



Judge Advocate Training

Instructors:

Judge Advocate David Pleasanton, Esq.

Assistant Judge Advocate Curtis McNeil, Esq.

2025 DEPARTMENT OF FLORIDA

FALL CONFERENCE

Three Documents

Articles of Incorporation

- Filed with the Florida Secretary of State - Division of Corporations (SunBiz).
- Creates a separate entity in the eyes of the State.
- Required by Article X, Section 18, Constitution, Department of Florida.
- A corporate structure, if properly followed and adhered to limits the liability of its members.

Post Constitution

- Required by Article X, Section 10, Constitution, Department of Florida.
- A Constitution should lay out the broad policy of the Post.

Post By-Laws

- Required by Article X, Section 10, Constitution, Department of Florida.
- Should not repeat the language found in the Constitution.
- Should provide additional guidance for the implementation & use of policy set forth in the Constitution.

Do not copy language from the Department Constitution and By-Laws into the Post Constitution and By-Laws if inappropriate.

General

- Each Post of the American Legion shall be the judge of its own membership, subject to the restrictions of the Post Constitution and By-Laws, except that no person who is a member of an organization which has for its aim the overthrow of the United States Government by force or violence, or who subscribes to the principles of any group opposed to our form of government, shall be eligible to become or remain a member of the American Legion.
- Any person shall be eligible for membership in The American Legion if he or she is or was a member of the Army, Navy, Marine Corps, Coast Guard, Air Force or Space Force of the United States of America and assigned to active duty at some time during any period listed in the National Constitution of the American Legion, or who, being a citizen of the United States at the time of entry therein, served on active duty in the armed forces of the Governments associated with the United States during any of said periods, provided, however, that such service shall have been terminated by honorable discharge or honorable separation, or continued honorably after any of said periods, provided, further, that no person shall be entitled to membership who, being in such service during any of said periods, refused on conscientious, political or other such grounds to subject oneself to military discipline or unqualified service.

General (continued)

- ✓ Members of this Post shall be the judge of new members, including Legionnaires that seek to transfer into this Post, and at a minimum, an individual must meet the requirement for membership established by Title 36 U.S.C. Section 21703 and Article IV, Section 1, Constitution, American Legion.
- No person may be a member at any time of more than one Post.
- ✓ A Legionnaire can only be accepted as a member of this Post through the transfer process set forth in Article X, Sections 5 and 15, Constitution, Department of Florida.

General (continued)

- No person, who has been expelled by a Post, shall be admitted to membership in another Post, without the consent of the expelling Post, except that where such consent has been asked and denied by the expelling Post, he or she may appeal to the Executive Committee of the Department of the expelling Post for permission to be admitted to the membership in another Post, and shall be ineligible for membership until such permission is granted.
- **What is the basic requirement of an individual to be a Legionnaire? (Membership in a Post) Is an individual still a Legionnaire if they have been expelled by a Post?**
- ✓ If an individual, who has been expelled from another Post, applies for membership in this Post, this Post must have the consent of the expelling Post before membership can be considered. If the expelling Post does not give their consent, the individual will need to obtain permission to renew their Legion membership from the Department Executive Committee of the expelling Post, before this Post can consider their application for membership.

General (continued)

- Any member in good standing in a Post moving from one's Post to any other Post shall be entitled to verification from one's original Post stating one's membership therein and the duration thereof.
- ✓ This Post shall provide verification of a Legionnaire's standing in this Post, should the Legionnaire so request, when attempting to transfer to another Post.

General (continued)

- The Department Commander, upon recommendation of the Department Executive Committee or the Past Department Commanders Committee (PDC Committee) when the Department Executive Committee is not in session may initiate actions to ensure that improper management, dishonesty, conflicts of personalities, malfeasance, misfeasance, nonfeasance or any other factors do not jeopardize the continued existence of any Post in the Department of Florida. These actions may include but are not limited to the following: directing the Commander of the District in which the Post is located to conduct a preliminary investigation into the affairs of the Post and to act, if possible, as a mediator if he/she should find that the problem is primarily one of a conflict in personalities. Should the Department Commander decide that there may be some cogent reason to use some other individual to conduct the initial investigation/mediation, he/she shall, in consultation with the Department Area Commander in which the Post is located, detail some other member of the Department to conduct the initial investigation/mediation. A report of such investigation, to include recommendations for further actions by officials of the Department, shall be rendered to the Department Commander.

General (continued)

- If such initial investigation/mediation does not indicate a recommended solution to the problem, the Department Commander, after consultation with Chairman of the Internal Affairs Commission, shall appoint a member of that Commission, not from the same District as the Post involved, to conduct a further investigation into the affairs of the Post and to act, if possible, as a mediator if he should feel that mediation could be successful. A report of such investigation, to include recommendations for further actions by the Department, shall be rendered to the Department Commander as soon as practicable.
- The Post involved shall be responsible for the cost of the investigation detailed above, to include travel expenses, lodging and other expenses for the investigator, auditors, accountants or other personnel.

Disciplinary Actions

- A Post may suspend or expel a Post member from the American Legion only after providing the member due process and a proper showing of cause. Charges shall be based upon disloyalty, neglect of duty and/or conduct unbecoming a member of The American Legion. All charges must be made under oath in writing by the accusers, and no member in good standing shall lose their membership until given a fair trial by the Post or Department in such manner and form as the Post or Department By-Laws and Post or Department Executive Committee shall prescribe. Any member of this Post shall be expelled for cause by a two-thirds vote of the Executive Committee at the conclusion of trial if found guilty.
- Any officer or executive committee member may be removed for inefficiency by the Executive Committee, a two-thirds vote of said committee being necessary to effect such removal.

Disciplinary Actions (continued)

- Department will not and can not conduct a trial for a Post. The Department may assist under certain very restricted circumstances (Rules Governing Trials Paragraph 9).
- The only way a Post can take disciplinary action which results in the removal of an elected officer from his or her position, or the expulsion or suspension of a Legionnaire from the Legion is through the procedure set out in Article X, Section 13 of the Department Constitution & the Rules Governing Trials.
- Article IV, section 6 - the Department does not and will not conduct any trials of a Post member for offenses committed at the Post. It is up to the Post to discipline its members as the Post deems fit, and in adherence to the policies and rules set forth in the Constitution, American Legion, Department of Florida, and the Rules Governing Trials established by the Department Executive Committee. Further, only the members/jurors sitting in judgment at the trial can impose a punishment if the accused is found guilty of an offense.

Disciplinary Actions (continued)

- Any officer or executive committee member may be removed for inefficiency by the Executive Committee, a two-thirds vote of said committee being necessary to effect such removal.
- ✓ Any disciplinary action, other than a social quarters/canteen violation which is dealt with via house rules, shall follow the procedure set forth in the Constitution, American Legion, Department of Florida and the Rules Governing Trials instituted by the Department Executive Committee.

Disciplinary Actions (continued)

- A vacancy shall exist when an Executive Committee member or Post officer is absent from the Post for a continuous period of two (2) stated meetings or if any absence is considered detrimental to the interest of the Post by the Executive Committee.
- ✓ If an Executive Committee member or Post Officer is absent from the Post for a continuous period of two (2) slated meetings or an absence is considered detrimental to the interest of the Post, then such can be considered neglect of duty which may be dealt with through the appropriate disciplinary procedure.

Membership

- There shall be no form or class membership except an active membership, or Honorary membership and dues shall be paid annually or for life respectively.
- ✓ There shall be no form or class of membership except an active membership, and dues may be paid annually, for a period of three years, or for life. This Post recognizes an Honorary Life Membership, by which this Post chooses to honor a Legionnaire of this Post who has _____ by paying their dues so long as the Legionnaire honored remains a member of the Post.

Auxiliary

- Installation of elected officers of the Post Legion Auxiliary shall be governed by the date and times set forth in the Post Constitution and By-Laws.

Auxiliary (continued)

- Membership in The American Legion Auxiliary shall be limited to the: grandmothers, mothers, sisters, male spouses, and direct and adopted descendants of members of The American Legion; and grandmothers, mothers, sisters, male spouses, and direct and adopted descendants of all men and women who served in either of the following periods: April 6, 1917 to November 11, 1918 and any time after December 7, 1941, who, being a citizen of the United States at the time of their entry therein served on active duty in the Armed Forces of any of the governments associated with the United States during either eligibility periods and died in the line of duty or after honorable discharge; to those men and women who of their own right are eligible for membership in The American Legion.
- ✓ Membership in the American Legion Auxiliary Unit recognized by this Post shall be in accordance with the requirements set forth in Article III, Constitution, American Legion Auxiliary.

Auxiliary (continued)

- Each Auxiliary shall be an Independent Unit and shall be attached to a regularly chartered and active Post of The American Legion. The American Legion Auxiliary shall be governed by the Post Constitution and By-Laws and in each Department of the American Legion and by such rules and regulations as may be prescribed by the National Executive Committee and thereafter approved by such Department of The American Legion.
- ✓ This Post recognizes a subsidiary organization known as the American Legion Auxiliary Unit _____. Said organization will be governed by and in accordance with the rules and regulations established the American Legion Auxiliary National Constitution and By-Laws; the American Legion Auxiliary, Department of Florida Constitution and By-Laws; and the Constitution and By-Laws established by the Unit.

Elections

- The Executive Committee shall be elected annually, in May of each year, and shall take office after the installation of new officers, conducted by the newly elected District XX Commander (or designated alternate). All elections of officers shall be by written ballot. The majority of the votes shall be required to elect an officer candidate. Any member of Post XYZ, in good standing, shall be eligible to hold office in the Post upon furnishing a legible copy of their DD Form 214 or Certificate of Service to the Post Adjutant that shows membership eligibility. No name shall be placed in nomination without the consent of the nominee. The Commander, First Vice Commander, and Finance Officer may only hold the same elected position for no more than two (2) consecutive years.
- ✓ The Officers and Executive Committee Members of this Post, except the Adjutant, Service Officer, and Judge Advocate, shall be elected and their names submitted to the Department Adjutant for certification not more than ninety (90) days, nor less than ten (10) days prior to the Annual Department Convention. Installation of those Officers and Executive Committee Members, as well as the appointed officers, shall be a date determined by this Post, but shall not be later than sixty (60) days after the adjournment of the Annual Department Convention.

Elections (continued)

- The candidate seeking election as an Officer of the Post receiving a majority of the votes cast shall be declared elected to the office for which he was a candidate; provided, in the event no candidate receives a majority a run-off shall be held between the two candidates receiving the greatest number of votes.

Sons of The American Legion

- The Department of Florida of The American Legion recognizes a subsidiary organization under its jurisdiction, to be known as The Sons of The American Legion, Detachment of Florida.
- Each Squadron of The Sons of The American Legion, Detachment of Florida, shall be organized under the jurisdiction and sponsorship of a chartered and active local Post of The American Legion in the Department of Florida, and shall, at all times be subject to regulations by the local Post, the Department Executive Committee, the Department Convention, the National Executive Committee of The American Legion, the National Sons of The American Legion Constitution, the Detachment of Florida Executive Committee and the Detachment of Florida Convention.
- There shall be only one (1) Squadron of The Sons of The American Legion for each Post of The American Legion, Department of Florida. The commander of each Post where a Squadron has been formed shall appoint a committee of three (3) or more members from the Post to govern and advise the Squadron.

Sons of The American Legion (continued)

- ✓ This Post recognizes a program of the American Legion known as the Sons of the American Legion, Squadron _____. Said Squadron will be under the direct supervision of this Post (a committee of three Legionairres) and shall operate in accordance with the rules and policies established by the American Legion, Department of Florida and the Sons of the American Legion, Detachment of Florida.
- The Sons of The American Legion shall be non-partisan in politics and shall not be used for the dissemination of partisan principles.
- ✓ The Sons of the American Legion Squadron established by this Post shall be non-partisan in politics and shall not be used in the dissemination of partisan principles.

Sons of The American Legion (continued)

- The revenue of this Detachment shall be derived from annual dues of members, and by such other means as may be determined by the Department Executive Committee. Each Annual Department Convention shall determine the amount of Detachment dues for the succeeding fiscal year. In the absence of such determination at any Convention, the dues shall be as last previously determined.
- ✓ The revenue of Squadron _____ shall be derived from annual dues of members and such other endeavors as determined by the Squadron.

Questions?



Please leave feedback.