



## FAQ: ABCs of Nonprofit Membership Corporations

Does your nonprofit corporation have members? If so, do you know who they are and whether they get to vote on key matters affecting your organization?

Because the term “member” is often used loosely, it is easy for confusion to arise about whether a nonprofit has members for state nonprofit corporation law purposes, who the members are and what rights they have. In some cases, this confusion may lead to disputes about whether particular individuals are members and thus get to vote on certain corporate actions. In other cases, it may result in failing to obtain member approval of corporate actions, which can invalidate them or prevent them from occurring.

In the past many states, including Massachusetts, required all nonprofit corporations to have members. Over time, most states have done away with this requirement and now permit, but do not require, nonprofits to have members. The trend today is for nonprofits not to have members but instead to be governed solely by a self-perpetuating board that delegates day-to-day operations to the CEO or Executive Director.

Some nonprofits (especially older ones) that intend to be governed solely by a board of directors may have voting members and not realize it. Other nonprofits – such as museums and public radio and television stations – may call donors “members” but not give them voting rights. Yet other nonprofits – such as trade professional associations, social clubs and advocacy groups – are formed to serve and be governed by members and therefore choose to have voting members as well as a board of directors.

### In this FAQ, we’ll explain:

- What it means for a nonprofit corporation to have voting members.
- How the role of voting members differs from that of the board of directors.
- What rights voting members usually have.
- How to tell whether your nonprofit has voting members.
- How voting members differ from other supporters the nonprofit may call “members.”
- What can happen if your nonprofit has voting members but has not been holding members’ meetings.
- Other key points to be aware of if your nonprofit has voting members.

### 1. How is a nonprofit corporation governed?

All nonprofit corporations have boards of directors (sometimes called boards of trustees). Many nonprofit corporation boards are self-perpetuating – in other words, existing board members select new board members when there is a vacancy. However, some nonprofits have members who get to vote on selecting and removing board



members and on other major corporate actions, similar to the voting rights shareholders have in a for-profit corporation

## 2. What does the board of directors do?

The board oversees the nonprofit's activities and assets. It selects officers and, in some cases, an executive director or CEO, and delegates authority to those people to manage the nonprofit's day-to-day operations. Other key responsibilities of the board include:

- Determining the organization's mission;
- Setting big picture organizational goals and making sure the organization is meeting them;
- Ensuring the organization has adequate resources to further its mission and goals (including raising funds for the organization);
- Protecting the organization's assets;
- Raising the organization's profile in the community; and
- Ensuring the organization's legal and ethical integrity and maintaining accountability.

## 3. What do voting members do?

Under many state nonprofit corporation laws, voting members have the right to vote on important corporate actions such as:

- Electing and removing directors
- Amending the articles and bylaws
- Approving the sale or transfer of all or substantially all of the organization's assets
- Approving a merger
- Approving a voluntary dissolution of the organization

## 4. What other rights do members have?

In addition to the right to vote on certain corporate actions, voting members usually also have the right to review certain information about the corporation such as a list of the organization's members, minutes of members' and directors' meetings and, in some cases, the organization's financial statements. In certain cases, voting members may have the right to sue to enforce their membership rights.

## 5. How do we know if our nonprofit corporation has voting members?

Check the original articles of incorporation (called articles of organization in Massachusetts) and any amendments to them. State nonprofit corporation law generally requires the articles to state whether the nonprofit has members with legal voting rights. It's also a good idea to review all versions of the bylaws to determine what they have said about members and members' rights at various points in time.



**6. Our nonprofit has members who pay a membership fee and receive a newsletter and discounts on admission to the organization's events. Does that mean they get to vote to elect directors and on other key corporate actions?**

Not necessarily. Many nonprofits call their donors "members" and give them benefits such as discounts on admission. Those "members" will not have the right to vote on important corporate actions unless they have the legal rights of voting members under state nonprofit corporation law. Generally, under state nonprofit corporation law, the nonprofit's articles of incorporation must specify that the nonprofit has members in order for those designated as members to have legal voting rights. The bylaws usually spell out the qualifications for membership and members' voting rights in more detail.

**7. What should our nonprofit keep in mind when setting qualifications for membership?**

If your organization has voting members, it's important to detail the criteria for membership clearly in the articles or bylaws and to make membership criteria specific and measurable so that it is easy to understand who is and who is not a member. Sometimes organizations define membership very broadly, such as all individuals who live in a particular neighborhood or who have received services from the organization. In such cases, it can be difficult to identify all the members, notify them of an upcoming vote on a proposed corporate action and obtain the votes of the number of members needed to approve the proposed action. (For example, in Massachusetts a merger of two nonprofit corporations requires approval of two-thirds of both organizations' members.) It is preferable instead to require members to take affirmative steps to join – such as by paying dues and providing their names and contact information to the organization on an annual basis – so that the organization can keep track of them and send them notices of member meetings and, if applicable, ballots.

**8. Our nonprofit's articles of incorporation state that the corporation has members. However, the bylaws don't mention members and we haven't been holding members' meetings. Do we have members?**

As noted above, many states' nonprofit corporation laws used to require all nonprofits to have members with legal voting rights. Today only a few states do. Older nonprofits may have amended their bylaws to remove references to members and stopped acting as if they have members, but may have overlooked the fact that they needed to amend their articles to do away with members. Technically, these organizations still have members.

**9. What can happen if our nonprofit has members but hasn't been holding members' meetings?**

Nonprofits that fail to hold members' meetings and obtain member votes on key matters, such as electing directors, amending articles and bylaws and other major





corporate actions risk having those actions invalidated. For example, if members are required to elect the board of directors but do not do so (instead, the board elects directors), the directors may be considered improperly seated and all actions approved by the board may be challenged as invalid. Often, nonprofits are not aware of the issue until they want to take a major corporate action – such as merging, disposing of a significant portion of their assets or dissolving – when state authorities require them to get member approval of the action.

#### 10. Can we combine members' meetings and board of directors meetings?

No. The two groups – members and the board of directors – are separate bodies. Therefore, members' meetings must be held separately from board meetings, even if the members and the directors are the same individuals. However, a members' meeting may be followed immediately by a board meeting and vice versa.

#### 11. What should we do if our nonprofit no longer wants to have voting members?

If the organization knows who the members are (for example, the board of directors and the members are the same individuals), it should hold a meeting or other vote of the members in accordance with state nonprofit corporation law where members vote to amend its articles of incorporation (and bylaws) to remove references to members so that the organization will be governed solely by its board of directors. The meeting or vote must be noticed and conducted in accordance with state nonprofit corporation law and with the organization's bylaws.

State nonprofit corporation law often provides a procedure for a nonprofit to petition a state official (often the secretary of state) to allow it to amend its articles if it doesn't know who its members are (for example, the articles describe the members in a very general way – such as residents of a particular neighborhood). Often, these procedures will include attempting to identify and contact members and giving notice of the proposed vote to them through publication in a newspaper. In this process, it is important to coordinate with the appropriate state official and to document what steps your nonprofit took to identify members and provide them with notice. It is generally a good idea for a nonprofit in this situation to work with an attorney who is familiar with state nonprofit corporation law to be sure that it's following these procedures correctly and to "clean up" corporate actions taken without the required member votes.

After the members vote to amend the articles, the articles of amendment should be filed with the secretary of state or other appropriate state official.

#### Key Takeaways

- Check your nonprofit's articles of incorporation and bylaws to determine whether it has voting members.
- If it does:





- o Be sure the criteria for membership described in your articles and bylaws are clear;
- o Understand members' rights under your state's nonprofit corporation law and your nonprofit's articles and bylaws; and
- o Be sure your organization is holding members' meetings and getting the required member votes.
- If your nonprofit no longer wants to have members, convene a members' meeting to amend the articles of incorporation and bylaws to remove references to members and file the amended articles with the appropriate state official.

### Additional Resources

For more information on this topic, please listen to our podcast [Articles, Bylaws and Corporate Law: The ABCs of Nonprofit Membership Corporations](#).

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