

Nonprofit Community Association Handbook



Updated: 2021

Acknowledgments

Prepared By: Division of Community and Regional Affairs

2020 Editor: Melody Nibeck, Local Government Specialist 4

Peter Freer

Original Authored By: Peter McKay

Jon Cecil

The State of Alaska, Department of Commerce, Community, and Economic Development (DCCED), complies with Title II of the Americans with Disabilities Act of 1990. This publication is available in alternative communication formats upon request. Please contact the DCRA Publication Specialist at 1-907-269-4560 or DCRA.publications@alaska.gov to make any necessary arrangements. The Alaska Relay is 711 or 1-800-770-8973\TTY, 1-800-770-8255\Voice.

Table of Contents

Chapter 1 – Introduction.....	1
Section 1 – What is a Nonprofit Corporation?.....	1
Section 2 – What Is a Nonprofit Community Association?.....	2
Section 3 – Why Have a Nonprofit Community Association?.....	2
Chapter 2 – Duties of Nonprofit Community Associations	3
Section 1 – Providing Public Services.....	3
Section 2 – Grants Administration.....	4
Section 3 – Community Assistance Program.....	6
Section 4 – Taxes.....	6
Section 5 – Financial Responsibility.....	8
Section 6 – Bookkeeping.....	8
Section 7 – Records Retention.....	9
Section 8 – Biennial Reports and Form Filing Fees.....	9
Section 9 – Legal Responsibilities.....	10
Section 10 – Risk Management.....	11
Chapter 3 – Powers of a Nonprofit Community Association.....	12
Section 1 – Comparison with a Municipality.....	12
Section 2 – Statutory Powers.....	12
Chapter 4 – Incorporation, Bylaws, Dissolution	14
Section 1 – Articles of Incorporation.....	14
Section 2 – How to Amend Articles of Incorporation.....	14
Section 3 – Bylaws.....	15
Section 4 – Dissolution.....	15
Chapter 5 – An Effective Nonprofit Community Association	17
Section 1 – Meetings.....	17
Section 2 – Conduct of Association and Board Members.....	19
Section 3 – Role of the Chair.....	19
Chapter 6 – Municipal Incorporation.....	20
Section 1 – Benefits and Drawbacks.....	20
Section 2 – First Class and Second Class Cities.....	20
Section 3 – Incorporation Process.....	21
Appendix A – Determination of Social Unit	22
Appendix B – Sample Bylaws	22
Chapter One: Membership.....	22
Chapter Two: Board of Directors.....	24
Chapter Three: Election Rules.....	25
Chapter Four: Officers.....	26

Chapter Five: Contracts, Checks, Deposits, and Fund Finances.....	27
Chapter Six: Books and Records.....	27
Chapter Seven: Amendment to Bylaws	28
Chapter Eight: Adoption of Bylaws	28
Appendix C – DCRA Regional Office Directory	29
Appendix D – Helpful Websites.....	30
State of Alaska Division of Corporations, Business and Professional Licensing:	30
IRS:	30
Other:.....	30

Chapter 1 – Introduction

The Department of Commerce, Community and Economic Development (DCCED) interacts with nonprofit corporations and nonprofit community associations all over Alaska. Staff members respond to concerns from nonprofit community associations on a regular basis. Typical questions reflect topics that include the nature of authority, the administration of duties, rules of procedure, and best sustainability practices.

This handbook, prepared for nonprofit community associations organized under the state law known as the Alaska Nonprofit Corporation Act (Alaska Statute [AS] 10.20), provides board members and employees with the information they need to do their jobs.

Board members of nonprofit community associations have important jobs managing the affairs and finances of the community. Nonprofit boards differ from city councils, and their board members do not have the same authority as city council members.

The purpose of this publication is to explain the following about nonprofit community associations:

- Roles in community affairs;
- Duties of the association;
- Powers; and
- Characteristics that contribute to effectiveness, such as how to hold meetings and conduct business.

Section 1 – What is a Nonprofit Corporation?

Nonprofit corporations are formed under Alaska Statute to undertake a wide variety of activities. A nonprofit corporation may also be a nonprofit community association organized for a specific purpose.

AS 10.20.005. Purposes. Corporations may be organized under this chapter for any lawful purpose, including, but not limited to, one or more of the following: charitable; religious; benevolent; eleemosynary; educational; civic; cemetery; patriotic; political; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association purposes. Trade unions and other labor organizations may also be organized under this chapter, but cooperative corporations, electric and telephone cooperatives, and organizations subject to state insurance or banking laws may not be organized under this chapter.

Nonprofit corporations in Alaska established under this law include groups such as Big Brothers/Big Sisters, the Salvation Army, Elks Club, and the Alaska Municipal League. Nonprofit

corporations may exist to provide social services to a specialized clientele, such as The Arc of Anchorage, serving children and adults who experience disabilities or mental health issues, or to serve the needs of the larger community, such as the Juneau Arts and Humanities Council. Nonprofit corporations may also be community associations.

Section 2 – What Is a Nonprofit Community Association?

A nonprofit community association is a corporation organized under State of Alaska law for civic purposes. Typically, nonprofit community associations are organized in unincorporated communities where there is no municipal government and no other organization that can act as an eligible recipient for state funds. A nonprofit community association can receive state funds and legislative grants, provide services to the community, and enter into contracts and other agreements. A nonprofit community association is not a city council and has none of the powers of a city council. Nonprofit community associations currently exist in more than thirty unincorporated Alaska communities.

According to Alaska Statutes, an unincorporated community can receive state grants only if an eligible entity is in place to receive the grant. That entity can be a Native village council or a nonprofit corporation organized under state law.

Section 3 – Why Have a Nonprofit Community Association?

There are many reasons an unincorporated community may want to form a nonprofit community association. A nonprofit community association allows the community to obtain funding for needed community projects, as well as operating funds for administering the public affairs of the community. Funding sources that might be available include loans, legislative grants and community revenue sharing funds.

A nonprofit community association can serve as a focal point for community affairs and activities. For example, the Edna Bay Community Association lobbied effectively for the construction of a road connecting the residential part of town with the school. The association provided a structure for decision-making and planning that enabled the community to move forward with the project.

A community association can also serve as a contact and source of information for people living outside the community, such as state and federal officials, contractors, and people interested in traveling to the area.

Chapter 2 – Duties of Nonprofit Community Associations

Alaska Statute 10.20.011 lists the wide range of powers that nonprofit corporations may exercise. AS 10.20.011(12) states that a nonprofit may “make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the state, for the administration and regulation of the affairs of the corporation.”

Thus, the articles of incorporation and bylaws chart the purpose and define the procedures of the organization. The articles of incorporation must contain a statement of purpose, such as to undertake civic projects or promote the improvement and betterment of the community.

The bylaws contain rules and procedures for conducting business and identify employee, board, and officers’ duties. Clear and complete bylaws are important and do not have to be complicated. Refer to the sample bylaws in Appendix B. The following sections discuss some of the duties of nonprofit community associations.

Section 1 – Providing Public Services

Nonprofit community associations are not the same as city councils; they do not have the same statutory powers and responsibilities. Still, nonprofit community associations may undertake activities that benefit local residents such as operating a library, providing fire protection or electricity, or maintaining roads or a community hall. The following are examples of nonprofit community associations and the services they provide:

- **The Community of Elfin Cove** offers clean drinking water services to the community, including collecting the water, testing for safety, and distributing it throughout the community.
- **Hyder Community Association** contracts with the Alaska Department of Transportation and Public Facilities to perform road maintenance and snow removal on the road between Hyder and Stewart, British Columbia.
- **Manley Hot Springs Community Association** operates a well house and sanitary landfill, offers a preschool program, helps maintain and operate the community building, and is involved in several other community services.
- **Kenny Lake Community League** built and maintains a hockey rink and track/baseballfield, expanded the public library, and maintains the community’s fire equipment.
- **Nelchina/Mendeltna** operates a solid waste transfer site and maintains a portion of a region-wide distance medical link.
- **Whale Pass Community Association** revamped the dock, upgraded and renovated the fire hall, and resurfaced the road system.

- **Point Baker Community Council** maintains a community building and a building used to house a fire-fighting boat.
- **Tolsona Community Corporation** provides solid waste disposal and fire protection.

Section 2 – Grants Administration

As a nonprofit corporation in good standing with the State of Alaska, a community association can apply for a variety of state grants and loans. State funds, including rural development assistance grants, legislative grants, Village Safe Water grants, bulk fuel loans, and state employment and training grants enable a small community to have facilities, programs, and services that may not otherwise be possible.

Along with the receipt of grant funds, the nonprofit community association accepts responsibility for meeting grant and loan requirements and keeping current and accurate records. Usually, for bookkeeping purposes, such funds are separated from the association's general fund or main checking account. Grant and loan funds are separated because they must be administered and managed according to the conditions established in the agreement between the state and the community association.

Separate checking accounts provide an independent record of all revenues and expenditures for each grant. An association may also choose to keep both grant funds and general funds in one checking account, though this approach will require good record keeping and careful management.

Having a reputation for good grant administration is important when a nonprofit community association seeks grant funding. Agencies prefer to fund communities that have demonstrated competence and thoroughness in the administration of previous grants and ongoing services.

The following guidelines will help ensure proper grant administration:

- 1. Keep grant funds in a separate account.**
 - Easier to keep track of expenditures.
 - Easier to meet reporting requirements.
 - Easier to audit.
- 2. Provide all reports on time.**
 - Record all deadlines and reporting requirements on your desk calendar at the beginning of the grant.
- 3. Make sure reports are complete.**
 - Ask for assistance, in advance, whenever necessary.
- 4. Document everything.**
 - Keep a phone log of conversations relating to the grant.
 - File notes, correspondence, and summaries of phone conversations and meeting related to the grant.
 - Keep and file all invoices and records of grant-related financial transactions.
- 5. Ask for assistance.**
 - All agencies expect some questions or problems during a project; ask for help as soon as it's needed. Agencies want to solve problems before they get out of hand.
- 6. Get management assistance if needed.**
 - Make sure you have enough experience to carry out the project.
 - If the community association needs expert help, get it.
- 7. Review the association's policies and procedures with the granting agency.**
 - Make sure the association's policies and procedures comply with the grant requirements.
 - Get the granting agency's approval in writing for any changes in the grant.
- 8. Don't wait until the last minute.**
 - Most grants have a lapsing date, and all funds must be expended by that date.
- 9. Before accepting the grant, make sure it is what the community needs.**
 - Your community will be expected to maintain any programs or buildings after the grant moneys expire.
 - Make sure the community is prepared for any long-term requirements pertaining to the project.

Section 3 – Community Assistance Program

Communities with no incorporated municipality may qualify for the Community Assistance Program (CAP), state funding provided annually to local communities. Alaska Statute 29.60.865 provides the requirements to qualify for CAP payments, specifically that “the department shall pay the money to the entity that the department finds most qualified to receive and spend the money on behalf of the community.” Additionally, the money must be dedicated to a public service or facility available to every person in the community. A community within a unified municipality, may in some cases still be eligible for CAP payments though it must be providing for at least three of the following services in the community: fire protection, emergency medical, water and sewer, solid waste management, public road or ice road maintenance, public health, or search and rescue.

Additional information about the Community Assistance Program is available at:

<https://www.commerce.alaska.gov/web/dcra/CommunityAidAccountability/CommunityRevenueSharing.aspx>

Section 4 – Taxes

The nonprofit community association may be an employer. As an employer, the association has important responsibilities, including obtaining federal and state employer identification numbers, verifying tax status, remitting appropriate withholdings, and submitting appropriate forms and paperwork.

To receive a federal Employer Identification Number (EIN), the community association must submit an application (Form SS-4) to the Internal Revenue Service (IRS). Call the IRS at 1-800-829-3676 to request Form SS-4, or go online: <https://www.irs.gov/pub/irs-pdf/fss4.pdf>

The association must also obtain an Alaska Employer Identification Number (AEIN) from the Alaska Department of Labor and Workforce Development, Employment Security Division. Contact the nearest Field Tax Office and ask for the Alaska Employer Registration Form. Or, view and print the form from this website: <http://labor.alaska.gov/estax/forms/AER.pdf>

Once completed, mail to the Juneau office listed on the following page.

Field Tax Offices

Department of Labor and Workforce Development

Anchorage Employment Security Tax

3301 Eagle St., Room 106
P.O. Box 241767 Anchorage, AK 99524-1767
Ph.: 1-907-269-4850 • Fax: 1-907- 269-4845

Juneau Employment Security Tax

1111 W. 8th St., Room 203
P.O. Box 115509 Juneau, AK 99811-5509
Ph.: 1-907-465-2787 • Fax: 1-907-465-2374

Wasilla Employment Security Tax

877 Commercial Drive
Wasilla, AK 99654-6937
Ph.: 1-907-352-2535 • Fax: 1-907-352-2581

Fairbanks Employment Security Tax

675 7th Avenue, Station L Fairbanks, AK 99701-4595
Ph.: 1-907-451-2876 • Fax: 1-907-451-2883

Kenai Employment Security Tax

145 Main Street Loop, Suite 143
Kenai, AK 99611-9106
Ph.: 1-907-283-0350 • Fax: 1-907-283-5152

- E-mail questions to the Employment Security Division at esd.tax@alaska.gov.
- Toll-free telephone number to reach an Employer Account Representative for all areas outside Juneau, out of state, and Canada: 1-888-448-3527
- Relay Alaska TDD/TTY/TT Services: 1-800-770-8973
- Field Tax Offices are in Anchorage, Fairbanks, Juneau, Kenai, and Wasilla. Each Field Tax Office has field auditors and support staff who are available to answer questions about Unemployment Insurance Tax filing requirements.
- Toll-free telephone number to connect to a field auditor: 1-888-448-2937.

Organizations not operated for profit are generally exempted from paying federal income taxes, though they may carry over funds from year to year. Nonprofit community associations operated exclusively for promoting the community welfare may qualify for this tax-exempt status. To establish tax-exempt status, the association must file an application with the IRS. Call the IRS at 1-800-829-3676 and request Form 1023, Application for Recognition of Exemption Under Section 501(c) (3) of the Internal Revenue Code. This application for tax exempt status can also be found online at: <https://www.irs.gov/forms-pubs/about-form-1023>.

Once the association receives an exempt determination, the determination is valid if there are no substantial changes in the association's character, purpose, or method of operation.

Tax-exempt organizations, depending on their gross receipts and type of IRS designation, may need to file an annual information return (Form 990, Return of Organization Exempt from Income Tax) with the IRS.

For more information on setting up a payroll accounting system and filing quarterly and annual tax reports, see the *Payroll Handbook for Small Communities* published by the Division of Community and Regional Affairs (DCRA).

Section 5 – Financial Responsibility

A nonprofit community association has important financial responsibilities.

1. **Stay solvent.** The association must manage its finances to avoid bankruptcy.
2. **Be efficient.** The association should provide services as efficiently as possible so that funds aren't wasted and the association and services to the community are sustainable.
3. **Spend in accordance with a budget.** By adopting a budget, the association establishes a plan for spending community association funds and identifies amounts that can be spent for each purpose.
4. **Satisfy legal reporting requirements.** State law requires nonprofit corporations to file several reports each year.
5. **Meet all employer-related requirements. If the association has employees, there are payroll requirements, withholdings, tax reports, and worker's compensation requirements.**

In meeting these responsibilities, the nonprofit community association satisfies other financial responsibilities. For example, managing community association finances well means the association can meet payroll and pay bills and taxes. Proper financial management also allows the community to qualify for grants.

Section 6 – Bookkeeping

A good bookkeeping system is needed to properly maintain accurate financial records. A bookkeeping system identifies the following:

- Where the money came from;
- Where the money was deposited;
- Where the money was spent;
- What you owe;
- What is owed to you; and
- What cash is available.

The bookkeeper records transactions such as cash receipts, cancelled checks, payroll checks, bank statements, invoices, time sheets, and grant receipts. The bookkeeper sorts the information and produces statements or financial reports that summarize the finances of the nonprofit community association for a period of time.

The reports inform the association's board of directors and members of funds received and disbursed by the community association. For more information about bookkeeping, contact a local government specialist in the nearest DCRA office (Appendix C).

Section 7 – Records Retention

Records retention refers to the length of time different types of records and files should be kept. Knowing how long to keep records prevents the files from growing so large the system becomes unmanageable, but at the same time, ensures records are kept to satisfy legal and other requirements.

The community association should have some method to handle current records, inactive records (records that are no longer actively used, but must be retained for a specified period), and permanent records. Methods may include file cabinets, boxes, folders, and many others.

The Alaska State Archives has a manual, Local Government Model, General Administrative Records Retention and Disposition Schedule, which offers advice on records retention. The manual suggests retention schedules for nearly 200 types of records. For a copy, contact the nearest DCRA office (Appendix C) or review a copy online:

<https://archives.alaska.gov/documents/rims/schedules/300-1.pdf>

Section 8 – Biennial Reports and Form Filing Fees

Biennial Reports: A nonprofit corporation must file a biennial report with the DCCED Corporations Section. If the nonprofit community association filed its articles of incorporation during an even-numbered year, the report must be filed before July 2 of each even-numbered year. If the articles of incorporation were filed during an odd-numbered year, the report must be filed before July 2 of each odd-numbered year. The biennial report may now be done online or printed from the Corporations, Business and Professional Licensing website:

www.corporations.alaska.gov. It is the responsibility of the association to file its reports in a timely manner. Failure to do so may result in the loss of non-profit corporation status, additional costs, and may prevent the organization from receiving grants and payments from the Community Assistance Program.

In the biennial report, the corporation (association) must provide the following:

- The name of the corporation (association) and the state where it is incorporated;
- The corporation's (association's) Alaska address and the name of its registered agent;

- A brief statement characterizing the activities of the corporation (association);
- The names and addresses of the officers and board members; and
- The real and personal property assets of the corporation (association).

If the corporation (association) changes officers or board members, the corporation must file a notice of change before July 2 of that year. The notice must state the name and address of the new board member, the name of the person replaced, and the office held.

Filing Fees for Nonprofits: Filing fees charged by the Division of Corporations, Business and Professional Licensing for forms commonly used by nonprofit corporations are listed below. The full list appears online at:

<https://www.commerce.alaska.gov/web/cbpl/corporations/corpformsfees/formsbyentity.aspx>

As of the printing of this handbook, various filing fees for nonprofits include:

- Articles of incorporation and issuing a certificate of incorporation: \$50
- Amended articles of incorporation: \$25
- Notice of change of officers or directors: \$25
- Articles of dissolution: \$15
- Resolution to dissolve: \$10
- Biennial report: \$25

Section 9 – Legal Responsibilities

Nonprofit community associations have important legal and financial responsibilities because they are tasked with receiving and spending public funds. The association board must be knowledgeable about the financial statements, budgets, and internal controls of the association to appropriately manage its funds. Board members are legally responsible for the management of association finances.

The courts recognize the legal principle of the “reasonably prudent person” in defining the legal responsibilities of board members. Basically, the principle maintains:

Directors and officers shall discharge the duties of their respective positions in good faith and with the degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions.

There are three common violations of fiduciary responsibility:

1. **Mismanagement:** Mismanagement occurs when board members or officers make poor decisions. Examples include spending grant funds on unapproved purchases, or bouncing checks.

2. **Non-management:** Non-management occurs when board members fail to use good management techniques. Examples include failure to attend board and committee meetings and failure to exercise control over the organization or to adequately evaluate information for decision-making.
3. **Conflict of Interest:** This violation occurs when a board member or officer participates in deciding when the outcome benefits him or herself or a family member. If the board is voting on a matter from which he or she could financially or otherwise benefit, the member should refrain from voting to avoid a conflict or the appearance of having a conflict of interest. The board member may be counted to constitute a quorum, but should disqualify him or herself from voting. Association bylaws often provide specific policies and procedures for dealing with such situations.

In addition to acting as a “reasonably prudent person,” a board member must also act in “good faith.” Legally, a board member must act with reasonable care to avoid injury to others.

The National Center for Voluntary Action suggests board members:

- Attend all board and committee meetings; if unable to attend, have a valid reason for the absence.
- Have a thorough knowledge of the association bylaws and articles of incorporation.
- Keep informed of the association’s activities and operations.
- Ensure statutory and administrative requirements are met by filing necessary reports, withholding employee taxes, etc.
- Record all votes and actions in the board minutes.
- Avoid conflict of interest; discourage any business transactions between board members and the association, unless conducted entirely in the open and with strict safeguards.
- Make no personal profit from association activities, except for compensation provided for in the bylaws.

Section 10 – Risk Management

The nonprofit community association should also consider purchasing liability insurance. Examples of insurance policies include general liability, directors’ errors and omissions, and automobile liability.

For more information regarding liability insurance, consult an insurance agent. The association should shop around for policies to ensure it gets the best deal.

In conclusion, board members who work and act in the best interests of the community association are less likely to be held personally liable for errors. If an association requires a more detailed analysis of board member responsibility, an attorney experienced in liability law should be contacted.

Chapter 3 – Powers of a Nonprofit Community Association

Section 1 – Comparison with a Municipality

A nonprofit community association is not the same as a municipal (city or borough) government. A nonprofit community association is a private organization that exists to benefit its members. Under state law it's no different than, for example, the Lions Club. A city council or borough assembly, on the other hand, is a public governing body representing the larger community within the municipality. A municipality is a political subdivision of the state and has broad powers; the governing body of a municipality may adopt and enforce local laws for activities such as garbage collection and disposal, land-use regulation, dog control, and building codes, and may levy and collect taxes.

Municipal powers and responsibilities are provided primarily by Alaska Statute Title 29 and a few other state laws. Nonprofit corporation powers and responsibilities, on the other hand, are provided primarily by Alaska Statute Chapter 10.20. The full text can be found online at www.legis.state.ak.us/basis/statutes.asp#10.20.005.

Section 2 – Statutory Powers

AS 10.20.011 provides nonprofit corporations with several specific powers. The following is an abridged list of these powers:

1. Use its corporate name;
2. Sue and be sued, complain and defend, in its corporate name;
3. Adopt and use a corporate seal;
4. Purchase, take, receive, lease, take by gift, devise, bequest, and otherwise acquire, own, hold, improve, use, and deal with real or personal property;
5. Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of its property and assets;
6. Lend money to its employees other than its officers and board members and otherwise assist its employees, officers, and board members;
7. Purchase, take, receive, subscribe to, and otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, and deal with shares and other interests in domestic or foreign

corporations, associations, partnerships, and individuals with obligations of the United States or another government, state, territory, governmental district, municipality, and any instrumentality thereof;

8. Make contracts, incur liabilities, borrow money at rates of interests the corporation may determine, issue notes, bonds, and other obligations, and secure obligations by mortgage or pledge of property, franchises, and income;
9. Lend money for corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
10. Carry on its operations, have offices, and exercise the powers granted by AS 10.20.011 in any state, territory, district, and possession of the United States, and in any foreign country;
11. Elect or appoint officers and agents of the corporation, who may be board members or members, define their duties, and fix their compensation;
12. Make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the state, for administering and regulating the affairs of the corporation;
13. Make donations for public welfare and for charitable, scientific, or educational purposes; and, in time of war, make donations in aid of war activities;
14. Indemnify a board member or former board member, or a person who has served at its request as a board member of another corporation in which it owns shares or is a creditor, against expenses reasonably incurred by that person in connection with the defense of any action, suit, or proceeding, civil or criminal, in which that person is a party by reason of being or having been a board member, except in relation to matters in which that person was adjudged to be liable for negligence or misconduct in the performance of corporate duties; and make any other indemnification authorized by the articles of incorporation, bylaws, or resolution;
15. Pay pensions and establish pension plans or trusts for its board members and employees;
16. Cease its corporate activities and surrender its franchise; and
17. Have and exercise all powers necessary to carry out the purposes of the corporation.

Chapter 4 – Incorporation, Bylaws, Dissolution

Section 1 – Articles of Incorporation

A nonprofit corporation (association) must complete articles of incorporation to comply with the state’s law for incorporation. View, download or print Form 08-438, Articles of Incorporation, at:

<https://www.commerce.alaska.gov/web/cbpl/Corporations/CorpFormsFees/FormsbyEntity.aspx>

If you need assistance in completing the Articles of Incorporation, it is advised that you seek legal counsel. Please be aware the filing will become public information. For more information visit the corporation website at:

<https://www.commerce.alaska.gov/web/cbpl/Corporations.aspx> .

Section 2 – How to Amend Articles of Incorporation

State law allows a corporation to amend its articles of incorporation. Amendments follow a certain procedure.

First, the corporation (association) board adopts a resolution which describes the proposed amendment and directs that a vote be taken on the amendment at the annual or a special meeting. Written notice, detailing the proposed amendment or a summary of the changes, is given to each voting member as provided in the articles of incorporation or bylaws.

The proposed amendment is adopted if approved by a two-thirds vote of the members present or represented by proxy. If the corporation (association) has no members, then a majority of the board of directors may adopt an amendment. Any number of amendments may be voted on at any one meeting.

After an amendment is approved, the amended articles must be signed in duplicate by the corporation (association) president or vice president and secretary, and show the corporation name and the amendment. Duplicate originals of the amended articles must be submitted to the DCCED Corporations Section with the current filing fee and the following information:

- If there are members entitled to vote, a statement including the date when the amendment was adopted, that a quorum was present at the meeting, and that the amendment received at least two-thirds of the votes cast; or
- A statement that the amendment was adopted by consent in writing signed by all members

entitled to vote; or

- If the corporation has only a board of directors but no members, include a statement that there are no members, (or no members entitled to vote), the date of the board of directors meeting when adoption occurred, and a statement that a majority of the directors in office approved the amendment.

To download Form 08-439, Articles of Amendment, visit the Corporations web page at:

<https://www.commerce.alaska.gov/web/cbpl/Corporations/CorpFormsFees/FormsbyEntity.aspx>

Section 3 – Bylaws

A good set of bylaws is invaluable for the effective operation of a nonprofit community association. Bylaws specify the operating rules and procedures of the association and identify the duties of association officers and board members. Having good bylaws does not eliminate the potential for conflict or disputes. They should help ensure, however, that disputes are over substantive matters and not over interpretation of the rules. Refer to Appendix B for Sample Bylaws.

Section 4 – Dissolution

A nonprofit community association may be dissolved voluntarily or involuntarily.

Voluntary Dissolution: If the community association wishes to dissolve voluntarily:

1. Board members must adopt a resolution recommending the corporation be dissolved. Written notice of the meeting, in accordance with association procedures, must be given to each voting member. Association members then vote on the question of dissolution at the annual or a special meeting. Adoption requires a two-thirds vote of the members present or represented by proxy.
2. After adopting the resolution, the association must file a properly signed and witnessed copy of the resolution along with Form 08-444, Resolution to Dissolve, and the current filing fee to the DCCED Corporations Section.
3. At the same time, or shortly thereafter, the association must also submit Form 08-445, Articles of Dissolution, plus the current filing fee. This filing occurs only after all debts, liabilities, and obligations of the association are paid, or adequate provision for payment is made, and all property and assets of the association are transferred, conveyed, or distributed according to law.

The articles of dissolution must provide the following information:

- The name of the corporation;
- A statement providing the date of the meeting at which the resolution was passed, that a quorum was present, and that the resolution received at least two-thirds of the votes cast;

- A statement that the resolution was adopted by written consent, signed by all members entitled to vote;
- A statement that all debts, obligations, and liabilities of the association have been paid or that adequate provision has been made for payment;
- A plan of distribution adopted by the association or a statement that no plan was adopted;
- A statement that all remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with state law; and
- A statement that there are no suits pending against the corporation, or that adequate provision has been made satisfying a judgment.

View or download Forms 08-444 and 08-445 at:

<https://www.commerce.alaska.gov/web/cbpl/Corporations/CorpFormsFees/FormsbyEntity.aspx>

Involuntary Dissolution: A nonprofit community association may be dissolved involuntarily by the DCCED Corporations Section for any of the following reasons:

- Failure to file a biennial report within the time required by law;
- Obtaining articles of incorporation through fraud;
- Continuing to exceed or abuse the authority conferred by law;
- Failure for 30 days to appoint or maintain a registered agent in Alaska;
- Failure for 30 days after changing a registered office or registered agent to file a statement of change;
- Failure to revoke or complete a plan of voluntary dissolution within the time required by law;
or
- Failure to file a notice of change of an officer or board member within 90 days as required by law.

Chapter 5 – An Effective Nonprofit Community Association

Section 1 – Meetings

To carry out its duties, a nonprofit community association holds meetings of the membership. To be effective, the association should follow some basic meeting guidelines, which are described below.

Hold Open Meetings: Meetings of the association serve as an opportunity for association members to participate in decision-making, share ideas and experiences, and engage in serving and bettering the community. A Superior Court case in 1990 established that community associations were subject to the provisions of the Open Meetings Act. However, when the Alaska Legislature amended the Open Meetings Act in 1994, wording which had previously subjected community associations to the act were intentionally removed, thus releasing community associations from all provisions of the act. However, because it is generally the goal of non-profit community associations to serve the community, it is still a good idea to hold open meetings and include all members of your community in the decision-making process.

Notice of the Meeting: Adequate notice of meetings is needed so that association members or the general public can choose to attend. Notice can be broadcast over radio or printed in the newspaper if available. Otherwise, notices should be posted in at least three places where the association members and the public will see them.

An acceptable practice is to give notice at least 10 days before a meeting. If an association's bylaws or articles of incorporation do not have notice provisions, the association must comply with AS 10.20.066, which states:

Unless otherwise provided in the articles of incorporation or bylaws, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at the meeting. If mailed, the notice shall be considered to be delivered when deposited in the United States mail addressed to the member at the member's address as it appears on the records of the corporation, with postage prepaid.

A nonprofit community association that receives state funding must comply with any notice provisions in the grant application or grant agreement.

The Agenda: An agenda is a meeting plan – a list of items to be discussed and the order in which they will be considered. An agenda helps organize a meeting and enables the association to handle its business in an orderly way. Additionally, an agenda informs board members and the

public of topics that will be considered at the meeting. Agendas should indicate the date, time, and location of the meeting.

Meeting Space: A regular meeting place should be selected so the public will know where to attend. Exceptions should be made only when a large crowd is expected and more space may be needed. It is important to attempt to provide a space large enough and comfortable enough for all members. Working as a group is easier in a place that has adequate lighting, heating, and ventilation.

Meeting Rules: To maintain order, the association should adopt meeting rules based on accepted parliamentary procedure. The most common is Robert's Rules of Order. Parliamentary procedures help the association reach decisions that are agreeable to the majority of the members while protecting the rights of the minority. Parliamentary procedures also maintain order while allowing everyone to state their opinions.

Public Participation: In addition to notifying the public of meetings, encouraging citizen participation on community issues is good policy. Citizens are more likely to support decisions made by the association if the association listens to them. Soliciting public opinion and taking it into account when making decisions lets members of the public know their opinions are important. Also, hearing all sides of an issue contributes to better decision-making. There are many ways to solicit public opinion: taking statements at meetings, forming a citizens committee, using public opinion surveys, or just talking to people in the community. Whatever method is used, public participation builds trust between the community and the association.

Minutes: The association should keep minutes for all association meetings. Accurate minutes provide an unbiased record of the association's actions. If minutes can't be taken during the meeting, the meeting should be taped and minutes written later.

Minutes may be as detailed or as specific as the board wishes. However, at a minimum, minutes should include:

- The date, time and place of the meeting, as well as when the meeting ended;
- The absence or presence of each board member;
- An accurate description of each motion, the maker of the motion, the roll call vote on each motion, and whether the motion passed or failed;
- The names of the individuals who spoke before the association and a summary of their comments; and
- A statement of each item of business discussed.

Fairness: An association should try to be fair when making decisions, respecting equally the rights of all interested parties. Fairness in decision-making is commonly called “due process.” Due process includes the following:

- Giving adequate notice of meetings;
- Making available to all interested parties the information necessary to better understand the issues;
- Giving members and the public an opportunity to be heard at public meetings; and
- Making decisions based on the facts presented.

Section 2 – Conduct of Association and Board Members

Conflict of Interest: Conflict of interest occurs when a board member uses his or her position for personal benefit or financial gain or for the benefit or financial gain of a family member, business associate, or close friend. Having a conflict of interest is okay. If a conflict cannot be avoided, a board member should not vote on that particular item. Although nonprofit corporations are not covered under the state’s conflict of interest law, not to reveal a conflict of interest would be unfair and could discredit the individual and the board.

Open Discussions: Association meetings should be open to the public. The board should discuss its business in an open forum to permit all members to benefit from the discussion. When meeting on matters relating to state or federal funds, the meeting should be open to the general public, in accordance with any funding source requirements.

Section 3 – Role of the Chair

Presiding Over Meetings: The chairperson presides over meetings, maintains order, and keeps the discussion moving. The chair’s ability to preside over meetings is critical to the successful operation of the association.

Managing Debate: A good chairperson understands the issues and can bring the association to a decision. Discussion and debate can be managed effectively by constantly tying facts and issues together to reach agreement. Knowledge of parliamentary procedure is helpful.

Chapter 6 – Municipal Incorporation

Section 1 – Benefits and Drawbacks

Some communities may have the option of incorporating into a municipality. Incorporation comes with both benefits and drawbacks, and each community may have their own reasons for either incorporating, or for remaining unincorporated. Some elements to consider include:

- Community Assistance Program payments are substantially higher for municipalities than unincorporated communities, depending upon population.
- Incorporated communities may have access to other sources of state and federal funding which unincorporated municipalities do not have access to such as Payment-in-Lieu of Taxes and Shared Fisheries Taxes, among others.
- Incorporated municipalities have several statutory requirements which unincorporated communities do not have including Alaska Statute Title 29 powers and responsibilities.
- While incorporation does increase a community’s funding and powers in that community, it also comes with responsibilities and requirements which should be weighed out when considering such a change.
- Incorporated municipalities must comply with the provisions of the Alaska Open Meetings Act, and other state laws.

For more information about municipal powers and responsibilities, contact your Local Government Specialist (Appendix C).

Section 2 – First Class and Second Class Cities

The type of municipality most non-profit community associations might be interested in would primarily be either first class cities or second class cities. A few of the many differences between first and second class cities in Alaska include:

- A first class cities is a school district and thus has certain school-related responsibilities under state law, in accordance with Alaska Statute Title 14;
- First class cities have mandatory planning, platting, and land use powers, which second class cities may choose whether to opt into;
- First class cities may impose property taxes at a higher rate than second class cities;
- Election of and powers of the mayor are different for first and second class cities; and
- First class cities are required to perform an annual audit, while second class cities are only required to perform an audit if they have expended a certain amount of state and federal funds in the previous fiscal year.

To incorporate as a first class city, the community must have at least 400 permanent residents. A second class city does not have a population requirement, though at least 25 voters of the proposed city must sign an incorporation petition to begin the process.

Though the terms may be confusing, the title of “second class city” in no way signifies this type of municipality or the members of that community in a derogatory fashion. There are benefits to being a second class and a first class city, and each community must decide for themselves which is most appropriate for them.

Section 3 – Incorporation Process

Alaska Statute Chapter 29.05 provides for procedures of incorporation. Essentially, incorporation begins with a petition filed with the Local Boundary Commission, including specific information about the proposed city and the voters’ signatures. The Local Boundary Commission then instigates a review of the petition, followed by an investigation, hearing, and decision. Finally, the community holds an election on the question of incorporation. The incorporation process may be rejected at any step of this process.

Several documents pertaining to incorporation and further information is available at the Local Boundary Commission’s website at:

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission.aspx>.

Appendix A – Determination of Social Unit

3 AAC 180.110. Determination of social unit

(a) A community under AS 29.60.879 is a social unit if

(1) the persons residing in that area are a discrete and identifiable unit based on evidence of

(A) school enrollment;

(B) sources of employment;

(C) voter registration;

(D) permanency of dwelling units; or

(E) presence of a commercial establishment; and

(2) the geographic area in which the persons reside is proportionate in size to that number of persons; in determining whether this standard has been met, the department may consider the physical topography of the area, the use of the land, land ownership patterns, and other factors that could affect population density; an area with a population density of at least 14 persons per square mile is considered to have met this standard. (b) Individuals residing in one or more of the following places are not a social unit under AS 29.60.879:

(1) a place where public access or the right to reside at the location is restricted;

(2) a place that is contiguous to a city and is dependent upon the city to the extent that it exists only because the city exists;

(3) a place provided by an employer that is populated primarily by persons who are required to reside there as a condition of their employment.

Appendix B – Sample Bylaws

Bylaws should be as specific as possible especially concerning times, places, length of posting, and dates of meeting. Provided here is sample community association bylaw language.

Chapter One: Membership

Section 1. Members. All residents of this community who are 18 years of age or older are eligible to be members of this corporation. All members of the corporation may vote for and are eligible to be officers of the corporation.

Section 2. Annual Meeting. The membership shall elect a board of directors at the annual meeting to be held in the community at a time designated by the president of the corporation. The membership and board of directors shall be notified not less than 15 days before the date of the annual meeting. Notice shall be given by posting the scheduled date, time, and place of the meeting in at least three prominent public locations in the community. The annual meeting shall be open to the public.

Section 3. Regular Meetings. The board of directors shall meet regularly on the _____ of every month. These meetings shall be open to the public and shall be publicly noticed by posting the scheduled date, time, and place of the meeting in at least three prominent, public locations in the community.

Section 4. Special Meetings. Special meetings of the membership may be called by or at the request of the chair or any three directors or by a petition of ten percent of the registered members. These meetings shall be public and shall be publicly noticed at least 15 days in advance by posting the date, time, place, and purpose of the meeting in at least three prominent, public locations in the community. The members may not address any matter that is not stated in the public notice as the purpose of the meeting.

Section 5. Quorum. _____ Members of the board of directors constitute a quorum for the transaction of business at any meeting of the board. _____ Affirmative votes are required for any action taken by the board.

Section 6. Voting and Voting by Proxy. All members are entitled to vote and shall have the right to do so in person or by an agent authorized by a written proxy executed by the member filed with the secretary of the corporation. Such proxy shall be valid only if executed in favor of another member and no proxy shall be valid after the expiration of 11 months from the date of its execution.

Section 7. Order of Business. The order of business at all meetings of the members shall be as follows:

- A. Roll Call
- B. Proof of Notice of Meeting or Waiver of Notice
- C. Reading and Approval of Minutes of Preceding Meeting
- D. Reports of Directors
- E. Reports of Committees
- F. Unfinished Business
- G. New Business
- H. Election of Directors (if applicable)
- I. Adjournment

Chapter Two: Board of Directors

Section 1. Directors. The number of directors shall be seven. Directors shall be members of the corporation and shall act on good faith charge of the members of the corporation.

Section 2. Term of Office. The term of office for each director shall be for three years from the time of his or her election at the annual meeting until his or her successor has been elected and qualified. All officers (president, vice president, secretary and treasurer) are elected by and from the directors for one year terms. To allow for terms to expire each year, initially the directors' terms shall be as follows:

1. Director Three Years Term Expires 20 __
2. Director Three Years Term Expires 20 __
3. Director Three Years Term Expires 20 __
4. Director Three Years Term Expires 20 __
5. Director Three Years Term Expires 20 __
6. Director Three Years Term Expires 20 __
7. Director Three Years Term Expires 20 __

The initial seats shall be assigned by drawing straws.

Section 3. Vacancies. Except as otherwise provided, any vacancies occurring in the board of directors, whether by resignation or removal, shall be filled by the majority vote of the remaining directors. In the event of the simultaneous resignation and/or removal of three or more directors, the membership shall hold new elections to fill those vacant positions on the board. Those directors so elected shall serve for the remaining portion of the unexpired term.

Section 4. Removal of Directors. Any director may be removed by a majority of the members who vote on the issue providing that just cause has been established and whenever, in their judgment, the best interests of the corporation would be served by doing so.

Chapter Three: Election Rules

Section 1. Election Notice. A notice of vacancies for expired terms of office for board of directors and a notice that an election shall be held shall be prepared and posted by the secretary and shall contain the following:

1. Whether the election is general or special
2. Date of the election
3. Location of the meeting where the election will be held
4. Time of election meeting
5. Seats or office to be filled
6. A statement describing voter qualifications

Section 2. Nominations. Nominations for board of directors shall be open nomination from the floor at the annual membership meeting.

Section 3. Ballots. Ballots shall be on plain white paper with a space for writing in the nominee's name and a blank square for marking a vote next to the nominee's name.

Section 4. Voting Procedures. Voting procedures are as follows:

1. The secretary shall check for the member's name on the master list of members. If the member's name appears on the master membership list, that person is deemed qualified to vote.
2. Qualified voters shall give his/her name to the secretary and then write it on the blank list or membership roster.
3. Voters shall mark the ballot next to the name of the nominees they wish to vote for, as provided in Section 3: Ballots.
4. Voting shall be by secret ballot. Ballots shall be marked in pen. After the ballot is marked, the voter shall fold it and deposit it in the ballot box.

Section 5. Tallying Procedures. Before counting the ballots, the secretary shall check to make sure that the number of members' names signed on the membership roster is equal to the number of ballots in the ballot box. The ballot box shall be opened in public. The ballots shall be tallied by the secretary or a committee of judges selected from the membership and recorded by the treasurer.

Section 6. Certifying the Election. The election shall be certified by the president and vice president of the corporation. Nominees receiving the greatest number of votes cast shall be considered elected directors. For example, if two seats are to be filled, the top two vote getters are the newly elected directors. The secretary shall post a copy of the report of election results in three public places the day after the election results are known. The notice shall include:

1. That the election has been certified by the president or vice president
2. The final results of the election
3. A list of the names of the new directors

Chapter Four: Officers

Section 1. Selection of Officers. The board of directors shall elect from among themselves the following officers: president, vice president, secretary, and treasurer. This shall be the first order of business of the first meeting of the board of directors following the elections of directors at the annual meeting.

Section 2. President. The president is the principal executive officer of the corporation and shall, in general, supervise and control all the business and affairs of the corporation. The president shall preside at all meetings of the board of directors. The president shall sign contracts or other instruments which the board of directors has authorized to be executed.

Section 3. Vice President. In the absence of the president, or in the event of an inability or refusal to act, the vice president shall perform the duties of the president, and when so acting shall have all the powers of and be subject to all the restrictions upon the president.

Section 4. Secretary and Treasurer.

The secretary shall:

1. Keep a journal of proceedings of the corporation, record all votes at meetings of the corporation.
2. Provide for the standardization and maintenance of all forms, books, and records of the corporation.
3. Keep the corporate seal and affix the seal to all contracts and instruments authorized to be executed by the corporation.

The treasurer shall:

1. Manage, deposit, and invest all funds of the corporation as directed by the board of directors.
2. Disburse money for all corporate obligations.
3. Keep regular books or accounts of all corporate financial transactions, and provide for financial reports or audits as directed by the board of directors.

Chapter Five: Contracts, Checks, Deposits, and Fund Finances

Section 1. Contracts. The board of directors, at the direction of the membership, may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances as authorized by the board of directors.

Section 2. Checks, Draft Signing Authority. All checks, drafts, or orders for payment of money, notes, or other evidence of indebtedness issued in the name of the corporation and in such a manner as shall be determined from time to time by the board of directors shall be signed by the treasurer and shall be countersigned by the president or vice president of the corporation.

Section 3. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board of directors may select.

Section 4. Gifts. The board of directors may accept on behalf of the corporation any contribution, gift, bequest, or device for any special purpose for the corporation.

Section 5. Grants. No grant monies from a state, federal, or other governmental entity shall be applied for without the majority vote approving such application at a meeting of the members of the corporation.

Section 6. Dues. Dues may or may not be assessed by the board of directors, but may not exceed five dollars per member per year.

Section 7. Fiscal Year. The fiscal year of the corporation shall begin on the first day of July and end on the last day of June the following year.

Section 8. Budget. A proposed budget of all revenues and expenditures for the year shall be agreed upon by a vote of the board prior to the beginning of each fiscal year. Deviations from the budget must be approved by a majority of the board at a special meeting.

Chapter Six: Books and Records

The corporation shall keep correct and complete records of financial transactions and accounts, and shall also keep minutes of the proceedings of its board of directors. All books and records of the corporation may be inspected by any member, or his/her agent or attorney, for any purpose at any reasonable time. If reproduced copies are requested, the cost of reproduction shall be charged to the requesting party.

Chapter Seven: Amendment to Bylaws

The bylaws may be amended by an affirmative vote of two-thirds of the members voting at an annual meeting. The text of the proposed amendment must be included in the public notice announcing the time, date, and place of the annual meeting.

Chapter Eight: Adoption of Bylaws

This is to certify that the above bylaws were adopted by the board of directors at a meeting on the _____ day of _____, 20____.

President

Secretary

Appendix C – DCRA Regional Office Directory

Department of Commerce, Community, and Economic Development
Division of Community and Regional Affairs

Anchorage

550 W 7th Ave, 16th Floor
Anchorage, AK 99501
Toll Free: 877-769-4614
Phone: 907-269-4501
Fax: 907-269-4563

Juneau

State Office Building 9th Floor
PO Box 110809
Juneau, AK 99811
Phone: 907-465-4751
Fax: 907-465-3767

Fairbanks

455 3rd Avenue, Suite 140
Fairbanks, AK 99701
Phone: 907-451-2749
Fax: 907-451-2742

Bethel

PO Box 348
Bethel, AK 99559
Phone: 907-543-3475
Fax: 907-543-4152

Nome

PO Box 1769
Nome, AK 99762
Phone: 907-443-5457/5459
Fax: 907-443-3596

Kotzebue

PO Box 350
Kotzebue, AK 99752
Phone: 907-442-3696
Fax: 907-442-2402

Dillingham

PO Box 790
Dillingham, AK 99576
Phone: 907-842-5135
Fax: 907-842-5140

Appendix D – Helpful Websites

Below are specific sites for forms or other information which may be helpful to a nonprofit community association (nonprofit corporation).

State of Alaska Division of Corporations, Business and Professional Licensing:

- Articles of Incorporation, Articles of Amendment, Articles of Dissolution, Resolution to Dissolve, Notice of Change of Office or Directors, Biennial Report: <https://www.commerce.alaska.gov/web/cbpl/Corporations.aspx>
- Alaska Employer Registration: labor.state.ak.us/estax/forms/AER.pdf

IRS:

- IRS Form SS-4: Application for Employer Identification Number: <http://www.irs.gov/pub/irs-pdf/fs4.pdf>.
- IRS Forms and Publications: <http://www.irs.gov/formspubs/index.html>

Division of Community and Regional Affairs:

- DCRA Website: <https://www.commerce.alaska.gov/web/dcra/>
- Local Government Assistance: <https://www.commerce.alaska.gov/web/dcra/LocalGovernmentAssistance.aspx>
- Local Government Resource Desk: <https://www.commerce.alaska.gov/web/dcra/LocalGovernmentResourceDesk.aspx>
- Community Assistance Program: <https://www.commerce.alaska.gov/web/dcra/CommunityAidAccountability/CommunityRevenueSharing.aspx>
- Community Aide and Assistance Section: <https://www.commerce.alaska.gov/web/dcra/CommunityAidAccountability.aspx>
- Community Database Online (COD): <https://dcra-cdo-dcced.opendata.arcgis.com/>

Other:

- Alaska Statutes and Administrative Code: <http://touchngo.com/lglcntr/akstats/statutes.htm>