

AUXILIARY ORGANIZATIONS ASSOCIATION

EXPRESS OR IMPLIED REQUIREMENTS

Auxiliary Organizations as Tax-Exempt Nonprofit Public Benefit Corporations

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A comprehensive matrix of the major substantive statutory and regulatory requirements for auxiliary organization structured as nonprofit public benefit corporations and as tax-exempt entities. Included are cross-walk references to related requirements of auxiliary organizations found in the Education Code and the California Code of Regulations, Title 5, with commentary footnotes.

EXPRESS OR IMPLIED AUXILIARY ORGANIZATION REQUIREMENTS

(As Tax-Exempt Nonprofit Public Benefit Corporations)

Major Requirements Typology and Nature	Corporations Code	Government Code	Other
A. FORMATION (& any changes)			
<i>Articles of Incorporation (file with Secretary of State)</i>	§5120		
1. Mandatory Provisions:	§5130		
a. Corporation Name	§5130		
b. Specific Type of Nonprofit (public benefit)	§5130		
c. Specific Supporting Organization (SO) category ¹ Sought			IRC §509(a)
d. Purpose of Corporation	§5130		
e. Name of Initial Agent for Service of Process	§5130		
2. Optional Provisions (recommended for inclusion in Bylaws – See below)	§§5132(c) & 5151(c)(1)		
3. Provisions to Qualify for Tax-Exempt Status (appropriate public or charitable purpose; dissolution assets dedication; political campaigning or excessive lobbying restrictions)			
a. Federal			IRC §501(c)(3)
b. California			R&T C §§214 & 23701d
4. Provisions Relating to Auxiliary Organizations (cross-walk requirements)			
a. Specific dissolution of assets dedication approvals			Title 5 §42600(b)
b. Political contributions restriction; exceptions			Edu C §89300 & CCR Title 5 §42403(c)(1)
B. OPERATIONS			
<i>Bylaws</i>	§5150		
1. Default Provisions : unless otherwise stated in Articles or Bylaws	§§5151-5153		
a. Bylaw amendments	§5151(e)		
b. Calling Board or Committee Meetings	§5211(a)(1)		
c. Notice of Meetings (superseded By Ed Code -- see Other)	§5211(a)(2)		Edu C §§89305-7.4 ² & 89920-28
d. Director ³ Waiver of Meeting Notice	§5211(a)(3)		
e. Meeting Adjournment	§5211(a)(4)		

¹ Not mandatory, but will strengthen and clarify status of auxiliary organization in support of campus, and settle Supporting Organization type under IRC.

² Applicable only to Student Body Organizations.

³ The term “Director” refers to a governing body member.

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Major Requirements Typology and Nature	Corporations Code	Government Code	Other
B. OPERATIONS (continued)			
<i>Bylaws (continued)</i>			
1. Default Provisions : “unless otherwise stated in Articles or Bylaws” (continued)			
g. Meetings using telecommunication devices	§5211(a)(6)		
h. Quorum (majority of directors present)	§5211(a)(7)		
i. Decisions by Board (subject to function, program & budget oversight – see Other)	§5211(a)(8)		Edu C §§89300 & 89900(c), CCR Title 5 §42402 & Ex O 1059
j. Board Delegation (with limitations)	§521(c)		
k. Officers (Secretary, CFO/Treasurer may not currently serve as Chair)	§5213(a)		
l. Election of Officers (only by & at pleasure of Board)	§5213(b)		
m. Officer Terms	§5213(c)		
n. Board Member (Director) Terms	§5220(a)-(b)		
o. Removal of Directors	None		
p. Removal of Designated Directors (by designator)	§5222(f)		
q. Director Vacancies	§5224(a)		
r. Organization without members	§5310(a)		
s. Board approved Annual Report sent by electronic transmission	§6321(a)		
t. Statements of certain transactions sent by electronic transmission	§6322(a)		
2. Other Related Provisions			
a. Director Proxy Voting (Prohibited)	§5211(c)		
b. Nonvoting Directors (Prohibited)	§5211(c)		
c. Officer or “Judicial Council” veto of Board action (Prohibited)	§5210		
3. Provisions Relating to Auxiliary Organizations (cross-walk requirements)			
a. Board composition (size & membership categories)			Edu C §89903(a) & CCR Title 5 §42602
b. Frequency of Board Meetings (at least one each fiscal year)	§5211(a)(2)		Edu C §89903(b) & CCR Title 5 §42602
<i>Initial Filings</i>			
1. Registration with AG Registry of Charitable Trusts (RCT) (Form CT-1)		§12585	CCR Title 11 §300
2. Statement by Domestic Nonprofit Corporation (SoS Form SI-100)	§6210(a)		SI-100 Instructions
3. Federal (IRS Form 1023 Application)			IRC §508 & IRS Publication 557
4. California (FTB Form 3500A Application) + IRS Determination Letter copy			R&T C §§23701(a) & CCR Title 18 §23701(1)
5. File Articles of Incorporation (& any amendments) with Chancellors Office			CCR Title 5 §42600(a)
6. Application for Federal Employer Identification Number (IRS Form SS-4)			IRC §§3101-3128 & Treas Reg §31.6011(b)- 1(a)(2)

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B. OPERATIONS (continued)			
<i>Members</i> (applicable to Student Body Organizations)			
1. Statutory Members (defined, authority, rights)	§§5056(a), 5078, 5132(c)(2), 5520, 6321,6330, & 6333		
2. Alternative "Membership" Methods	§§5152, 5332(a) & 5131(c)(4)		
5. Provisions Relating to Auxiliary Organizations (cross-walk requirements):			
a. Provide a campus "student government" entity governed primarily by students			Ed C §89300 & CCR Title 5 §§41401-11
<i>Governance</i>			
1. Duty Standards: Due Care, Inquiry, Loyalty & Attention to Investments	§5231		
2. Committee Possessing Board Authority (Board members only)	§§5210, 5212(a) & 5151(c)(4)		
3. Audit Committee (Requirement thresholds, charge, & membership limitations)		§§12583 &12586(e)(2)	
4. Investment Standards including (social responsibility precepts – see Other)	§5240		CSU RFIN 7-78-6
5. Directors' Inspection Rights	§6334		
<i>Director Conduct Standards</i>			
1. Director "Self-Dealing" Transactions: Defined, Exclusions & Threshold	§5233(a)(b)		
2. Board Validation Process	§5233(d)		
3. Provisions Relating to Auxiliary Organizations (cross-walk requirements):			
a. Director "Financial Interest" in Contracts or other Transactions: Prohibition			Ed C §89906
b. Exceptions & Qualified Validation Process			Ed C §89907
c. Exclusions to Exceptions (categorical prohibitions)			Ed C §89908
c. Use of Nonpublic Information for Personal Gain			Ed C §§89006 & 89909
<i>Disposition of Assets</i>			
1. Proposed Sale or other Disposition of all or substantially all assets ⁴ :			
a. Board Resolution & any designated persons Approval	§5911(a)(1)(2)		
b. Advance Written Notice to AG RCT (w/ "material facts" of transaction)	§5913		CCR Title 11 §§999.1© & 999.2(f)
c. Verification of asset FMV (qualified appraisal(s)) v. consideration	§5911(c)		CCR Title 11 §999.1(c)
d. Certificate of Instrument of Transfer	§5912		
<i>Financial Accounting Standards & Reporting</i>			
1. FASB for some; GASB for others			
2. Provisions Relating to Auxiliary Organizations (cross-walk requirements):			
a. Timely Financial Reports under GAAP			Ex O 1000
b. External Auditor Firms Qualifications			ICSUAM 13175.00

⁴ AG seems to view dispositions involving a "material amount" (20%+) of corporate assets to warrant treatment as "substantially all" of the assets.

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B. OPERATIONS (continued)			
<i>Charitable Solicitations & Funds Management</i>			
1. "Institutional Funds" under UPMIFA			Prob C §§18501-10
2. Regulations over Charitable Solicitations			Bus & P C §17510-17510.9
<i>Periodic Filings and Reports</i>			
1. Annual Federal EO Tax Information Return (IRS Form 990)			Treas Reg §1.6033-2(a)
2. Annual Federal Business Income Return (IRS Form 990T) – if applicable			Treas Reg §1.6012-2(e)
3. Annual California EO Information Return (FTB Form 199)			R&T C §23772(a)(1)
4. Annual California EO Business Income Tax Return (FTB 109) – if applicable			R&T C §23771
4. Annual AG Registration/Renewal Fee Report (Form RRF-1 & 990s)		§12586-12587	CCR §§301 & 311-312
5. Annual Financial Report to Board	§§6321(a)6322		
6. Biennial Statement of Information w/ Sec. of State (SoS Form SI-100)	§§6210(a)-(b)		
7. Statement Designating New Agent for Service of Process w/ Sec. of State	§§6212		
8. Provisions Relating to Auxiliary Organizations (cross-walk requirements):			
a. Annual Financial Audit Report to Chancellor's Office & published/noticed to public			Ed C §89900(a) & CCR Title 5 §42408
C. RESTRUCTURING (e.g., change of purpose, tax status, or a merger)			
1. Request AG RCT ruling on proposed Corporate Change	§5820(b)	§12580-12599.7	CCR Title 11 §999.1-999.8
2. Merger Agreement (if applicable)	§§6610-6012		
3. File Certificate of Amendment of Articles of Incorporation approved by Board	§§5810-5820		
4. Board adopts Amended Bylaws	§5150		
5. File IRS Form 8940 (if Supporting Organization status change sought)			IRC §509(a)
6. Include Amended Articles and Bylaws with next tax returns			
7. Provisions Relating to Auxiliary Organizations (cross-walk requirements):			
a. File Amended Articles & Bylaws with Chancellors Office			CCR Title 5 §42600(a)
D. WIND UP AND DISSOLUTION			
1. Board Resolution of Intent to Wind Up and Dissolve	§6610		
2. File Certificate of Intent to Dissolve w/ Sec. of State & AG RCT (ELEC -NP)	§6611(a)		
3. Notify creditors & Pay (or provide for) known debts & liabilities	§6517		
4. Plan & Execute Net Assets Liquidation & Distribution per Art. of Incorporation	§§6713-19		CCR Title 5 §42600(b) ⁵
5. Request & Obtain Approval or Waiver Letter from AG RCT	§§5820, 6615 & 6716(c)	§12580-12599.7	CCR Title 11 §§999.1-999.8
6. File Final Information Tax Returns (IRS 990 w/ Schedule N; FTB 199)			Treas Reg §1.6033-2(a), R&T C §23772(a)(1), & IRS Publication 4779

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⁵ CSU Auxiliary Organization Policies and Procedures for Auxiliary Organizations, §5.6, sets out a detailed dissolution process to be observed.