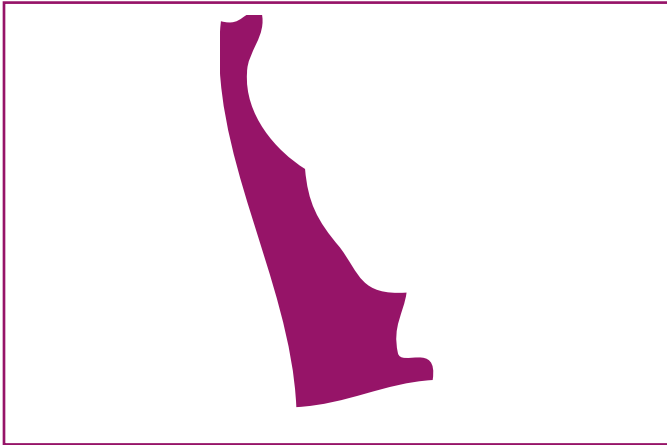


This profile is part of a set of 51 profiles, including all U.S. states and the District of Columbia, which outlines state laws, regulations, and requirements that apply to charitable organizations. It covers six areas and highlights ways in which state laws differ from federal laws governing charitable organizations.



## Formation, Elections, Operation, and Dissolution

### Nonprofit Corporations

Nonprofit corporations are governed by the Delaware General Corporation Law, Del. Code Ann. Tit. 8, §§ 101-398.

### Nonprofit Unincorporated Associations

Nonprofit unincorporated associations are governed by the Delaware Uniform Unincorporated Nonprofit Association Act, Del. Code Ann. Tit. 6, §§ 1901-1916.

### Election of Directors

Election of directors if governed by Del. Code Ann. Tit. 8, § 141. Board may consist of one or more members.

### Director Term

No set limits for Director Terms. Del. Code Ann. Tit. 8, § 141.

### Meeting and Quorum Requirements

Quorum (Members): As specified in the bylaws or certificate of incorporation, but in no event less than one-third of the shares entitled to vote at a meeting. Del. Code Ann. tit. 8, § 216.

Quorum (Directors): A majority of the total number of directors shall constitute a quorum for the transaction of business unless of the certificate of incorporation or bylaws require a greater number. Unless the certificate of incorporation provides otherwise, the bylaws may provide that a number less than a majority shall constitute a

quorum, which in no case shall be less than one-third of the total number of directors. Del. Code Ann. Tit. 8, § 141.

Annual meeting required unless directors are elected by written consent in lieu of an annual meeting pursuant to Del. Code Ann. Tit. 8, § 211.

### Officer Requirements

Corporations shall have officers as stated in the bylaws or in a resolution of the board of directors not inconsistent with the bylaws. Del. Code Ann. Tit. 8 § 142.

### Officer Term

Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors. Del. Code Ann. Tit. 8 § 142.

### Dissolution

Dissolution is governed by Del. Code Ann. Tit. 8 §§ 271-285.

## Duties, Indemnification, and Interested Transactions

### Director Duties

In an action to enjoin a corporate transaction for breach of fiduciary duties, this Court generally applies one of three levels of judicial review: the deferential business judgment rule, the Unocal or Revlon enhanced scrutiny standard or the stringent standard of entire fairness. *Golden Cycle, LLC v. Allan*, 1998 WL 892631, 11 (Del.Ch.) (Del.Ch., 1998).

### Officer Duties

Officers of Delaware corporations, like directors, owe fiduciary duties of care and loyalty. *Gantler v. Stephens*, 965 A.2d 695, 708 (Del. Supr., 2009).

### Board Independence Requirements

Relevant statute not found.

### Interested Transactions

Interested transactions are not voidable solely for that reason if (1) the material facts are disclosed or known to the board of directors and the board in good faith authorizes the transaction by a majority of disinterested directors, (2) the material facts are disclosed or known to the board of directors and the board in good faith authorizes the transaction by a majority of stockholders or (3) the transaction is fair as to the corporation. Del. Code Ann. Tit. 8 § 144

## Indemnification of Directors/Officers

Corporation must indemnify a director or officer who was successful on the merits in defense of a proceeding s/he was a party because of his/her role as a director. Del. Code Ann. Tit. 8 § 145.

Corporation may indemnify person who (i) is party to a proceeding b/c of his/her role as director provided s/he acted in accordance with the required duties of good faith, in the best interest and had no reasonable cause to believe his/her act/s were illegal and (ii) is party to a proceeding b/c of his/her role as officer provided s/he acted in good faith and in a manner reasonably believed to be in the best interests of the corporation. Del. Code Ann. Tit. 8 § 145.

## Loans to Directors, Officers, or Employees

Permitted so long as they may reasonably be expected to benefit the corporation. Del. Code Ann. Tit. 8 § 143.

## Notable Departures from Federal Law

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### Religious/Church Exemption

See Tax sections below.

### Healthcare "Plus Factors"

Hospitals must provide charity care as a condition of approval of their certificate of public review. Del. Code Ann. Tit. 16 §§ 9311, 9301, 9304.

## General

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### Rebuttable Presumption of Reasonableness - Delegation to Disinterested "Others"

A member of the board of directors is fully protected in relying in good faith upon the records of the corporation and upon such information presented by any of the corporation's officers or employees or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation. Del. Code Ann. Tit. 8 § 141.

### Charitable Solicitation Requirements

No relevant statute found.

### State-Specific Retention Policies

Corporate record retention requirements are established by Del. Code Ann. Tit. 8 § 224.

### Personal Information Collection and Protection Laws

No relevant statute found.

## Whistleblower Protection

Not specific to nonprofit organizations; however, the Delaware Whistleblowers' Protection Act can be found at Del. Code Ann. Tit. 19 §§ 1701-1708.

## State Volunteer Liability Law

Volunteers protected under Del. Code Ann. Tit. 10 § 8133.

## Independent Audit Requirements

Relevant statute not found.

## State Filing Requirements

Annual reports are required. Del. Code Ann. Tit. 8 § 502.

## Model Acts

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### Uniform Prudent Management of Institutional Funds Act

Adopted

### Uniform Prudent Investor Act

Not Adopted

## Tax Exemptions

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### Income Tax

Nonprofit organizations which are exempt from federal taxes under Section 501(c) are exempt from the Delaware Corporate Income Tax. Del. Code Ann. Tit. 8 § 501. See also [http://revenue.delaware.gov/services/Business\\_Tax/Non\\_Profit.shtml](http://revenue.delaware.gov/services/Business_Tax/Non_Profit.shtml).

### Sales and Use Taxation

Nonprofit corporations are exempt from taxes on most goods and services. Del. Code Ann. Tit. 8 § 501. See also [http://revenue.delaware.gov/services/Business\\_Tax/Non\\_Profit.shtml](http://revenue.delaware.gov/services/Business_Tax/Non_Profit.shtml).

### Property Tax Exemption

Property taxes and exemptions therefrom are governed at a county level. Property held by certain non-profit corporations, including non-profit hospitals, is exempt from county and municipal property taxation. Del. Code Ann. Tit. 9 § 8105.

### Miscellaneous Exemptions

N/A.

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General Resource:

<http://delcode.delaware.gov/title8/>

**Disclaimer**

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This manual is intended to be used as a practical and informative guide only, and is not a substitute for the advice of legal counsel. It is not to be considered comprehensive or to be used as legal authority for any purpose. Please note that the information provided within may not be accurate for many reasons, including but not limited to changes in applicable legal authority and the applicability of such authority in any particular circumstance is highly fact-specific and open to multiple interpretations. The information presented here is accurate as of 10/26/2016.