FLORIDA NONPROFIT CORPORATION ACT WEBINAR
QUESTIONS FROM JUNE 25, 2026

Disclaimer: The following questions and answers are intended to provide a high-level overview of the Florida Nonprofit Corporation Act (the "Act"). These questions and answers do not constitute legal advice. Because your organization's articles and bylaws are unique, compliance requirements will vary. To ensure compliance with the updated standards of conduct, conflict-of-interest rules, and record-keeping mandates, you are encouraged to review FNA's Florida Nonprofit Corporation Act Compliance Self-Assessment Tool and consult with legal counsel to review your specific governing documents and practices.

Application and Enforcement

- How long will organizations have to get their documents into compliance – this may take some time beyond July 1?

Answer: House Bill 797 ("HB 797") takes effect July 1, 2026, and the Act itself does not grant a separate grace or "cure" period for updating your governing documents (HB 797, § 190). On that date, the new statutory "default rules" automatically apply to every existing Florida nonprofit corporation. In practical terms there is no deadline by which you must "become compliant," but because the statute fills any silence in your bylaws the moment it is effective, you should audit and amend your articles and bylaws as soon as reasonably possible so the defaults do not unintentionally override how your organization operates.

- Who is responsible for oversight and enforcement under the new Act? For example, if an organization is out of compliance, what agency or authority would identify that, and how would enforcement typically occur? Would someone have to blow the whistle to trigger enforcement?

Answer: There is no single "nonprofit regulator" that proactively audits compliance; oversight is shared and largely complaint (or filing) driven. First, the Florida Department of State administers the Act and enforces filing obligations. So, if a corporation fails to timely file its annual report and pay the annual report filing fee or maintain a registered agent or registered office, the Department can administratively dissolve it (§ 617.1420). Second, the Department of Legal Affairs (the Florida Attorney General's office) can act on a member's or citizen's complaint to revoke a charter or pursue a corporation used for improper purposes or tainted by a conflict-of-interest/improper-benefit transaction (§ 617.2003), and the Attorney General may bring proceedings to dissolve the corporation or enjoin unauthorized activity (§ 617.0834(2)(c)). Third, much enforcement is private: directors, officers, and members can bring derivative actions on the corporation's behalf (§§ 617.0741–617.0747), seek judicial removal of a director for fraud or gross abuse (§ 617.08091), or seek judicial dissolution (§ 617.1430). So in most cases someone—a member, the Department, the Attorney General, or a court—must raise the issue; the state does not routinely police bylaw compliance.

- Do the same changes with the Act apply to 501(c)(6) organizations or do the changes differ?

Answer: The Act is a state corporate-governance statute that applies to all nonprofit corporations organized under Florida law, regardless of federal tax classification—so a 501(c)(6) organization (for example, a trade association or chamber) is generally subject to the same governance changes as any other Florida nonprofit. (The webinar stressed that "nonprofit" is a state-law status, separate from federal "tax-exempt" status.) The main place the federal category matters is where the statute itself draws a line by IRS code section. Key examples: only 501(c)(3) corporations must keep a minimum of three directors—others may now have as few as one (§ 617.0803); only 501(c)(3) corporations are barred from purchasing their members' membership interests (§ 617.0608); and the revised liability statute now applies its standards to directors and officers of all nonprofits, whereas the prior version singled out 501(c)(3), (c)(4), (c)(5), and (c)(6) (§ 617.0834). Outside of those code-specific rules, a 501(c)(6) should expect the same default-rule framework.

- If you are a nonprofit registered in Florida, but are headquartered in another state, do these changes apply to us?

Answer: The answer turns on where you are incorporated, not where your headquarters sits. If your nonprofit corporation is incorporated in Florida (a "domestic corporation"), Chapter 617 governs your internal affairs and the new rules apply in full even if your principal office is out of state (§ 617.01401(8)). If instead you are incorporated in another state and merely registered or qualified to conduct affairs in Florida (a "foreign corporation"), your internal governance—how you elect directors, members' rights, fiduciary duties, and the like—is governed by the law of your state of incorporation, not Chapter 617 (§ 617.15015), although you must still comply with Florida's requirements for foreign corporations (registered agent, annual report, etc.) and remain subject to Florida enforcement provisions. In short, a Florida-incorporated nonprofit headquartered elsewhere is fully covered; an out-of-state nonprofit merely registered in Florida generally is not, except for the foreign-corporation compliance rules provided in §§ 617.15015–617.15315.

- For organizations written into state statutes (Area Agencies on Aging (Council on Aging Martin County) and Healthy Start Coalitions given as examples), would Nonprofit Corporations Act supersede the Florida Statute the organization is already written into if there is a conflict?

Answer: Chapter 617 mostly provides "default rules" that govern only where your governing documents—or another, more specific law—are silent. Where the Florida Legislature has created a particular class of organization under its own statute, those organizations are generally formed and governed under that specific statute, not Chapter 617, and the specific statute controls over the general nonprofit law where the two conflict (§ 617.0301; § 617.2001(1)). So if an Area Agency on Aging or a Healthy Start Coalition is expressly created and regulated by a dedicated Florida Statute, that statute's requirements take precedence on the points it addresses, while Chapter 617's default rules fill in the gaps the special statute does not cover. Because the interaction is fact-specific, organizations written into statute should compare the two provisions side-by-side (and consult counsel) to confirm which controls on any given issue.

Documents and Policies

- Are an organization's bylaws usually publicly available? Or does the organization control access?

Answer: Your articles of incorporation are a public record because they are filed with the Florida Department of State; however, your bylaws are not filed with the state and are not automatically public—the organization controls access. That said, the Act requires the corporation to keep its current bylaws (along with its articles, board minutes, a list of directors and officers, the most recent annual report, etc.) as corporate records (§ 617.1601), and members have a statutory right to inspect and copy many of those records on at least five business days' written notice for a proper purpose (§ 617.1602). The corporation may impose reasonable confidentiality and use restrictions on the records it produces (§ 617.1602(4)). So bylaws are generally internal documents you control, subject to members' statutory inspection rights.

However, for Section 501(c)(3) organizations, the bylaws submitted with your Form 1023 application are available to the general public. The public can request a copy of a tax-exempt organization's exemption application by submitting a Form 4506-B to the IRS.

- Do documents such as conflict-of-interest policy need to be signed annually by board members or once unless revised?

Answer: Nothing in HB 797 dictates how often board members must sign a conflict-of-interest policy—the statute does not require a signed conflict-of-interest policy or set an annual cadence. What the Act does is regulate conflict-of-interest transactions themselves: a conflicted director must disclose the material facts, and the transaction is protected if approved by a majority of "qualified directors" (those with no material interest or material relationship) or shown to be fair to the corporation (§§ 617.0143, 617.0832). Annual signing is therefore a best-practice and IRS Form 990 expectation rather than a Chapter 617 mandate. Because the new law tightens the definitions of conflicts and "qualified directors," the webinar recommended updating your conflict-of-interest policy to mirror the statutory definitions and process; many organizations satisfy this by having directors re-acknowledge the policy annually and again whenever it is revised.

- If nothing is in the bylaws about hybrid/virtual meetings does the Governance Updates mean by default those are allowed?

Answer: Generally, yes - electronic and hybrid participation is permitted, though for member meetings it depends on board authorization. For the board itself, the Act allows meetings to be held flexibly and permits action by electronic means and by written consent, so directors may meet by remote or hybrid technology unless your documents say otherwise (§§ 617.0820(4), 617.0821). For members, remote participation is allowed if authorized by the board, and remote attendees are deemed present and may vote so long as the corporation uses reasonable measures to verify identity and enable participation (§617.0721). The technology must ensure participant identity, record integrity, and proper documentation of the action taken. So silence in your bylaws does not prohibit virtual or hybrid meetings, but you should confirm the board has authorized member remote participation and adopt clear procedures—ideally spelled out in your bylaws.

Boards

- Would something like Directors and Officers insurance cover the recklessness scenario?

Answer: That depends on your insurance policy, not on the statute. Chapter 617 addresses statutory immunity from liability—and under the amended law, a director or officer loses that statutory protection if the conduct rises to "recklessness," meaning acting (or failing to act) in conscious disregard of a risk that is known or so obvious it should be known, and so great that harm is highly probable (§ 617.0834(4)). Whether your D&O carrier will defend or indemnify a reckless-conduct claim is a separate, contract-based question; many D&O policies expressly exclude coverage for reckless, willful, intentional, fraudulent, or bad-faith acts, and for transactions producing an improper personal benefit. So a scenario that defeats statutory immunity because it is "reckless" is exactly the kind of claim a policy may also exclude. Review your policy's exclusions and confirm coverage with your broker.

- Do you think this will have an impact on existing D&O insurance - need riders?

Answer: The new recklessness standard does not change your insurance contract, but it does change the liability landscape your insurance is meant to backstop—so a coverage review is worthwhile. Because directors and officers can now be personally liable when conduct is reckless (conscious disregard of a known or obvious risk), and because officers carry new statutory duties—including a duty to escalate material information and probable legal violations—the situations in which a claim could be brought have expanded (§§ 617.0834, 617.0844). Whether you need a rider, higher limits, or revised terms is a question for your broker and carrier; at minimum, confirm the policy covers the newly codified officer duties and check how it treats "recklessness." The Act also continues to permit indemnification of directors and officers (§ 617.0831), which works alongside—not in place of—D&O coverage.

- What if a director resigns effective immediately and is unwilling to serve until a replacement is designated?

Answer: A director cannot be forced to keep serving - resignation is voluntary and a director may resign at any time. The Act's "holdover" rule that a director continues to serve until the director's successor takes office applies when a director's term expires, not when a director affirmatively resigns; a resigning director's departure simply creates a vacancy (§ 617.0805(4)). The board can fill that vacancy promptly by a majority vote of the remaining directors, even if the remaining directors no longer constitute a quorum, unless your governing documents provide otherwise (§ 617.0809). Two practical cautions: a 501(c)(3) must still maintain at least three directors, so an immediate resignation that drops you below three should be backfilled quickly (§ 617.0803); and your bylaws may specify the form and effective timing of resignations, so review them and document the resignation in writing.

- Can the director/founder stay on the board for an unlimited amount of time?

Answer: Yes—Chapter 617 imposes no maximum length of service or term limit for directors. The default term is one year, but your articles or bylaws may set different terms (§ 617.0805). Nothing in the Act prevents a founder/director from being re-elected indefinitely. If you want term limits, you must put them in your articles or bylaws—the statute will not impose them by default. Conversely, if you want a long-serving founder to be removable, note the new default that a director may be removed "with or without cause" by the appropriate majority unless your documents provide otherwise (§ 617.0808).

- Are there changes to board member composition?

Answer: Yes—the Act revises several rules about the board's composition and structure. The minimum size changed: a board may now consist of one or more directors, except that a 501(c)(3) must still have at least three (§ 617.0803). Selection rules are now explicit: in membership corporations directors are elected by the voting members, and in non-membership corporations the board elects its own directors, unless your documents provide otherwise (§ 617.0804). Terms default to one year but can be customized; classes/staggered terms are permitted; and decreasing the board's size does not cut short a sitting director's term (§§ 617.0805, 617.0806). Removal and vacancy-filling rules also changed (§§ 617.0808, 617.0809).

Directors and Officers

- What is the definition of and difference between trustee, director, officer, and board member?

Answer: Under the Act, "board of directors" means the group vested with managing the corporation's affairs, "irrespective of the name by which such group is designated, including ... managers or trustees" (§ 617.01401(4)). So "director," "board member," and (commonly) "trustee" all refer to the same governance role—the people who set strategy and provide oversight. An "officer" is different: officers (e.g., chair, vice chair, secretary, treasurer, and often a CEO or executive director) are the management level who carry out board-approved strategy and run day-to-day operations; the new law imposes statutory standards of conduct on officers (§ 617.0844). Importantly, the Act clarifies that a director (and an officer) is not a trustee in the legal/fiduciary "trust" sense, even though your bylaws may use "trustee" as a title (§§ 617.0830(6), 617.0844(7)).

- Our bylaws calls ours Trustees not Directors. Does this make a difference?

Answer: It generally makes no legal difference. Because the Act defines "board of directors" to include a governing body called "trustees," your Trustees are treated as directors under Chapter 617 and are subject to the same duties, standards of conduct, and default rules (§§ 617.01401(4), 617.0830). You do not have to rename them. The practical recommendation is consistency: make sure your articles and bylaws use the term clearly and that your records—including the required list of directors and officers—identify these individuals as the governing board, so there is no ambiguity about who holds director-level duties.

- Please clarify what is meant by officers (Board Chair, Vice Chair, Secretary, Treasurer) being engaged in managing day to day activities of organization.

Answer: The point is the division of roles: directors govern (set mission, strategy, budgets, and major policies, and provide oversight), while officers manage—they execute board-approved strategy and run day-to-day operations, implement policies and internal controls, with authority defined by the board and the bylaws. Under the new laws imposed by the Act, officers are held to statutory governance duties, not just operational expectations: an officer must act in good faith, in the corporation's best interests, and with the care of an ordinarily prudent person, and may rely on qualified professionals (§ 617.0844(1)–(5)). Officers also have an affirmative duty to inform their superior or the board of material information and of any actual or probable material violation of law (§ 617.0844(6)). So "officers managing day-to-day" means the chair, treasurer, and similar officers—and any executives designated as officers—are now formally accountable under the statute for how they run operations and what they escalate.

- When you say maintain a list of officers, is officers here referencing elected officers of the board or staff positions like CEO, CFO, etc.?

Answer: The Act requires the corporation to keep "a list of the names and … addresses … of its current directors and officers" as a corporate record (§ 617.1601(1)(f)). Notably, the Act does not define "officer," so who counts as an officer is determined by your bylaws and by the list you maintain. That means "officers" is not limited to elected board officers—if your bylaws designate staff executives (CEO, CFO, executive director) as officers, they belong on the list; if your bylaws treat only the elected board officers (chair, secretary, treasurer, and the like) as officers, then those are your officers. The practical recommendation is to be deliberate—amend your bylaws to state clearly who is (and is not) an officer, because that designation now carries the statutory officer duties and reporting obligations.

- Our board of directors is a working board of individuals that are also responsible for the day-to-day management of the organization. In those cases, do those individuals need to be defined under both lists in the bylaws?

Answer: If the same individuals serve in two capacities—as directors and as officers who handle day-to-day management—then yes, they should be identified in both roles. The required corporate-records list covers both current directors and current officers (§ 617.1601(1)(f)), and the two roles now carry different statutory duties (directors under § 617.0830; officers, including the duty to escalate material information and legal violations, under § 617.0844). Listing a person under both makes clear they hold both sets of responsibilities. Practically, your bylaws should define who the officers are and describe the dual roles, so a working-board member understands they are wearing both a governance hat (as a director) and a management hat (as an officer).

- Does the reporting requirement apply to all directors or just officers?

Answer: The new mandatory "report up" duty applies to officers, not to directors generally. Under § 617.0844(6), an officer must take the following affirmative action: (a) inform the superior officer or the board of material information about the corporation's affairs within the officer's functions, and (b) report any actual or probable material violation of law or material breach of duty. Directors are governed by the general standards of conduct—good faith, best interests, and reasonable care, with a right to rely on officers and professionals (§ 617.0830)—but the specific affirmative escalation/reporting obligation is an officer duty. The webinar's hypothetical illustrated this: an executive director who only mentioned a problem casually, rather than formally reporting it to the board, could face personal liability under Section 617.0844(6). For someone who is both a director and an officer, the officer reporting duty attaches in their officer capacity.

Membership vs. Non-Membership Organizations

- Is there a definition of a membership organization?

Answer: There is no defined term "membership organization" in the Act. What the statute defines is a "member": "one having membership rights in a corporation in accordance with its articles of incorporation or bylaws or this chapter" (§ 617.01401(19)). In other words, you are a membership organization only if your articles or bylaws create a class of members with rights (such as the right to vote for directors). The Act also makes clear that members have no voting or other rights except as the articles or bylaws provide, and that each member has the same rights as every other member unless your governing documents say otherwise (§ 617.0601(3)).

- What if membership is only a small part of your organization, not the overarching constituency?

Answer: Whether you are a "member" organization in the legal sense does not depend on how large your "membership" program is—it depends solely on whether your articles or bylaws grant a class of persons statutory membership rights (§ 617.01401(19)).

- Am I correct to assume that nonprofits such as museums, zoos, etc. that sell memberships so that the member has access to the facility are not automatically considered a membership organization?

Answer: Generally, yes—your assumption is correct. Museums, zoos, and similar organizations that sell "memberships" giving the buyer access, discounts, or other benefits are usually offering a contractual benefit relationship, not statutory membership with governance rights. Those buyers are "members" in the legal sense only if your articles or bylaws confer membership rights on them (§ 617.01401(19)); simply calling them members or selling access passes does not make them voting members of the corporation. The webinar noted that nonprofits routinely use "membership" informally in connection with fundraising and "friend-raising." To avoid ambiguity, confirm your governing documents do not inadvertently grant governance rights, and—if you are board-governed—state that you are a non-member nonprofit.

- How can a member organization become a non-member organization?

Answer: You convert by amending your governing documents to eliminate the member class and vest governance in the board. Use the Act's articles of amendment procedure: the board adopts the amendment and, if your members have voting rights, the members must approve it (§§ 617.1001, 617.1002). To amend your bylaws, use the procedure(s) provided for in the bylaws themselves. Note a transition rule—members of a corporation that existed on July 1, 1991 keep their existing voting and other rights until those rights are changed by amendment of the articles or bylaws (§ 617.0601(3)), so the amendment is the mechanism that actually removes member rights. Once you have no members entitled to vote, the Act provides that any requirement for member notice, presence, or voting is satisfied by board action (§ 617.0601(1)(b)). Practically, you should take the following steps: (1) confirm who must approve the change; (2) amend the articles and bylaws; and (3) file amended articles with the Florida Department of State.

- Can we just change the name of members to "affiliate Members" to be in compliance with the non-legal version?

Answer: Renaming alone is not enough—what controls is substance, not the label. Under the Act, a "member" is anyone who has "membership rights … in accordance with [the] articles of incorporation or bylaws" (§ 617.01401(19)). If your "affiliate Members" still hold voting or other governance rights under your documents, they remain legal members no matter what you call them; conversely, if they have no such rights, you are effectively non-member. So to move from a member to a non-member structure you must remove the governance rights in your articles and bylaws (see the articles of incorporation amendment process in §§ 617.1001–617.1002; your bylaws are amended pursuant to the procedure(s) described in your bylaws themselves), and you may then use “affiliate members,” “supporters,” or “friends” as a marketing term for that benefit-only group. The webinar specifically distinguished legal members from affiliate members on exactly this point.

- Our bylaws Member section states "The members of the corporation shall be the members of the Board of Trustees." Should we change to say that we are non-member?

Answer: When your only “members” are the trustees (directors) themselves, you operate in substance like a board-governed, non-member organization—but technically your bylaws still create a member class. You have two options: (1) amend your articles and bylaws to state expressly that the corporation has no members and is governed by its board; this removes any doubt and avoids the default member rules; or (2) keep the current structure—because the Act provides that where a corporation has no members (or no members entitled to vote), any requirement for member notice, presence, or voting is satisfied by the board (§ 617.0601(1)(b)). Most organizations in your position choose option (1) for clarity. Unless you intend to give legal rights to members, your documents should clearly state you are a non-member nonprofit. Use the articles of incorporation amendment procedure in §§ 617.1001–617.1002 to amend your articles and the procedure(s) set forth in your bylaws to amend your bylaws.

- Our articles said membership but what if we can’t find original incorporators/members …Bylaws assume non-member organizations.

Answer: If your articles created a member class but no members exist or can be identified, and your bylaws operate as a non-member organization, the cleanest fix is to amend the articles to match how you actually operate—stating that the corporation has no members. Procedurally, where there are no members entitled to vote, the board adopts the amendment without a member vote (§ 617.0601(1)(b); §§ 617.1001–617.1002), and you file amended articles with the Florida Department of State. This eliminates the conflict between your articles (which reference membership) and your bylaws (which assume none). Until you amend, be aware the statute’s default member rules could theoretically be invoked, so resolving the discrepancy promptly is the safe course; given the document mismatch, it is worth having counsel confirm the approval mechanics for your specific situation.

- Does this mean that specific details of membership levels and pricing need to be detailed in the bylaws, instead of just being in a policy which our bylaws reference?

Answer: No. The Act does not require membership levels and pricing to be spelled out in the bylaws. It expressly allows flexibility: a corporation may admit members for no consideration or for consideration “determined by the board of directors,” and payment may be made on terms “set forth in or authorized by the articles of incorporation, bylaws, or action of the board of directors” (§ 617.0601(6)). Likewise, dues, assessments, and fees may be fixed in the articles or bylaws, or the articles or bylaws may authorize the board (or the members) to set the amount and method of collection (§ 617.0604). So you may continue to keep specific levels and pricing in a board-adopted policy that your bylaws reference, as long as your articles or bylaws authorize the board to set them. What the governing documents should contain is the authority and framework; the detailed price schedule can live in the policy.

- How are nonprofits that have subsidiaries classified? I ask because the articles of the subsidiary name the parent organization the "sole member." Please confirm that this is different from how you are describing "member organizations."

Answer: A parent named as the "sole member" of a subsidiary is indeed a "member" in the statutory sense—because a "member" is one having membership rights under the articles or bylaws (§ 617.01401(19))—but this is a different concept from a broad-based "membership organization" with many individual voting members. The Act expressly contemplates entity members: a corporation has the power to be a "member" of another entity (§ 617.0302(16)), and where an entity is a member, its chair, president, vice president, secretary, or treasurer is deemed authorized to vote and execute consents on the member entity's behalf (§ 617.0721). This "sole member" model is a common control and governance mechanism in parent-subsidiary nonprofit structures—it gives the parent reserved powers over the subsidiary—rather than a community-style membership.

For more information about the Nonprofit Corporation Act, visit https://www.flnonprofits.org/florida-nonprofit-corporation-act.