

**ANNOTATED MODEL
ARTICLES OF INCORPORATION
for a Riverkeeper in Florida**

Prepared by
Philip A. Moffat, Student
University of Florida Conservation Clinic¹
Fredric G. Levin College of Law

Thomas T. Ankersen, Clinic Director

INTRODUCTION

This is a model set of Articles of Incorporation for a Riverkeeper organization in Florida. They were developed and annotated by a student for illustrative and discussion purposes only. These articles are not meant to be legal instruments. Before adopting Articles of Incorporation or any other legal instrument, the actual incorporators should consult a qualified and licensed attorney. Articles must be filed with the Florida Department of State, Division of Corporations. Unless a delayed effective date is specified, the corporate existence begins when the Articles are filed or on a date specified in the Articles, provided the date specified does not precede the date of filing by more than five days.²

Articles presented here incorporate the requirements of Chapter 617, Florida Statutes, and I.R.C. §501(c)(3), the provision of the Internal Revenue Code that provides tax-exempt status to qualified organizations. They are based on a review of the articles of several non-governmental organizations, model articles provided by the Division of Corporations, and the writings of several legal commentators. Many commentators, including Professor Michael W. Gordon who authored the Florida Corporations Manual, encourage the use of briefly drafted Articles of Incorporation that devolve as much authority as possible to the corporate bylaws. This approach promotes flexibility since bylaws and amendments to bylaws need not be filed with the Department of State, Division of Corporations.³

¹ The University of Florida Conservation Clinic is an interdisciplinary legal clinic housed at the College of Law within the Center for Governmental Responsibility. Students from the College of Law and other disciplines within the University of Florida work together to provide assistance in solving environmental and land use problems. All clinic students work under the direction of the clinic director, Tom Ankersen, a licensed legal practitioner within the State of Florida. The clinic utilizes applied education to provide legal assistance to conservation projects of importance in Florida and elsewhere.

² See FLA. STAT. § 617.0203(1).

³ See Michael W. Gordon, FLORIDA CORPORATIONS MANUAL, VOL. 1, ARTICLES OF INCORPORATION §6.05 (3rd ed. 1992).

PREAMBLE

Articles of Incorporation typically include preamble language similar to the following:

The undersigned citizens of the United States, desiring to form a not for profit corporation under the Florida Not For Profit Corporation Act, Chapter 617, Florida Statutes, certify and acknowledge the following:⁴

ARTICLE I. NAME

The name⁵ of the Corporation Not for Profit shall be the _____, **Inc.** (“Corporation”).

Note: The Florida Statutes require the inclusion of the not for profit corporation’s name in the Articles of Incorporation.⁶ Furthermore, the corporate name must include language indicating that the organization is a corporation.⁷ For example, “Corporation,” “Incorporated,” or the abbreviations “Inc.” or “Corp.” meet the requirements. However, the word “Company” or the abbreviation “Co.” cannot be used.⁸ These have been reserved for profit corporations organized under Florida Statutes, Chapter 607.⁹

Prior to filing the Articles, the incorporators should apply for a reserved name.¹⁰ The application must provide the name and address of the applicant and the name proposed for reservation.¹¹ If the name is available, the Department of State will reserve the name for 120 days.¹²

ARTICLE II. DURATION

⁴ The sample Articles of Incorporation provided by the Division of Corporations of the Florida Department of State provides similar language.

⁵ To use the “keeper” name, an organization must apply for a license from the National Alliance of River, Sound and Baykeepers.

⁶ See FLA. STAT. § 617.0202(1)(a).

⁷ See *Id.* at § 617.0401(1)(a).

⁸ See *Id.*

⁹ See Guidance Information available on the Florida Department of State, Division of Corporations website <http://www.dos.state.fl.us/doc/corp_rol.html>.

¹⁰ See FLA. STAT. § 617.0402(1).

¹¹ See *Id.*

¹² See *Id.*

The duration of the Corporation shall be perpetual.

Note: Florida has a presumption that the duration of a corporation is perpetual.¹³ This provision is not required by the Florida Statutes, but it is usually included.

ARTICLE III. PRINCIPAL OFFICE & MAILING ADDRESS

The principal office and mailing address of the Corporation shall be

Note: Florida Statutes require a principal office and mailing address.¹⁴

ARTICLE IV. PURPOSE

The Corporation is organized exclusively for charitable, scientific and educational purposes within the meaning of § 501(c)(3) of the Internal Revenue Code, as may be amended.

Note: Florida Statutes require the inclusion of a corporation's purpose in the Articles of Incorporation.¹⁵ This generic language meets the minimum requirements of I.R.C. §501(c)(3).¹⁶ The language parallels that considered acceptable.¹⁷ The inclusion of "scientific purposes" is appropriate since Riverkeepers may engage in monitoring or other such activities and provide the results of these to the public.

A Riverkeeper may choose to include more specific purposes tailored to its interests. For example, a Riverkeeper may choose to provide resources to other § 501(c)(3) organizations throughout the watershed to assist with monitoring activities, etc. in areas in which the Riverkeeper may not readily visit. Appropriate language in the Purposes section might include the following, "The Corporations is also organized for the purposes of making contributions or donations to other § 501(c)(3) organizations within the meaning of the Internal

¹³ See Michael W. Gordon, FLORIDA CORPORATIONS MANUAL, VOL.1, ARTICLES OF INCORPORATION §6.05 (3RD ed. 1992).

¹⁴ See FLA. STAT. § 617.0202(1)(b).

¹⁵ See FLA. STAT. § 617.0202(1)(c).

¹⁶ See Treas. Reg. § 1.501(c)(3)-1(b).

¹⁷ See *Id.*

Revenue Code, as may be amended and exempt from taxation under § 501(a) of the Internal Revenue Code, as may be amended." Any purposes expressed must conform to the requirements of I.R.C. § 501(c)(3) to receive tax exempt status.

ARTICLE V. ELECTION OF CORPORATE DIRECTORS

The directors of the Corporation shall be elected in accordance with methods and qualifications specified in the bylaws of the Corporation. In no event, shall the number of directors be fewer than three.

Note: Florida Statutes do not require the inclusion of the exact method of election in the Articles of Incorporation.¹⁸ If not specified in the Articles of Incorporation, the method must be specified in a corporation's bylaws, and so stated in the articles.¹⁹ Incorporators should include the method in the bylaws, keeping the articles brief in order to maintain organizational flexibility.²⁰ A Riverkeeper organization may wish to adopt a method of selection that ensures geographic distribution across the watershed and/or which includes representation by specific organizations or interest groups. Furthermore, Chapter 617, Florida Statutes allow no less than three members of the Board of Directors at anytime.²¹ The Board of Directors must be representative of the public interest should the corporation choose to litigate as a Public Interest Law Firm.²²

ARTICLE VI. POWERS

¹⁸ See FLA. STAT. § 617.0202(1)(d).

¹⁹ See *Id.*

²⁰ See Michael W. Gordon, FLORIDA CORPORATIONS MANUAL, VOL. 1, ARTICLES OF INCORPORATION §6.05 (3rd ed. 1992).

²¹ See FLA. STAT. § 617.0803(1).

²² See Rev. Proc. 92-59, 1992-2 C.B. 411-12. For a good description of Public Interest Law Firms, see Philip Moffat and Thomas T. Ankersen, Charitable 501(c)(3) Tax-Exempt Status for Environmental Organizations: Issues and Requirements (April 1999) (unpublished manuscript on file with author).

The powers of the Corporation shall be provided in the bylaws of the Corporation in accordance with Chapter 617, Florida Statutes with the following limitations within the meaning of §501(c)(3) of the Internal Revenue Code, as may amended:

1. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributed to its members, directors, officers or other private interests. However, the Corporation shall be authorized and empowered to pay a reasonable flat salary for services rendered by its employees and to make payments and other distributions in furtherance of the purposes set forth in Article IV.
2. Only an insubstantial amount of the activities of the Corporation shall be in furtherance of a purpose not set forth in Article IV.
3. Only an insubstantial amount of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, within the meaning of §501(c)(3) of the Internal Revenue Code, as may be amended, unless the Corporation elects the provisions of § 501(h) of the Internal Revenue Code, as may amended.
4. In no event shall the Corporation have the power to participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of, or in opposition to, any candidate for public office, all within the meaning of § 501(c)(3) of the Internal Revenue Code, as may be amended.
5. In the event the Corporation chooses to litigate, using its own staff attorneys on behalf of its members or other clients, the Corporation shall comply with the guidelines provided within Revenue Procedure 92-59, 1992-2 C.B. 411-12, as may be amended, superseded or modified. The bylaws of the Corporation shall adopt these provisions accordingly.

Note: Florida Statutes allow the powers to be limited in any manner not inconsistent with law.²³ However, in order to gain tax-exempt status the powers must be limited in accordance with I.R.C. § 501(c)(3) and the accompanying regulations and guidelines in order to satisfy the organizational test.²⁴ Beyond the limitations required to satisfy the I.R.S., and in the absence of some unique considerations, there does not appear to be any reason to otherwise limit the powers of a Florida Riverkeeper organization.

ARTICLE VII. MEETINGS

1.) After incorporation, the appropriate members of the Corporation shall hold an organizational meeting in accordance with Chapter 617, Florida Statutes, as amended.

²³ See FLA. STAT. § 617.0202(1)(e).

²⁴ See I.R.C. § 501(c)(3); Treas. Reg. § 1.501(c)(3)-1(b)(1)(b)(ii); Rev. Proc. 92-59, 1992-2 C.B. 411-12.

2.) The board of directors of the Corporation may participate in a regular or special meeting by, or conduct the meeting through, the use of any means of communication which allows all directors participating to simultaneously hear one another. A director participating in such a meeting is deemed present at the meeting. In the alternative, the board of directors may take actions through signed e-mail communications provided all board members agree.

Note: The organizational meeting is a requirement of Florida law although it is not required to be specified within the Articles of Incorporation.²⁵ If the board of directors is named within the Articles, upon a majority vote, they meet to appoint officers, adopt bylaws and conduct other necessary business.²⁶ If the board of directors is not named in the Articles, the Incorporators meet upon a majority vote to elect a board of directors and complete the organization of the corporation or they will meet to elect a board who will complete the organization themselves.²⁷ Florida Statutes require at least three days notice of the time and place of the meeting.²⁸ However, Florida Statutes provide for a paper organizational meeting should the Incorporators or board members (as determined above) agree in a written consent signed by all.²⁹ Inclusion of the mandatory meeting provision in these Articles ensures that a corporation meets the statutory requirements during its establishment. Furthermore, Professor Gordon suggests that corporations hold these initial organizational meetings because it suggests to a court in some future conflict, that traditional corporate “norms” have been followed.³⁰ This is particularly important when the corporate fiction is being challenged.³¹

The provision for communication in subsequent meetings is drawn directly from the Florida Statutes and is included to provide flexibility in the directors' meetings and communications. Florida Statutes state, “unless the articles of incorporation or the bylaws provide otherwise, the board of directors may . .

²⁵ See FLA. STAT. § 617.0205(1).

²⁶ See *Id.*

²⁷ See *Id.* Successful challenges to the corporate fiction may result in personal liability to officers and directors.

²⁸ See FLA. STAT. § 617.0205(3).

²⁹ See *Id.*

³⁰ See Michael W. Gordon, FLORIDA CORPORATIONS MANUAL, VOL. 1, ARTICLES OF INCORPORATION § 9.08 (3rd ed. 1992).

³¹ See *Id.*

. conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting.”³² Florida corporations law has not kept pace with recent technological advances. It does not address the permissibility of simultaneous communications without hearing (e.g., on-line chat). Nor do it address whether e-mail “meetings” which are neither simultaneous or capable of being heard are permissible.

Florida Statutes do, however, allow actions that are “required or permitted . . . to be taken at a board of directors meeting . . . [to] be taken without a meeting if the action is taken by *all* the members of the board.”³³ Furthermore, “the action must be evidenced by one or more written consents describing the action taken and signed by each director.”³⁴ The signed consent has the effect of a meeting vote and can be effective as early as the last signature.³⁵ It is possible that e-mail communication may be considered a signed and written consent by a board member if the communication is sufficiently formalized and “signed.”³⁶ One difficulty with sole reliance on these types of “meetings” is the potential for challenge to the corporate fiction.³⁷ As Professor Gordon indicates, reliance on traditional corporate “norms” may protect the corporate fiction should it be challenged.³⁸

ARTICLE VIII. INCORPORATORS

The names and addresses of the Incorporators are:

³² See FLA. STAT. § 617.0820(4).

³³ See FLA. STAT. § 617.0821 (emphasis added).

³⁴ See *Id.*

³⁵ See *Id.* at (2)-(3).

³⁶ For example, most e-mail messages include the address of the sender and other pertinent information. Additionally, should the e-mail include the corporate letterhead, it may be considered “signed.” For example, courts have found letterhead to be a sufficient signature to withstand Statute of Frauds challenges.

³⁷ See Michael W. Gordon, FLORIDA CORPORATIONS MANUAL, VOL. 1, ARTICLES OF INCORPORATION § 9.08 (3rd ed. 1992).

³⁸ See *Id.*

Note: Florida Statutes require the inclusion of the names and addresses of the incorporators in the Articles of Incorporation.³⁹ The incorporators are the persons who apply for corporate status for their organization. Frequently, they become the Board of Directors. Often they turn the corporation over to an appointed Board of Directors after incorporation.

ARTICLE IX. DISSOLUTION

Upon dissolution and upon payment or adequate discharge of all liabilities and obligations, the assets of the Corporation shall be distributed for one or more exempt purposes within the meaning of § 501(c)(3) of the Internal Revenue Code, as amended, or shall be distributed to a State or the Federal government for a public purpose.

Note: This provision is required by Treas. Reg. § 1.501(c)(3)-1(b)(4) in order to pass the organizational test for tax-exempt status. It is not required by the Florida Statutes. However, if this is not provided, the I.R.S. will look to applicable to State law for the proper asset distribution.⁴⁰ Florida Statutes allow for the distribution of the assets to members of a not-for-profit corporation upon dissolution.⁴¹ Florida Statutes only require asset distribution to other “charitable” organizations if the assets are received and held subject to limitations preventing their use in ways unrelated to the “charitable” purpose.⁴² Since it is difficult to ensure that all gifts and donations received are appropriately restricted by the donor, it is easier to provide for asset distribution in accordance with I.R.C. § 501(c)(3) within the Articles of Incorporation.

ARTICLE X. REGISTERED AGENT AND OFFICE

³⁹ See FLA. STAT. § 617.0202(1)(g).

⁴⁰ See Treas. Reg. § 1.501(c)(3)-1(b)(4).

⁴¹ See FLA. STAT. § 617.1406(d).

⁴² See *Id.* at (c).

The Registered Agent and Registered Office of the Corporation are

Note: Florida Statutes require the inclusion of the name and address of a registered agent.⁴³ Florida Statutes require that the office be within Florida.⁴⁴ The registered agent may be either: 1.) an individual who resides in the State and whose business office is identical with the registered office; or 2.) a corporation authorized to transact business or conduct its affairs in the State and whose business office is identical with the registered office.⁴⁵ The registered agent is responsible for receiving service of process in the event the corporation is sued.⁴⁶ For this reason, many corporations designate their attorney as the registered agent. The agent or a designated representative is also responsible for the production of vital business records upon lawful request as specified in Chapter 617, Florida Statutes.⁴⁷

ACCEPTANCE BY REGISTERED AGENT

Having been appointed the Registered Agent of the _____, Inc., and to accept service of process for the above stated corporation at the place designated in this certificate, I hereby accept the appointment and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Dated this ___ day of _____ 19__.

By : _____

⁴³ See FLA. STAT. § 617.0202(1)(f).

⁴⁴ See FLA. STAT. § 617.0501(1).

⁴⁵ See *Id.*

⁴⁶ See *Id.* at (3).

⁴⁷ See FLA. STAT. § 617.0503(2).

Note: Florida Statutes require that the registered agent simultaneously accept the designation when designated.⁴⁸ Furthermore, the agent must state that he/she is familiar with and accepts the obligations of the designation.⁴⁹

⁴⁸ *See* FLA. STAT. § 617.0501(3).

⁴⁹ *See Id.*