.


§ 615. Designated body.

§ 6.10610. DIFFERENCES IN RIGHTS AND OBLIGATIONS OF MEMBERS

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

(b) See Section 10.22922(a) (bylaw amendments requiring member approval).

Source Note: Subsection (a) derived from Model Nonprofit Corporation Act (1987), 3rd Ed. (2008), § 6.10. Subsection (b) is new.

CROSS-REFERENCES

Admission of members, see § 6.02602.
Consideration for memberships, see § 6.03603.
Member meetings and voting, see Ch. 7.
“Membership corporation” defined, see § 1.40102.

OFFICIAL COMMENT

Section 6.10610 allows great flexibility and diversity in membership rights. In the absence of an applicable provision in the articles of incorporation or bylaws, all members have the same rights and obligations with respect to voting, dissolution, transfer of their memberships, and other matters.

The differences among members may relate to dues, assessments, transfers of memberships, use of facilities, termination or suspension of members, voting, distributions on dissolution, and other factors. Distinctions may be made between individual, corporate, and other entities that are members of the corporation. These distinctions among members may be based on size, net worth, number of employees, activity, and other factors. These distinctions may but do not necessarily result in classes having the right to vote separately on matters requiring a member vote. See Sections 10.04904 and 10.22922.

Once members have been admitted, a vote of the members may be required to change membership rights and obligations. See Sections 10.03903, 10.04904, 10.21921 and 10.22922. The obligations of members to their corporation are dealt with in Section 6.13613.
§ 6.11. TRANSFERS

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

(b) Where 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 prior to the adoption of the restriction unless the restriction is approved by the affected member.


CROSS-REFERENCES

Differences in rights and obligations of members, see § 6.10.
“Membership” defined, see § 1.401.
“Membership corporation” defined, see § 1.401.

OFFICIAL COMMENT

Subdivision Section 611(a) provides that a membership in a membership corporation cannot be transferred unless the articles of incorporation or bylaws provide for transfers. A corporation’s articles or bylaws may provide for transfers if the members want transferable memberships. The articles or bylaws may impose limitations, conditions, and fees as a condition to transferring memberships. For example, the articles or bylaws could provide that transfers may be made only with the approval of the board of directors.

Subdivision Section 611(b) is particularly important to members of mutual benefit corporations if their memberships represent a valuable asset. It provides that no restriction on transfer can be imposed after the fact without approval of the affected member.

As subsection Section 611(a) makes clear, the membership transfers to which this section applies are actions taken by the member. A new member may also be substituted for an existing member identified in the articles of incorporation or bylaws by an appropriate amendment of the articles or bylaws, but that type of action is not a transfer subject to this section.

§ 6.12. MEMBER’S LIABILITY TO THIRD PARTIES

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


CROSS-REFERENCES
Liability for preincorporation transactions, see § 2.04.
“Member” defined, see § 1.40102.
“Membership corporation” defined, see § 1.40102.

OFFICIAL COMMENT

Section 6.12 sets forth the general rule that members have no personal liability to third parties for the acts, debts, liabilities, or obligations of their corporation. Following incorporation, members have limited liability in the absence of: (i) facts allowing a court to pierce the corporate veil; or (ii) a legally enforceable obligation of a member to the corporation. See Section 2.04 as to the liability of persons purporting to act as or on behalf of a corporation that has not been formed.

§ 6.13. 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.

(d) See Section 10.22(a) (bylaw amendments requiring member approval).


CROSS-REFERENCES

Creditor’s action against member, see § 6.14.
Liability to third parties, see § 6.12.
“Member” defined, see § 1.40102.
“Membership corporation” defined, see § 1.40102.
Obligations of members, see § 6.10.10.
Shareholders rarely obligate themselves to make payments to business corporations in addition to the amounts they pay to acquire their shares. Members, on the other hand, particularly members of professional associations or other mutual benefit corporations, often agree to pay dues to support the purposes of their corporation and may make yearly or other payments for benefits or services provided by membership corporations.

Persons who become members in a corporation whose bylaws authorize dues, assessments, or fees agree to the imposition of those items by virtue of accepting their membership in the corporation.

The term “fees” includes initiation fees.

The provisions of this section also apply to a designated body under Section 8.12812. Thus Section 6.13613(c) will permit the bylaws to authorize a designated body to fix the amount and method of collection of fees, assessments and dues.

§ 6.14614. CREDITOR’S ACTION AGAINST MEMBER

(a) A proceeding may 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.

(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) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the proceeding.


CROSS-REFERENCES

Liability for fees, etc., see § 6.13613.
Liability to third parties, see § 6.12612.
“Membership corporation” defined, see § 1.40102.

OFFICIAL COMMENT

A member is generally not liable for the debts, liabilities, or obligations of a nonprofit corporation. See Section 6.12612. This section does not change that rule. This section deals only
with the procedure by which a creditor of the corporation may reach a liability owed by a
member to the corporation, such as an unpaid subscription for membership.

Section 6.44614 requires a creditor to obtain a final judgment against a membership
corporation before suing its members unless a proceeding against the corporation would be
useless. A proceeding usually would be useless if a corporation were bankrupt or it was obvious
that it did not have sufficient assets to meet the obligation. Section 6.44614 is not intended to
preclude the availability of other remedies to a creditor, as, for example, under the Uniform
Fraudulent Transfer Voidable Transactions Act.

§ 615. DESIGNATED BODY

A designated body may be vested with powers otherwise exercisable by the members, as
provided in Section 812 (designated body).

[Subchapter] C
RESIGNATION AND TERMINATION

§ 6.20620. Resignation.

§ 6.21621. Termination and suspension.

§ 6.22622. Purchase of memberships.

§ 6.20620. RESIGNATION

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

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

Source Note: Substantially a reenactment of Model
Nonprofit Corporation Act (1987), 3rd Ed. (2008), §
6.20.

CROSS-REFERENCES

Liability for fees, etc., see § 6.13613.

Liability to third parties, see § 6.12612.

“Membership corporation” defined, see § 1.40102.

OFFICIAL COMMENT

Section 6.20620(a) sets forth the basic right of a member to resign from a membership
corporation at any time. A nonprofit organization generally cannot force a person to belong to it,
except in limited instances where membership is required by law, such as certain homeowners
associations or bar associations in states that have an integrated bar. See Section \(\text{1.03103}\) which
preserves the application of such other laws.

Although a membership corporation generally may not force a person to be a member, a
person may be liable to the corporation for wrongfully withdrawing in violation of contractual or
other obligations to remain as a member. Under Section \(\text{6.20620}\)(b) a person may be liable for
obligations incurred or commitments made prior to the resignation. These commitments may
extend beyond the time the member resigns.

Resignation from membership will not allow a person to avoid liability for goods or
services already provided or for ongoing obligations to which the member agreed prior to
resignation. Section \(\text{6.20620}\)(b). This provision is particularly important to membership
corporations that provide benefits or services to members’ businesses. The member in joining the
organization may promise to use its facilities or services for a specified period of time. While
Section \(\text{6.20620}\)(a) allows a member to resign at any time, Section \(\text{6.20620}\)(b) allows the
corporation to enforce or obtain damages for violation of a member’s agreement.

§ 6.21621. 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 must be
commenced within one year after the effective date of the termination or suspension.

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

(d) See Section \(\text{10.22922}\)(a) (bylaw amendments requiring member approval).

Source Note: Derived from Model Nonprofit Corporation Act (1987) § 6.21. Subsection (c) is
patterned after Model Nonprofit Corporation Act (1987) § 6.20(b). Subsection (d) is new., 3rd

CROSS-REFERENCES

“Member” defined, see § 1.40102.
“Membership” defined, see § 1.40102.
“Membership corporation” defined, see § 1.40102.

OFFICIAL COMMENT
Section 6.21 does not deal with the question of the substantive grounds for termination. It also does not specify any requirements that the procedures for termination or suspension must satisfy, but leaves the determination of those procedures to the members. The procedures will require due process for the member being terminated or suspended, but the nature of the process to be provided will depend on the reason for the termination or suspension. Suspension for failure to comply with administrative requirements such as paying dues, for example, do not require the type of due process required when a member is to be terminated for misconduct.

The prior version of the act differentiated between termination and expulsion, using the term “termination” when speaking of memberships and the term “expulsion” when speaking of members. That distinction has been eliminated from the current act in favor of the single term “termination.”

If the membership in a membership corporation is limited to persons who are members in good standing in a lodge, church, club, society, or other entity, the articles of incorporation or bylaws may provide that failure on the part of a person to remain in good standing in the other entity will be sufficient cause to terminate the membership of the person in the corporation.

To provide finality subsection, Section 62(b) requires that a proceeding challenging a termination or suspension be commenced within one year after the date of the termination or suspension.

A person who has been terminated or suspended is liable for dues, assessments, and fees based on commitments made or obligations incurred prior to the termination or suspension. If the person has contracted or agreed to make payments to the nonprofit corporation regardless of his or her status as a member, that obligation continues even though the person is suspended or is no longer a member.

§ 6.22. PURCHASE OF MEMBERSHIPS

(a) Except as provided in the articles of incorporation or bylaws, a membership corporation that is not a charitable corporation may not purchase any of its memberships or any right arising therefrom. A membership corporation that is not a charitable corporation may purchase any of its memberships or any right arising therefrom only to the extent provided in and in accordance with the articles of incorporation or bylaws.

(b) See Sections 1.03(b) (application of [Act] to other laws) and 10.22(a) (bylaw amendments requiring member approval).


CROSS-REFERENCES
“Membership corporation” defined, see § 1.40102.
Rights and obligations of members, see § 6.10610.
When repurchases may not be made, see § 6.41641(b).

OFFICIAL COMMENT

Assets of membership corporations that are held for a public, charitable or religious purpose are not available for distribution to members either upon dissolution or while the corporation is operating or upon dissolution. Corporations that hold such assets are prohibited by other laws from purchasing their memberships because such a purpose can have the effect of impermissibly distributing restricted assets to the members. As provided in Section 4.03106(b), those other laws control over this section. Members in mutual benefit corporations, on the other hand, may have an economic interest in the corporation and their memberships may represent a valuable asset. Upon dissolution, any surplus may be distributed to members in the absence of some other distribution provision.

Certain protections must be provided to the creditors of the corporation to ensure that the assets are not improperly diverted to members thereby rendering the corporation unable to meet its liabilities. Consequently, the repurchase of a membership is made subject to the restrictions on distributions in Section 6.41641(b).

A bylaw provision authorizing purchase of memberships must be approved by the members. See Section 40.22922.

The repurchase of a membership under this section is different from a termination of membership under Section 6.21621 because a termination usually does not involve the payment of any consideration to the member being terminated.

[Subchapter] D
DELEGATES


§ 6.30630. 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.

Source Note: Subsections (a) and (b) are substantially a reenactment of Model Nonprofit Corporation Act (1987) § 6.40, except that a reference in subsection (a) to delegates having the authority of members has been omitted. 3rd Ed. (2008), § 6.30.

CROSS-REFERENCES

“Designated body.” see § 8.12812.
Notice, see § 4.41103.

OFFICIAL COMMENT

Section 6.30630 authorizes nonprofit corporations to operate with delegates rather than or in addition to members or a board of directors. Section 6.30630 authorizes the articles of incorporation or bylaws to set forth rules in regard to delegates, meetings of delegates, and carrying on corporate activities during and between meetings of delegates.

The prior version of the act provided in subsection (a) that delegates could have “some or all of the authority of members.” That restriction has been omitted because delegates may be given not just some or all of the authority of members, but also some of the authority of the board of directors to act on those matters specified in the articles of incorporation or bylaws.

Insofar as the delegates have been given the powers of members, they have analogous rights, duties, and obligations. Similarly, when delegates are exercising powers of the board of directors they will have the duties and liabilities of directors. See Section 8.12812.

[Subchapter] E
FINANCIAL PROVISIONS

§ 6.40640. Distributions prohibited.

§ 6.41641. Compensation and other permitted payments.

§ 6.42642. Capital contributions of members.


§ 6.44644. Private foundations.

§ 6.40640. DISTRIBUTIONS PROHIBITED

(a) Except as permitted under Section 6.22 or 6.41622 (purchase of memberships) or 641 (compensation and other permitted payments), a nonprofit corporation shall not pay dividends or make distributions of any part of its assets, income, or profits to its members,
directors, members of a designated body, or officers.

(b) This section does not apply to a contract or transaction authorized pursuant to
Section 8.60860 (conflicting interest transactions; voidability).

Source Note: Derived from Model Nonprofit
("distribution") and 13.01 6.40.

CROSS-REFERENCES

Compensation and other permitted payments, see § 6.41641.
“Designated body” defined, see § 1.40102.
“Director” defined, see § 1.40102.
“Member” defined, see § 1.40102.
“Officer” defined, see § 1.40102.
Purchase of memberships, see § 6.22622.

OFFICIAL COMMENT

Section 6.40640 sets forth the basic rule that a nonprofit corporation is prohibited from
paying dividends or making other types of distributions. If a transfer is a direct payment to a
member as a result of the member’s interest in the nonprofit corporation, it is prohibited except
to the extent provided in Section 6.41641. Cash dividends from whatever source are the clearest
example of prohibited dividends. See Kubik v. American Composers Alliance, Inc., 54 N.Y.S.2d
764 (1945).

The question arises as to what a nonprofit corporation can do with profits it generates as
it cannot use the profits to pay dividends. Corporations that are exempt from federal income tax
under Section 501(c)(3) of the Internal Revenue Code typically use profits to further their public,
charitable, or religious purposes. Other nonprofit corporations may use profits to improve their
facilities and services. In Burton Potter Post No. 185, American Legion v. Epstein, 219 N.Y.S.2d
224 (1961), a nonprofit club generated profits from its activities which were used to improve the
club facilities. The court found that the corporation was “not organized for pecuniary profit as
long as it devotes its income to club purposes.” Id. at 227.

While the members may benefit from the use of funds for club purposes, the nonprofit
corporation’s facilities and services, that benefit is not a dividend and is not considered a
distribution because the nonprofit corporation is conferring benefits upon its members in
conformity with its purposes.

A payment by a nonprofit corporation that is not derived from “any part of its income or
profit” is not a distribution. Thus the return of an overcharge or the provision of services for
which members have paid is not a distribution, nor is the payment of reasonable compensation
for services.
A payment by a nonprofit corporation pursuant to a contract or transaction authorized under Section 8.60 is not a distribution.

§ 6.41. COMPENSATION AND OTHER PERMITTED PAYMENTS

(a) A nonprofit corporation may pay reasonable compensation or reimburse reasonable expenses to members, directors, 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 Section 6.22 (purchase of memberships), 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 Act.

Source Note: Subsections (a) and (b) patterned after 15 Pa.C.S. § 5551(b) and (c). Subsection (c) derived from Model Nonprofit Corporation Act (1987), 3rd Ed. (2008), § 13.02(b).

CROSS-REFERENCES

Corporate purposes, see § 3.01.
“Designated body” defined, see § 1.401.
“Director” defined, see § 1.401.
Dissolution, see Ch. 1411.
“Member” defined, see § 1.401.
“Officer” defined, see § 1.401.
Purchase of memberships, see § 6.22.

OFFICIAL COMMENT

Most nonprofit corporations do not compensate individuals for serving as directors. In some nonprofit corporations, however, compensation may be appropriate as a result of the time and effort needed to serve as a director, the responsibilities undertaken, and other relevant factors. Section 8.41 allows the board of directors to set the compensation of directors for...
serving as directors. The general power of the board under Section 8.01801 to manage the affairs of the corporation also gives the board the power to set the compensation of directors who serve as officers or in some other capacity.

Distributions upon dissolution or final liquidation are governed by Chapter 1411. Normally, the members of a nonprofit corporation that is not a charitable corporation will receive its net worth upon dissolution. Members of a charitable corporation, in contrast, normally will not share in its net worth upon dissolution since they do not have any economic interest in its assets. Under limited circumstances, however, a charitable corporation may distribute its assets to its members, if those members are themselves charitable corporations or otherwise recognized as exempt under Section 501(c)(3) of the Internal Revenue Code.

§ 6.42642. CAPITAL CONTRIBUTIONS OF MEMBERS

(a) A membership corporation that is not a charitable corporation may provide in its articles of incorporation or bylaws that members, upon or subsequent to admission, must make capital contributions. Except as provided in the articles or bylaws, the amount shall be fixed by the board of directors. The requirement of a capital contribution may apply to all members, or to the members of a single class, or to members of different classes in different amounts or proportions.

(b) The adoption or amendment of a capital contribution requirement, whether or not approved by the members, shall not apply to a member who did not vote in favor of the adoption or amendment until 30 days after the member has been given notice of the adoption or amendment.

Source Note: Subsection (a) is patterned in part after 15 Pa.C.S. § 5541(a). Subsection (b) is new. Model Nonprofit Corporation Act, 3rd Ed. (2008), § 6.42.

CROSS-REFERENCES

Dues, assessments, and fees, see § 6.43613.
“Membership corporation” defined, see § 1.40102.
When capital contributions may not be repaid, § 6.41641(b).

OFFICIAL COMMENT

Mutual benefit corporations may find it desirable to require the members to make capital contributions at certain times, for example, to fund improvements to a clubhouse or other facilities of the corporation. Capital contributions are typically different from membership obligations like dues in that capital contributions are larger in amount and sporadic or nonrecurring. They also differ in that capital contribution requirements must be set forth in the articles of incorporation or bylaws. As a result, Section 6.42642(b) provides that adoption or amendment of a capital contribution will not apply to a member who does not vote in favor of
the change until 30 days after notice to the member. This will permit the member to resign if the member does not wish to satisfy the capital contribution requirement. A similar delay does not apply to changes in dues, assessments, or fees.

The provisions of this section also apply to a designated body under Section 8.12812. Thus a designated body may perform any of the functions of the board of directors described in this section.

§ 6.43643. 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 is 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 be required to make effective such action by the board.


CROSS-REFERENCES

When debt instruments may not be repaid, § 6.41641(b).

OFFICIAL COMMENT

Issuance of bonds or debt instruments must be done in compliance with applicable federal and state securities laws, subject to any applicable exemptions from registration under those laws. The application of such laws is preserved by Section 4.03106.

The provisions of this section also apply to a designated body under Section 8.12812. Thus the functions of the board of directors under this section with respect to debts and security interests may be assigned to a designated body instead.

§ 6.44644. PRIVATE FOUNDATIONS

(a) Except as provided in subsection (b), a nonprofit corporation that is a private foundation as defined in Section 509(a) of the 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) does 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.

Source Note: Derived from Model Nonprofit Corporation Act (1987), 3rd Ed. (2008), § 1.506.44.

CROSS-REFERENCES
Powers, see § 3.02302.
Purposes, see § 3.01301.

OFFICIAL COMMENT
Under Section 508(e)(1) of the Internal Revenue Code, a private foundation (as defined in Section 509(a)) is not exempt from federal income tax under Section 501(a) unless its governing instrument includes provisions the effects of which are:

(1) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under Section 4942; and

(2) to prohibit the foundation from engaging in any act of self-dealing (as defined in Section 4941(d)), from retaining any excess business holdings (as defined in Section 4943(c)), from making any investments in such manner as to subject the foundation to tax under Section 4944, and from making any taxable expenditures (as defined in Section 4945(d)).

Section 1.508-3(d) of the Income Tax Regulations provides that a private foundation’s governing instrument is deemed to conform with the requirements of Section 508(e) of the Internal Revenue Code if valid provisions of state law have been enacted which either require the foundation to comply with the provisions of Section 508(e)(1), or treat the required provisions as contained in the foundation’s governing instrument.
Section 508(e)(2) of the Internal Revenue Code provides that the requirements of paragraph 1 of the section do not apply to a private foundation organized before January 1, 1970 which has been excused from complying with the requirements of paragraph 1 by a court order secured in a proceeding begun before January 1, 1972. That exception is preserved by Section 6.44(b).

Under the applicable Income Tax Regulation (Section 1.508(3)(d)), this section satisfies the requirement that a private foundation’s governing instrument include such provisions. The section applies only to foundations that are corporations, and does not satisfy the requirements of Section 508(e) in the case of trusts or other entities that qualify as private foundations under Section 509(a) of the Code.
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