

ARTICLE 4  
FORMATION OF CORPORATIONS

- Section 401. Incorporators.  
402. Certificate of incorporation; contents.  
403. Certificate of incorporation; effect.  
404. Approvals, notices and consents.  
405. Organization meeting.  
406. Private foundation, as defined in the United States internal revenue code of 1954: provisions included in the certificate of incorporation.

§ 401. Incorporators.

One or more natural persons at least eighteen years of age may act as incorporators of a corporation to be formed under this chapter.

§ 402. Certificate of incorporation; contents.

(a) A certificate, entitled "Certificate of Incorporation of ..... (name of corporation), under section 402 of the Not-for-Profit Corporation Law," shall be signed by each incorporator with his name and address included in such certificate and delivered to the department of state. It shall set forth:

(1) The name of the corporation.

(2) That the corporation is a corporation as defined in subparagraph (5) of paragraph (a) of section 102 (Definitions).

(2-a) the purpose or purposes for which it is formed, it being sufficient to state that the purpose of the corporation is any purpose for which corporations may be organized under this chapter as a charitable or non-charitable corporation, and whether it is a charitable corporation or a non-charitable corporation under section 201 (Purposes). Any corporation may also set forth any activities that it intends to carry out in furtherance of such purpose or purposes; provided that this subparagraph shall not be interpreted to require that the certificate of incorporation set forth such activities or otherwise state how the corporation's purposes will be achieved.

(2-b) If it is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, a statement that no such consent or approval is required. Such statement shall be deemed conclusive for purposes of filing by the department of state. If subsequent to submitting the certificate of incorporation for filing, the corporation plans to engage in any activity requiring consent or approval pursuant to section 404 (approvals, notices and consents) of this chapter, the corporation shall obtain such consent or approval and accordingly amend its certificate of incorporation pursuant to article eight of this chapter.

(3) The county within the state in which the office of the corporation is to be located. It may also set forth the post office address of an office without the state, at which, pursuant to section 621 (Books and records; right of inspection; prima facie evidence), the books and records of account of the corporation shall be kept.

(4) The names and addresses of the initial directors.

(5) The duration of the corporation if other than perpetual.

(6) A designation of the secretary of state as agent of the corporation upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him.

(7) If the corporation is to have a registered agent, his name and address within this state and a statement that the registered agent is to be the agent of the corporation upon whom process against it may be served.

(8) The statements, if any, with respect to special not-for-profit corporations required under article 14 (Special not-for-profit corporations).

(b) If the certificate is for the incorporation of an existing unincorporated association or group it shall have annexed thereto an affidavit of the subscribers of such certificate stating that they constitute a majority of the members of a committee duly authorized to incorporate such association or group.

(c) The certificate of incorporation may set forth any provision, not inconsistent with this chapter or any other statute of the state, which provision is (1) for the regulation of the internal affairs of the corporation, including types or classes of membership and the distribution of assets on dissolution or final liquidation, or (2) required by any governmental body or officer or other person or body as a condition for giving the consent or approval required for the filing of such certificate of incorporation.

§ 403. Certificate of incorporation; effect.

Upon the filing of the certificate of incorporation by the department of state, the corporate existence shall begin, and such certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter, except in an action or special proceeding brought by the attorney-general. Where the certificate is for the incorporation of an unincorporated association or group, the members of such association or group shall be members of the corporation so created, and all property owned by or held for it shall belong to and vest in the corporation, subject to all existing incumbrances and claims as if incorporation had not taken place. Where the certificate is for the reincorporation of a corporation created by special law for purposes for which a corporation may be formed under this chapter, such reincorporation shall not effect a dissolution of the corporation but shall be a continuation of its corporate existence, without affecting its then existing property rights or liabilities, or the liabilities of its members or officers as such, but thereafter it shall have only such rights, powers and privileges, and be subject to such other duties and liabilities as a corporation formed for the same purposes under this chapter.

§ 404. Approvals, notices and consents.

(a) Every certificate of incorporation which includes among its purposes the formation of a trade or business association shall have endorsed thereon or annexed thereto the consent of the attorney-general.

(b) (1) Every certificate of incorporation which includes among its purposes the care of destitute, delinquent, abandoned, neglected or dependent children; the establishment or operation of any adult care facility, or the establishment or operation of a residential program for victims of domestic violence as defined in subdivision four of section four hundred fifty-nine-a of the social services law, or the placing-out or boarding-out of children or a home or shelter for unmarried mothers, excepting the establishment or maintenance of a hospital or facility providing health-related services as those terms are defined in article twenty-eight of the public health law and a facility for which an operating certificate is required by articles sixteen, nineteen, twenty-two and thirty-one of the mental hygiene law; or the solicitation of contributions for any such purpose or purposes, shall have endorsed thereon or annexed thereto the approval of the commissioner of the office of children and family services or with respect to any adult care facility, the commissioner of health.

(2) A corporation whose statement of purposes specifically includes

the establishment or operation of a child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of the certificate of incorporation, each amendment thereto, and any certificate of merger, consolidation or dissolution involving such corporation to the office of children and family services within thirty days after the filing of such certificate, amendment, merger, consolidation or dissolution with the department of state. This requirement shall also apply to any foreign corporation filing an application for authority under section thirteen hundred four of this chapter, any amendments thereto, and any surrender of authority or termination of authority in this state of such corporation.

(c) Every certificate of incorporation which includes among the purposes of the corporation, the establishment, maintenance and operation of a hospital service or a health service or a medical expense indemnity plan or a dental expense indemnity plan as permitted in article forty-three of the insurance law, shall have endorsed thereon or annexed thereto the approval of the superintendent of financial services and the commissioner of health.

(d) Every corporation whose certificate of incorporation includes among its purposes the operation of a school; a college, university or other entity providing post secondary education; a library; or a museum or historical society shall have endorsed thereon or annexed thereto the approval of the commissioner of education, or in the case of a college or a university, the written authorization of the Regents. Any other corporation the certificate of incorporation of which includes a purpose for which a corporation might be chartered by the regents of the university of the State of New York shall provide a certified copy of the certificate of incorporation to the commissioner of education within thirty business days after the corporation receives confirmation from the department of state that the certificate has been accepted for filing.

(e) Every certificate of incorporation of a cemetery corporation, except those within the exclusionary provisions of section 1503 (Cemetery corporations) shall have endorsed thereon or annexed thereto the approval of the cemetery board.

(f) Every certificate of incorporation of a fire corporation shall have endorsed thereon or annexed thereto the approval, signed and acknowledged, of the authorities of each city, village, town or fire district in which the corporation proposes to act. Such authorities shall be: in a city, the mayor; in a village, a majority of the trustees; in a town, a majority of the members of the town board; in a fire district, a majority of the fire commissioners. The members of the town board of a town, or the trustees of a village, shall not consent to the formation of a fire corporation as hereinbefore provided, until such board shall have held a public hearing on the question of whether the fire company should be incorporated. The notice shall be published at least once in each week for two successive weeks in the official newspaper published in the county in which such fire corporation intends to locate, prior to the regular meeting of such board designated by the chairman of the board to consider the matter. Such notice shall contain the name of the proposed company, the names of the persons signing the certificate of incorporation, a brief description of the territory to be protected by the fire company and that all persons interested shall be heard. If no newspaper is published in the county the publication of the notice shall be in a newspaper in an adjoining county selected by the chairman of such board. All expenses in connection with such publication shall be borne by the parties making the application and paid before the

hearing.

(g) Every certificate of incorporation of a corporation for prevention of cruelty to animals shall have endorsed thereon or annexed thereto the approval of the American Society for the Prevention of Cruelty to Animals, or, if such approval be withheld thirty days after application therefor, a certified copy of an order of a justice of the supreme court of the judicial district in which the office of the corporation is to be located, dispensing with such approval, granted upon eight days' notice to such society.

(h) Every certificate of incorporation of a Young Men's Christian Association shall have endorsed thereon or annexed thereto the approval of the chairman of the national board of Young Men's Christian Associations.

(i) Every certificate of incorporation which indicates that the proposed corporation is to solicit funds for or otherwise benefit the armed forces of the United States or of any foreign country, or their auxiliaries, or of this or any other state or any territory, shall have endorsed thereon or annexed thereto the approval of the chief of staff.

(j) Every certificate of incorporation which includes among its purposes the organization of wage-earners for their mutual betterment, protection and advancement; the regulation of hours of labor, working conditions, or wages; or the performance, rendition or sale of services as labor consultant, labor-management advisor, negotiator, arbitrator, or specialist; and every certificate of incorporation in which the name of the proposed corporation includes "union", "labor", "council" or "industrial organization", or any abbreviation or derivative thereof in a context that indicates or implies that the corporation is formed for any of the above purposes, shall have endorsed thereon or annexed thereto the approval of the industrial board of appeals. The board shall make such inquiry into the purposes of the proposed corporation as it shall deem advisable and shall order a hearing if necessary to determine whether or not such purposes are in all respects consistent with public policy and the labor law. Notice of the time and place of hearing shall be given to the applicants and such other persons as the board may determine.

(k) Every certificate of incorporation for a corporation which has as its exclusive purpose the promotion of the interests of savings bank life insurance or the promotion of the interests of member banks may, if the approval of the superintendent of financial services is endorsed thereon or annexed thereto, use as a part of the corporate name any of the words or phrases, or any abbreviation or derivative thereof, set forth in subparagraph (5) of paragraph (a) of section 301 (Corporate name; general).

(l) Every certificate of incorporation for a corporation which has as its exclusive purpose the creation of an association of licensed insurance agents, licensed insurance brokers, or licensed insurance underwriters and every application for authority of a foreign corporation which is an independent laboratory engaged in testing for public safety, or which has as its purpose the advancement of corporate, governmental, and institutional risk and insurance management, or which has as its exclusive purpose the creation of an association of insurers, each of which is duly licensed in this state or, if it does no business or is not licensed in this state, is duly licensed in another state or foreign jurisdiction may, if the approval of the superintendent of financial services is endorsed thereon or annexed thereto, use as a part of the corporate name any of the words or phrases, or any abbreviation or derivative thereof, set forth in subparagraph (5) of paragraph (a) of

section 301 (Corporate name; general).

(m) Every certificate of incorporation in which the name of the proposed corporation includes the name of a political party shall have endorsed thereon or annexed thereto the consent of the chairman of the county committee of such political party of the county in which the office of the corporation is to be located, except in cases where the supreme court finds that the withholding of such consent of the county chairman is unreasonable.

(n) Every certificate of incorporation in which the name of the proposed corporation includes the words "American Legion," shall have endorsed thereon or annexed thereto the approval of the Department of New York, the American Legion, duly acknowledged by its commander or adjutant.

(o) Every certificate of incorporation which includes among its corporate purposes or powers the establishment or maintenance of any hospital, as defined in article twenty-eight of the public health law, or the solicitation of contributions for any such purpose, or purposes, shall have endorsed thereon or annexed thereto the approval of the public health and health planning council.

(p) Every certificate of incorporation of a medical corporation as defined in article forty-four of the public health law and organized pursuant thereto and pursuant to this chapter, shall have endorsed thereon or annexed thereto the consent of the commissioner of health and the approval of the public health and health planning council.

(q) Every certificate of incorporation which includes among its corporate purposes or powers the establishment, or operation of a facility for which an operating certificate from the commissioner of mental health is required by article thirty-one of the mental hygiene law, or the solicitation of contributions for any such purpose, shall have endorsed thereon or annexed thereto the approval of the commissioner of mental health.

(r) Every certificate of incorporation of a health maintenance organization as defined in article forty-four of the public health law and organized pursuant thereto and pursuant to this chapter, shall have endorsed thereon or annexed thereto the consent of the commissioner of health.

(t) Every certificate of incorporation which includes among its purposes and powers the establishment or maintenance of a hospital or facility providing health related services, as those terms are defined in article twenty-eight of the public health law, or the solicitation of contributions for any such purpose or two or more of such purposes, shall have endorsed thereon the approval of the public health and health planning council.

(u) Every certificate of incorporation which includes among the purposes of the corporation, the establishment or operation of a substance abuse, substance dependence, alcohol abuse, alcoholism, or chemical abuse or dependence program, or the solicitation of contributions for any such purpose, shall have endorsed thereon or annexed thereto the consent of the commissioner of the office of alcoholism and substance abuse services to its filing by the department of state.

(v) Every certificate of incorporation which includes among the purposes of the corporation, the establishment, maintenance and operation of a nonprofit property/casualty insurance company, pursuant to article sixty-seven of the insurance law, shall have endorsed thereon or annexed thereto the approval of the superintendent of financial services.

(w) Every certificate of incorporation in which the name of the proposed corporation includes the terms: "school," "education," "elementary," "secondary," "kindergarten," "prekindergarten," "preschool," "nursery school," "museum," "history," "historical," "historical society," "arboretum," "library," "college," "university" or other term restricted by section two hundred twenty-four of the education law; "conservatory," "academy," or "institute," or any abbreviation or derivative of such terms, shall have endorsed thereon or annexed thereto the consent of the commissioner of education.

§ 405. Organization meeting.

(a) After the corporate existence has begun, an organization meeting of the initial directors, or, if directors are not designated in the certificate of incorporation, of the incorporator or incorporators, shall be held within or without this state, for the purpose of adopting by-laws, electing directors to hold office as provided in the certificate of incorporation or the by-laws, and the transaction of such other business as may come before the meeting. The meeting may be held at the call of any director or, if directors are not designated in the certificate of incorporation, any incorporator who shall give at least five days' notice thereof by mail to each other director or incorporator, which notice shall set forth the time and place of the meeting. Notice need not be given to any director or incorporator who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him. If there are more than two directors or incorporators, a majority shall constitute a quorum and the act of the majority of those present at a meeting at which a quorum is present shall be the act of the directors or incorporators. For the purposes of this section an incorporator or director may act in person or by proxy signed by him or his attorney in fact.

(b) Any action permitted to be taken at an organization meeting may be taken without a meeting if each director or, if directors are not designated in the certificate of incorporation, each incorporator or his attorney-in-fact signs an instrument setting forth the action so taken.

(c) If a designated director or an incorporator dies or is for any reason unable to act, the other or others may act. If there is no designated director or incorporator able to act, any person for whom an incorporator is acting as agent may act in his stead, or if such other person also dies or is for any reason unable to act, his legal representative may act.

§ 406. Private foundation, as defined in the United States internal revenue code of 1954: provisions included in the certificate of incorporation.

(a) The following provisions are hereby included in the certificate of incorporation of every domestic corporation, heretofore or hereafter formed, to which this chapter applies in whole or in part, and which is a "private foundation" as defined in section 509 of the United States internal revenue code of 1954 ("code"):

(1) The corporation shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income under section 4942 of the code.

(2) The corporation shall not engage in any act or self-dealing which is subject to tax under section 4941 of the code.

(3) The corporation shall not retain any excess business holdings which are subject to tax under section 4943 of the code.

(4) The corporation shall not make any investments in such manner as to subject the corporation to tax under section 4944 of the code.

(5) The corporation shall not make any taxable expenditures which are subject to tax under section 4945 of the code. Except as provided in paragraph (b), this paragraph applies notwithstanding any other provision of the certificate of incorporation or any direction in a gift instrument.

(b) Paragraph (a) shall not apply to the extent that it conflicts with any mandatory direction in a gift instrument executed prior to the effective date of this section unless such conflicting direction is removed as impracticable under article eight of the estates, powers and trusts law or in any other manner provided by law. The absence of a specific provision in the gift instrument for the current use of the principal of the fund, or the presence in such an instrument of a provision, as to the principal of a fund, limited to the principal's being held, invested and reinvested, is not such a conflicting mandatory direction.

(b-1) A domestic, not-for-profit corporation that is a "private foundation" as defined in section 509 of the code and that is required by section 6104(d) of the code to make available for public inspection its annual return shall publish notice of the availability of such return for inspection. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper designated by the clerk of the county in which the principal office of the private foundation is located, having general circulation in that county. When such county is located within a city with a population of one million or more, such designation shall be as though such notice were a notice of judicial proceedings. The notice shall state that the annual return of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within one hundred eighty days after the date of such publication, and shall state the address and the telephone number of the private foundation's principal office and the name of its principal manager. A copy or notice published in a newspaper other than the newspaper or newspapers designated by the county clerk shall not be deemed to be one of the publications required by this paragraph.

(c) All references in this section to sections of the code shall be to such sections as amended from time to time, or to corresponding provisions of subsequent internal revenue laws.

(d) Nothing in this section shall impair the rights and powers of the courts or the attorney-general of this state.

(e) For purposes of this section, the term gift instrument shall have the meaning set forth in section 551 (Definitions).