

Nebraska Nursery & Landscape Association
By-Laws
Updated 12-7-2015

Article 1

Name, Organization and Location

Section 1. Name. The name of the association is the NEBRASKA NURSERY & LANDSCAPE ASSOCIATION.

Section 2. Organization. The corporation is organized under the Nebraska Nonprofit Corporation Act.

Section 3. Location. The association may have one (1) or more offices within or without the State of Nebraska as the Board of Directors may from time to time determine.

ARTICLE II

Membership

Section 1. Classes of Membership. There shall be five (5) classes of Members

The qualification requirements of each class are as follow:

(a) Active Members. Any business, located in the state of Nebraska, and whose business is actively and primarily engaged in the production, utilization and/or distribution of agricultural and or horticultural products and materials. They must derive a majority of their revenues from the sale or use of agricultural and horticultural products and materials. Included in this category shall be businesses which are actively engaged in wholesale or retail nursery, garden centers, certified landscape designers, certified nursery professionals and landscape contractors. Each member business or firm shall be entitled to only one vote regardless of the number of outlets it may have in the state of Nebraska.

(b) Associate Members. A wholesale or retail nursery business not located in Nebraska and persons or entities engaged in allied trades, such as horticultural printers, publishers of the trade papers, dealers in nursery supplies, manufacturers of agricultural implements and landscape architects and employees of private and/or governmental institutions whose duties are of a horticultural nature.

(c) Honorary Members. Persons who, having done some outstanding service in the field of horticulture or in the interest of the Nurserymen of the country, are deemed worthy of this honor.

(d) Individual Members. Any individual who does not fit in any of the other classes of membership.

(e) Student Members. A full time student in the horticulture field in any of the Nebraska colleges.

The term "nursery business," as used in this Article, refers to the production, distribution, or planting of or landscaping with plant materials, including but not limited to, trees, shrubs, vines and other plants having a persistent woody stem or stems, and all herbaceous annuals, biennials, or perennials, generally used for outdoor or indoor planting. Each Active and Associate Member shall designate one of its employees to represent such Member.

Section 2. Voting. Only Active, Honorary, Individual and Associate Members shall have voting rights and each such Member shall be entitled to one (1) vote on each matter submitted to a vote of the Members.

Section 3. Application for Membership. Application for any class of Membership shall be made in writing on a form approved by the Board of Directors or by nomination by an Active Member. If the Board of Directors determines that the applicant is eligible (or deserving in the case of Honorary Members) for the class of Membership applied for, the applicant shall become a Member of the association upon the receipt by the association of the initial dues and other assessments established by the Board of Directors (or immediately in the case of Honorary Members.)

Section 4. Dues. The amount of Member dues and other assessments and rules governing the payment of dues and other assessments shall be established by the Board of Directors, and the Board of Directors may from time to time amend the dues and other assessments amounts and payment rules; provided that Honorary Members shall not be required to pay dues.

Section 5. Termination of Membership. The Board of Directors, in its discretion, has the right and power to terminate a Member where the Member no longer qualifies under these Bylaws or for failure to pay dues. Before a Member may be terminated, other than for failure to pay dues, written notice must be given to the Member and that Member must be given the opportunity to be heard before the Board of Directors at the Board of Directors' next regular meeting following such notice.

ARTICLE III

Meetings of the Members

Section 1. Time and Place. An annual meeting of the Members shall be held at such place, within or without the State of Nebraska, and on such date as may be determined by the Board of Directors. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the association. Special Meetings of the Members may be called by the Board of Directors. Members holding ten percent (10%) of the votes entitled to be cast or ten (10) Active or Associate Members, whichever is less, shall constitute a quorum at any meeting of the Members. Except as otherwise required by these Bylaws, the vote of a majority of the votes entitled to be cast by the Members present at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the Members.

Section 2. Notice. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) , nor more than fifty (50), days before the date of the meeting, personally, by mail, e-mail or fax, by or at the direction of the President or the officer or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the association, with postage thereupon prepaid.

Section 3. Proxies. A voting Member may vote either in person or by proxy executed in writing by the Member or by his authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

Section 4. Ballots. In all matters to be brought before the Membership for a vote, the vote may be taken by mail, e-mail or fax ballots. The Executive Secretary shall file a tabulation of the results of the ballots with the minutes of the meetings of the Membership.

ARTICLE IV

Directors

Section 1. Management Number. The property, business and affairs of the association shall be controlled and managed by a Board of Directors, each member of which must be an Active or Associate Member of the association. The Board of Directors shall consist of the President, Vice President, Immediate Past President and six (6) other at-large directors elected by the Members. Only two members of the Board of Directors may be Associate Members at any given time. The Board of Directors may also include advisory, non-voting board members as appointed by the President and ratified by the Board of Directors.

Section 2. Advisory, Non-Voting Board Members. Advisory, non-voting board members shall be appointed by the President based on the need of the Board of Directors for certain expertise, including, but not limited to education, research, regulation or professional practice and shall serve as a liaison between the organization or institution the individual is associated and the board. An advisory, non-voting member would serve no longer than a two (2)-year term, with option of reappointment.

Section 3. Term, Vacancies. At each annual meeting of the Members, the at-large directors shall be elected for a term of three (3) years. The term of each member of the Board of Directors shall commence on the day following such member's election and shall continue until the day following the election and qualification of the director's successor. A director may be elected to succeed himself/herself in office. Whenever any vacancy of the members, of the Board of Directors shall occur due to death, resignation, removal or otherwise, a majority of the remaining directors, even if less than a quorum, may appoint a successor to serve for the unexpired term of the director whose place is vacant.

Section 4. Quorum. A majority of the full Board of Directors, but not less than five (5) directors, shall constitute a quorum for the transaction of business. The vote of the majority of the directors present at a meeting at which a

quorum is present shall be the act of the Board of Directors. In all matters coming before the Board of Directors, each director shall be entitled to cast one (1) vote.

Section 5. Meeting. The annual meeting of the Board of Directors, and all other regular or special meetings, shall be held at any place within or without the State of Nebraska, as may be designated by the Board of Directors or by written consent of the member thereof. Regular meetings of the Board of Directors shall be held as frequently at such time and place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be held at any time upon call of the President of the association.

Section 6. Notice. Regular meetings of the Board of Directors may be held without notice. Special meetings of the Board of Directors may be held upon two (2) days' notice. Neither the business to be transacted nor the purpose of any regular or special meeting of the Board of Directors need to be specified in the notice or waiver of notice of such meeting.

Section 7. Attendance. Attendance of a director at any meeting shall constitute a waiver of notice, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Section 8. Meetings (Not in Person). The Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board or committee by means of a conference call, e-mail or fax communication whereby all persons participating in the meeting can hear or read all comments from each other and participation in a meeting in this manner shall constitute presence in person at the meeting.

Section 9. Action by Written Consent. Any action which is required to be or may be taken at a meeting of the directors or any committee of the directors, may be taken without a meeting if consent in writing, setting forth the action so taken, are signed by all the members of the Board of Directors or of the committee as the case may be. The consents shall have the same force and effect as a unanimous vote at a meeting duly held, and may be stated as such in any certificate or document. The Executive Secretary shall file the consents with the minutes of the meetings of the Board of Directors or of the committees as the case may be.

ARTICLE V

Committees

The board of Directors, by resolution, may provide for such special committees of two (2) or more persons as it deems desirable, and discontinue the same at pleasure. Each such committee shall have such powers and perform such duties, not inconsistent with law, as may be assigned to it by the Board of Directors. Except as otherwise directed by the Board of Directors, the President shall appoint the chairman of all special committees from among the Members of the association and each such chairman shall choose the members of the chairman's committee.

ARTICLE VI

Officers

Section 1. Officers. The officers of the association shall be a President, Vice President, and Secretary/Treasurer.

Section 2. Election. The President and Vice President shall be elected by the Members at the annual meetings. Except as set forth in Section 3 of this Article VI, such officers shall hold office for a term of two (2) years. A failure to elect a President, Vice President or other officers or agents shall not dissolve the association. The Secretary/Treasurer shall be appointed by, and shall serve at the pleasure of, the Board of Directors.

Section 3. Vacancies. In case any office shall become vacant by reason of death, resignation, removal or otherwise, the Board of Directors, by vote of the majority of the directors present at a meeting at which a quorum is present, choose a successor or successors for the unexpired term, except for the office of President, which shall be succeeded to by the Vice President if vacant. The Vice President shall automatically succeed the President at the end of the President's two year term.

Section 4. Bond. The Board of Directors, by resolution, may require any officer to give bond to the association, with sufficient surety or sureties, conditioned for the faithful performance of duties of his office.

ARTICLE VII

Duties of Officers

Section 1. President. The President shall preside at all meetings of the directors and shall have general supervision of the business and finances of the association and shall see that all orders and resolutions of the Board of Directors are carried into effect, subject, however, to the right of the directors to delegate any specific powers to any other officer or officers of the association except such as may be by statute exclusively conferred upon the President. During his or her term of office, the President may appoint advisory, concurrently serving non-voting board members.

Section 2. Vice President. The Vice President shall perform such duties as shall be assigned to him/her and shall exercise such powers as may be granted to him/her by the Board of Directors or by the President. In the absence of the President, the Vice President may perform the duties and exercise the powers of the President with the same force and effect as if performed by the President.

Section 3. Secretary/Treasurer. The Secretary/Treasurer shall act as clerk at all meetings of the Board of Directors. The Secretary/Treasurer shall perform such other duties as may be prescribed from time to time by the Board of Directors, committees thereof or the President, under whose supervision the Secretary/Treasurer shall be. The Board of Directors, at any meeting, may designate any of their number to act as an acting secretary in the absence of the Secretary/Treasurer. The Secretary/Treasurer shall have custody of the association's funds and shall keep accurate accounts of receipts and disbursements in books to be maintained by him/her for such purpose, and shall deposit all monies and other valuable effects of the association in the name and to the credit of the association in depositories designated by the Board of Directors. The Secretary/Treasurer shall disburse the funds of the association as may be ordered by the Board of Directors and shall render to the President and the Board of Directors at regular or special meetings thereof, an accounting of all the transactions conducted by the Secretary/Treasurer and of the financial condition of the association. Duties of the Secretary/Treasurer may be designated by the board to be performed by the Executive Director and /or Association Agency but the Board of Directors with oversight and review of the Secretary/Treasurer.

ARTICLE VIII

Indemnification of Officers,

Directors and Others

Section 1. Definitions. In this Article VIII:

(a) "Association" includes any domestic or foreign predecessor entity of the association in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(b) "Director or Officer" means an individual who is or was a director or officer of the Association or an individual who, while a director or officer of the Association, is or was serving at the Association's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. "Director or Officer" includes, unless the context requires otherwise, the estate or personal representative of the director or officer.

(c) "Expense" include counsel fees.

(d) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including and excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(e) "Official capacity" means (1) when used with respect to a director, the office of director in a corporation; and (2) when used with respect to an individual other than a director, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(f) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(g) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

Section 2. Right to Indemnification. Except as provided below, the Association shall indemnify an individual made a party to a proceeding because he/she is or was a Director or Officer against liability incurred in the proceeding if:

- (a) he/she conducted himself/herself in good faith;
- (b) he/she reasonably believed that his/her conduct was in the Association's best interests or not opposed to its best interests; and
- (c) in the case of any criminal proceeding, he/she had no reasonable cause to believe his conduct was unlawful.

The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the Director or Officer did not meet the standard of conduct described in this section.

The Association may not indemnify a Director or Officer under this section in respect of any claim, issue or matter in connection with a proceeding by or in the right of the Association as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association. In addition, indemnification permitted under this section in connection with a proceeding by or in the right of the Association is limited to reasonable expenses, including attorney's fees, incurred in connection with the proceeding.

Section 3. Mandatory Indemnification. The Association shall indemnify a Director or Officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he/she was a party because he/she is or was a Director or Officer of the Association against reasonable expenses incurred by him/her in connection with the proceeding.

Section 4. Advance for Expenses. The Association shall pay for or reimburse the reasonable expenses incurred by a Director or Officer who is a party to a proceeding in advance of final disposition of the proceeding if:

- (a) The Director or Officer furnishes the Association a written affirmation of his good faith belief that he/she has met the standard of conduct described in Article VIII, Section 2.
- (b) The Director or Officer furnishes the Association a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he/she did not meet the standard of conduct; and
- (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article VIII.

The undertaking required by subsection (b) must be an unlimited general obligation of the Director or Officer, but need not be secured and may be accepted without reference to financial ability to make repayments. Determinations and authorizations of payments under this Section 6 of this Article VIII.

Section 5. Court-Ordered Indemnification. A Director or Officer of the Association who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

- (a) the Director or Officer is entitled to mandatory indemnification under Article VIII, Section 3, in which case the court shall also order the Association to pay the Director's or Officer's reasonable expenses incurred to obtain court-ordered indemnification: or
- (b) the Director or Officer is fairly and reasonably entitled to indemnification; or nullification in view of all the relevant circumstances, whether or not he/she met the standard of conduct set forth in Article VIII, Section 2 or was adjudged liable as described in Article VIII, Section 2, but if; he/she was adjudged so liable his indemnification is limited to reasonable expenses incurred.

Section 6. Determination and Authorization of Indemnification. The Association may not indemnify a Director or Officer under Article VIII, Section 2 unless authorized in the specific case after a determination has been made that indemnification of the Director or Officer is permissible in the circumstances because he has met the standard of conduct set forth in Article VIII, Section 2. The determination shall be made:

- (a) by the Board of Directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding; or

(c) by the Members with voting rights.

Section 7. Indemnification of Employees and Agents. The Association may indemnify and advance expenses under this subchapter to an employee or agent of the Association who is not a director or officer to the same extent as to a director or officer. The Association may also indemnify and advance expenses to an employee or agent who is not a director or officer to the extent, consistent with public policy that may be provided by general or specific action of its Board of Directors, or by contract.

Section 8. Insurance. The Association may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the Association, or who, while a director, officer, employee, or agent of the Association, is or was serving at the request of the Association as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him/her in that capacity or arising from his status as a director, officer, employee or agent, whether or not the Association would have power to indemnify him/her against the same liability under Article VIII, Section 2 or 3.

Section 9. Witness Fees. This Article VIII does not limit the Association's power to pay or reimburse expenses incurred by a Director or Officer in connection with his appearance as a witness in a proceeding at a time when he/she has not been made a named defendant or respondent to the proceeding.

Section 10. Amendment. This Article VIII may be hereafter amended or repealed; provided, however, that no amendment or repeal shall reduce, terminate, or otherwise adversely affect the right of a person entitled to obtain indemnification hereunder with respect to acts or omissions of such person occurring prior to the effective date of such amendment or repeal.

Article IX.

Amendments

These Bylaws may be amended at any meeting of the Board of Directors at which a quorum is present, by the affirmative vote of a majority of the directors present at such meeting.