

Sample Charter

*Neil McBride
Legal Aid Society
March 2007*

CHARTER OF

1. The name of the corporation is
2. This corporation is a public benefit corporation.
3. The corporation's registered agent and registered office shall be:
4. The incorporator shall be:
5. The street address of the principal office shall be:
6. The corporation shall not be for profit.
7. The corporation shall / shall not have members.
8. The corporation is organized exclusively for charitable, religious, educational and scientific purposes, 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 corresponding sections of any future federal tax code.
9. Notwithstanding any other provision of this charter, this corporation shall not carry on any other activities not permitted to be carried on by: (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 or the corresponding provision of any future United States Internal Revenue law or (b) a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any future Internal Revenue law.
10. In the event of dissolution, the residual assets of the organization shall be turned over to one or more organizations that themselves are recognized as exempt under

Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future Internal Revenue Code, or to the federal, state or local government for exclusive public purpose.

11. The primary purpose of the corporation is

12. The corporation shall, in addition, be empowered to carry out any activities authorized by the Tennessee Nonprofit Corporation Act and that may be carried out by organizations that are exempt under Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code.

13. The corporation shall make or pay no compensation, loan or other payment to any officer, board member, creator or organizer of the corporation, or substantial contributor to it, except as reasonable compensation for goods or services rendered or as reasonable reimbursement for authorized expenditures incurred on behalf of the corporation. No part of the corporation's assets or net earnings, current or accumulated, shall ever be distributed to or divided among such persons or private individuals, pursuant to the provisions of Section 501(c)(3).

14. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in any way (including the publishing or distribution of statements) in any political campaign or on behalf of or in opposition to any candidate for public office.

15. Under the authority of Section 48-52-102(b)(3) of the Tennessee Nonprofit Corporation Act, a director shall not be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except that this provision shall not eliminate or limit the liability of a director for:

- a. Any breach of the director's duty of loyalty to the corporation or its members; or
- b. Any acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
- c. Any unlawful distribution of assets in violation of Section 48-58-304 of the Tennessee Nonprofit Corporation Act.

16. The corporation shall not discriminate against any person on the basis of race, color, sex, national origin, religion, disability, age and any other basis prohibited by law. This policy of nondiscrimination applies to the hiring of personnel, election of board members, provision of services to the public, contracting for and purchasing of services and all other activities of the corporation. This policy of nondiscrimination includes, but is not limited to, a commitment to full compliance with Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any subsequent amendments to these statutes.

Dated this _____ day of _____, 20____,

Incorporator(s)

Sample Charter with Comments

Neil McBride
Legal Aid Society
March 2007

[This sample charter will be appropriate to many nonprofit corporations that are seeking recognition from the IRS as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. This sample is not appropriate for all corporations. Some types of organizations may need to include other specific provisions in their charter to gain IRS recognition as tax exempt organizations or to qualify for certain funding and certification. Some organizations may have other provisions that should be included in the charter. Some nonprofit organizations should seek a tax exempt status other than 501(c)(3). Some may not need to incorporate. This sample will not fit all circumstances. It is not a substitute for legal advice. Legal requirements may change. Organizations that have questions about incorporation should consult with an attorney who is familiar with the law of nonprofit corporations.]

CHARTER OF

1. The name of the corporation is
2. This corporation is a public benefit corporation.

[This is a term of art, required to be answered by the Tennessee Nonprofit Corporation Act. Corporations can be mutual or public benefit. Mutual benefit corporations will not usually qualify as exempt under Section 501(c)(3).]

3. The corporation's registered agent and registered office shall be:

[State the name and address of a stable person who can be relied upon to forward official mail. This address can be a person at the principal office, a board member or legal counsel. It must be a street address. The corporation may change its registered agent and this address when it files its annual report with the Secretary of State.]

4. The incorporator shall be:

[This can be one or more persons. Consider who might be appropriate to recognize as a matter of organizational history or development. Incorporators have little formal authority beyond holding an organizational meeting and appointing the first board of directors. The incorporator can be counsel, but it is sometimes useful to use this as an opportunity to recognize someone, or to present a name that funders and others recognize and respect.]

5. The street address of the principal office shall be:

[This must be a street address.]

6. The corporation shall not be for profit.

7. The corporation will not have members.

[“Members” here is a term of art. A corporation can have a membership, who may pay dues and have some designated authority, without having statutory members. In this provision, “members” means a group of people who have the authority to elect the board and whose approval is required before the corporation may amend its charter and bylaws, before it may dissolve, and before it may take some other important actions. This is a complicated idea for many new groups, because a corporation can have members without having members. In general, organizations that exist to carry out a function may not wish to have statutory members.]

8. The corporation is organized exclusively for charitable, religious, educational and scientific purposes, 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 corresponding sections of any future federal tax code.

9. Notwithstanding any other provision of this charter, this corporation shall not carry on any other activities not permitted to be carried on by: (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 or the corresponding provision of any future United States Internal Revenue law or (b) a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any future Internal Revenue law.

10. In the event of dissolution, the residual assets of the organization shall be turned over to one or more organizations which themselves are recognized as exempt under Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future Internal Revenue Code, or to the federal, state or local government for exclusive public purpose.

[The IRS requires that charters include paragraphs 9 and 10 in substantially this form as a condition for recognition of tax exempt status. These paragraphs are not in the form for incorporation provided by the Tennessee Secretary of State. Organizations should be warned against using the Secretary's form without first seeking legal advice.]

11. The primary purpose of the corporation is

[This statement is not required to gain nonprofit status from the State of Tennessee, but a statement of purpose in the charter is strongly recommended. Some grantors and prospective participants like to see what an organization's initial purpose is. This statement should not be detailed but should offer a useful description of the purpose. It is not a plan for action but is more than a mission statement. This provision should be a practical statement that will help board members and others to understand the present intent of the organization. Organizations are not necessarily restricted to the specific activities described in this provision. This description will have other implications, such as helping to determine whether an activity is related or unrelated for the purpose of Unrelated Business Income Tax.]

12. The corporation shall, in addition, be empowered to carry out any activities authorized by the Tennessee Nonprofit Corporation Act and that may be carried out by organizations that are exempt under Sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code.

[The Tennessee Nonprofit Corporation Act includes a general provision giving all authority to all nonprofit corporations, such as owning property, issuing bonds, etc. It is not necessary to recite in the charter all the authority the corporation should have.]

13. The corporation shall make or pay no compensation, loan or other payment to any officer, board member, creator or organizer of the corporation, or substantial contributor to it, except as reasonable compensation for goods or services rendered or as reasonable reimbursement for authorized expenditures incurred on behalf of

the corporation. No part of the corporation's assets or net earnings, current or accumulated, shall ever be distributed to or divided among such persons or private individuals, pursuant to the provisions of Section 501(c)(3).

14. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation. The corporation shall not participate in, or intervene in any way (including the publishing or distribution of statements) in any political campaign or on behalf of or in opposition to any candidate for public office.

[Paragraphs 13 and 14 are not required. They are an important reminder to board members and a comfort to some funders and public agencies.]

15. Under the authority of Section 48-52-102(b)(3) of the Tennessee Nonprofit Corporation Act, a director shall not be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director, except that this provision shall not eliminate or limit the liability of a director for:

- a. Any breach of the director's duty of loyalty to the corporation or its members; or
- b. Any acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
- c. Any unlawful distribution of assets in violation of Section 48-58-304 of the Tennessee Nonprofit Corporation Act.

[This provision gives board members the maximum protection against personal liability to the corporation offered by state law.]

16. The corporation shall not discriminate against any person on the basis of race, color, sex, national origin, religion, disability, age or any other basis prohibited by law. This policy of nondiscrimination applies to the hiring of personnel, election of board members, provision of services to the public, contracting for and purchasing of services and all other activities of the corporation. This policy of nondiscrimination includes, but is

not limited to, a commitment to full compliance with Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any subsequent amendments to these statutes.

[This provision is not required by law. Some grantors require this or a similar statement to be in the charter, bylaws or some formal board policy statement. Some corporations may want to prohibit other kinds of discrimination, such as that based on sexual orientation.]

Dated this _____ day of _____, 20____,

Incorporator(s)

[There is no prohibition against including other provisions in the charter. This charter is intended to be as short as possible and still include the required and most useful provisions. More detailed provisions about organization and decision making should usually be in the bylaws. If an issue is critical to the organization, or if the founders want to make something as hard to change as possible (such as requiring certain categories of persons to be designated as board members), it may be included in the charter.]

Sample Bylaws

Neil McBride
Legal Aid Society
March 2007

This sample should be considered only as a guide. Some grantors have specific requirements that may need to be included in the bylaws or charter. Some organizations may have specific governing requirements that should be expressed in the bylaws. These sample bylaws may not be appropriate to some organizations. Organizations that have questions about bylaws should consult legal counsel with experience in nonprofit representation.

BYLAWS

OF

ARTICLE I. Name and Address

The name of this corporation shall be _____. The board of directors may designate other names for specific activities and programs as it deems appropriate. The principal office shall be _____.

ARTICLE II. Objectives

The corporation's purpose shall be _____.

ARTICLE III. Membership

Members of the board of directors shall constitute the membership of the corporation.

[If the corporation will have statutory members, describe their selection, and authority. If the corporation will have delegates (participants who are not statutory members), describe their selection and authority here.]

ARTICLE IV. Board of Directors

A. Composition of the Board of Directors. The number of board members shall be at least _____ and no more than _____. Directors shall be of adult age. Directors shall be _____.
[Describe appropriate criteria, affiliation, qualifications, appointing organizations, etc.]

B. Election. Candidates for membership shall be selected from among those nominated by the Nominating Committee, which shall consist of three persons appointed by the president. A majority of members present may also nominate candidates for positions on the board of directors. Directors shall be elected by a majority vote of those members present. *[This provision should be consistent with the paragraph above.]*

C. Terms. Each director shall serve for a term of three years, or until a successor is selected. Initially, one-third of the directors shall serve three year terms; one-third shall serve two year terms and one-third shall serve one year terms. Terms shall be established so that one-third of the directors may be elected each year.

D. Removal. A director who has missed three or more consecutive meetings may be removed by a majority vote of the board members then sitting. A director may be removed for any reason by a vote of two-thirds of the members then sitting.

E. Vacancies. Vacancies may be filled at any time by a majority vote of members then sitting.

F. General Powers. The board of directors shall constitute the governing body of the corporation. The board shall manage the business and affairs of the corporation. It shall have all powers necessary to carry out the objectives of the corporation as set forth in Article II. The board may accept, on behalf of the corporation, any contribution, bequest, or devise. The board shall have the authority to hire and dismiss the director as necessary in order to carry out the objectives of the corporation.

G. Meetings. Meetings of the board of directors shall be held at least ____ each year, at a reasonable time and place designated by the president. The president may designate additional meeting dates. One-third of the board members then sitting may, by written request, schedule additional meetings.

H. Annual Meeting. A meeting during the ____ quarter of the year shall be designated as the "Annual Meeting," at which new members are elected and other formal annual business conducted.

I. Notice of Meetings. Board members shall receive ten days notice in advance of regularly scheduled meetings. This notice may be given in writing, in person, by telephone, or by any other reasonable method.

J. Waiver of Notice of Meeting. A director may, in writing, waive notice of any meeting of the board of directors either before or after the meeting, and such waiver shall be deemed the equivalent of giving notice. Attendance of a director at a meeting shall constitute waiver of notice of that meeting, unless attendance is for the express purpose of objecting to the transaction of business because the meeting has not been lawfully called or convened.

K. Adjournment. A meeting of the board of directors may be adjourned. Notice of the adjourned meeting or of the business to be transacted there, other than by announcement at the meeting at which the adjournment is taken, shall not be necessary. At an adjourned meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

L. Informal Action. If all the directors severally or collectively consent in writing to any action taken or to be taken by the corporation, the action shall be as valid as though it had been authorized at a meeting of the board.

M. Attendance by Telephone. If a member is not reasonably able to attend a meeting, a majority of the members present may authorize participation by telephone, so long as the absent member can hear, or be advised of the discussion of business, and other members can hear, or be advised of the absent member's votes or comments. An absent member participating by telephone may count toward a quorum.

N. Resignations. Any director may resign at any time by giving notice of resignation to any officer of the board.

O. Quorum. A quorum shall be ___ percent of the directors then sitting.

P. Proxy Voting. There shall be no proxy voting. Upon a vote of a majority of members then sitting, the board may allow proxy voting on a specific resolution, provided that a copy of the resolution shall be distributed to members at least 30 days prior to the meeting at which proxy voting on the resolution is proposed.

Q. Committees. The board of directors may appoint any committee it deems necessary to carry out its functions.

R. Compensation of Board Members. No member of the board of directors shall receive any salary or compensation for service as director. No member shall receive any service or benefit not provided to the general public. Members may receive reimbursement for out-of-pocket expenses incurred while conducting authorized business on behalf of the corporation. Members shall be entitled to receive reasonable fees for goods or services rendered to the corporation in capacities other than as members of the board.

ARTICLE V. Officers

A. Officers. The board of directors shall have a president, a vice-president, a secretary, and a treasurer. Any person may hold two or more offices except that the president shall not also be vice-president, secretary or treasurer.

B. Duties of Officers.

1. The president shall preside at all meetings of the board and executive committee. The president shall appoint members to standing and ad hoc committees. The president shall perform whatever duties the board of directors may from time to time assign.

2. The vice-president shall carry out the duties of the president when the president is absent or incapacitated; shall have the same power and duties as the president when acting in that capacity; and shall perform whatever duties the board may from time to time assign.

3. The secretary shall have charge of such books, documents and papers as the board of directors may determine; shall keep, or cause to be kept, a true and complete record of the meetings of the board of directors; shall give, or cause to be given, notice of all meetings of the directors; shall keep, or cause to be kept, a record containing the names, alphabetically arranged, of all persons who are members of the corporation, showing their places of residence, the names of persons entitled to participate in corporate affairs. Such books shall be open for inspection as provided by law. The secretary shall, in general, perform all the duties incident to the office of secretary subject to the control of the board of directors and shall perform other duties as may be prescribed by the board of directors.

4. The treasurer shall have custody of all corporate funds, property and securities subject to such regulations as may be imposed by the board of directors. The treasurer shall keep, or cause to be kept, full and accurate accounts of receipts and disbursements and shall deposit, or cause to be deposited all corporate funds and other valuable effects in the name of and to the credit of the corporation in a depository or depositories designated by the board of directors. Corporate funds may be deposited only in banks or institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The treasurer shall give to the president or board, whenever they require it, an account of transactions as treasurer and of the financial condition of the corporation and shall, in general, perform all duties incident to the office of treasurer, subject to the control of the board of directors.

C. Executive Committee. The Executive Committee shall be composed of the officers of the board of directors and other board members as a majority of the board shall designate. They shall meet as needed to plan for the board's work and to fulfill tasks assigned to them by the board.

D. Election and Terms. The officers shall be elected by the board of directors. The term of office shall be for three years or until the member's term as director expires.

ARTICLE VI. Staff

A. Executive Director. The executive director is responsible for administering the program of the corporation. The executive director is accountable to the board of directors and shall work closely with the board to fulfill its objectives. The executive director, as authorized

by the board's fiscal policy, shall sign or delegate authority to sign checks and enter into agreements with the approval of the board of directors, which are necessary to carry out the objectives of the corporation. The executive director may hire other staff members as the board of directors authorizes. The executive director shall be an ex officio member of the board. The executive director shall not be entitled to vote but shall be entitled to notice of and attendance at meetings, except those portions of a meeting at which matters directly relating to the director are discussed.

B. Other Staff. All other staff shall be supervised by and accountable to the director.

C. Hiring policies. Hiring shall be conducted in full compliance with the corporation's anti-discrimination policy. The corporation shall hire no employees who are members of the immediate family (spouse, grandparent, parent, brother or sister, son or daughter) of any board member, or of any person who will supervise the employee.

ARTICLE VII. Finances

A. Fiscal Year. The board shall establish the corporation's fiscal year.

B. Budget. The board of directors shall prepare and adopt an annual budget at its first meeting each year.

C. Annual Financial Statement. The corporation shall prepare an annual financial statement for distribution to board members.

D. Fiscal Policy. The board shall adopt and from time to time review a fiscal policy setting out a formal procedure that shall govern internal controls, the signing of checks; the obligation of funds; approval of contracts, leases, deeds and mortgages; and other significant aspects of the organization's fiscal operation. The fiscal policy shall assure that the corporation shall have sound financial controls that are appropriate, under generally accepted accounting principles, to its size and purpose.

E. Seal. The corporation will not use a common seal. The signature of the name of the corporation by an authorized person shall be legal and binding.

ARTICLE VIII. Parliamentary Procedures

Robert's Rules of Order shall be the parliamentary authority for all matters of procedure not specifically covered by these bylaws.

ARTICLE IX. Amendments of the Charter and Bylaws

The charter and these bylaws may be amended, supplemented, or repealed by a two-thirds vote of the directors present at any meeting at which a quorum is present. Before directors

may vote on an amendment to the charter or bylaws, notice must be given to directors of the proposed amendment at a prior meeting of the board, and in no case less than 30 days before the amendment is to be considered. These bylaws shall become effective upon approval by the board of directors.

ARTICLE X. Statement of Nondiscrimination *[if not in charter]*

The corporation shall not discriminate against any person in the hiring of personnel, election of board members, provision of service to the public, the contracting for or purchasing of services or in any other way, on the basis of race, color, sex, national origin, disability, age, or any other basis prohibited by law. This policy against discrimination includes, but is not limited to, a commitment to full compliance with Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and any subsequent amendments statutes.

ARTICLE XI. Conflict of Interest Policy

The IRS now requires newly-applying organizations to adopt a conflict of interest policy. This one is adapted (with slight editorial changes) from a sample policy included in the application instructions. This policy may be included in the bylaws or it may be a separate policy adopted by the board. This policy is more detailed and complicated than may be appropriate for many organizations. It is a response to, among other things, the kind of expectations established in the Sarbanes-Oxley Act, which is aimed to make boards of directors more accountable for the activities of the corporations they govern.

A. Purpose. The purpose of the conflict of interest policy is to protect this organization's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

B. Definitions.

1. Interested Person. Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

2. Financial Interest. A person has a financial interest if the person has directly or indirectly, through business, investment, or family:

i. An ownership or investment interest in any entity with which the organization has a transaction or arrangement,

- ii. A compensation arrangement with the organization or with any entity or individual with which the organization has a transaction or arrangement, or
- iii. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

C. Procedures.

1. **Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. **Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussions with the interested person, he or she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest.

i. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

ii. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

iii. After exercising due diligence, the governing board or committee shall determine whether the organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

iv. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or agreement.

4. Violations of the Conflicts of Interest Policy.

i. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

ii. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

D. Records of Proceedings. The minutes of the governing board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.

2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement and a record of any votes taken in connection with the proceedings.

3. A statement that the interested person was not present when the governing body or committee considered whether the matter represented a conflict of interest and did not vote on the matter itself.

E. Compensation.

1. A voting member of the governing board who receives compensation, directly or indirectly, from the organization for services is precluded from voting on matters pertaining to that member's compensation.

2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the organization for services is precluded from voting on matters pertaining to that member's compensation.

3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

F. Annual Statements. Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement that affirms such person:

1. He received a copy of the conflicts of interest policy,
2. Has read and understands the policy,
3. Has agreed to comply with the policy, and
4. Understands the organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

G. Periodic Reviews. To ensure the organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
2. Whether partnerships, joint ventures, and arrangements with management organizations conform to the organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

H. Use of Outside Experts. When conducting the periodic reviews as provided for in Article XI, Section G, the organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

Approved: _____

Sample Bylaws with Comments

Neil McBride
Legal Aid Society
March 2007

This sample should be considered only as a guide. Some grantors have specific requirements that may need to be included in the bylaws or charter. Some types of organizations may have specific governing requirements that should be expressed in the bylaws. Every organization does not need to address each one of these issues. In some cases, it may be more appropriate for some organizations to address these issues in board policies or policy manuals. These sample bylaws will not be appropriate for many nonprofit organizations. Bylaws must be submitted to the IRS with the Form 1023, Application for Tax Exempt Recognition. Organizations must submit later amendments to the bylaws to the IRS. Organizations with questions about their bylaws should consult legal counsel with experience in representing nonprofit organizations.

BYLAWS

OF

ARTICLE I. Name and Address

The name of this corporation shall be _____. The board of directors may designate other names for specific activities and programs as it deems appropriate. The principal office shall be located at _____.

[Check with the Secretary of State before submitting a name, to make sure it is available. Include the street address of the principal office .]

ARTICLE II. Objectives

The corporation's purpose shall be _____.

ARTICLE III. Membership

Members of the board of directors shall constitute the membership of the corporation.

[If the corporation will have statutory members, describe their selection, and authority. If the corporation will have delegates (participants who are not statutory members), describe their selection and authority here.]

ARTICLE IV. Board of Directors

A. Composition of the Board of Directors. The number of board members shall be at least _____ and no more than _____. Directors shall be of adult age. Directors shall be

[Describe appropriate criteria, affiliation, qualifications, appointing bodies, etc.]

B. Election. Candidates for membership shall be selected from among those nominated by the Nominating Committee, which shall consist of three persons appointed by the President. A majority of members present may also nominate candidates for positions on the board of directors. Directors shall be elected by a majority vote of those members present.

C. Terms. Each director shall serve for a term of three years, or until a successor is selected. Initially, one-third of the directors shall serve three year terms; one-third shall serve two year terms and one-third shall serve one year terms. Terms shall be established so that one-third of the directors may be elected each year.

D. Removal. A director who has missed three or more consecutive meetings may be removed by a majority vote of the board members then sitting. A director may be removed for any reason by a vote of two-thirds of the members then sitting.

[This provision makes it relatively easy to remove a director for not participating but requires a larger majority to remove a director for other cause.]

E. Vacancies. Vacancies may be filled at any time by a majority vote of members then sitting.

F. General Powers. The board of directors shall constitute the governing body of the corporation. The board shall manage the business and affairs of the corporation. It shall have all powers necessary to carry out the objectives of the corporation as set forth in Article 2. The board may accept, on behalf of the corporation, any contribution, bequest, or devise. The board shall have the authority to hire and dismiss the director as necessary in order to carry out the objectives of the corporation.

G. Meetings. Meetings of the board of directors shall be held at least _____ each year, at a reasonable time and place designated by the president. The president may designate additional meeting dates. One-third of the board members then sitting may, by written request, schedule additional meetings.

[It is sometimes a good idea to authorize a person or committee or percentage of directors in addition to the president to convene a meeting.]

H. Annual Meeting. A meeting during the fourth quarter of the year shall be designated as the "Annual Meeting," at which new members are elected and other formal annual business conducted.

[Make sure that people are willing and able to travel in your area during the time of year you designate to hold the annual meeting.]

I. Notice of Meetings. Board members shall receive ten days notice of regularly scheduled meetings. This notice may be given in writing, in person, by telephone, or by any other reasonable method.

[Boards with members from a local area may function with ten days notice or less; boards with members who must travel long distances to meetings may require more notice.]

J. Waiver of Notice of Meeting. A director may, in writing, waive notice of any meeting of the board of directors either before or after the meeting, and such waiver shall be deemed the equivalent of giving notice. Attendance of a director at a meeting shall constitute waiver of notice of that meeting, unless attendance is for the express purpose of objecting to the transaction of business because the meeting has not been lawfully called or convened.

K. Adjournment. A meeting of the board of directors may be adjourned. Notice of the adjourned meeting or of the business to be transacted there, other than by announcement at the meeting at which the adjournment is taken, shall not be necessary. At an adjourned meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

L. Informal Action. If all the directors severally or collectively consent in writing to any action taken or to be taken by the corporation, the action shall be as valid as though it had been authorized at a meeting of the board.

M. Attendance by Telephone. If a member is not reasonably able to attend a meeting, a majority of the members present may authorize participation by telephone, so long as the absent member can hear, or be advised of the discussion of business, and other members can hear, or be advised of the absent member's votes or comments. A member participating by telephone may count toward a quorum.

N. Resignations. Any director may resign at any time by giving notice of resignation to any officer of the board.

O. Quorum. A quorum shall be _____ *[percent or number]* of the directors then sitting. *[This number may be less than 50%.]*

P. Proxy Voting. There shall be no proxy voting. Upon a vote of a majority of members then sitting, the board may allow proxy voting on a specific resolution, provided that a copy of the resolution shall be distributed to members at least 30 days prior to the meeting at which proxy voting on the resolution is proposed.

[Proxy voting is allowed by Tennessee law unless prohibited by the corporation. This provision does not permit proxy voting except in the case of a specific resolution. This exception may assist the corporation to achieve a quorum on a critical issue.]

Q. Committees. The board of directors may appoint any committee it deems necessary to help carry out its functions.

[Some organizations may choose to make certain key committees a part of their organizational structure.]

R. Compensation of Board Members. No member of the board of directors shall receive any salary or compensation for their services as director. No member shall receive any service or benefit not provided to the general public. Members may receive reimbursement for out-of-pocket expenses incurred while conducting authorized business on behalf of the corporation. Members shall be entitled to receive reasonable fees for goods or services rendered to the corporation in capacities other than as members of the board.

ARTICLE V. Officers

A. Officers. The board of directors shall have a president, a vice-president, a secretary, and a treasurer. Any person may hold two or more offices except that the president shall not also be vice-president, secretary or treasurer.

[Some organizations prefer to call the head of their board a chair, chairperson or chairman. They would then have a vice-chair, etc.]

B. Duties of Officers.

1. The president shall preside at all meetings of the board and executive committee. The president shall appoint members to standing and ad hoc committees. The president shall perform whatever duties the board of directors may from time to time assign.

2. The vice-president shall carry out the duties of the president when the president is absent or incapacitated; shall have the same power and duties as the president when acting in that capacity; and shall perform whatever duties the board may from time to time assign.

3. The secretary shall have charge of such books, documents and papers as the board of directors may determine; shall keep, or cause to be kept, a true and complete record of the meetings of the board of directors; shall give, or cause to be given, notice of all meetings of the directors; shall keep, or cause to be kept, a record containing the names, alphabetically arranged,

of all persons who are members of the corporation, showing their places of residence, the names of persons entitled to participate in corporate affairs. Such books shall be open for inspection as provided by law. The secretary shall, in general, perform all the duties incident to the office of secretary subject to the control of the board of directors and shall perform other duties as may be prescribed by the board of directors.

4. The treasurer shall have custody of all corporate funds, property and securities subject to such regulations as may be imposed by the board of directors. The treasurer shall keep, or cause to be kept, full and accurate accounts of receipts and disbursements and shall deposit, or cause to be deposited all corporate funds and other valuable effects in the name of and to the credit of the corporation in a depository or depositories designated by the board of directors. Corporate funds may be deposited only in banks or institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The treasurer shall give to the president or board, whenever they require it, an account of transactions as treasurer and of the financial condition of the corporation and shall, in general, perform all duties incident to the office of treasurer, subject to the control of the board of directors.

C. Executive Committee. The Executive Committee shall be composed of the officers of the board of directors and other board members as a majority of the board shall designate. They shall meet as needed to plan for the board's work and to fulfill tasks assigned to them by the board.

D. Election and Terms. The officers shall be elected by the board of directors. The term of office shall be for three years, or until the member's term as director expires.

ARTICLE VI. Staff

A. Executive Director. The executive director is responsible for administering the program of the corporation. The executive director shall be hired by and accountable to the board of directors and shall work closely with the board to fulfill its objectives. The executive director, as authorized by the board's fiscal policy, shall sign or delegate authority to sign checks and enter into agreements with the approval of the board of directors, which are necessary to carry out the objectives of the corporation. The executive director may hire other staff members as the board of directors authorizes. The executive director shall be an ex officio member of the board. The executive director shall not be entitled to vote but shall be entitled to notice of and attendance at meetings, except those portions of a meeting at which matters directly relating to the director are discussed.

[Some organizations may have more than one key staff member who might be hired by or responsible to the board.]

B. Other Staff. All other staff shall be supervised by and accountable to the director.

C. Hiring policies. Hiring shall be conducted in full compliance with the corporation's anti-discrimination policy. The corporation shall hire no employees who are members of the immediate family (spouse, grandparent, parent, brother or sister, son or daughter) of any board member, or of any person who will supervise the employee.

ARTICLE VII. Finances

A. Fiscal Year. The board shall establish the corporation's fiscal year.

B. Budget. The board of directors shall prepare and adopt a budget at its first meeting each year.

C. Annual Financial Statement. The corporation shall prepare an annual financial statement for distribution to board members.

D. Fiscal Policy. The board shall adopt and from time to time review a fiscal policy setting out a formal procedure that shall govern internal controls, the signing of checks; the obligation of funds; approval of contracts, leases, deeds and mortgages; and other significant aspects of the organization's fiscal operation. The fiscal policy shall assure that the corporation shall have sound financial controls that are appropriate, under generally accepted accounting principles, to its size and purpose.

E. Seal. The corporation will not use a common seal. The signature of the name of the corporation by an authorized person shall be legal and binding.

ARTICLE VIII. Parliamentary Procedures

Robert's Rules of Order shall be the parliamentary authority for all matters of procedure not specifically covered by these bylaws.

ARTICLE IX. Amendments of the Charter and Bylaws

The charter and these bylaws may be amended, supplemented, or repealed by a two-thirds vote of the directors present at any meeting at which a quorum is present. Before directors may vote on an amendment to the charter or bylaws, notice must be given to directors of the proposed amendment at a prior meeting of the board, and in no case less than 30 days before the amendment is to be considered. These bylaws shall become effective upon approval by the board of directors.

ARTICLE X. Statement of Nondiscrimination

The corporation shall not discriminate against any person in the hiring of personnel, election of board members, provision of service to the public, the contracting for or purchasing of services or in any other way, on the basis of race, color, sex, national origin, disability, age, or

any other basis prohibited by law. This policy against discrimination includes, but is not limited to, a commitment to full compliance with Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and any subsequent amendments to these statutes.

[Some grantors require a statement to this effect to be in the charter, bylaws or board policy.]

Approved: _____

[Bylaws should be dated, so that readers know they have the most recent version. If the board adopts amendments, it should insert them and restate the full set, add the date of the amendment, and make sure members have the correct version.]

Checklist for Bylaws

This checklist should be used only as a rough guide. Every organization's bylaws do not need to address each of these issues. This list does present most of the issues that bylaws might usually address. An organization should consider whether it would be useful to address these questions in its bylaws. Some organizations choose to cover these issues in the charter or in separate board policies. It is not necessary to address an issue in both the charter and bylaws. Covering issues in the bylaws allows for more flexibility in amendment and permits an organization to devote its charter to fundamental questions of organization. If a provision that is normally included in the bylaws is considered crucial to an organization, it can be appropriate to place it in the charter. This checklist is not a substitute for legal advice. Organizations with questions about bylaws should consult legal counsel with experience in nonprofit representation.

1. Name. Will the corporation operate under more than one name?

Will the corporation have a seal?

2. Objectives. It may be helpful to restate and expand on the purpose as given in the charter. This provision should not be an implementation plan.

3. Board of Directors

How many?

How, when and by whom chosen?

What requirements or criteria for selection (by a self-perpetuating board) or appointment (by an outside group.)? Note that groups can appoint some and the board can appoint some.

What terms?

Will you have term limits?

How removed? Some groups have different voting requirements to remove members for missing meetings (a majority) or for cause (a higher percentage).

When, where and how often board will meet?

Who has authority to call meetings?

Normal procedure: chair

Some percentage of directors or executive committee

When will the corporation hold an annual meeting?

What notice shall directors receive?

May the directors waive notice?
How to fill vacancies?
May meetings be adjourned?
May directors act informally?
May directors attend by telephone?
May directors vote by proxy? Through other directors?
 Through non-directors?
How may directors resign?
What constitutes a quorum? (There is no requirement to state that a majority
 constitutes a quorum. Certain types of groups operate effectively
 with one-third, or with a specified number less than a majority.)
Compensation of directors

4. Officers

How many officers? (Must have President and one other in Tennessee)
What is duty of each?
 President
 Vice President
 Secretary
 Treasurer
 Other
How elected?
What length of term?
How removed?

5. Committees

Who shall appoint?
What composition?
What authority?
Possible committees:
 Executive
 Audit
 Personnel
 Fund Raising

6. Staff/Personnel

Authority of Executive Director

Should the executive director be a board member?

Should the executive director be an “ex officio?” member?

Right to notice and attendance at board meetings

How the executive director is hired.

Affirmative action/equal opportunity provisions

Who supervises other staff?

Shall the corporation have a written personnel policy?

7. Finances

What fiscal year?

What requirements for budget?

Annual audit?

Shall the corporation have a written fiscal policy?

8. Parliamentary Procedure

What rules shall govern meetings? (Roberts?)

9. Amendments to Charter and Bylaws

How shall the charter be amended?

How shall the bylaws be amended?

Prior notice to members?

Percentage of vote required for passage?

10. Statement of Nondiscrimination (if not in charter)

11. Special Requirements

Certain organizations, such as schools, health clinics, child care programs, etc., may want to include provisions to address issues specific to their operation. Organizations may want to spell out important policies in the bylaws, such as how to set fees, how to decide on admission, who to serve, or what geographic area to serve. Organizations may want to decide whether these are policies to be set by the director, by the board, and whether they should be in the bylaws. The answer depends upon how stable or flexible the group wants to be. (Sometimes, being flexible is the best way to be stable, but that depends on the group and its mission.) Some public and private funders require specific provisions to be in the charter or bylaws. Groups should consult with similar organizations to determine what provisions ought to be in the bylaws, and in their charter.

12. Membership

Will the Corporation have statutory members? If so, bylaws must include specific provisions for selection of statutory members, specifying when they meet, how they make decisions, parallel to those identified for the board itself, above.

Who is eligible for membership?

What power shall the membership have? (Any significant changes in power granted by state law should be included in the charter.)

13. Delegates (non-statutory members)

Will the Corporation have delegates? (Note they can be called members.) If so, bylaws should include specific provisions regarding their selection, meeting and decision making.

Who is eligible to be a delegate?

What power shall delegates have?

14. Conflicts of Interest

Does the organization have a conflicts of interest policy? Does it want to include such a policy in its bylaws?