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## **Title 10, Chapter 24 GENERAL PROVISIONS-NONPROFIT CORPORATIONS**

### **Article 1 Short Title**

#### **10-3101. Short Title**

Chapters 24 through 40 shall be known and may be cited as the Arizona nonprofit corporation act.

#### **10-3102. Reservation of power to amend or repeal**

The legislature has the power to amend or repeal all or part of this act at any time and all domestic and foreign corporations subject to this act are governed by the amendment or repeal.

### **Article 2 Filing Documents and Fees-Nonprofit Corporations**

#### **10-3120. Filing Requirements**

A. In order to qualify for filing by the commission, a document shall satisfy the requirements of this section and any other section of chapters 24 through 42 of this title that adds to or varies these requirements.

B. Chapters 24 through 42 of this title require or permit filing of the document in the office of the commission.

C. The document shall contain the information required by chapters 24 through 42 of this title. It may contain other information.

D. The document shall be typewritten or printed and shall be legible and capable of microfilm or other process reduction and subsequent reproduction as determined by the commission.

E. The document and any exhibits to the document shall be in the English language or accompanied by an English translation certified as accurate by or on behalf of the person causing the document to be delivered for filing.

F. The document shall be executed:

1. By the presiding officer or its board of directors of a domestic or foreign corporation, its president or by another of its officers.
2. If directors have not been selected or the corporation has not been formed, by an incorporator.
3. If the corporation is in the hands of a receiver, trustee or other court appointed fiduciary, by that fiduciary.

G. The document shall state the name of each person who signs it and the capacity in which each person signs. The document may but need not contain:

1. The corporate seal.
  2. An attestation by the secretary or an assistant secretary.
  3. An acknowledgment, verification or proof.
- H. If the commission has prescribed a mandatory form for the document under section 10-3121, the document shall be in or on the prescribed form.
- I. Except as provided in subsection J of this section and sections 10-3503 and 10-11509, the document shall be delivered to the office of the commission for filing and shall be accompanied by the correct fee and any other payment or penalty required by chapters 24 through 42 of this title or other law.
- J. Notwithstanding subsection I of this section:
1. A person may deliver by means of a fax or electronic transmission a document that is required or permitted by chapters 24 through 42 of this title to be delivered to the commission for filing. The person shall retain the original document for at least twelve months in the books and records of the corporation or of the person making the delivery for filing, if the delivery is not made on behalf of the corporation, and the person shall make the original documents available for inspection and copying by the commission on reasonable notice.
  2. A document that is reproduced at a fax machine or through an electronic transmission at the commission is deemed delivered to the commission:
    - (a) On the date of the reproduction if reproduced on or before 5:00 p.m. mountain standard time and if the day is a business day of the commission.
    - (b) On the next succeeding business day if reproduced after 5:00 p.m. mountain standard time and if the day is a business day of the commission.
  3. On the request of the person transmitting the document, the commission shall confirm by fax or electronic transmission or other writing the receipt of the document.
  4. A person shall pay and deliver to the commission any fee or penalty imposed by this title with respect to delivery of a document to the commission for filing in the manner as the commission determines.
  5. If the commission determines that the legality of the document reproduced by means of a fax or electronic transmission is not sufficient, the commission may require that either:
    - (a) The document be delivered to the commission by means of an additional fax or electronic transmission.
    - (b) An original document be delivered to the commission by means other than a fax or electronic transmission.
  6. The commission shall not file a document if any required amount is not paid as provided in paragraph 4 of this subsection or if any required additional counterpart is not delivered as provided in paragraph 5 of this subsection.
  7. A reproduced document delivered under this subsection is deemed to satisfy any requirement in chapters 24 through 42 of this title for delivery of an original and one or more copies of the document. A document subject to this paragraph is deemed to have been delivered on the date on which it was delivered as provided in paragraph 2 of this subsection only if the first reproduction at a minimum permits identification of the corporation to which the document pertains and of the general nature of the document and the commission subsequently determines that paragraphs 4 and 5 of this subsection and any other requirements of chapters 24 through 42 of this title regarding the document have been satisfied.
  8. The commission may prescribe the format of an electronic document delivered to the commission pursuant to this subsection.

### **10-3121. Forms**

- A. Certificates, reports and statements required by section 10-3202, subsection D and sections 10-11622 and 10-11623 to be delivered to and filed by the commission shall be made on the forms that are prescribed and furnished by the commission.
- B. The commission may prescribe and furnish on request forms for other documents required or permitted to be filed by chapters 24 through 40 of this title, but their use is not mandatory.



**10-3122. Filing, service and copying fees; public access fund; expedited report filing and access; same day and next day services**

A. The commission shall collect and deposit, pursuant to sections 35-146 and 35-147, in the state general fund the following nonrefundable fees when the documents described in this subsection are delivered to the commission for filing or issuance:

Document	Fee
1. Articles of incorporation	\$ 30
2. Application for use of indistinguishable name	\$ 10
3. Application for reserved name	\$ 10
4. Notice of transfer of reserved name	\$ 10
5. Application for registered name	\$ 10
6. Application for renewal of registered name	\$ 10
7. Agent's statement of resignation	\$ 10
8. Amendment of articles of incorporation	\$ 25
9. Restatement of articles of incorporation with amendment of articles	\$ 25
10. Statement of merger, interest exchange, conversion, domestication or division if the entity responsible for filing the statement is a nonprofit corporation	\$100
11. Articles of dissolution	\$ 25
12. Articles of revocation of dissolution	\$ 25
13. Application for reinstatement following administrative dissolution or revocation, in addition to other fees and penalties due	\$ 25
14. Application for authority	\$150
15. Application for withdrawal	\$ 25
16. Annual report	\$ 10
17. Articles of correction	\$ 25
18. Application for certificate of good standing	\$ 10

B. The commission shall collect a nonrefundable fee of twenty-five dollars each time process is served on it under chapters 24 through 42 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding. The fee collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. The commission shall charge and collect fifty cents per page for copying documents on request. The commission shall also charge five dollars plus fifty cents per page for certifying the copy of a filed document. The fees collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. A penalty of one hundred dollars payable in addition to other fees accrues and is payable if a foreign corporation fails to file an amendment, restated articles that include an amendment, or articles of merger within sixty days of the time of filing in the jurisdiction in which the corporation is domiciled. The penalty collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Pursuant to section 10-122, subsection F, the commission shall provide for and establish an expedited service for the filing of all documents and services provided pursuant to chapters 24 through 42 of this title.

F. Pursuant to section 10-122, subsection F, the commission may provide for and establish same day and next day services for the filing of any documents and services provided pursuant to chapters 24 through 42 of this title.

G. The commission may charge persons who access the commission's data processing system that is maintained pursuant to section 10-122.01 from remote locations and persons requesting special computer generated printouts, reports and tapes a reasonable fee that does not exceed the cost of the time, equipment and personnel necessary to provide this service or product as determined by the commission.

H. Except as provided in section 10-122.01, subsection B, paragraph 3, in addition to any fee charged pursuant to this section, the commission may charge and collect the following nonrefundable fees to help defray the cost of the improved data processing system that is maintained pursuant to section 10-122.01:

1. Filing articles of incorporation of a domestic corporation, ten dollars.
2. Filing an application of a foreign corporation for authority to transact business in this state, twenty-five dollars.

I. All monies received pursuant to subsections E through H of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the public access fund established by section 10-122.01.

J. Fees charged pursuant to this section are exempt from section 39-121.03, subsection A, paragraph 3.

K. Any person may advance monies to the commission to pay fees required pursuant to this section for future filings and services. All monies received pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the money on deposit account in the public access fund established by section 10-122.01.

#### **10-3123. Effective time and date of document**

A. Except as provided in subsections B and C of this section, a document delivered to the commission for filing is effective when the document is delivered to the commission for filing.

B. A document may specify a delayed effective time or date, or both, and if so, the document is effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 12:01 a.m. mountain standard time on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is delivered.

C. Subject to section 10-3124, if the commission determines that the requirements of chapters 24 through 40 of this title for filing have not been met, the document shall not be filed and, except as provided in section 10-3203, the delivery of the document is ineffective. If the commission determines that the requirements for filing have been met, the commission shall file the document as provided in section 10-3125 and the filing is effective as of the date and time determined pursuant to subsection A or B of this section.

#### **10-3124. Correcting filed document; articles of incorporation; application for authority to conduct affairs**

A. A domestic or foreign corporation may correct a document that has been filed by the commission if the document either:

1. Contains an incorrect statement and the correction does not materially alter a substantive provision.
2. Was defectively executed, attested, sealed, verified or acknowledged.

B. A document is corrected by both:

1. Preparing articles of correction that:
  - (a) Describe the document or attach a copy of it to the articles.
  - (b) Specify the date the document was delivered to the commission.
  - (c) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.
  - (d) Correct the incorrect statement or other defect.
2. Delivering the articles to the commission for filing.

C. Articles of correction are effective on the effective date of the document they correct except as to persons who rely on the incorrect statement or other defect and who are adversely affected by the correction. As to those persons, articles of correction are effective as provided in section 10-123.

D. If articles of incorporation, articles of domestication or an application for authority to conduct affairs is rejected for filing by the commission, the articles or application may be resubmitted within thirty days after the date of rejection. If the resubmitted articles or application cures the defect that caused the rejection, the resubmitted articles or application shall be filed by the commission and is effective on the date that would have been the effective date of filing the articles or application if the articles or application had not been rejected.

#### **10-3125. Filing duty of commission**

A. At the time of delivery of a document to the commission, the commission shall stamp, endorse or attach the date and time of delivery of the document.

B. The commission shall file a document delivered to the commission for filing if both of the following apply:

1. The commission determines that the document satisfies the requirements of chapters 24 through 40 of this title.
2. The corporation filing the document or on whose behalf the document is being filed is in good standing pursuant to section 10-3128.

C. The commission may file a document delivered to the commission in which either the corporation has filed articles of dissolution or the corporation has filed a document that is required to bring the corporation into good standing. The commission shall provide notice of the filing to the domestic or foreign corporation or its representative.

D. If the commission refuses to file a document, it shall provide notice of the refusal to the domestic or foreign corporation or its representative within five days after the determination of the refusal to file, together with a brief written explanation of the reason for the refusal.

E. The filing or refusing to file a document by the commission does not:

1. Affect the validity or invalidity of the document in whole or in part, except to the extent that filing is required to make the document valid.
2. Relate to the correctness or incorrectness of information contained in the document.
3. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

#### **10-3127. Evidentiary effect of copy of filed document**

A stamp affixed to a copy of a document filed by the commission, bearing the signature of the executive director of the commission, which may be in facsimile, and the seal of the commission, is conclusive evidence that the original document is on file with the commission.

#### **10-3128. Certificate of good standing**

A. A person may apply to the commission to furnish a certificate of good standing for a domestic or foreign corporation.

B. The certificate of good standing sets forth all of the following:

1. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.
2. That either:
  - (a) The domestic corporation is incorporated under the law of this state and the date of its incorporation.
  - (b) The foreign corporation is authorized to transact business in this state.
3. That all affidavits and annual reports required before the date of the certificate have been filed with the commission.
4. That all annual filing fees due before the date of the certificate have been paid.
5. That according to the records of the commission, the corporation is in good standing in this state.

C. Subject to any qualification stated in the certificate, a certificate of good standing issued by the commission may be relied on as conclusive evidence of the matters stated in the certificate.

### **Article 3 Arizona Corporation Commission**

#### **10-3130. Powers**

The commission has the power and authority reasonably necessary to enable it to administer this title efficiently and to perform the duties imposed on it by this title, including the power and authority to make rules and regulations for those purposes.

### **Article 4 Definitions, Notice, Private Foundations, Judicial Relief and Religious Organizations**

#### **10-3140. Definitions**

In chapters 24 through 40 of this title, unless the context otherwise requires:

1. "Acknowledged" or "acknowledgment" means either an acknowledgment pursuant to title 33, chapter 4, article 5 or the signature, without more, of the person or persons signing the instrument, in which case the signature or signatures constitute the affirmation or acknowledgment of the signatory, under penalties of perjury, that the instrument is the act and deed of the signatory and that the facts stated in the instrument are true.
2. "Act of the board of directors" means either:
  - (a) An act of the majority of the directors present at a duly called meeting at which a quorum is present, unless the act of a greater number is required by chapters 24 through 40 of this title, the articles of incorporation or the bylaws.
  - (b) Action taken by written consent of the directors in accordance with chapters 24 through 40 of this title.
3. "Act of the members" means either:
  - (a) An act adopted or rejected by a majority of the votes represented and voting at a duly held meeting at which a quorum is present where affirmative votes also constitute a majority of the required quorum unless a greater number of votes is required by chapters 24 through 40 of this title, the articles of incorporation or the bylaws.
  - (b) An action taken by written consent of the members in accordance with chapters 24 through 40 of this title.
  - (c) An action taken by written ballot of the members in accordance with this chapter.
4. "Address" means a mailing address.
5. "Affiliate" means a person that directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with the person specified.
6. "Articles of incorporation" means the original or restated articles of incorporation or articles of merger and all amendments to the articles of incorporation or merger and includes amended and restated articles of incorporation and articles of amendment and merger.
7. "Board", "board of directors" or "board of trustees" means the group of persons vested with the direction of the affairs of the corporation irrespective of the name by which the group is designated, except that no person or group of persons shall be deemed to be the board of directors solely because of powers delegated to that person or group pursuant to section 10-3801, subsection C.
8. "Business day" means a day that is not a Saturday, a Sunday or any other legal holiday in this state.
9. "Bylaws" means the code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name by which those rules are designated.
10. "Certificate of disclosure" means the certificate of disclosure described in section 10-3202.
11. "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. Rights are the same if they are determined by a formula applied uniformly.
12. "Commission" means the Arizona corporation commission.
13. "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface or contrasting color or typing in capitals or underlined is conspicuous.
14. "Corporation" or "domestic corporation" means a nonprofit corporation that is not a foreign corporation and that is incorporated under or subject to chapters 24 through 40 of this title.
15. "Corporation sole" means a corporation formed pursuant and subject to chapter 42, article 1 of this title.
16. "Court" means the superior court of this state.
17. "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.
18. "Deliver" includes sending by mail, private courier, fax or electronic transmission.
19. "Delivery" means actual receipt by the person or entity to which directed and for electronic transmissions means receipt as described in section 44-7015, subsection B.
20. "Directors" or "trustees" means individuals, designated in the articles of incorporation or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.
21. "Dissolved" means the status of a corporation on either:

- (a) Effectiveness of articles of dissolution pursuant to section 10-11403, subsection B or section 10-11421, subsection B.
- (b) A decree pursuant to section 10-11433, subsection B becoming final.
22. "Distribution" means a direct or indirect transfer of money or other property or incurrence of indebtedness by a corporation to or for the benefit of its members in respect of any of its membership interests. A distribution may be in the form of any of the following:
- (a) A declaration of payment of a dividend.
  - (b) Any purchase, redemption or other acquisition of membership interests.
  - (c) A distribution of indebtedness.
  - (d) Otherwise.
23. "Effective date of notice" is prescribed in section 10-3141.
24. "Electronic transmission" means an electronic record as defined in section 44-7002 and that is sent pursuant to section 44-7015, subsection A.
25. "Employee" means an officer, director or other person who is employed by the corporation.
26. "Entity" includes a corporation, foreign corporation, not for profit corporation, business corporation, foreign business corporation, profit and not for profit unincorporated association, close corporation, corporation sole, limited liability company or registered limited liability partnership, a professional corporation, association or limited liability company or registered limited liability partnership, a business trust, estate, partnership, trust or joint venture, two or more persons having a joint or common economic interest, any person other than an individual and a state, the United States and a foreign government.
27. "Executed by the corporation" means executed by manual or facsimile signature on behalf of the corporation by a duly authorized officer or, if the corporation is in the hands of a receiver or trustee, by the receiver or trustee.
28. "Filing" means the commission completing the following procedure with respect to any document delivered for that purpose:
- (a) Determining that the filing fee requirements of this title have been satisfied.
  - (b) Determining that the document appears in all respects to conform to the requirements of chapters 24 through 40 of this title.
  - (c) On making the determinations, endorsement of the word "filed" with the applicable date on or attached to the document and the return of notice of the filing to the person who delivered the document or the person's representative.
29. "Foreign corporation" means a corporation that is organized under a law other than the law of this state and that would be a nonprofit corporation if formed under the laws of this state.
30. "Governmental subdivision" includes an authority, county, district, municipality and political subdivision.
31. "Includes" and "including" denotes a partial definition.
32. "Individual" includes the estate of an incompetent individual.
33. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.
34. "Known place of business" means the known place of business required to be maintained pursuant to section 10-3501.
35. "Mail", "to mail" or "have mailed" means to deposit or have deposited a communication in the United States mail with first class postage prepaid.
36. "Means" denotes an exhaustive definition.
37. "Member" means, without regard to what a person is called in the articles of incorporation or bylaws, any person or persons who, pursuant to a provision of a corporation's articles of incorporation or bylaws, have the right to vote for the election of a director or directors. A person is not a member by virtue of any of the following:
- (a) Any rights that person has as a delegate.
  - (b) Any rights that person has to designate a director or directors.
  - (c) Any rights that person has as a director.
  - (d) Being referred to as a member in the articles of incorporation, bylaws or any other document, if the person does not have the right to vote for the election of a director or directors.

38. "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles of incorporation and bylaws and chapters 24 through 40 of this title.
39. "Newspaper" has the same meaning prescribed in section 39-201.
40. "Notice" and "notify" are prescribed in section 10-3141.
41. "Person" includes individual and entity.
42. "President" means that officer designated as the president in the articles of incorporation or bylaws or, if not so designated, that officer authorized in the articles of incorporation, bylaws or otherwise to perform the functions of the chief executive officer, irrespective of the name by which designated.
43. "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located or in any other document executed by the corporation by an officer and delivered to the commission for filing. If an office has not been so designated, principal office means the known place of business of the corporation.
44. "Proceeding" includes a civil suit and a criminal, administrative and investigatory action.
45. "Publish" means to publish in a newspaper of general circulation in the county of the known place of business for three consecutive publications.
46. "Record date" means the date, if any, established under chapter 29 or 30 of this title on which a corporation determines the identity of its members and their membership interests for purposes of chapters 24 through 40 of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.
47. "Secretary" means that officer designated as the secretary in the articles of incorporation or bylaws or that officer authorized in the articles of incorporation, the bylaws or otherwise to perform the functions of secretary, irrespective of the name by which designated.
48. "State" if referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions and a territory and insular possession of the United States and their agencies and governmental subdivisions.
49. "Treasurer" means that officer designated as the treasurer in the articles of incorporation or bylaws or that officer authorized in the articles of incorporation, bylaws or otherwise to perform the functions of treasurer, irrespective of the name by which designated.
50. "United States" includes a district, authority, bureau, commission and department and any other agency of the United States.
51. "Vice-president" means an officer designated as a vice-president in the articles of incorporation or bylaws or an officer authorized in the articles of incorporation or the bylaws or otherwise to perform the functions of a vice-president, irrespective of the name by which designated.
52. "Vote" includes authorization by written ballot and written consent.
53. "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote that is contingent on the happening of a condition or event that has not occurred at the time. If a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

#### **10-3141. Notice**

- A. Notice under chapters 24 through 40 of this title must be in writing unless oral notice is reasonable under the circumstances. Oral notice is not permitted if written notice is required under chapters 24 through 40 of this title.
- B. Notice may be communicated in person, by telephone, telegraph, teletype, fax, electronic transmission or other form of wire or wireless communication, or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television or other form of public broadcast communication.
- C. Written notice by a domestic or foreign corporation to its members or directors, if in comprehensible form, is effective when mailed, if correctly addressed to the member's or director's address shown on the corporation's current list of members or directors. Notice given by electronic transmission, if in

comprehensible form, is effective when directed to an e-mail address shown on the corporation's current list of members or directors.

D. A written notice or report by a domestic or foreign corporation to its members delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

E. Written notice to a domestic or foreign corporation that is authorized to transact business in this state, other than in its capacity as a member, may be addressed to its statutory agent at its known place of business or to the corporation or its secretary at its principal office shown in its most recent annual report on file with the commission, or in the case of a foreign corporation that has not yet delivered an annual report in its application for a certificate of authority. Unless otherwise prohibited in chapters 24 through 40 of this title, written notice may also be given by electronic transmission when directed to an e-mail address that the corporation or its statutory agent provides.

F. Except as provided in subsection C of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

1. When received.
2. Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postpaid and correctly addressed.
3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and if the receipt is signed by or on behalf of the addressee.

G. Oral notice is effective when communicated if communicated in a comprehensible manner.

H. If chapters 24 through 40 of this title prescribe notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements that are not inconsistent with this section or other provisions of chapters 24 through 40 of this title those requirements govern.

#### **10-3150. Private foundations; definition**

A. Except if otherwise determined by a court of competent jurisdiction or to the extent no longer required by the internal revenue code of 1986, a corporation that is a private foundation as defined in section 509(a) of the internal revenue code of 1986 shall:

1. Distribute such amounts for each taxable year at a time and in a manner that does not subject the corporation to tax under section 4942 of the code.
2. Not engage in any act of self-dealing as defined in section 4941(d) of the code.
3. Not retain any excess business holdings as defined in section 4943(c) of the code.
4. Not make any taxable expenditures as defined in section 4944 of the code.
5. Not make any taxable expenditures as defined in section 4945(d) of the code.

B. For the purposes of this section, "code" means the internal revenue code of 1986 as amended.

#### **10-3160. Judicial relief**

A. If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles of incorporation, bylaws, or chapters 24 through 40 of this title, on petition of a director, officer, delegate or member, the court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

B. The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles of incorporation, bylaws and chapters 24 through 40 of this title, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

C. The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, than would otherwise be imposed by the articles of incorporation, bylaws, or chapters 24 through 40 of this title.

D. If practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles of incorporation or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without being subject to this section.

E. Notwithstanding subsection D, an order under this section may also authorize the obtaining of the votes and approvals that are necessary for the dissolution, merger or sale of assets.

F. Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of that order, is a valid meeting or vote and shall have the same force and effect as if it complied with every requirement imposed by the articles of incorporation, bylaws and chapters 24 through 40 of this title.

### **10-3180. Religious corporations; constitutional protections**

If religious doctrine governing the affairs of a corporation organized primarily for religious purposes is inconsistent with the provisions of chapters 24 through 40 of this title on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the constitution of this state or both.

## **Title 10, Chapter 25 INCORPORATION-NONPROFIT CORPORATIONS**

### **Article 1 Incorporation**

#### **10-3201. Incorporators**

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation and a certificate of disclosure to the commission for filing.

#### **10-3202. Articles of incorporation; violation; classification**

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that satisfies the requirements of section 10-3401.
2. A brief statement of the character of affairs that the corporation initially intends to conduct. This statement does not limit the affairs that the corporation may conduct.
3. The name and address of each person who is to serve as a director until a successor is elected and qualifies.
4. The name, street address and signature of the corporation's statutory agent.
5. The street address of the known place of business for the corporation, if different from that of its statutory agent.
6. The name and address of each incorporator.
7. Whether or not the corporation will have members.
8. Any provision elected by the incorporators that under chapters 24 through 40 of this title or any other law of this state may be elected only by specific inclusion in the articles of incorporation.
9. The signatures of all incorporators.

B. The articles of incorporation may set forth:

1. A provision eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken or any failure to take any action as a director, except liability for any of the following:
  - (a) The amount of a financial benefit received by a director to which the director is not entitled.
  - (b) An intentional infliction of harm on the corporation or the members.
  - (c) A violation of section 10-3833.
  - (d) An intentional violation of criminal law.
2. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 10-3850, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the exceptions described in paragraph 1 of this subsection.
3. Any other provision, not inconsistent with law.

C. The articles of incorporation need not set forth any of the corporate powers enumerated in chapters 24 through 40 of this title.



- D. The certificate of disclosure shall set forth all of the following:
1. The following information regarding all persons who at the time of its delivery are officers, directors, trustees and incorporators:
    - (a) Whether any of the persons have been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the five-year period immediately preceding the execution of the certificate.
    - (b) Whether any of the persons have been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the five-year period immediately preceding the execution of the certificate.
    - (c) Whether any of the persons are or have been subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the five-year period immediately preceding the execution of the certificate, if the injunction, judgment, decree or permanent order involved any of the following:
      - (i) The violation of fraud or registration provisions of the securities laws of that jurisdiction.
      - (ii) The violation of consumer fraud laws of that jurisdiction.
      - (iii) The violation of the antitrust or restraint of trade laws of that jurisdiction.
    - (d) With regard to any of the persons who have been convicted of the crimes or who are the subject of the judicial action described in subdivisions (a), (b) and (c) of this paragraph, information regarding:
      - (i) Identification of the persons, including present full name, all prior names or aliases, including full birth name, present home address, all prior addresses for the immediately preceding five-year period and date and location of birth.
      - (ii) The nature and description of each conviction or judicial action, the date and location, the court and public agency involved, and the file or case number of the case.
  2. A brief statement disclosing whether any persons who at the time of its delivery are officers, directors, trustees and incorporators and who have served in any such capacity in any other corporation on the bankruptcy or receivership of the other corporation. If so, for each corporation, the certificate shall include:
    - (a) The names and addresses of each corporation and the person or persons involved.
    - (b) The state in which each corporation:
      - (i) Was incorporated.
      - (ii) Transacted business.
    - (c) The dates of corporate operation.
  3. The signatures of all the incorporators.
  4. The date of its execution, which shall be not more than thirty days before its delivery to the commission.
  5. A declaration by each signer that the signer swears to its contents under penalty of law.
- E. The certificate of disclosure may set forth the name and address of any other person whom the incorporator or incorporators choose to be the subject of those disclosures required under subsection D, paragraph 1 of this section.
- F. If within sixty days after delivering the articles of incorporation and certificate of disclosure to the commission any person becomes an officer, director or trustee and the person was not the subject of the disclosures set forth in the certificate of disclosure, the incorporator or incorporators or, if the organization of the corporation has been completed as provided in section 10-3205, the corporation shall execute and deliver to the commission within the sixty-day period a declaration, sworn to under penalty of law, setting forth all information required by subsection D, paragraph 1 of this section, regarding the person. If the incorporator or incorporators or, as applicable, the corporation fails to comply with this subsection, the commission may administratively dissolve the corporation pursuant to section 10-11421.
- G. If any of the persons described in subsection D, paragraph 1 of this section have been convicted of the crimes or are the subject of the judicial action described in subsection D, paragraph 1 of this section, the commission may direct detailed interrogatories to the persons requiring any additional relevant information deemed necessary by the commission. The interrogatories shall be completely answered within thirty days after mailing of the interrogatories. With respect to corporations incorporating or seeking

authority to conduct affairs, articles of incorporation or an application for authority shall not be filed until all outstanding interrogatories have been answered to the satisfaction of the commission. With respect to existing domestic and foreign corporations, if the interrogatories are not answered as provided in this subsection or the answers to the interrogatories otherwise indicate proper grounds for an administrative dissolution, the commission shall initiate an administrative dissolution in accordance with chapters 24 through 40 of this title.

H. On a quarterly updated basis, the commission shall provide to the attorney general a list of all persons who are convicted of the crimes or who are the subject of the judicial action described in subsection D, paragraph 1 of this section as indicated by the certificate of disclosure filed during the preceding three months.

I. Any person who executed or contributed information for a certificate of disclosure and who intentionally makes any untrue statement of material fact or withholds any material fact with regard to the information required in subsection D, paragraph 1 of this section is guilty of a class 6 felony.

### **10-3203. Incorporation**

A. Unless a delayed effective date is specified in the articles of incorporation, incorporation occurs and the corporate existence begins when the articles of incorporation and certificate of disclosure are delivered to the commission for filing.

B. The commission's filing of the articles of incorporation and certificate of disclosure is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation pursuant to chapter 37 of this title.

C. Subject to section 10-3124, if the commission determines that the requirements of chapters 24 through 42 of this title for filing have not been met, the articles of incorporation and certificate of disclosure shall not be filed and the corporate existence terminates at the time the commission completes the determination. If the corporate existence is terminated pursuant to this subsection, sections 10-11404, 10-11405 and 10-11406 apply.

D. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the articles of incorporation shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

### **10-3204. Liability for noncorporate transactions**

All persons purporting to act as or on behalf of a corporation with actual knowledge that no corporation exists under chapters 24 through 40 of this title are jointly and severally liable to the extent not precluded by section 12-2506 for all liabilities created while so acting.

### **10-3205. Organization of corporation**

After incorporation the board of directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.

### **10-3206. Bylaws**

A. The board of directors of a corporation shall adopt initial bylaws for the corporation.

B. The bylaws of a corporation may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

### **10-3207. Emergency Bylaws**

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection D of this section. The emergency bylaws are subject to amendment or repeal by the members and may make all provisions necessary for managing the corporation during the emergency, including all of the following:

1. Procedures for calling a meeting of the board of directors.
2. Quorum requirements for the meeting.
3. Designation of additional or substitute directors.

- B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.
- C. Corporate action taken in good faith in accordance with the emergency bylaws both:
1. Binds the corporation.
  2. May not be used to impose liability on a corporate director, officer, employee or agent.
- D. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of a local emergency, a state of emergency or a state of war emergency, all as defined in section 26-301.

## **Title 10, Chapter 26 PURPOSES AND POWERS-NONPROFIT CORPORATIONS**

### **Article 1 General Provisions**

#### **10-3301. Purposes**

Subject to any limitations or requirements contained in its articles of incorporation or in any other applicable law, a corporation shall have the purpose of engaging in and may engage in any lawful activity including the practice of medicine as defined in section 32-1401 or the practice of dentistry as described in section 32-1202, or both, provided that the corporation engages in the practice of medicine or dentistry only through individuals licensed to practice in this state. This section does not alter any law or change any liability that might otherwise be applicable to the relationship between persons furnishing a professional service and persons receiving a professional service, including liability arising from that relationship.

#### **10-3302. General powers**

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including power to:

1. Sue and be sued, complain and defend in its corporate name.
2. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it.
3. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation.
4. Purchase, receive, lease or otherwise acquire and own, hold, improve, use and otherwise deal with real or personal property or any interest in property wherever located.
5. Sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property.
6. Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of and deal with shares or other interests in or obligations of any entity.
7. Make contracts and guarantees, incur liabilities, borrow monies, issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage, deed of trust, security agreement, pledge or other encumbrance of any of its property, franchises or income.
8. Issue any bond, debenture or debt security of the corporation by causing one or more officers designated in the bylaws or by the board of directors to sign the bond, debenture or debt security either manually or in facsimile and, if deemed necessary or appropriate by the officers, by causing its authentication, countersignature or registration, either manually or in facsimile, by a trustee, transfer agent or registrar other than the corporation itself or an employee of the corporation. If an officer who has signed, either manually or in facsimile, a bond, debenture or debt security as provided in this paragraph ceases for any reason to be an officer before the security is issued, the corporation may issue the security with the same effect as if the officer were still in office at the date of issue.

9. Lend monies, invest and reinvest its monies and receive and hold real and personal property as security for repayment, except as limited by section 10-3833.
10. Be a promoter, incorporator, partner, member, associate or manager of any entity.
11. Conduct its activities, locate offices and exercise the powers granted by chapters 24 through 40 of this title within or without this state.
12. Elect or appoint directors, officers, employees and agents of the corporation, define their duties, fix their compensation and lend them monies and credit.
13. Pay pensions and establish pension plans, pension trusts and other benefit or incentive plans for any of its or its affiliates' current or former directors, officers, employees and agents.
14. Eliminate or limit the liability of its directors in the manner and to the extent provided by section 10-3202 and chapter 31, article 5 of this title.
15. Make payments or donations not inconsistent with law for the public welfare or for charitable, religious, scientific or educational purposes and for other purposes that further the corporate interest.
16. Impose dues, assessments, admission and transfer fees on its members.
17. Establish conditions for admission of members, admit members and issue memberships.
18. Carry on a business.
19. Transact any lawful activity that will aid governmental policy.
20. Do any other act not inconsistent with law that furthers the activities and affairs of the corporation.

#### **10-3303. Emergency powers**

A. In anticipation of or during an emergency as prescribed in subsection D of this section, the board of directors of a corporation may:

1. Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent.
2. Relocate the principal office, designate alternative principal offices or regional offices or authorize the officers to do so.

B. During an emergency as prescribed in subsection D of this section, unless emergency bylaws provide otherwise:

1. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.
2. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

C. Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

1. Binds the corporation.
2. May not be used to impose liability on a corporate director, officer, employee or agent.

D. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of a local emergency, a state of emergency or a state of war emergency all as defined in section 26-301.

#### **10-3304. Validity of actions**

A. Except as provided in subsection B of this section, the validity of corporate action shall not be challenged on the ground that the corporation lacks or lacked power to act.

B. A corporation's power to act may be challenged by any of the following:

1. In a proceeding by members of a corporation that is not a condominium association as defined in section 33-1202, or a planned community association as defined in section 33-1802, having at least ten per cent or more of the voting power or by at least fifty members, unless a lesser percentage or number is provided in the articles of incorporation, against the corporation to enjoin the act.
2. In a proceeding by any member of a condominium or a planned community association against the corporation to enjoin the act pursuant to title 12, chapter 10, article 1.

3. In a proceeding by the corporation, directly, derivatively or through any receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the corporation.

C. In a member's proceeding under subsection B, paragraph 1 of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

## **Title 10, Chapter 27 NAME-NONPROFIT CORPORATIONS**

### **Article 1 General Provisions**

#### **10-3401. Corporate name**

A. A corporate name shall not contain language that states or implies that the corporation is organized for a purpose other than the purpose permitted by section 10-3301 and in its articles of incorporation.

B. Except as authorized by subsection C of this section, a corporate name must be distinguishable from all of the following:

1. The corporate name of a corporation incorporated in this state or a foreign corporation authorized to conduct affairs in this state.
2. A corporate name reserved under section 10-402 or 10-3402 or registered under section 10-403 or 10-3403.
3. A fictitious name of a foreign corporation under section 10-1506 or 10-11506.
4. The corporate name of a business corporation incorporated under this title or a foreign business corporation authorized to transact business in this state.
5. The partnership name of a limited partnership organized and registered under the laws of this state or of a foreign limited partnership authorized to transact business in this state.
6. The name of a limited liability company organized under title 29, chapter 4 or a foreign limited liability company authorized to transact business in this state.
7. A trade name registered pursuant to title 44, chapter 10, article 3.1.
8. The name of a registered limited liability partnership registered under title 29, chapter 5, article 10 or a foreign registered limited liability partnership authorized to transact business in this state.

C. A corporation may apply to the commission for authorization to use a name that is not distinguishable from one or more of the names described in subsection B of this section. The commission shall authorize use of the name applied for if either:

1. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the commission to change its name to a name that is distinguishable from the name of the applying corporation.
2. The applicant delivers to the commission a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

D. A corporation may use the name, including a fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business or conduct affairs in this state and the proposed user corporation either has:

1. Merged with the other corporation.
2. Been formed by reorganization of the other corporation.
3. Acquired all or substantially all of the assets, including the corporate name, of the other corporation.

E. Chapters 24 through 42 of this title do not control the use of fictitious names.

#### **10-3402. Reserved name**

A. A person may reserve the exclusive use of a corporate name, including a fictitious name to be adopted by a foreign corporation under section 10-11506, by delivering an application to the commission for filing. The application shall be executed by the applicant or an authorized agent of the applicant and shall set forth the name and address of the applicant and the name proposed to be reserved. If the commission finds that the corporate name applied for is available, it shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

B. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the commission a notice of the transfer that shall be executed by the applicant or an authorized agent of the applicant and that states the name and address of the transferee. The transfer shall not extend the period for which the name is reserved.

#### **10-3403. Registered name**

A. A foreign corporation may register its corporate name, or its corporate name with any change required by section 10-11506, if the name is distinguishable from the corporate names that are not available under section 10-3401, subsection B.

B. A foreign corporation registers its corporate name or its corporate name with any change required by section 10-11506, by delivering to the commission an application both:

1. Setting forth its corporate name or its corporate name with any change required by section 10-11506, the state or country and date of its incorporation and a brief description of the nature of the activities in which it is engaged.
2. Accompanied by a certificate of existence or a similar document from the state or country of incorporation that has been issued within sixty days of delivering the application for filing with the commission.

C. The name is registered for the applicant's exclusive use on the effective date of the application. The registration expires one year after the effective date of the application unless it is renewed pursuant to subsection D of this section.

D. A foreign corporation whose registration is effective may renew it for successive years by delivering to the commission for filing a renewal application that complies with the requirements of subsection B of this section. The renewal application renews the registration for one year after the effective date of the renewal application.

E. A foreign corporation whose registration is effective may qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under chapters 24 through 42 of this title or by another foreign corporation authorized to conduct affairs in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

## **Title 10, Chapter 28 OFFICE AND AGENT-NONPROFIT CORPORATIONS**

### **Article 1 Place of Business and Agent**

#### **10-3501. Known place of business and statutory agent**

Each corporation shall continuously maintain in this state both:

1. A known place of business that may be the address of its statutory agent.
2. A statutory agent who may be either:
  - (a) An individual who resides in this state.
  - (b) A domestic business or nonprofit corporation formed under this title.
  - (c) A foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state.
  - (d) A limited liability company formed under title 29.
  - (e) A limited liability company authorized to transact business in this state.

#### **10-3502. Change of known place of business and statutory agent**

A. A corporation may change its known place of business or statutory agent by delivering to the commission for filing a statement of change that may be the annual report and that sets forth:

1. The name of the corporation.
2. If the current known place of business is to be changed, the street address of the new known place of business.
3. If the current statutory agent is to be changed, the name and street address of the new statutory agent and the new agent's written consent to the appointment.

B. The statement of change shall be executed by the corporation by an officer and delivered to the commission. The change or changes set forth in the statement of change are effective on delivery to the commission for filing.

C. If the statutory agent changes its street address, it shall give written notice to the corporation of the change and sign, either manually or by fax, and deliver to the commission for filing a statement that complies with the requirements of subsection A of this section and that recites that the corporation has been given written notice of the change. The change or changes set forth in the statement are effective on delivery to the commission for filing.

#### **10-3503. Resignation of statutory agent**

A. A statutory agent may resign its agency appointment by signing and delivering to the commission for filing the signed original statement of resignation. The statement may include a statement that the known place of business is also discontinued. The statutory agent shall give written notice of its resignation to the corporation at an address other than the statutory agent's address.

B. After filing the statement, the commission shall mail one copy to the corporation at its known place of business, if not discontinued, and another copy to the corporation at its principal office.

C. The agency appointment is terminated and, if so provided in the statement, the known place of business is discontinued on the thirty-first day after the date on which the statement was delivered to the commission for filing.

#### **10-3504. Service on corporation**

A. The statutory agent appointed by a corporation is an agent of the corporation on whom process, notice or demand that is required or permitted by law to be served on the corporation may be served and that, when so served, is lawful personal service on the corporation.

B. If a corporation fails to appoint or maintain a statutory agent at the address shown on the records of the commission, the commission is an agent of the corporation on whom any process, notice or demand may be served. Pursuant to the Arizona rules of civil procedure, service on the commission of any process, notice or demand for an entity that is registered pursuant to this title shall be made by delivering to and leaving with the commission duplicate copies of the process, notice or demand, and the commission shall immediately cause one of the copies of the process, notice or demand to be forwarded by mail, addressed to the corporation at its known place of business. Service made on the commission is returnable pursuant to applicable law relative to personal service on the corporation. If service is made on the commission, whether under this chapter or a rule of court, the corporation has thirty days to respond in addition to the time otherwise provided by law.

C. The commission shall keep a permanent record of all processes, notices and demands served on it under this section and shall record in the record the time of the service and its action with reference to the service.

D. Notice required to be served on a corporation pursuant to section 10-11421 or 10-11422 may be served:

1. By mail addressed to the statutory agent of the corporation or, if the corporation fails to appoint and maintain a statutory agent, addressed to the known place of business required to be maintained pursuant to section 10-3501.
2. By electronic transmission to the statutory agent or to the corporation, or both.
3. Pursuant to the rules for service of process authorized by the Arizona rules of civil procedure.

## **Title 10, Chapter 29 MEMBERS AND MEMBERSHIP-NONPROFIT CORPORATIONS**

### **Article 1 Admission of Members**

#### **10-3601. Admission**

A. The articles of incorporation or bylaws may establish criteria or procedures for admission of members and continuation of membership.

B. No person shall be admitted as a member without that person's consent. Consent may be express or implied.

**10-3602. Consideration**

Except as provided in its articles of incorporation or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

**10-3603. No requirement of members**

A corporation is not required to have members.

**Article 2 Types of Memberships-Members' Rights and Obligations**

**10-3610. Difference in rights and obligations of members**

All members have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles of incorporation or bylaws establish classes of membership with different rights or obligations or otherwise provide. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles of incorporation or bylaws.

**10-3611. Transfers**

A. Except as set forth in or authorized by the articles of incorporation or bylaws, no member of a corporation may transfer a membership or any right arising from that membership.

B. If transfer rights are provided, no restriction on them is binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

**10-3612. Member's liability to third parties**

A member of a corporation is not personally liable for the acts, debts, liabilities or obligations of the corporation.

**10-3613. Member's liability for dues, assessments and fees**

A. A member may become liable to the corporation for dues, assessments and fees. A provision of the articles of incorporation, a provision of the bylaws or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability for dues, assessments or fees. An express or implied agreement, consent or acquiescence by the member is necessary to create liability for dues, assessments or fees. A member is deemed to have agreed to the liability if there exists at the time the member becomes a member a provision of the articles of incorporation, a provision of the bylaws, a provision of the declaration of a condominium or a planned community or a resolution adopted by the board authorizing or imposing dues, assessments or fees.

B. A home buyer may implicitly consent to liability for dues, assessments and fees.

C. Unless the provision authorizing dues expressly limits the amount of the dues, the amount and the member's liability are subject to increase or decrease.

**10-3614. Creditor's action against member**

A. No creditor of the corporation may bring a proceeding to reach the liability of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation, and execution has been returned unsatisfied in whole or in part.

B. All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection A to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in that proceeding.

C. In any proceeding by a creditor under this section, the member shall pay any amount that is determined to be owed by the member to the corporation directly to the corporation and not to any creditor. The member is not liable directly or indirectly for any costs incurred by the creditor in the proceeding. If the member has paid the amount to the corporation, the liability of the member to the



corporation for that amount is fully satisfied, the member is no longer a party to the proceeding and is immune from further proceedings under this section for the amount.

## **Article 3 Resignation and Termination**

### **10-3620. Resignation**

A. A member may resign at any time, except as set forth in or authorized by the articles of incorporation or bylaws.

B. The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

C. This section does not apply to corporations that are condominium associations or planned community associations.

### **10-3621. Termination, expulsion and suspension**

A. No member of a corporation may be expelled or suspended, and no membership or memberships in such a corporation may be terminated or suspended, except pursuant to a procedure that is set forth in the articles of incorporation, bylaws or an agreement between the member and the corporation or a procedure that is otherwise appropriate.

B. For purposes of subsection A, a procedure is otherwise appropriate if either:

1. The following are provided:

(a) A written notice at least fifteen days before the expulsion, suspension or termination and the reasons therefor.

(b) An opportunity for the member to be heard, orally or in writing, at least five days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension should not take place.

2. It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

C. Any written notice that is mailed shall be sent to the last address of the member shown on the corporation's records.

D. Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, shall begin within six months after the effective date of the expulsion, suspension or termination.

E. A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

F. This section does not apply to corporations organized primarily for religious purposes.

### **10-3622. Purchase of memberships**

Except as provided in the articles of incorporation or bylaws, a corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles of incorporation or bylaws. A corporation shall not make a payment that violates section 10-11301 or 10-11302.

## **Article 4 Derivative Suits**

### **10-3630. Definitions**

In this article, unless the context otherwise requires:

1. "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section 10-3637, in the right of a foreign corporation.

2. "Independent person" means a person with no personal interest in the transaction and no personal or other relationship which influences the person.

### **10-3631. Standing**

A. A proceeding may be brought in the right of a domestic corporation to procure a judgment in its favor by either:

1. In the case of a corporation that has members, any member or members having twenty-five per cent or more of the voting power or by fifty members, whichever is less.
2. In the case of a corporation that does not have members, any director or twenty-five per cent of the directors, whichever is greater.

B. In any such proceeding, each complainant shall both:

1. Have been a member or director, as applicable, of the corporation at the time of the act or omission complained of.
2. Fairly and adequately represent the interests of the corporation in enforcing the right of the corporation.

#### **10-3632. Demand**

No complainant may commence a derivative proceeding until both:

1. A written demand has been made on the corporation to take suitable action.
2. Ninety days have expired from the date the demand was made unless the complainant has earlier been notified that the demand has been rejected by the corporation or unless the statute of limitations will expire within the ninety days or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety day period.

#### **10-3633. Stay of proceedings**

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

#### **10-3634. Dismissal**

A. A derivative proceeding shall be dismissed by the court on motion by the corporation on any legal grounds, including if one of the groups specified in subsections B or F has determined in good faith after conducting a reasonable inquiry on which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

B. Unless a panel is appointed pursuant to subsection F, the determination in subsection A shall be made by either:

1. A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.
2. A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constitute a quorum.

C. None of the following shall by itself or collectively cause a director to be considered not independent for purposes of this section:

1. The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.
2. The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.
3. The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

D. If a derivative proceeding is commenced after a determination has been made that rejects a demand by the complainants, the complaint shall allege with particularity facts that establish either:

1. That a majority of the board of directors did not consist of independent directors at the time the determination was made.
2. That the requirements of subsection A have not been met.

E. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection A have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving by clear and convincing evidence that the requirements of subsection A have not been met.

F. The court may appoint a panel of one or more independent persons on motion by the corporation to determine whether the maintenance of the derivative proceeding is in the best interests of the corporation. In that case, the plaintiff has the burden of proving by clear and convincing evidence that the

requirements of subsection A have not been met. A person appointed by the court is not liable for a determination made pursuant to this section.

#### **10-3635. Discontinuance or settlement**

No derivative proceeding may be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's members or a class of members, the court shall direct that notice be given to the affected members.

#### **10-3636. Payment of expenses**

On termination of the derivative proceeding the court may either:

1. Order the corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation.
2. Order the plaintiff to pay any defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.
3. Order a party to pay an opposing party's reasonable expenses, including attorney fees, incurred because of the filing of any pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation.

#### **10-3637. Applicability to foreign corporations**

In any derivative proceeding in the right of a foreign corporation, the matters covered by this article are governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 10-3633, 10-3635 and 10-3636.

### **Article 5 Delegates**

#### **10-3640. Delegates**

- A. A corporation may provide in its articles of incorporation or bylaws for delegates that have some or all of the authority of members.
- B. The articles of incorporation or bylaws may set forth provisions relating to:
  1. The characteristics, qualifications, rights, limitations and obligations of delegates including the delegates' selection and removal.
  2. Calling, noticing, holding and conducting meetings of delegates.
3. Carrying on corporate activities during and between meetings of delegates.

## **Title 10, Chapter 30 MEMBERS' MEETINGS AND VOTING-NONPROFIT CORPORATIONS**

### **Article 1 Meetings and Action Without Meetings**

#### **10-3701. Annual and regular meetings; exceptions**

- A. Unless otherwise provided in the articles of incorporation or bylaws, a corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.
- B. A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.
- C. A corporation may hold annual and regular membership meetings in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the corporation shall hold annual and regular meetings at the corporation's principal office.

D. At regular meetings the members shall consider and act on any matter raised and that is consistent with the notice requirements of section 10-3705.

E. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

F. Notwithstanding this chapter, a condominium association shall comply with title 33, chapter 9 and a planned community association shall comply with title 33, chapter 16 to the extent that this chapter is inconsistent with title 33, chapters 9 and 16.

#### **10-3702. Special meeting**

A. A corporation with members shall hold a special meeting of members either:

1. On the call of its board or of the person or persons authorized to do so by the articles or bylaws.

2. Except as provided in the articles of incorporation or bylaws of a corporation organized primarily for religious purposes, if the holders of at least ten per cent of the voting power of any corporation sign, date and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

B. The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for the purpose of determining whether the ten per cent requirement of subsection A of this section has been met.

C. A corporation may hold a special meeting of members in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, the corporation shall hold special meetings at the corporation's principal office.

D. Unless otherwise provided in the articles of incorporation or bylaws, the corporation may conduct only those matters at a special meeting of members that are within the purpose or purposes described in the meeting notice required by section 10-3705.

#### **10-3703. Court ordered meeting; costs; attorney fees**

A. The court in the county where a corporation's principal office is located, or if the corporation has no principal office in this state, the court in the county where the corporation's known place of business is located, may summarily order a meeting to be held on application by any of the following:

1. Any member, if an annual meeting was not held within fifteen months after its last annual meeting.

2. Any member, if a regular meeting is not held within forty days after the date it was required to be held.

3. A member who signed a demand for a special meeting that is valid under section 10-3702 or a person or persons entitled to call a special meeting, if either:

(a) Notice of the special meeting was not given within thirty days after the date that the demand was delivered to a corporate officer.

(b) The special meeting was not held in accordance with the notice.

B. The court may:

1. Fix the time and place of the meeting.

2. Specify a record date for determining members entitled to notice of and to vote at the meeting.

3. Prescribe the form and content of the meeting notice.

C. If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

#### **10-3704. Action by written consent; definition**

A. The members may approve any action that is required or permitted by chapters 24 through 40 of this title and that requires the members' approval without a meeting of members if the action is approved by members holding at least a majority of the voting power, unless the articles of incorporation, bylaws or chapters 24 through 40 of this title require a different amount of voting power. The action shall be evidenced by one or more written consents describing the action taken, signed by those members representing at least the requisite amount of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

B. If not otherwise fixed under section 10-3703 or 10-3707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection A of this section.

C. The consent signed under this section has the effect of a meeting vote and may be described as such in any document.

D. Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent.

E. Unless otherwise specified in the consent or consents, the action is effective on the date that the consent or consents are signed by the last member whose signature results in the requisite amount of the voting power, except that if chapters 24 through 40 of this title require notice of proposed actions to members who are not entitled to vote in the action and the action is to be taken by unanimous consent of the members entitled to vote, the effective date is not before ten days after the corporation gives its members not entitled to vote written notice of the proposed action. The notice shall contain or be accompanied by the same material that under chapters 24 through 40 of this title would have been sent to members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the members for action.

F. Any member may revoke the member's consent by delivering a signed revocation of the consent to the president or secretary before the date that the consent or consents are signed by the last member whose signature results in the requisite amount of the voting power.

G. For the purposes of this section, "signature" includes an electronic signature as defined in section 44-7002.

#### **10-3705. Notice of meeting**

A. Except as provided in section 33-2208, a corporation shall notify members of the date, time and place of each annual, regular and special members' meeting at least ten days but not more than sixty days before the meeting date. Unless chapters 24 through 40 of this title or the articles of incorporation or bylaws require otherwise, the corporation shall give notice only to members entitled to vote at the meeting.

B. Unless chapters 24 through 40 of this title or the articles of incorporation or bylaws require otherwise, the notice of an annual or regular meeting does not require a description of the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under section 10-3703 or 10-3707, the record date for determining members entitled to notice of and to vote at an annual, regular or special members' meeting is the day before the effective date of the first notice to the members.

E. Unless the bylaws require otherwise, if an annual, regular or special members' meeting is adjourned to a different date, time or place, a notice of the new date, time or place is not required if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 10-3707, the corporation shall give notice of the adjourned meeting pursuant to this section to persons who are members as of the new record date.

#### **10-3706. Waiver of notice**

A. A member may waive any notice required by chapters 24 through 40 of this title, the articles of incorporation or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

B. A member's attendance at a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter at the time it is presented.

**10-3707. Record date; determining members entitled to notice and vote**

A. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing that record date, the board may fix a future date as that record date. If that record date is not fixed, members at the close of business on the business day before the day on which notice is given, or if notice is waived, at the close of business on the business day before the day on which the meeting is held, are entitled to notice of the meeting.

B. The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing that record date, the board may fix a future date as that record date. If that record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

C. The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing that record date, the board may fix in advance that record date. If that record date is not fixed, members at the close of business on the day on which the board adopts the resolution relating to that record date, or the sixtieth day before the date of other action, whichever is later, are entitled to exercise those rights.

D. The record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of members.

E. A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting, unless the board fixed a new date for determining the right to notice or the right to vote. The board shall fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date that is more than seventy days after the record date for determining members entitled to notice of the original meeting.

F. If a court orders a meeting adjourned to another date, the original record date for notice of voting continues in effect.

**10-3708. Action by written ballot**

A. Unless prohibited or limited by the articles of incorporation or bylaws, any action that the corporation may take at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

B. A written ballot shall:

1. Set forth each proposed action.
2. Provide an opportunity to vote for or against each proposed action.

C. Approval by written ballot pursuant to this section is valid only if both:

1. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.
2. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

D. All solicitations for votes by written ballot shall:

1. Indicate the number of responses needed to meet the quorum requirements.
2. State the percentage of approvals necessary to approve each matter other than election of directors.
3. Specify the time by which a ballot must be delivered to the corporation in order to be counted, which time shall not be less than three days after the date that the corporation delivers the ballot.

E. Except as otherwise provided in the articles of incorporation or bylaws, a written ballot shall not be revoked.

F. After providing notice that complies with subsection G of this section to members that a vote shall be conducted by electronic means, a written ballot may be delivered through an online voting system that does all of the following:

1. Authenticates the member's identity.
2. Authenticates the validity of each electronic vote to ensure that the vote is not altered in transit.
3. Transmits a receipt to each member who casts an electronic vote.
4. Stores electronic votes for recount, inspection and review purposes.

G. The notice prescribed by subsection F of this section shall include a reasonable procedure by which a member may obtain and cast a ballot through some other form of delivery, including United States mail delivery and fax transmission.

## **Article 2 Voting**

### **10-3720. Members' list for meeting**

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all of its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting another list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting and the corporation shall prepare that list on the same basis and make it a part of the list of members.

B. For the purpose of communication with other members concerning the meeting the corporation shall make the list of members available for inspection by any member at the corporation's principal office or at another place identified in the meeting notice in the city where the meeting will be held. On written demand a member, a member's agent or a member's attorney may inspect and, subject to the limitations of section 10-11602, subsection C, and section 10-11605, may copy the list, during regular business hours and at the member's expense, during the period it is available for inspection.

C. The corporation shall make the list of members available at the meeting, and any member, a member's agent or a member's attorney may inspect the list at any time during the meeting or during any adjournment.

D. If the corporation refuses to allow a member, a member's agent or a member's attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection B of this section, the court in the county where a corporation's principal office is located, or if no principal office is located in this state, the court in the county where a corporation's known place of business is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to comply with this section does not affect the validity of any action taken at the meeting.

F. The articles of incorporation or bylaws of a corporation organized primarily for religious purposes may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

### **10-3721. Voting entitlement generally**

A. Unless the articles of incorporation or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members. A member is entitled to vote only on those matters expressly provided in the articles of incorporation or bylaws.

B. Unless the articles of incorporation or bylaws or written agreement signed by the subject members and delivered to the corporation provide otherwise, if a membership stands of record in the names of two or more persons, those persons' acts with respect to voting shall have the following effect:

1. If only one votes, the act binds all.
2. If more than one votes, the vote shall be divided on a pro rata basis.

### **10-3722. Quorum requirements**

Unless chapters 24 through 40 of this title or the articles of incorporation provide for a higher or lower quorum the bylaws may provide the number or percentage of members entitled to vote, present or represented by proxy, or the number or percentage of votes entitled to be cast by members present or represented by proxy, that shall constitute a quorum at a meeting of members. In the absence of that provision, members, present or represented by proxy, holding one-tenth of the votes entitled to be cast, shall constitute a quorum.

### **10-3723. Voting requirements**

Unless chapters 24 through 40 of this title provide otherwise, the articles of incorporation or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes

represented and voting, for which affirmative votes also constitute a majority of the required quorum, is the act of the members.

#### **10-3724. Proxies**

A. A member may vote the member's votes in person or by proxy.

B. Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form, either personally or by the member's attorney-in-fact.

C. An appointment of a proxy is effective on receipt by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following:

1. A pledgee.

2. A person who purchased, agreed to purchase, holds an option to purchase or holds any other right to acquire the membership interest.

3. A creditor of the corporation who extended or continued credit to the corporation under terms requiring the appointment.

4. An employee of the corporation whose employment contract requires the appointment.

5. A party to a voting agreement created pursuant to section 10-3731.

E. The death or incapacity of the member who appoints a proxy does not affect the right of the corporation to accept the proxy's authority unless the secretary or other officer or agent authorized to tabulate votes receives written notice of the death or incapacity before the proxy exercises authority under the appointment.

F. Appointment of a proxy is revoked by the person who appoints the proxy by either:

1. Attending any meeting and voting in person.

2. Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

G. An appointment made irrevocable under subsection D of this section is revoked if the interest with which it is coupled is extinguished.

H. A transferee for value of a membership interest subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence at the time that the transferee acquired the membership interest and the existence of the irrevocable appointment was not noted conspicuously on the transfer documents.

I. Subject to section 10-3727 and to any express limitation on the proxy's authority that appears on the face of the appointment form, a corporation may accept the proxy's vote or other action as that of the member making the appointment.

#### **10-3725. Cumulative voting for directors**

A. If the articles of incorporation or bylaws provide for cumulative voting by members, members may cumulate their votes for directors, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or by distributing the product among two or more candidates.

B. Cumulative voting is not authorized at a particular meeting unless either:

1. The meeting notice or statement accompanying the notice states conspicuously that cumulative voting is authorized.

2. A member who has the right to cumulate votes gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes during the meeting, and if one member gives this notice all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

C. A director elected by cumulative voting may be removed by the members without cause if the requirements of section 10-3808 are met unless the votes cast against removal, or those members not consenting in writing or by ballot to the removal, would be sufficient to elect that director if voted cumulatively at an election at which the same total number of votes were cast or, if the action is taken by



written consent or ballot, all memberships entitled to vote were voted and the entire number of directors authorized at the time of the director's most recent election were then being elected.

#### **10-3726. Other methods of electing directors**

A corporation may provide in its articles of incorporation or bylaws the process for election of directors by members or delegates by any of the following means:

1. On the basis of chapter or other organizational unit.
2. By region or other geographic unit.
3. By preferential voting.
4. By any other reasonable method.

#### **10-3727. Corporation's acceptance of votes**

A. If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member if:

1. The member is an entity and the name signed purports to be that of an officer or agent of the entity.
2. The name signed purports to be that of an administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment.
3. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment.
4. The name signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver or proxy appointment.
5. Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

C. The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

D. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

E. Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

### **Article 3 Voting Agreements of Trusts**

#### **10-3730. Voting trusts**

If and to the extent a membership is transferable as provided in section 10-3611, and unless otherwise provided in the articles of incorporation or bylaws, one or more members may create a voting trust, conferring on one or more trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their memberships to the trustee or trustees. The agreement may contain any lawful provision not inconsistent with the purposes of the trust.

#### **10-3731. Voting agreements**

A. Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose.

B. Unless otherwise provided in the voting agreement, a voting agreement created under this section is specifically enforceable.

### **10-3732. Member agreements**

A. An agreement among the members of a corporation that complies with this section is effective among the members and the corporation even though it is inconsistent with one or more other provisions of chapters 24 through 40 of this title if it meets any of the following conditions:

1. Restricts the discretion or powers of the board of directors.
2. Governs the authorization or making of distributions whether or not in proportion to ownership of memberships, subject to the limitations in sections 10-11301 and 10-11302.
3. Establishes who shall be directors or officers of the corporation, their terms and conditions of office or employment or their manner of selection or removal.
4. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among any of them, including use of weighted voting rights or director proxies.
5. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation or among any of them.
6. Transfers to one or more members or other persons all or part of the authority to exercise the corporate powers or to manage the affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members.
7. Requires dissolution of the corporation at the request of one or more of the members or on the occurrence of a specified event or contingency.
8. Establishes the terms and conditions of employment of members.
9. Addresses the use of arbitration or other forms of dispute resolution to resolve disputes among members.
10. Restricts the transfer of memberships.
11. Otherwise governs the exercise of the corporate powers or the management of the affairs of the corporation, its liquidation and dissolution or the relationship among the members, the directors and the corporation, or among any of them.

B. An agreement authorized by this section shall be:

1. Set forth either:
  - (a) In the articles of incorporation or bylaws and approved by all persons who are members at the time of the agreement.
  - (b) In a written agreement that is signed by all persons who are members at the time of the agreement and that is filed with the corporation.
2. Subject to amendment or termination only by all persons who are members at the time of the amendment, unless the agreement provides otherwise.
3. Valid for the duration of the corporation's existence, unless the agreement provides otherwise.

C. An agreement authorized by this section is enforceable by any party to the agreement against any other party to the agreement. The existence of an agreement authorized by this section shall be noted conspicuously in an information statement provided to any person who becomes a member and who was not a signatory of the agreement. The failure to note the existence of the agreement in the information statement does not affect the validity of the agreement or any action taken pursuant to it. Any transferee of a membership who at the time of transfer did not have knowledge of the existence of the agreement is entitled to rescission of the membership. A transferee shall be deemed to have knowledge of the existence of the agreement if its existence is noted in the information statement in compliance with this subsection and the information is delivered to the transferee at or before the time of transfer of the membership or the transferee has actual notice of the existence of the agreement at the time of transfer. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of the transfer of the membership.

D. If the agreement ceases to be effective for any reason, the board of directors, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, may adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

E. An agreement that is authorized by this section and that limits the discretion or powers of the board of directors relieves the directors of and imposes on the person or persons in whom such discretion or powers are vested liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section is not a ground for imposing personal liability on any member for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were an unincorporated association or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

G. Incorporators may act as members with respect to an agreement authorized by this section if no members have been admitted when the agreement is made.

H. This section does not apply to, limit or invalidate agreements that are otherwise valid or authorized without regard to this section, including without limitation member agreements between or among some or all of the members or agreements between or among the corporation and one or more members. The procedure set forth in this section is not the exclusive method of agreement among members or among members and the corporation with respect to any of the matters described in this section.

## **Title 10, Chapter 31 DIRECTORS AND OFFICERS-NONPROFIT CORPORATIONS**

### **Article 1 Board of Directors**

#### **10-3801. Requirement for and duties of board**

A. Each corporation shall have a board of directors.

B. All corporate powers shall be exercised by or under the authority of and the affairs of the corporation shall be managed under the direction of its board of directors, subject to any limitation set forth in the articles of incorporation.

C. The articles of incorporation may authorize one or more members, delegates or other persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized the authorized person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from those duties and responsibilities.

#### **10-3802. Qualifications of directors**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the articles of incorporation or bylaws so prescribe.

#### **10-3803. Number of directors**

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

B. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed, from time to time, within the minimum and maximum, by the members or the board of directors.

#### **10-3804. Election, designation and appointment of directors**

A. If the corporation has members, the members shall elect all the directors except the initial directors at the first annual meeting of members, and at each annual meeting after the first annual meeting, unless either:

1. The terms of the directors are staggered pursuant to section 10-3806.
2. The articles of incorporation or bylaws provide some other time or method of election.
3. The articles of incorporation or bylaws provide that some of the directors are appointed by some other person or some of the directors are designated.

B. If the corporation does not have members, all the directors except the initial directors shall be elected, appointed or designated as provided in the articles of incorporation or bylaws. If no method of designation

or appointment is set forth in the articles of incorporation or bylaws, the board of directors shall elect the directors other than the initial directors.

#### **10-3805. Terms of directors generally**

A. The terms of the initial directors of a corporation expire at the first election, appointment or designation of directors as provided in section 10-3804.

B. The articles of incorporation or bylaws shall specify the terms of directors. In the absence of any term specified in the articles of incorporation or bylaws, the term of each director is one year. Unless otherwise provided in the articles of incorporation or bylaws, directors may be elected for successive terms.

C. A decrease in the number of directors or term of office does not shorten the term of any incumbent director.

D. Except as provided in the articles of incorporation or bylaws:

1. The term of a director elected to fill a vacancy in the office of a director elected by members expires at the next election of directors by members.

2. The term of a director elected to fill any other vacancy expires at the end of the unexpired term that the director is filling.

E. Despite the expiration of a director's term, a director shall continue to hold office until the director's successor is elected, designated or appointed and qualifies, until the director's resignation or removal or until there is a decrease in the number of directors.

#### **10-3806. Staggered terms for directors**

The articles of incorporation or bylaws may provide for staggering the directors' terms of office by dividing the total number of directors into two or more groups. The terms of office of the several groups need not be uniform.

#### **10-3807. Resignation of directors**

A. A director may resign at any time by delivering written notice to the board of directors, its presiding officer or the corporation.

B. A resignation is effective when the notice is delivered unless the notice specifies a later effective date or event. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

#### **10-3808. Removal of directors elected by members or directors**

A. A director may be removed from office pursuant to any procedure provided in the articles of incorporation or bylaws.

B. If the articles of incorporation or bylaws do not provide a procedure for removal of a director from office:

1. The members may remove one or more directors elected by them with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

2. If a director is elected by a class, chapter, region or other organizational or geographic unit or grouping only the members of that class, chapter, region, unit or grouping may participate in the vote to remove the director.

3. Except as provided in paragraph 9, a director may be removed under paragraph 1 or 2 only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

4. If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, region, unit or grouping of members, the number of votes of that class, chapter, region, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

5. A director elected by members may be removed by the members at a meeting by written consent or by written ballot of the members authorized to vote on such removal. If the removal is to occur at a meeting, the meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.

6. In computing whether a director is protected from removal under paragraphs 2 through 4, it is assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

7. An entire board of directors may be removed under paragraphs 1 through 5.

8. Except as provided in subsection C, a director elected by the board may be removed with or without cause by the vote of two-thirds of the directors then in office or any greater number as is set forth in the articles of incorporation or bylaws.

9. If, at the beginning of a director's term on the board of directors, the articles of incorporation or bylaws provide that the director may be removed for missing a specified number of meetings of the board of directors, the board of directors may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

C. Notwithstanding subsection B, paragraph 8, a director elected by the board to fill the vacancy of a director elected by the members may be removed with or without cause by the members, but not by the board of directors.

#### **10-3809. Removal of designated or appointed directors**

A. A designated director may be removed by an amendment to the articles of incorporation or bylaws deleting or changing the designation.

B. Except as otherwise provided in the articles of incorporation or bylaws, an appointed director may be removed with or without cause by the person appointing the director. The person removing the director shall give written notice of the removal to the director and either the board of directors, its presiding officer or the corporation. A removal is effective when the notice is delivered unless the notice specifies a later effective date or event.

#### **10-3810. Removal of directors by judicial proceeding**

A. The court in the county where a corporation's known place of business or, if none in this state, its statutory agent is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its members holding at least twenty-five per cent of the voting power of any class, if the court finds that both:

1. The director engaged in fraudulent conduct or intentional criminal conduct with respect to the corporation.

2. Removal is in the best interests of the corporation.

B. The court that removes a director may bar the director from serving on the board for a period prescribed by the court, but in no event may the period exceed five years.

C. If members commence a proceeding under subsection A, they shall make the corporation a party defendant, unless the corporation elects to become a party plaintiff.

D. The articles of incorporation or bylaws of a corporation organized for religious purposes may limit or prohibit the application of this section.

#### **10-3811. Vacancy on board**

A. Unless the articles of incorporation or bylaws provide otherwise, and except as provided in subsections B and C of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, either:

1. The members, if any, may fill the vacancy.

2. The board of directors may fill the vacancy.

3. If the directors remaining in office constitute fewer than a quorum of the board of directors, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

B. Unless the articles of incorporation or bylaws provide otherwise, if the vacant office was held by a director elected by a class, chapter, region or other organizational or geographic unit or grouping, only members of the class, chapter, region, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members.

C. Unless the articles of incorporation or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

D. If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles of incorporation or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

E. A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under section 10-3807, subsection B or otherwise may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

F. If at any time by reason of death or resignation or other cause a corporation has no directors in office, any officer or any member may call a special meeting of members.

#### **10-3812. Compensation of directors**

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

## **Article 2 Meetings and Action of the Board**

#### **10-3820. Regular and special meetings**

A. If the time and place of a directors' meeting is fixed by the bylaws or the board of directors, the meeting is a regular meeting. All other meetings are special meetings.

B. A board of directors may hold regular or special meetings in or out of this state.

C. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by or conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

#### **10-3821. Action without meeting**

A. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by chapters 24 through 40 of this title to be taken at a directors' meeting may be taken without a meeting if the action is taken by all of the directors. The action must be evidenced by one or more written consents describing the action taken, signed by each director and included in the minutes filed with the corporate records reflecting the action taken.

B. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

C. The consent signed under this section has the effect of a meeting vote and may be described as such in any document.

D. Any director may revoke a consent by delivering a signed revocation of the consent to the president or secretary before the date the last director signs the consent.

E. For the purposes of this section, a consent may be signed using an electronic signature as defined in section 44-7002.

#### **10-3822. Call and notice of meetings**

A. Unless the articles of incorporation, bylaws or subsection C of this section provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

B. Unless the articles of incorporation, bylaws or subsection C of this section provide otherwise, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

C. In corporations without members any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members is not valid unless each director is given at least two days' written notice that the matter will be voted on at a directors' meeting or unless notice is waived pursuant to section 10-3823.

D. Unless the articles of incorporation or bylaws provide otherwise, the presiding officer of the board of directors, the president or twenty per cent of the directors then in office may call and give notice of a meeting of the board.

### **10-3823. Waiver of notice**

A. A director may waive any notice required by chapters 24 through 40 of this title, the articles of incorporation or bylaws before or after the date and time stated in the notice. Except as provided in subsection B of this section, the waiver shall be in writing and signed by the director entitled to the notice, or by electronic transmission, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting or promptly on the director's arrival at the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

C. For the purposes of this section, a waiver may be signed using an electronic signature as defined in section 44-7002.

### **10-3824. Quorum and voting**

A. Unless the articles of incorporation or bylaws require a different number, a quorum of a board of directors consists of either:

1. A majority of the fixed number of directors if the corporation has a fixed board size.
2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of at least one-third of the fixed or prescribed number of directors determined under subsection A.

C. The articles of incorporation or bylaws may specify that, if a quorum is present when a meeting is convened, the quorum shall be deemed to exist until the meeting is adjourned, notwithstanding the departure of one or more directors.

D. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

E. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless either:

1. The director objects at the beginning of the meeting or promptly on the director's arrival to holding it or transacting business at the meeting.
2. The director's dissent or abstention from the action taken is entered in the minutes of the meeting.
3. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation before 5:00 p.m. on the next business day after the meeting.

F. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

G. The articles of incorporation or bylaws may authorize a director to vote in person or by proxy. The following provisions apply to voting by proxy:

1. A director may appoint a proxy to vote or otherwise act for the director by signing an appointment form, either personally or by the director's attorney-in-fact. The appointment does not relieve the director of liability for acts or omissions imposed by law on directors.
2. An appointment of a proxy is effective when received by the secretary. An appointment is valid for one month unless a different period is expressly provided in the appointment form.
3. An appointment of a proxy is revocable by the director.
4. The death or incapacity of the director appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless written notice of the death or incapacity is received by the secretary before the proxy exercises its authority under the appointment.
5. Subject to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as of the shareholder making the appointment.

### **10-3825. Committees of the board**

A. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee

shall have one or more members, and each member of a committee shall serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of members of the board of directors to it must be approved by the greater of:

1. A majority of all the directors in office when the action is taken.
2. The number of directors required by the articles of incorporation or bylaws to take action under section 10-3824.

C. Sections 10-3820 through 10-3824 governing meetings, action without meetings and notice, waiver of notice, quorum and voting requirements of the board of directors also apply to committees and their members.

D. Subject to the limitations set forth in subsection E of this section, each committee of the board may exercise the authority of the board of directors under section 10-3801 to the extent specified by the board of directors or in the articles of incorporation or bylaws.

E. A committee shall not take any of the following actions:

1. Authorize distributions.
2. Approve or recommend to members any action that requires the members' approval under this chapter.
3. Fill vacancies on the board of directors or on any of its committees.
4. Adopt, amend or repeal bylaws.
5. Fix the compensation of directors for serving on the board of directors or any committee of the board of directors.

F. The creation of, delegation of authority to or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 10-3830.

G. The board of directors may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

## **Article 3 Standards of Conduct**

### **10-3830. General standards for directors**

A. A director's duties, including duties as a member of a committee, shall be discharged:

1. In good faith.
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In a manner the director reasonably believes to be in the best interests of the corporation.

B. In discharging duties, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by any of the following:

1. One or more officers or employees of the corporation whom the director reasonably believes are reliable and competent in the matters presented.
2. Legal counsel, public accountants or other person as to matters the director reasonably believes are within the person's professional or expert competence.
3. A committee of or appointed by the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.
4. In the case of corporations organized for religious purposes, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

C. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection B unwarranted.

D. A director is not liable for any action taken as a director or any failure to take any action if the director's duties were performed in compliance with this section. In any proceeding commenced under this section or any other provision of this chapter, a director has all of the defenses and presumptions ordinarily available to a director. A director is presumed in all cases to have acted, failed to act or otherwise discharged such director's duties in accordance with subsection A. The burden is on the party challenging a director's action, failure to act or other discharge of duties to establish by clear and convincing evidence facts rebutting the presumption.



E. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of that property.

### **10-3833. Liability for unlawful distributions**

A. A director who votes for or assents to a distribution made in violation of sections 10-11301 and 10-11302 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating sections 10-11301 and 10-11302 or the articles of incorporation if it is established that the director's duties were not performed in compliance with section 10-3830.

B. A director of a corporation who is present at a meeting of its board of directors at which action on any distribution in violation of section 10-11301 is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the secretary of the meeting before the adjournment of the meeting or forwards the dissent by registered or certified mail to the secretary of the corporation before 5:00 p.m. of the next business day after the adjournment of the meeting. The right to dissent does not apply to a director who voted in favor of the action.

C. A director who is held liable under subsection A of this section for an unlawful distribution is entitled to contribution from:

1. Every other director who could be held liable under subsection A of this section for the unlawful distribution.
2. Each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of sections 10-11301 and 10-11302 or the articles of incorporation.

D. A proceeding under this section is barred unless it is commenced within two years after the date on which the distribution is made.

## **Article 4 Officers**

### **10-3840. Officers**

A. A corporation shall have the officers described in its articles of incorporation or bylaws or appointed by the board of directors in accordance with the articles of incorporation or bylaws.

B. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in a corporation.

### **10-3841. Duties and authority of officers**

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties and authority of other officers.

### **10-3842. Standards of conduct for officers**

A. If an officer has discretionary authority with respect to any duties, an officer's duties shall be discharged under that authority:

1. In good faith.
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In a manner the officer reasonably believes to be in the best interests of the corporation.

B. In discharging duties, an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by either:

1. One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

2. Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

3. In the case of corporations organized for religious purposes, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

C. An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection B unwarranted.

D. An officer is not liable for any action taken as an officer or any failure to take any action if the officer's duties were performed in compliance with this section. In any proceeding commenced under this section or any other provision of this chapter, an officer has all of the defenses and presumptions ordinarily available to an officer. An officer is presumed in all cases to have acted, failed to act or otherwise discharged such officer's duties in accordance with subsection A. The burden is on the party challenging an officer's action, failure to act or other discharge of duties to establish by clear and convincing evidence facts rebutting the presumption.

#### **10-3843. Resignation and removal of officers**

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date or event. If a resignation is made effective at a later date or event and the corporation accepts the later effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

B. A board of directors may remove any officer at any time with or without cause.

#### **10-3844. Contract rights of officers**

A. The appointment of an officer does not itself create contract rights.

B. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

#### **10-3845. Officers' authority to execute documents**

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by two individuals who are either:

1. Both the presiding officer of the board of directors and the president.
2. Either the presiding officer of the board of directors or the president, and one of the following:
  - (a) A vice-president.
  - (b) The secretary.
  - (c) The treasurer.
  - (d) The executive director.

## **Article 5 Indemnification**

#### **10-3850. Definitions**

In this article, unless the context otherwise requires:

1. "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
2. "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation'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 entity. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on or otherwise involve services by the director to the plan or to

participants in or beneficiaries of the plan. Director includes the estate or personal representative of a director and includes ex officio members of the board.

3. "Expenses" include attorney fees and other costs and expenses reasonably related to a proceeding.

4. "Liability" means the obligation to pay a judgment, settlement, penalty or fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding and includes obligations and expenses that have not yet been paid by the indemnified persons but that have been or may be incurred.

5. "Officer" means an individual who is or was an officer of a corporation or an individual who, while an officer of a corporation, is or was serving at the corporation'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 entity. An officer is considered to be serving an employee benefit plan at the corporation's request if the officer's duties to the corporation also impose duties on or otherwise involve services by the officer to the plan or to participants in or beneficiaries of the plan. Officer includes the estate or personal representative of an officer.

6. "Official capacity" means if used with respect to a director, the office of director in a corporation and, if used with respect to an officer as contemplated in section 10-3856, the office in a corporation held by the officer. Official capacity does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

7. "Outside director" means a director who, when serving as a director, is not or was not a compensated officer, employee or member holding more than ten per cent of the voting power of the corporation or any affiliate of the corporation or an officer, employee or holder of more than ten per cent of the voting power of such a member or any affiliate of that member.

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

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

### **10-3851. Authority to indemnify**

A. Except as provided in subsection D of this section, a corporation may indemnify an individual made a party to a proceeding because either:

1. The individual is or was a director against liability incurred in the proceeding if all of the following conditions exist:

(a) The individual's conduct was in good faith.

(b) The individual reasonably believed:

(i) In the case of conduct in an official capacity with the corporation, that the conduct was in its best interests.

(ii) In all other cases, that the conduct was at least not opposed to its best interests.

(c) In the case of any criminal proceedings, the individual had no reasonable cause to believe the conduct was unlawful.

2. The director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation pursuant to section 10-3202, subsection B, paragraph 2.

B. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection A, paragraph 1, subdivision (a) of this section.

C. The termination of a proceeding by judgment, order, settlement or conviction or on a plea of no contest or its equivalent is not of itself determinative that the director did not meet the standard of conduct described in this section.

D. A corporation may not indemnify a director under this section either:

1. In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation.

2. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

E. Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

#### **10-3852. Mandatory indemnification**

A. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was the prevailing party, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

B. Unless limited by its articles of incorporation, section 10-851, subsection D or subsection C of this section, a corporation shall indemnify an outside director against liability. Unless limited by its articles of incorporation or subsection C of this section, a corporation shall pay an outside director's expenses in advance of a final disposition of a proceeding, if the director furnishes the corporation with a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 10-851, subsection A and the director furnishes the corporation with a written undertaking executed personally, or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct. The undertaking required by this subsection is an unlimited general obligation of the director but need not be secured and shall be accepted without reference to the director's financial ability to make repayment.

C. A corporation shall not provide the indemnification or advancement of expenses described in subsection B of this section if a court of competent jurisdiction has determined before payment that the outside director failed to meet the standards described in section 10-851, subsection A, and a court of competent jurisdiction does not otherwise authorize payment under section 10-854. A corporation shall not delay payment of indemnification or expenses under subsection B of this section for more than sixty days after a request is made unless ordered to do so by a court of competent jurisdiction.

#### **10-3853. Advance for expenses**

A. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if both of the following conditions exist:

1. The director furnishes to the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 10-3851 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation pursuant to section 10-3202, subsection B, paragraph 1.

2. The director furnishes the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if the director is not entitled to mandatory indemnification under section 10-3852 and it is ultimately determined that the director did not meet the standard of conduct.

B. The undertaking required by subsection A, paragraph 2 of this section is an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Authorizations of payments under this section shall be made in a manner consistent with section 10-3830 or 10-3842.

D. This section does not apply to advancement of expenses to or for the benefit of an outside director. Advances to outside directors shall be made pursuant to section 10-3852.

#### **10-3854. Court ordered indemnification**

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification or an advance for expenses 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 advances for expenses if it determines either:

1. The director is entitled to mandatory indemnification under section 10-3852, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court ordered indemnification.

2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 10-3851 or was adjudged liable as described in section 10-3851, subsection D, but if the director was adjudged liable under section 10-3851, subsection D, indemnification is limited to reasonable expenses incurred.

#### **10-3855. Determination and authorization of indemnification**

A. A corporation may not indemnify a director under section 10-3851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 10-3851.

B. The determination shall be made either:

1. By the board of directors by a majority vote of the directors not at the time parties to the proceeding.
2. By special legal counsel:
  - (a) Selected by majority vote of the disinterested directors.
  - (b) If there are no disinterested directors, selected by majority vote of the board of directors.
3. By the members, but directors who are at the time parties to the proceeding may not vote on the determination.

C. Neither special legal counsel nor any member has any liability whatsoever for a determination made pursuant to this section. In voting pursuant to subsection B of this section, directors shall discharge their duty in accordance with section 10-3830.

D. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection B, paragraph 2 of this section to select counsel.

#### **10-3856. Indemnification of officers**

A. A corporation may indemnify and advance expenses under this article to an officer of the corporation who is a party to a proceeding because the individual is or was an officer of the corporation as follows:

1. To the same extent as a director.
2. If the individual is an officer but not a director, to the further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:
  - (a) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.
  - (b) Liability arising out of conduct that constitutes:
    - (i) Receipt by the officer of a financial benefit to which the officer is not entitled.
    - (ii) An intentional infliction of harm on the corporation or the members.
    - (iii) An intentional violation of criminal law.

B. Subsection A, paragraph 2 of this section applies to an officer who is also director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

C. An officer of a corporation who is not a director is entitled to mandatory indemnification under section 10-3852, subsection A and may apply to a court under section 10-3854 for indemnification or an advance for expenses, in each case to the same extent to which a director is entitled to indemnification or advance for expenses under those sections.

#### **10-3857. Insurance**

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director or officer of the corporation or who, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the person against the same liability under this article.

### **10-3858. Application of article**

A. A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors or a contract or otherwise is valid only if and to the extent the provision is consistent with this article. If the articles of incorporation limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the articles of incorporation.

B. This article does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

C. This article does not limit a corporation's power to indemnify, advance expenses or maintain insurance on behalf of an employee or agent.

## **Article 6 Director's Conflicting Interest Transactions**

### **10-3860. Definitions**

In this article, unless the context otherwise requires:

1. "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, by a subsidiary of the corporation or by any other entity in which the corporation has a controlling interest if either:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person either:

(i) Is a party to the transaction.

(ii) Has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called on to vote on the transaction.

(b) The transaction is brought or is of such character and significance to the corporation that it would in the normal course be brought before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called on to vote on the transaction:

(i) An entity, other than the corporation, of which the director is a director, general partner, agent or employee.

(ii) A person that controls one or more of the entities specified in item (i) of this subdivision or an entity that is controlled by or is under common control with one or more of the entities specified in item (i) of this subdivision.

(iii) An individual who is a general partner, principal or employer of the director.

2. "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, by a subsidiary of the corporation or by any other entity in which the corporation has a controlling interest respecting which a director of the corporation has a conflicting interest.

3. "Related person" of a director means either:

a) The spouse, or a parent or sibling of the spouse, of the director, a child, grandchild, sibling, parent or spouse of a child, grandchild, sibling or parent, of the director, an individual having the same home as the director or a trust or estate of which an individual specified in this subdivision is a substantial beneficiary.

(b) A trust, estate, incompetent, conservatee or minor of which the director is a fiduciary.

4. "Required disclosure" means disclosure by the director who has a conflicting interest of both:

(a) The existence and nature of the conflicting interest.

(b) All facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

5. "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability or other damage.

#### **10-3861. Judicial action**

A. A transaction that is effected or proposed to be effected by a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, and that is not a director's conflicting interest transaction shall not be enjoined, be set aside or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the corporation, because a director of the corporation, or any person with whom or with which the director has a personal, economic or other association, has an interest in the transaction.

B. A director's conflicting interest transaction shall not be enjoined, be set aside or give rise to an award of damages or other sanctions in a proceeding by a member by or in the right of the corporation, because the director, or any person with whom or with which the director has a personal, economic or other association, has an interest in the transaction, if either:

1. Directors' action respecting the transaction was taken at any time in compliance with section 10-3862.
2. Members' action respecting the transaction was taken at any time in compliance with section 10-3863.
3. The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

C. Any person seeking to have a director's conflicting interest transaction enjoined, set aside or give rise to an award of damages or other sanctions shall first prove by clear and convincing evidence that subsection B of this section is not applicable.

#### **10-3862. Directors' action; definition**

A. Directors' action respecting a transaction is effective for purposes of section 10-3861, subsection B, paragraph 1 if the transaction received the affirmative vote of a majority, but at least two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection B of this section. Action by a committee is effective under this section only if both:

1. All of its members are qualified directors.
2. Members are either all of the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors or the board.

B. If a director has a conflicting interest regarding a transaction but neither the director nor a related person of the director specified in section 10-3860, paragraph 3, subdivision (a) is a party to the transaction and if the director has a duty under law or professional canon or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in section 10-3860, paragraph 4, subdivision (b), disclosure is sufficient for purposes of subsection A of this section if the director both:

1. Discloses to the directors voting on the transaction the existence and nature of the conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction.
2. Plays no part, directly or indirectly, in their deliberations or vote.

C. A majority, but at least two, of all of the qualified directors on the board of directors or on the committee is a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

D. For purposes of this section, "qualified director" means, with respect to a director's conflicting transaction, any director who does not have either:

1. A conflicting interest respecting the transaction.

2. A familial, financial, professional or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

#### **10-3863. Members' action; definition**

A. Members' action respecting a transaction is effective for purposes of section 10-3861, subsection B, paragraph 2 if a majority of the votes entitled to be cast by the holders of all qualified membership interests was cast in favor of the transaction after all of the following:

1. Notice to members describing the director's conflicting interest transaction.
2. Provision of the information referred to in subsection C of this section.
3. Required disclosure to the members who voted on the transaction, to the extent the information was not known by them.

B. A majority of the votes entitled to be cast by the holders of all qualified membership interests is a quorum for the purposes of action that complies with this section. Subject to subsections C and D of this section, members' action that otherwise complies with this section is not affected by the presence of members or the voting of membership interests that are not qualified membership interests.

C. For purposes of compliance with subsection A of this section, a director who has a conflicting interest respecting the transaction shall inform, before the members' vote, the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number and the identity of persons holding or controlling the vote of all membership interests that the director knows are beneficially owned, or the voting of which is controlled, by the director or by a related person of the director, or both.

D. If a member's vote does not comply with subsection A of this section solely because of a failure of a director to comply with subsection C of this section and if the director establishes that his failure did not determine and was not intended by him to influence the outcome of the vote, the court, with or without further proceedings respecting section 10-3861, subsection B, paragraph 3, may take such action, respecting the transaction and the director and give such effect, if any, to the members' vote, as it considers appropriate in the circumstances.

E. For purposes of this section, "qualified membership interests" means any membership interests entitled to vote with respect to the director's conflicting interest transaction except membership interests that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

#### **10-3864. Conflict of interest policy; exceptions**

A. The board of directors of a corporation shall adopt a policy regarding transactions between the corporation and interested persons, including the sale, lease or exchange of property to or from interested persons and the corporation, the lending or borrowing of monies to or from interested persons by the corporation or the payment of compensation by the corporation for services provided by interested persons. For the purposes of this subsection, "interested person" means an officer or director of a corporation or any other corporation, firm, association or entity in which an officer or director of a corporation is a member, officer or director or has a financial interest.

B. The requirements of this section do not apply to any of the following:

1. A corporation that had assets at the end of its last fiscal year with a book value of less than ten million dollars, net of accumulated depreciation, or had gross receipts or revenues of less than two million dollars in its last fiscal year.
2. A corporation that offers goods or services only to members who are entitled to vote for its board of directors.
3. A corporation organized for religious purposes that does not have, as a substantial portion of its business, the offering of goods or services on a regular basis to the public for remuneration.
4. A corporation organized by or on behalf of the United States, this state, a political subdivision of this state or an agency or instrumentality of such a governmental entity.
5. A hospital, medical, dental or optometric service corporation licensed pursuant to title 20, chapter 4, article 3.

C. For the purposes of subsection B, paragraph 3:



1. Goods and services include medical, hospital, dental or counseling or social services offered on a regular basis to the public for remuneration.
2. A corporation organized for religious purposes includes a corporation or foreign corporation that controls or is controlled directly or indirectly by a corporation or foreign corporation organized for religious purposes.

D. The exemption provided by subsection B, paragraph 4 does not apply to a corporation that provides services to or operates assets of the governmental entity pursuant to a lease or contract.

## **Title 10, Chapter 33 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS-NONPROFIT CORPORATIONS**

### **Article 1 Articles of Incorporation**

#### **10-11001. Authority to amend**

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision that is not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control or purpose of duration of the corporation.

#### **10-11002. Amendment by board of directors**

A. If a corporation has members who are otherwise entitled to vote on amendments to the corporation's articles, then unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval to either:

1. Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.
2. Delete the names and addresses of the initial directors.
3. Delete the name and address of the initial statutory agent or known place of business, if a statement of change is on file with the commission.
4. Change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", "association", "society", or the abbreviation "corp.", "inc.", "co.", "ltd.", "assn." or "socy." for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name.
5. Make any other change expressly permitted by chapters 24 through 40 of this title or the articles of incorporation to be made by director action.

B. If a corporation has no members or if no members are entitled to vote on the proposed amendment, the board of directors may adopt one or more amendments to the corporation's articles of incorporation.

C. Adoption of an amendment pursuant to this section requires the approval in writing by any person or persons whose approval is required pursuant to section 10-11030 for an amendment to the articles of incorporation or bylaws.

#### **10-11003. Amendment by board of directors and members**

A. The following apply to amendments to the articles of incorporation by the board of directors and the members, if there are members entitled to vote on the amendment:

1. A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the members.
2. For the amendment to be adopted all of the following shall have occurred:
  - (a) The board of directors shall recommend the amendment to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for that determination to the members with the amendment.
  - (b) The members entitled to vote on the amendment shall approve the amendment as provided by paragraph 5 of this subsection.

(c) Each person whose approval is required by the articles of incorporation as authorized by section 10-11030 for an amendment to the articles of incorporation or bylaws shall approve the amendment in writing.

3. The board of directors may condition its submission of the proposed amendment on any basis.

4. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with section 10-3705. The notice of meeting shall also state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and shall contain or be accompanied by a copy or summary of the amendment.

5. Unless chapters 24 through 40 of this title, the articles of incorporation or the board of directors acting pursuant to paragraph 3 of this subsection requires a greater vote or voting by class, the amendment to be adopted shall be approved by two-thirds of the votes cast or a majority of the voting power, whichever is less.

B. The following apply to amendments to the articles of incorporation by the members, if there are members:

1. If the articles of incorporation expressly permit, the members may propose amendments to the articles of incorporation. If so permitted, the articles of incorporation shall set forth procedures for adopting member initiated amendments, including the percentage of voting power and method of notice required to propose an amendment and the responsibility for calling a member meeting to consider the amendment.

2. For the amendment to be adopted, all of the following shall have occurred:

(a) The members entitled to vote on the amendment shall approve the amendment as provided in paragraph 4 of this subsection.

(b) The corporation shall notify each member in accordance with subsection A, paragraph 4 of this section.

(c) Each person whose approval is required by the articles of incorporation as authorized by section 10-11030 for an amendment to the articles of incorporation or bylaws shall approve the amendment in writing.

3. The members may condition adoption of the proposed amendment on any basis.

4. Unless chapters 24 through 40 of this title, the articles of incorporation or the members acting pursuant to paragraph 3 of this subsection require a greater vote or voting by class, the amendment to be adopted shall be approved by two-thirds of the votes cast or a majority of the voting power, whichever is less.

#### **10-11004. Class voting by members on amendments**

The members of a class of a corporation are entitled to vote as a class on a proposed amendment to the articles of incorporation only if a class vote is provided for in the articles of incorporation or bylaws.

#### **10-11006. Articles of amendment**

A. A corporation amending its articles of incorporation shall deliver to the commission for filing articles of amendment setting forth:

1. The name of the corporation.

2. The text of each amendment adopted.

3. The date of each amendment's adoption.

4. A statement that the amendment was duly adopted by act of the members or act of the board of directors and, if applicable, with the approval required pursuant to section 10-11030.

B. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the articles of amendment shall be published. An affidavit evidencing the publication may be filed with the commission.

2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

#### **10-11007. Restated articles of incorporation**

A. A corporation's board of directors may restate its articles of incorporation at any time with or without approval by the members or any other person.

B. The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring approval by the members or any other person, it shall be adopted as provided in section 10-11003.

C. If the board of directors submits a restatement for member action, the corporation shall notify each member entitled to vote of the proposed membership meeting in writing in accordance with section 10-3705. The notice shall also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and shall contain or be accompanied by a copy or summary of the restatement that identifies any amendment or other change it would make in the articles.

D. If the board of directors submits a restatement for member action by written ballot or written consent, the material that solicits the approval shall contain or be accompanied by a copy or summary of the restatement that also identifies any amendment or other change it would make in the articles of incorporation.

E. A corporation restating its articles of incorporation shall deliver to the commission for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

1. Whether the restatement contains an amendment to the articles requiring approval by any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement.

2. If the restatement contains an amendment to the articles requiring approval by the members, a statement that such approval was obtained.

3. If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to section 10-11030, a statement that such approval was obtained.

F. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

G. The commission may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection E of this section.

H. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the articles of restatement shall be published. An affidavit evidencing the publication may be filed with the commission.

2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

#### **10-11008. Amendment pursuant to reorganization**

A. A corporation's articles may be amended pursuant to this section without action by the board of directors or members or approval required pursuant to section 10-11030 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under a federal statute or a statute of this state if the articles of incorporation after amendment contain only provisions required or permitted by section 10-3202.

B. Before the date of entry of a final decree in the reorganization proceeding, the individual or individuals designated by the court plan shall deliver to the commission articles of amendment setting forth all of the following:

1. The name of the corporation.

2. The text of each amendment contained in the plan of reorganization.

3. The date of the court's order or decree confirming the plan of reorganization containing the articles of amendment.

4. The title of the reorganization proceeding in which the order or decree was entered.

5. A statement that the court had jurisdiction of the proceeding under federal or state statute.

C. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

D. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the articles of amendment shall be published. An affidavit evidencing the publication may be filed with the commission.

2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

#### **10-11009. Effect of amendment and restatement**

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed

on the corporation or any property held by it by virtue of any trust on which that property is held by the corporation or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

## **Article 2 Bylaws**

### **10-11020. Amendment by board of directors**

A. If a corporation has no members, its board of directors may adopt one or more amendments to the corporation's bylaws.

B. The adoption of an amendment pursuant to this section shall require the approval in writing by any person or persons whose approval is required pursuant to section 10-11030.

### **10-11021. Amendment by board of directors or members**

If the articles of incorporation or the bylaws require that an amendment to or repeal of the corporation's bylaws be submitted to the members, the procedures set forth in section 10-11003 shall apply.

### **10-11022. Class voting by members on amendments**

The members of a class of a corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles of incorporation or bylaws.

### **10-11023. Bylaw increasing quorum or voting requirement for members**

A. If authorized by the articles of incorporation, members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for members, or of classes of members, than is required by chapters 24 through 40 of this title. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum or voting requirement for members shall meet the same quorum requirement and shall be adopted by the same vote and classes of members required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

B. A bylaw that fixes a greater quorum or voting requirement for members under subsection A shall not be adopted, amended or repealed by the board of directors.

### **10-11024. Bylaw increasing quorum or voting requirement for directors**

A. A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed as follows:

1. If originally adopted by the members, only by the members.
2. If originally adopted by the board of directors, either by the members or by the board of directors.

B. A bylaw that is adopted or amended by the members and that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the members or the board of directors.

C. Action by the board of directors under subsection A, paragraph 2 to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and shall be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

## **Article 3 Articles of Incorporation and Bylaws**

### **10-11030. Approval by third persons**

The articles of incorporation may require a specified person or persons other than the board of directors to approve in writing any amendment to the articles of incorporation or bylaws and, unless the articles of incorporation or bylaws otherwise provide, that article provision may only be amended with the approval in writing of the specified person or persons.

### **10-11031. Amendment terminating members or redeeming or canceling memberships**

A. Any amendment to the articles of incorporation or bylaws of a corporation that terminates all members or any class of members or redeems or cancels all memberships or any class of memberships shall be adopted in accordance with section 10-11002, 10-11003, 10-11020 or 10-11021, as applicable, and this section.

B. The members shall approve any amendment described in subsection A of this section by two-thirds of the votes cast by each class.

C. The provisions of section 10-3621 do not apply to any amendment described in subsection A of this section.

## **Title 10, Chapter 34 MERGERS AND OTHER RESTRUCTURING TRANSACTIONS-NONPROFIT CORPORATIONS**

### **Article 1 General Provisions**

#### **10-11101. Definitions**

A. In this article, unless the context otherwise requires:

1. "Plan" means a plan of merger, interest exchange, conversion, domestication or division, as applicable.
2. "Transaction" means a merger, an interest exchange, a conversion, a domestication or a division, as applicable.

B. Except for terms defined in chapters 24 through 40 of this title or unless the context otherwise requires, terms used in this article have the same meanings prescribed in section 29-2102.

#### **10-11102. Entity restructuring transactions**

A. If its board of directors adopts and, if required by section 10-11103, its members and other persons approve a plan, a domestic corporation may be a party to or otherwise undertake a transaction by adopting a plan and otherwise complying with this article and:

1. Title 29, chapter 6, article 2 for a merger.
2. Title 29, chapter 6, article 3 for an interest exchange.
3. Title 29, chapter 6, article 4 for a conversion.
4. Title 29, chapter 6, article 5 for a domestication.
5. Title 29, chapter 6, article 6 for a division.

B. The effective time and date of the transaction are as provided in title 29, chapter 6. Except as expressly set forth in this article, the procedures regarding the effect of and all other aspects of the transaction are governed by title 29, chapter 6.

C. This section does not limit the power of a corporation to acquire all or part of the interests of another entity through a voluntary exchange or otherwise.

#### **10-11103. Action on plan**

A. If the members of a domestic corporation or other persons are entitled to vote on or approve the plan, except as provided in subsection G of this section, after adopting a plan, the board of directors of the corporation shall submit the plan for approval by its members and the other persons.

B. For a plan to be approved all of the following must occur:

1. The board of directors recommends the plan to the members, unless the board of directors determines that because of a conflict of interest or other special circumstances it should not make a recommendation and communicates the basis for its determination to the members with the plan.
2. The members entitled to vote on the plan approve the plan.
3. Each person whose approval is required by the articles of incorporation for a transaction of the kind contemplated by the plan approves the plan in writing.

C. The board of directors may condition its submission of the plan on any basis.

D. If the corporation submits the transaction for member action at a membership meeting, the corporation shall notify each member of the proposed membership meeting at which the plan is to be submitted for

approval in accordance with section 10-3705. The notice shall state that the purpose or one of the purposes of the meeting is to consider the plan and shall contain or be accompanied by a copy or summary of the plan.

E. Unless chapters 24 through 40 of this title, the articles of incorporation or the board of directors acting pursuant to subsection C of this section requires a greater vote or voting by class, the plan to be authorized shall be approved by a majority of the votes cast or a majority of the voting power of the class, whichever is less.

F. Voting by a class of members is required on a plan if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 10-11004 or 10-11022. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

G. Unless the articles of incorporation otherwise require, action by the members of a domestic corporation that is the surviving corporation on a plan of merger is not required if all of the following conditions exist:

1. The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section 10-11002, from its articles of incorporation before the merger.
2. Each member of the surviving corporation who was a member immediately before the effective date of merger will hold the same number of memberships with identical designations, preferences, limitations and relative rights immediately after the effective date of merger.
3. The number of voting members existing immediately after the merger, plus the number of voting memberships issuable as a result of the merger, will not exceed more than twenty per cent the total number of voting memberships of the surviving corporation existing immediately before the merger.
4. The number of memberships, if any, that entitle the holders of the memberships to participate without limitation in distributions existing immediately after the merger, plus the number of participating memberships issuable as a result of the merger, will not exceed the total number of participating memberships existing immediately before the merger by more than ninety per cent.

#### **10-11105. Statement of merger or interest exchange; publication**

Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the statement of merger or interest exchange shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

#### **10-11108. Requests, devises and gifts**

Unless the will or other instrument otherwise specifically provides, any bequest, devise, gift, grant or promise that is contained in a will or other instrument of donation, subscription or conveyance, that is made to a domestic nonprofit corporation and that takes effect or remains payable after the transaction inures, as applicable, to the surviving entity in a merger, the acquiring entity in an interest exchange, the converted entity in a conversion, the domesticated entity in a domestication and, as specified in the statement of division, one or more of the resulting entities in a division.

## **Title 10, Chapter 35 SALE OF ASSETS-NONPROFIT CORPORATIONS**

### **Article 1 General Provisions**

#### **10-11201. Sale of assets in regular course of activities and mortgage of assets**

A. On the terms and conditions and for the consideration determined by the board of directors, a corporation may:

1. Sell, lease, exchange or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities.
2. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

3. Transfer any or all of its property to a corporation all the shares of memberships of which are owned by the corporation.
- B. Unless the articles of incorporation require it, approval by the members or any other person of a transaction described in subsection A is not required.

**10-11202. Sale of assets other than in regular course of activities**

A. On the terms and conditions and for the consideration determined by the corporation's board of directors, a corporation may sell, lease, exchange or otherwise dispose of all or substantially all of its property, with or without the goodwill, other than in the usual and regular course of its activities.

B. For a proposed transaction to be approved all of the following shall have occurred:

1. The board of directors shall approve the transaction. If the members of the corporation are entitled to vote on the proposed transaction, the board of directors shall submit the proposed transaction for approval by its members and shall recommend the proposed transaction to the members, unless the board of directors determines that because of a conflict of interest or other special circumstances it should not make a recommendation and communicates the basis for its determination to the members with the plan.
2. If the members of the corporation are entitled to vote on the proposed transaction, the members entitled to vote on the proposed transaction shall approve the proposed transaction.
3. Each person whose approval is required by the articles of incorporation for the sale, lease, exchange or other disposal shall approve the proposed transaction in writing.

C. The board of directors may condition its submission of the proposed transaction on any basis.

D. If the corporation submits the transaction for member action at a membership meeting, the corporation shall notify each member to which the proposed transaction is to be submitted for approval of the proposed membership meeting in accordance with section 10-3705. The notice shall state that the purpose or one of the purposes of the meeting is to consider the proposed transaction and shall contain or be accompanied by a copy or summary of a description of the transaction.

E. Unless chapters 24 through 40 of this title, the articles of incorporation or the board of directors acting pursuant to subsection C of this section, requires a greater vote or voting by class, a majority of the votes cast or a majority of the voting power of the class, whichever is less, shall approve the proposed transaction to be authorized.

F. At any time before consummation of the sale, lease, exchange or other disposition of property, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction, in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

G. A transaction that constitutes a distribution is governed by sections 10-11301 and 10-11302 and not by this section.

H. Except as provided in subsection K of this section and chapter 35.1 of this title, any person who intends to purchase, lease or otherwise acquire all or substantially all of the assets of a tax exempt corporation described in section 43-1201, paragraph 4, or all or substantially all of the assets located in this state of a tax exempt foreign corporation described in section 501(c)(3) of the internal revenue code of 1986 and is conducting affairs in this state, shall comply with subsection B of this section before such purchase, lease or acquisition if either:

1. The person is a tax exempt organization described in section 43-1201, paragraph 4 or section 501(c)(3) of the internal revenue code of 1986 but intends to use in an unrelated trade or business, determined by applying section 43-1201, paragraph 4 or section 513(a) of the internal revenue code of 1986 to such organization, any substantial portion of the assets to be acquired which were not being used in an unrelated trade or business of the corporation or foreign corporation conveying the assets immediately before the proposed purchase, lease or acquisition.
2. The person is not a tax exempt organization described in section 43-1201, paragraph 4 or section 501(c)(3) of the internal revenue code of 1986.

I. A person subject to the requirements of subsection H of this section shall give public notice of the intended transaction in accordance with subsection J of this section and shall hold a public hearing on the intended transaction no less than ten days after the first publication of the notice and no less than ten days before the intended purchase, lease or acquisition occurs. The sole purpose of the public hearing is

to receive public comment regarding the proposed transaction. The public hearing shall be held before at least two representatives of the person intending to purchase, lease or otherwise acquire the assets of the corporation or foreign corporation and at least two representatives of the corporation or foreign corporation.

J. Notice of the intended transaction shall include the time, date and place of the public hearing, the names of the parties to the transaction, a general summary of the intended transaction, a general description of the assets to be purchased, leased or otherwise acquired and a general description of the intended use of the assets after the completion of the transaction. The notice shall be published three consecutive times in a newspaper of general circulation in the county of the known place of business of the corporation or foreign corporation from which the assets are intended to be purchased, leased or otherwise acquired. The first notice shall be published no less than twenty days before the intended purchase, lease or acquisition occurs.

K. The requirements of subsections I and J of this section do not apply to the purchase, lease or other acquisition of assets under this section from a domestic or foreign corporation as provided in this section if any of the following applies:

1. The transaction involves assets having a book value at the time of the transaction, net of accumulated depreciation, of less than two million dollars.
2. The transaction is in the usual course of business of the transferor or in connection with the mortgage or pledge of any or all property and assets of the corporation or foreign corporation whether or not in its usual and regular course of business.
3. The transferor has assets immediately prior to such transaction, with a book value of more than ten million dollars, net of accumulated depreciation.
4. The transaction is to enable the transferor to finance the purchase of assets or to refinance assets already owned by it, or if, after the transaction has been completed, the transferor continues to have possession of the assets purchased, leased or otherwise acquired or used in the usual and regular course of its business.
5. The transferor offers goods or services only to members who are entitled to vote for its board of directors.
6. The transferor is organized for religious purposes and does not have, as a substantial portion of its business, the offering of goods or services on a regular basis to the public for remuneration.
7. The purchase, lease or sale of assets as described in subsection A of this section by the United States, this state, a political subdivision of this state or an agency or instrumentality of such a governmental entity.
8. The purchase, lease or sale of assets as described in subsection A of this section by a hospital, medical, dental or optometric service corporation licensed pursuant to title 20, chapter 4, article 3.

L. For the purposes of subsection K, paragraph 6 of this section:

1. Goods and services shall include, but are not limited to, medical, hospital, dental or counseling or social services offered on a regular basis to the public for remuneration.
2. A transferor organized for religious purposes includes a corporation or foreign corporation that controls or is controlled directly or indirectly by a corporation or foreign corporation organized for religious purposes.

M. The exemption provided by subsection K, paragraph 7 of this section does not apply to a corporation or foreign corporation that provides services to or operates assets of such a governmental entity pursuant to a lease or contract.

## **Title 10, Chapter 35.1 HOSPITAL AND COMMUNITY HEALTH CENTER MERGERS AND OTHER TRANSACTIONS**

### **Article 1 General Provisions**

#### **10-11251. Definitions**

In this chapter, unless the context otherwise requires:



1. "Assets" means all real, personal, tangible and intangible property and rights in property, including cash, buildings, equipment, investments and contracts with other entities.
2. "Community benefit activity" means any activity furthering community benefit purposes including any health care activity that includes education, prevention, promotion of community health, indigent care or any other charitable purpose.
3. "Community benefit assets" means every asset that has been used in connection with community benefit activity during the previous year.
4. "Community benefit organization" means a nonprofit charitable organization that is tax exempt under section 501(c)(3) of the internal revenue code and whose mission is solely to engage in community benefit activities.
5. "Community benefit purposes" means those purposes for which an entity may qualify for exemption pursuant to section 43-1201, paragraph 4 or section 501(c)(3) of the internal revenue code, or for similar activity engaged in by a for profit organization.
6. "Community health center" means a primary care facility that provides medical care in medically underserved areas as designated in section 36-2352 or in medically underserved areas or medically underserved populations as designated by the United States department of health and human services.
7. "Nonprofit health care entity" means a licensed hospital or community health center that holds tax exempt status pursuant to section 43-1201, paragraph 4 or section 501(c)(3) of the internal revenue code.
8. "Notice of completion" means the written notice that is sent by the hearing officer to the chairman of the corporation commission after the hearing officer holds a public hearing and files a summary report pursuant to section 10-11253.

**10-11252. Scope; included transactions; excluded transactions**

A. Except as provided in subsections B and C of this section, this chapter applies to any nonprofit health care entity that intends to sell, transfer, lease, exchange, option, convey, convert, give, merge or otherwise dispose of all or substantially all of its assets to or with another nonprofit health care entity or a for profit entity, including entering into a joint venture involving all or substantially all of its assets. The requirements of section 10-11202 do not apply to a nonprofit health care entity.

B. This chapter does not apply to any physician or licensed health care provider contract with a hospital or community health center. This chapter shall not affect any contract entered into between a physician or licensed health care provider or group of physicians or licensed health care providers and a licensed hospital.

C. This chapter does not apply to transactions:

1. Involving a transfer of community benefit assets of a licensed hospital or community health center with a book value of less than one million dollars, net of accumulated depreciation as of the date of the closing date of the intended transaction.
2. Enabling a party to finance the purchase of assets, refinance assets or mortgage or pledge assets already owned by the party, whether or not in its usual course of business.
3. Between or among a nonprofit health care entity and affiliated nonprofit entities that are part of a common line of ownership or control.

**10-11253. Public hearing; notice; requirements; summary report**

A. No later than ninety days before the anticipated closing of the intended transaction, any nonprofit health care entity that intends to engage in any of the transactions described in section 10-11252, subsection A shall give written notice to the director of the department of health services and the attorney general. The written notice shall include all of the following information:

1. The names, addresses and telephone numbers of the parties to the intended transaction.
2. The names, addresses and telephone numbers of the attorneys or other persons who represent the parties in connection with the intended transaction.
3. A general summary of the intended transaction.
4. A general description of the assets involved in the intended transaction and the intended use of the assets after the closing of the intended transaction.

5. A general summary of all collateral transactions that relate to the intended transaction, including the names, addresses and telephone numbers of the parties involved in the collateral transactions.
  6. The anticipated date of completion of the intended transaction.
- B. The notice and information required pursuant to subsection A of this section and information submitted pursuant to subsection H of this section are public records.
- C. Within thirty days after the nonprofit health care entity sends the written notice prescribed in subsection A of this section, the parties to the intended transaction shall:
1. Select a hearing officer to conduct the public hearing required by this section and determine a time and place within this state for the public hearing with the agreement of the director of the department of health services.
  2. Publish a notice of the time and place for the public hearing at least three consecutive times in at least one newspaper of general circulation in the county in which the nonprofit health care entity has its principal place of business.
- D. The hearing officer shall hold the public hearing within ten days after the last publication of the public notice.
- E. The purpose of the public hearing is to provide the information described in subsection F of this section and to receive comments from the public and other interested parties.
- F. The parties shall present written summary information at the public hearing that sets forth all of the following:
1. The extent to which the intended transaction impacts community benefit activities and is consistent with community benefit purposes, including a description of the resources that will be committed to community benefit purposes following the intended transaction.
  2. Whether the intended transaction creates or has the likelihood of creating an adverse effect on the access to or availability or cost of health care services.
  3. Whether any director, officer, agent or employee of the entity will receive any community benefit asset or will benefit directly or indirectly from the intended transaction, except for the receipt of compensation for professional services relating to the intended transaction for normal compensation for services rendered.
  4. The extent to which the nonprofit health care entity used due diligence in the selection of the entity that will receive any community benefit asset and in the negotiation of the price and other terms and conditions of the transaction.
  5. The extent to which the parties will continue to use the nonprofit health care entity's community benefit assets for community benefit purposes following the intended transaction, or, if applicable, the proceeds of the disposition of the assets will be deposited in a community benefit organization for community benefit purposes.
  6. Whether any initial board of directors members of any entity changed or created by the intended transaction will reside in or near the communities affected by the intended transaction.
  7. That any community benefit organization established to hold the proceeds of the disposition of assets is organized for community benefit purposes as required under federal and state law.
- G. The attorney general may present information at the public hearing.
- H. The hearing officer conducting the public hearing shall compile a summary report of the public hearing proceedings and shall transmit the summary report, a notice of completion and copies of all written information presented at the hearing to the director of the department of health services and the attorney general.
- I. The parties to the intended transaction shall pay for all costs associated with the hearing officer, notice, publication of notice, public hearing and summary report.

#### **10-11254. Applicability**

- A. Nothing in this chapter:
1. Affects the provisions of chapters 24 through 35 and chapters 36 through 40 of this title regarding the corporation commission's acceptance or denial of new, restated or amended articles of incorporation.
  2. Affects the operation of state or federal antitrust laws or the attorney general's enforcement of those laws.

3. Is intended to create any private or governmental right or cause of action relating to the transaction or related parties.
- B. This chapter does not apply to any transactions for which a letter of intent or memorandum of understanding or similar documentation was executed on or before December 31, 1996.

## **Title 10, Chapter 36 DISTRIBUTIONS-NONPROFIT CORPORATIONS**

### **Article 1 General Provisions**

#### **10-11301. Prohibited distributions**

Except as authorized by section 10-11302, a corporation shall not make any distributions.

#### **10-11302. Authorized distributions**

- A. A corporation may purchase its memberships if after the purchase is completed both:
1. The corporation would be able to pay its debts as the debts become due in the usual course of its activities.
  2. The corporation's total assets would at least equal the sum of its total liabilities.
- B. A corporation may make distributions on dissolution that conform to chapter 37 of this title.
- C. A corporation may make distributions to members who are domestic or foreign nonprofit corporations if after the distribution is made both:
1. The corporation would be able to pay its debts as the debts become due in the usual course of its activities.
  2. The corporation's total assets would at least equal the sum of its total liabilities.

## **Title 10, Chapter 37 DISSOLUTION-NONPROFIT CORPORATIONS**

### **Article 1 Voluntary Dissolution**

#### **10-11401. Dissolution by incorporators or directors and third persons**

- A. A majority of the incorporators or initial directors of a corporation that has not commenced activities or the board of directors of a corporation that has no members or has no members entitled to vote on dissolution or that has not commenced activities may dissolve the corporation by delivering to the commission for filing articles of dissolution. An incorporator or a director, whose signature shall be acknowledged, shall execute the articles of dissolution, and the articles shall set forth all of the following:
1. The name of the corporation.
  2. The date of its incorporation.
  3. Either:
    - (a) That the corporation has no members.
    - (b) That the corporation has no members entitled to vote on dissolution.
    - (c) That the corporation has not commenced activities.
  4. That the dissolution was duly authorized by act of the board of directors or a majority of the incorporators or initial directors and, if required by section 10-11030, act of any other persons.
- B. The board of directors, incorporators or initial directors in approving the dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.
- C. Authorization of dissolution pursuant to this section shall require the approval in writing by any person or persons whose approval is required for dissolution.

#### **10-11402. Dissolution by directors and third persons**

- A. If the members of the corporation are entitled to vote on dissolution, a corporation's board of directors may propose dissolution for submission to the members.
- B. For a proposal to dissolve to be adopted all of the following shall have occurred:

1. The board of directors shall recommend dissolution to the members, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members.
  2. The members entitled to vote shall approve the proposal to dissolve as provided in subsection E or F of this section.
  3. Each person whose approval is required by the articles of incorporation for dissolution shall approve the plan in writing.
- C. The board of directors may condition its submission of the proposal for dissolution on any basis.
- D. The corporation shall notify each member of the proposed membership meeting in accordance with section 10-3705. The notice shall also state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation and shall contain or be accompanied by a copy or summary of the plan of dissolution.
- E. Unless the articles of incorporation or the board of directors acting pursuant to subsection C of this section requires a greater vote or voting by class, in order to adopt the proposal to dissolve a majority of the votes cast or a majority of the voting power, whichever is less, shall approve the proposal to dissolve.
- F. If the board of directors submits the dissolution for member action by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.
- G. The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

#### **10-11403. Articles of dissolution**

- A. At any time after dissolution is authorized, the corporation may dissolve by delivering to the commission articles of dissolution setting forth all of the following:
1. The name of the corporation.
  2. The date dissolution was authorized.
  3. A statement that the dissolution was duly authorized by an act of the members or an act of the board of directors and, if applicable, with the approval required pursuant to section 10-11402.
- B. A corporation is dissolved on the effective date of its articles of dissolution.
- C. The articles of dissolution shall not be considered complete until all fees, penalties and costs required to be paid under this title have been paid.
- D. Within sixty days after the commission approves the filing, either of the following must occur:
1. A copy of the articles of dissolution shall be published. An affidavit evidencing the publication may be filed with the commission.
  2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.
- E. The articles of dissolution are not complete until the commission has received a notice from the department of revenue that the tax levied under title 42, chapter 5, article 1 against the corporation has been paid, or until the department of revenue notifies the commission that the corporation is not subject to the tax and the commission has received from the department of revenue a certificate issued by the department of revenue pursuant to section 43-1151.
- F. Notwithstanding subsection C of this section, if an annual report becomes due on or after the first date on which the articles of dissolution are delivered to the commission for filing, the annual report requirement prescribed in section 10-11622 is suspended for a period of six months after the first date on which the articles of dissolution are delivered to the commission for filing. On the expiration of the six-month suspension, if the articles of dissolution are not approved for filing or if the corporation is administratively dissolved pursuant to section 10-11420, paragraph 9, all past due annual reports required by section 10-11622, together with fees, are owed as if the suspension never occurred.

#### **10-11404. Revocation of dissolution**

- A. A corporation may revoke its dissolution within one hundred twenty days of its effective date.
- B. Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

C. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the commission for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

1. The name of the corporation.
2. The effective date of the dissolution that was revoked.
3. The date that the revocation of dissolution was authorized.
4. If the corporation's board of directors, or its incorporators or initial directors, revoked the dissolution a statement to that effect.
5. If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.
6. If member or third person action was required to revoke the dissolution, a statement that revocation was permitted by act of the members and act of each third person, as applicable.

D. Revocation of dissolution is effective on the effective date of the articles of revocation of dissolution.

E. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

#### **10-11405. Effect of dissolution**

A. A dissolved corporation continues its corporate existence but shall not carry on any activities except that activity appropriate to wind up and liquidate its affairs, including:

1. Preserving and protecting its assets and minimizing its liabilities.
2. Discharging or making provision for discharging its liabilities and obligations.
3. Disposing of its properties that will not be distributed in kind.
4. Returning, transferring or conveying assets held by the corporation on a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition.
5. Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws.
6. If no provision has been made in its articles of incorporation or bylaws for distribution of assets on dissolution and the corporation is organized for charitable, religious, eleemosynary, benevolent, educational or similar purposes, to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.
7. If no provision has been made in its articles of incorporation or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefitting or serving.
8. Doing every other act necessary to wind up and liquidate its assets and affairs.

B. Dissolution of a corporation does not:

1. Transfer title to the corporation's property, except as provided in section 10-11421.
2. Subject its directors or officers to standards of conduct that are different from those prescribed in chapter 31 of this title.
3. Change quorum or voting requirements for its board of directors or members, change provisions for selection, resignation or removal of its directors or officers, or both, or change provisions for amending its bylaws.
4. Prevent commencement of a proceeding by or against the corporation in its corporate name or any officers, directors or members or affect applicable statutes of limitations.
5. Abate or suspend a proceeding pending by or against the corporation or any officers, directors or members on the effective date of dissolution.
6. Terminate the authority of the statutory agent of the corporation.

#### **10-11406. Known claims against dissolved corporation**

A. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

B. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time and from time to time after its effective date. The written notice shall:

1. Describe information that shall be included in a claim.
  2. Provide a mailing address where a claim may be sent.
  3. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim.
  4. State that the claim will be barred if not received by the deadline.
- C. A claim against the dissolved corporation is barred either:
1. If a claimant who was given written notice under subsection B of this section does not deliver the claim to the dissolved corporation by the deadline.
  2. If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.
- D. For purposes of this section, claim does not include a contingent claim. Notwithstanding the foregoing, a claim that is contingent as of the effective date of dissolution but later ripens into a known claim or a claim based on an event occurring after the effective date of dissolution may be disposed of at such later time by the dissolved corporation by following the procedures described in subsections B and C.

#### **10-11407. Unknown claims against dissolved corporation**

A. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

B. The notice shall:

1. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's known place of business is or was last located.
2. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.
3. State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

C. If the dissolved corporation publishes a newspaper notice in accordance with subsection B of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

1. A claimant who did not receive written notice under section 10-11406.
2. A claimant whose claim was timely sent to the dissolved corporation but not acted on.
3. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution and is not disposed of in accordance with section 10-11406, subsection D.

D. If a claim, including a contingent claim or a claim based on an event occurring after the effective date of dissolution, is not barred by section 10-11406 or this section, the claim may be enforced either:

1. Against the dissolved corporation to the extent of its undistributed assets.
2. If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to that person in liquidation, whichever is less, but the distributee's total liability for all claims under this section shall not exceed the total amount of assets distributed to the distributee.

## **Article 2 Administrative Dissolution**

#### **10-11420. Grounds for administrative dissolution**

The commission may commence a proceeding under section 10-11421 to administratively dissolve a corporation if either:

1. The corporation does not pay within sixty days after they are due any fees or penalties imposed by chapters 24 through 40 of this title.
2. The corporation does not deliver its annual report to the commission within sixty days after it is due.
3. The corporation is without a statutory agent or known place of business in this state.
4. The corporation does not notify the commission within sixty days that its statutory agent or known place of business has been changed, that its statutory agent has resigned or that its known place of business has been discontinued.

5. The corporation has failed to make any publication required by this title, provided the commission has notified the corporation of the intent of the commission to commence a dissolution proceeding for that reason and the corporation has failed to file an affidavit or other appropriate evidence of publication within sixty days after that notice.
6. The corporation's period of duration stated in its articles of incorporation expires.
7. The corporation has failed to comply with section 10-3202, subsection F.
8. Any officer or other representative of the corporation has made any misrepresentation of a material matter in any application, report or other document submitted by the corporation pursuant to chapters 24 through 40 of this title.
9. The commission has not received the notice required by section 10-11403, subsection E within six months after filing articles of dissolution.
10. The corporation has failed to file a certificate of disclosure or answer interrogatories as prescribed in chapters 24 through 40 of this title.
11. The corporation failed to comply with section 10-11623, subsection A.

#### **10-11421. Procedure for and effect of administrative dissolution**

- A. If the commission determines that one or more grounds exist under section 10-11420 for dissolving a corporation, it shall serve the corporation with written notice of its determination under section 10-3504.
- B. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the commission that each ground determined by the commission does not exist within sixty days after service of the notice is perfected under section 10-3504, the commission shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The commission shall file the original of the certificate and serve a copy on the corporation under section 10-3504. If the corporation that has been dissolved is a utility providing domestic water services or domestic wastewater services and the corporation has been dissolved for at least three years, after notice to interested parties, opportunity for objection and hearing before the commission, the assets of the corporation may be transferred by the commission to a domestic water improvement district or a domestic wastewater improvement district established pursuant to title 48, chapter 6 or to a municipality incorporated pursuant to title 9, chapter 1, on receipt by the commission of a written request from the governing body of the district or municipality.
- C. Subject to the provisions of section 10-11422 regarding reinstatement, a corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section 10-11405 and notify its claimants under sections 10-11406 and 10-11407. If the corporation has not applied for reinstatement within six months after the effective date of the dissolution, the commission shall release the corporate name for use in accordance with chapters 24 through 40 of this title or by a person intending to register the name as a trade name pursuant to title 44, chapter 10, article 3.1.
- D. The administrative dissolution of a corporation does not terminate the authority of its statutory agent.

#### **10-11422. Reinstatement following administrative dissolution**

- A. A corporation administratively dissolved under section 10-11421 may apply to the commission for reinstatement within six years after the effective date of dissolution unless the corporation is a utility providing domestic water services or domestic wastewater services and the assets of the corporation have been transferred to a domestic water improvement district or a domestic wastewater improvement district established pursuant to title 48, chapter 6 or to a municipality incorporated pursuant to title 9, chapter 1. The application shall both:
  1. Recite the name of the corporation and the effective date of its administrative dissolution.
  2. State that the ground or grounds for dissolution either did not exist or have been eliminated.
- B. If the commission determines that the application contains the information required by subsection A of this section and that the information is correct, the commission shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation under section 10-3504.
- C. When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

D. If another corporation has adopted the name of the corporation or another person has adopted the name of the corporation as a trade name, the application shall be accompanied by articles of amendment that are in accordance with chapter 33, article 1 of this title and that adopt a new name for the corporation that complies with chapter 27, article 1 of this title.

### **Article 3 Judicial Dissolution**

#### **10-11430. Grounds for judicial dissolution**

A. The court may dissolve a corporation in a proceeding by the attorney general if it is established that either:

1. The corporation obtained its articles of incorporation through fraud.
2. The corporation has continued to exceed or abuse the authority conferred upon it by law.

B. Except as provided in the articles of incorporation or bylaws of a corporation organized primarily for religious purposes, the court may dissolve a corporation in a proceeding by fifty members or by members holding twenty-five per cent of the voting power, whichever is less, or by a director or any person specified in the articles of incorporation, if any of the following is established:

1. The directors are deadlocked in the management of the corporate affairs, the members, if any, are unable to breach the deadlock and irreparable injury to the corporation is threatened or being suffered or the affairs of the corporation cannot be conducted generally because of the deadlock.
2. The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent.
3. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates to elect successors to directors whose terms have or would otherwise have expired.
4. The corporate assets are being wasted, misapplied or diverted for noncorporate purposes.

C. The court may dissolve a corporation in a proceeding by a creditor if it is established that either:

1. The creditor's claim has been reduced to a judgment, the execution on the judgment has been returned unsatisfied and the corporation is insolvent.
2. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

D. The court may dissolve a corporation in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

#### **10-11431. Procedure for judicial dissolution**

A. Venue for a proceeding by the attorney general to dissolve a corporation or for a proceeding brought by any other party named in section 10-11430 is in the county where a corporation's known place of business is or was last located.

B. It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them personally.

C. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the activities of the corporation until a full hearing can be held.

#### **10-11432. Receivership**

A. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate or manage the affairs of the corporation. After notifying all parties to the proceeding and any interested persons designated by the court, the court shall hold a hearing before appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the corporation and all of its property wherever located.

B. The court may appoint an individual or a domestic or foreign business or nonprofit corporation authorized to transact business in this state as a receiver. The court may require the receiver to post bond, with or without sureties in an amount the court directs.

C. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. Among other powers, the receiver may exercise all of the powers of the corporation, through or in place of its board of directors, executive committee or officers, to the extent



necessary to carry on the ordinary and necessary activities of the corporation and to manage the affairs of the corporation in the best interests of its members and creditors.

D. The court from time to time during the receivership may order compensation paid and expense disbursements or reimbursements made to the receiver and its counsel from the assets of the corporation or proceeds from the sale of the assets.

E. A receiver of a corporation may sue and defend in all courts in his own name as receiver of such corporation.

#### **10-11433. Decree of dissolution**

A. If after a hearing the court determines that one or more of the grounds for judicial dissolution described in section 10-11430 exist, it may enter a decree that dissolves the corporation and specifies the effective date. The clerk of the court shall deliver a certified copy of the dissolution decree to the commission which shall file it.

B. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with section 10-11405 and the notification of claimants in accordance with sections 10-11406 and 10-11407.

### **Article 4 Miscellaneous**

#### **10-11440. Deposit with department of revenue**

A. Assets of a dissolved corporation that should be transferred to a creditor, claimant or member of the corporation who cannot be found or who is not competent to receive them and does not have a legal representative who is legally competent to receive them shall be reduced to cash subject to known trust restrictions and deposited with the unclaimed property division of the department of revenue for safekeeping.

B. Notwithstanding subsection A, in the discretion of the unclaimed property division of the department of revenue property may be received and held in kind.

C. If the creditor, claimant, member or legal representative who is legally competent to receive the distributive portion furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the unclaimed property division of the department of revenue shall pay the creditor, member or legal representative that amount or property.

## **Title 10, Chapter 38 FOREIGN CORPORATIONS-NONPROFIT CORPORATIONS**

### **Article 1 Grant of Authority**

#### **10-11501. Authority to conduct affairs required**

A. A foreign corporation shall not conduct affairs in this state until it is granted authority to transact business in this state as provided in this chapter from the commission.

B. The following activities, among others, do not constitute conducting affairs within the meaning of subsection A:

1. Maintaining, defending or settling any proceeding.
2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.
3. Maintaining bank accounts.
4. Maintaining offices or agencies for the transfer, exchange and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities.
5. Selling through independent contractors.
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
7. Creating or acquiring indebtedness, mortgages and security interests in real or personal property.

8. Securing or collecting debts or enforcing mortgages and security interests in property securing the same.
  9. Owning, without more, real or personal property.
  10. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.
  11. Conducting affairs in interstate commerce.
  12. Being a limited partner of a limited partnership or a member of a limited liability company.
- C. The list of activities in subsection B is not exhaustive.

**10-11502. Consequences for conducting affairs without authority**

- A. A foreign corporation conducting affairs in this state without a grant of authority shall not be permitted to maintain a proceeding in any court in this state until it is authorized to transact business.
- B. The successor to a foreign corporation that transacted business in this state without a grant of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains authority to transact business.
- C. A court may stay a proceeding commenced by a foreign corporation, its successor or its assignee until it determines whether the foreign corporation, its successor or its assignee requires authority to transact business in this state. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains authority to transact business in this state.
- D. A foreign corporation that conducts affairs in this state without authority is liable to this state, for the years or portions of years during which it transacted business in this state without authority, in an amount equal to all fees that would have been imposed by chapters 24 through 40 of this title on the corporation if it had duly applied for and received authority to conduct business in this state as required by chapters 24 through 40 of this title and thereafter filed all reports required by chapters 24 through 40 of this title. In addition to all penalties imposed by chapters 24 through 40 of this title for failure to pay the fees, the corporation shall pay a penalty of up to one thousand dollars to this state for violating this section. The attorney general may bring proceedings to recover all amounts due this state under this section.
- E. Notwithstanding subsections A and B of this section, the failure of a foreign corporation to obtain authority to transact business in this state does not impair the validity of its corporate acts or prevent it from defending any proceedings in this state.
- F. The attorney general or any other person may bring and maintain an action to enjoin any foreign corporation from transacting business in this state without authority. On a foreign corporation obtaining authority, the action shall be dismissed, but the plaintiff shall recover its costs and reasonable attorney fees. A determination by a court of competent jurisdiction in this state that a party to the action is a foreign corporation that was required but failed to qualify as a foreign corporation under chapters 24 through 40 of this title is a prima facie evidence against the foreign corporation in any other action brought by or against it by any other person of the requirement to and failure to qualify.

**10-11503. Application for certificate of authority**

- A. A foreign corporation may apply for authority to conduct affairs in this state by delivering an application and a certificate of disclosure to the commission for filing. The certificate of disclosure shall contain the information set forth in section 10-3202, subsection D and is subject to the requirements of section 10-3202, subsection F. The application shall be executed by the corporation and shall set forth:
1. The name of the foreign corporation and, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 10-11506.
  2. The name of the state or country under whose law it is incorporated.
  3. Its date of incorporation and period of duration.
  4. The street address of its principal office in its state or country of incorporation.
  5. The street address of the proposed known place of business of the corporation in this state and the name and street address of its proposed statutory agent in this state.
  6. If its purpose or purposes are narrower than the transaction of any or all lawful affairs in which corporations may engage in the state or country under whose law it is incorporated, a statement of the limitations on its purpose.
  7. The names and usual business addresses of its current directors and officers.
  8. Whether the foreign corporation has members.

9. A brief statement of the character of business that the corporation initially intends actually to conduct in this state. This statement does not limit the character of business that the corporation ultimately conducts.

B. The foreign corporation shall deliver the application and the certificate of disclosure to the commission, together with a copy of its articles of incorporation, any amendments to the articles of incorporation and a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated, and the nonrefundable fees required by law.

C. After determining that the application sets forth the information required by this section, does not use as the name of the corporation in this state a name that is in violation of section 10-11506 and appears in all other respects to conform to the requirements of this article, the commission shall file the application. The date of filing shall be the date on which the corporation is granted authority to transact business in this state.

D. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the application shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

E. A foreign corporation authorized to transact business in this state is subject to section 10-11623.

#### **10-11504. Delivery of changes; changes requiring amendment to application for authority**

A. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended or restated by merger or otherwise, within sixty days after the amendment or restatement becomes effective, the foreign corporation shall deliver to the commission a copy of the amendment or restatement duly authenticated by the secretary of state or other official having custody of corporate records in the state or country where the foreign corporation is incorporated.

B. In addition to the requirement prescribed in subsection A of this section, a foreign corporation authorized to conduct affairs in this state shall amend its application for authority by filing with the commission articles of amendment to application for authority if any of the following occurs:

1. The foreign corporation changes its actual corporate name under which it has obtained authority to conduct affairs in this state pursuant to section 10-11503, subsection A, paragraph 1.
2. The foreign corporation changes its period of duration.
3. The foreign corporation changes its state or country of incorporation.
4. A statement in the application for authority was inaccurate when made.

#### **10-11505. Effect of grant of authority**

A. A grant of authority to conduct affairs authorizes the foreign corporation to conduct affairs in this state subject to the right of the state to revoke the grant of authority as provided in chapters 24 through 40 of this title.

B. A foreign corporation with a valid grant of authority has the same but no greater rights and enjoys the same but no greater privileges as and except as otherwise provided by chapters 24 through 40 of this title and is subject to the same duties, restrictions, penalties and liabilities now or later imposed on a domestic corporation of like character.

C. Chapters 24 through 40 of this title do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to conduct affairs in this state.

#### **10-11506. Corporate name of foreign corporation**

A. If the corporate name of a foreign corporation does not satisfy the requirements of section 10-3401, to obtain or maintain a grant of authority to conduct affairs in this state the foreign corporation shall use a fictitious name that satisfies the requirements of section 10-3401 to conduct affairs in this state if its real name is unavailable and it delivers to the commission for filing a copy of the resolution of its board of directors, certified by a duly authorized officer, adopting the fictitious name. The foreign corporation shall not include language in its corporate name stating or implying that the foreign corporation is organized for a purpose other than that permitted by section 10-3301 and its articles of incorporation.

B. Except as authorized by subsection C of this section, the corporate name, including a fictitious name, of a foreign corporation shall be distinguishable from:

1. The corporate name of a corporation incorporated under this title or a foreign nonprofit, not for profit, business or close corporation authorized to transact business or conduct affairs in this state.
  2. A corporate name reserved under section 10-402 or 10-3402 or registered under section 10-403 or 10-3403.
  3. The fictitious name of another foreign business or nonprofit corporation.
  4. The partnership name of a limited partnership organized and registered under the laws of this state or of a foreign limited partnership authorized to transact business in this state.
  5. The name of a limited liability company organized under title 29, chapter 4 or a foreign limited liability company authorized to transact business in this state.
  6. The name of a registered limited liability partnership registered under title 29, chapter 5, article 10 or a foreign registered limited liability partnership authorized to transact business in this state.
  7. A trade name registered pursuant to title 44, chapter 10, article 3.1.
- C. A corporation may apply to the commission for authorization to use a name that is not distinguishable from one or more of the names described in subsection B of this section. The commission shall authorize use of the name applied for if either:
1. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the commission to change its name to a name that is distinguishable from the name of the applying corporation.
  2. The applicant delivers to the commission a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- D. A corporation may use the name, including a fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business or conduct affairs in this state and the proposed user corporation either has:
1. Merged with the other corporation.
  2. Been formed by reorganization of the other corporation.
  3. Acquired all or substantially all of the assets, including the corporate name, of the other corporation.
- E. Chapters 24 through 42 of this title do not control the use of fictitious names.
- F. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 10-3401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 10-3401 and amends its application for authority under section 10-11504.

#### **10-11507. Known place of business and statutory agent of foreign corporation**

Each foreign corporation authorized to conduct affairs in this state shall continuously maintain in this state both:

1. A known place of business that may be the address of its statutory agent.
2. A statutory agent who may be either:
  - (a) An individual who resides in this state.
  - (b) A domestic business or nonprofit corporation.
  - (c) A foreign business or nonprofit corporation authorized to conduct affairs in this state.
  - (d) A limited liability company formed under title 29.
  - (e) A limited liability company authorized to transact business in this state.

#### **10-11508. Change of known place of business or statutory agent of foreign corporation**

A. A foreign corporation authorized to conduct affairs in this state may change its known place of business or statutory agent by delivering to the commission for filing a statement of change, which may be the annual report, that sets forth:

1. The name of the foreign corporation.
2. The street address of its current known place of business.
3. If the current known place of business is to be changed, the street address of the new known place of business.
4. The name and street address of its current statutory agent.
5. If the current statutory agent is to be changed, the name of its new statutory agent and the new agent's written consent to the appointment.

B. The statement of change shall be executed by the foreign corporation by an officer and delivered to the commission. The change or changes set forth in the statement of change are effective on delivery to the commission for filing.

C. If a statutory agent changes its street address it shall give written notice to the foreign corporation of the change and shall sign, either manually or in facsimile, and deliver to the commission for filing a statement that complies with the requirements of subsection A and recites that the foreign corporation has been given written notice of the change. The change or changes are effective on delivery to the commission for filing.

#### **10-11509. Resignation of statutory agent of foreign corporation**

A. The statutory agent of a foreign corporation may resign the agency appointment by delivering to the commission for filing an original signed statement of resignation. The statement of resignation may include a disclosure that the known place of business of the foreign corporation has changed or has been discontinued. The statutory agent shall give written notification of the resignation of the foreign corporation at its last known address, other than that of the resigning statutory agent.

B. After the receipt and filing of the statement of resignation, the commission shall mail one copy to the foreign corporation at its known place of business within the state, if not discontinued. The commission shall mail another copy of the statement of resignation to the foreign corporation at its last known office in the jurisdiction of incorporation.

C. The agency appointment is deemed terminated and the known place of business is discontinued, if so provided, on the thirty-first day after the date on which the statement was delivered to the commission for filing.

#### **10-11510. Service on foreign corporation**

A. The statutory agent appointed by a foreign corporation is an agent of the foreign corporation on whom process, notice or demand that is required or permitted by law to be served on the foreign corporation may be served and that, when so served, is lawful personal service on the foreign corporation.

B. If a foreign corporation fails to appoint or maintain a statutory agent at the address shown on the records of the commission, the commission is an agent of the foreign corporation on whom any process, notice or demand may be served. Pursuant to the Arizona rules of civil procedure, service on the commission of any process, notice or demand for an entity that is registered pursuant to this title shall be made by delivering to and leaving with the commission duplicate copies of the process, notice or demand, and the commission shall immediately cause one of the copies of the process, notice or demand to be forwarded by mail, addressed to the foreign corporation at its known place of business. Service made on the commission is returnable pursuant to applicable law relative to personal service on the foreign corporation. If service is made on the commission, whether under this chapter or a rule of court, the foreign corporation has thirty days to respond in addition to the time otherwise provided by law.

C. The commission shall keep a permanent record of all processes, notices and demands served on it under this section and shall record in the record the time of the service and its action with reference to the service.

D. Notice required to be served on a foreign corporation pursuant to section 10-11531 may be served:

1. By mail addressed to the statutory agent of the foreign corporation or, if the foreign corporation fails to appoint and maintain a statutory agent, addressed to its known place of business in this state or its principal place of business in its state or country of incorporation.
2. By electronic transmission to the statutory agent or to the corporation, or both.
3. Pursuant to the rules for service of process authorized by the Arizona rules of civil procedure.

## **Article 2 Withdrawal**

#### **10-11520. Withdrawal of foreign corporation**

A. A foreign corporation authorized to conduct affairs in this state shall not withdraw from this state until the commission files its application for withdrawal.

B. A foreign corporation authorized to conduct affairs in this state may apply to surrender the authority by delivering an application to the commission for filing. The application shall set forth:

1. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.
2. That it is not conducting affairs in this state and that it surrenders its authority to conduct affairs in this state.
3. That the foreign corporation revokes the authority of its statutory agent to accept service on its behalf and appoints the commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state.
4. A mailing address to which the commission may mail a copy of any process served on the commission pursuant to its appointment as the foreign corporation's agent for service of process.
5. A commitment to notify the commission in the future of any change in the foreign corporation's mailing address.

C. The application for withdrawal is not considered complete until the commission has received a notice from the department of revenue to the effect that the tax levied under title 42, chapter 5, article 1 against the foreign corporation has been paid or until it is notified by the department of revenue that the applicant is not subject to the tax and further has received from the department of revenue its certificate issued pursuant to section 43-1151.

D. The application for withdrawal is not considered complete until all fees, penalties and costs required to be paid under this chapter have been paid.

E. After determining that the application appears in all respects to conform to the requirements of this chapter and when all fees have been paid as are prescribed in this chapter, the commission shall file the application in the manner provided in section 10-3120. On the filing of the application for withdrawal, the authority of the foreign corporation to transact business in this state ceases.

F. Within sixty days after the commission approves the filing, either of the following must occur:

1. A copy of the application for withdrawal shall be published. An affidavit evidencing the publication may be filed with the commission.
2. The commission shall input the information regarding the approval into the database as prescribed by section 10-130.

G. After the withdrawal of the corporation is effective, service of process on the commission under this section is service on the foreign corporation. On receipt of process, the commission shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

H. Notwithstanding subsection D of this section, if an annual report becomes due on or after the first date on which an application for withdrawal is delivered to the commission for filing, the annual report requirement prescribed in section 10-11622 is suspended for a period of six months after the first date on which the application for withdrawal is delivered to the commission for filing. On expiration of the six-month suspension, if the application for withdrawal is not approved for filing or if the authority of the corporation to conduct affairs is revoked pursuant to section 10-11530, paragraph 10, all past due annual reports required by section 10-11622, together with fees, are owed as if the suspension never occurred.

#### **10-11521. Withdrawal by directors or members; foreign corporations**

A. A majority of the directors or members of a foreign corporation that has not commenced conducting affairs in this state may withdraw the foreign corporation by delivering to the commission for filing an application for withdrawal that sets forth all of the following:

1. The name of the foreign corporation and the name of the state or country under whose laws it is incorporated.
2. That the foreign corporation revokes the authority of its statutory agent to accept service on its behalf and appoints the commission as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to conduct affairs in this state.
3. A mailing address to which the commission may mail a copy of any process served on the commission pursuant to its appointment as the foreign corporation's agent for service of process.
4. A commitment to notify the commission in the future of any change in the foreign corporation's mailing address.
5. That the foreign corporation has not conducted affairs in this state and that it surrenders its authority to conduct affairs in this state.
6. That no debt of the foreign corporation acquired in this state remains unpaid.
7. That a majority of the directors or members authorized the withdrawal.

B. The application for withdrawal filed pursuant to this section must be executed pursuant to section 10-3120, subsection F.

C. After determining that the application appears in all respects to conform to the requirements of this chapter and when all fees have been paid as are prescribed by this chapter, the commission shall file the application in the manner provided in section 10-3120. On the filing of the application for withdrawal, the authority of the foreign corporation to conduct affairs in this state ceases.

## **Article 3 Revocation of Certificate of Authority**

### **10-11530. Grounds for revocation**

The commission may commence a proceeding under section 10-11531 to revoke the authority of a foreign corporation to conduct affairs in this state if any of the following conditions exist:

1. The foreign corporation does not deliver the annual report to the commission within the time required by chapters 24 through 40 of this title.
2. The foreign corporation does not pay any fees or penalties imposed by chapters 24 through 40 of this title when they become due and payable.
3. The foreign corporation is without a statutory agent or known place of business in this state for sixty days or more.
4. The foreign corporation does not inform the commission that its statutory agent or its known place of business has changed or that its statutory agent has resigned within sixty days after the change or resignation.
5. The foreign corporation has failed to make any publication required by this title, provided the commission has notified the foreign corporation of the intent of the commission to commence a revocation proceeding for that reason and the foreign corporation has failed to file an affidavit or other appropriate evidence of publication within sixty days after that notice.
6. An incorporator, director, officer or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the commission for filing.
7. The commission receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.
8. The corporation has failed to file a certificate of disclosure or answer interrogatories as prescribed in chapters 24 through 40 of this title.
9. Any officer or other representative of the corporation has made any misrepresentation of a material matter in any application, report or other document submitted by the corporation pursuant to chapters 24 through 40 of this title.
10. The corporation has failed to pay fees, penalties and costs required under this chapter or to comply with section 10-11520, subsection F or the commission has not received the notice required by section 10-11520, subsection C within six months after filing the application for withdrawal.

### **10-11531. Procedure for and effect of revocation; reinstatement**

A. If the commission determines that one or more grounds exist under section 10-11530 for revocation of a grant of authority, the commission shall serve the foreign corporation with written notice of the determination under section 10-11510.

B. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the commission that each ground for revocation determined by the commission does not exist within sixty days after service of the notice is perfected under section 10-11510, the commission may revoke the foreign corporation's grant of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The commission shall file the original of the certificate and serve a copy on the foreign corporation under section 10-11510.

C. The authority of a foreign corporation to conduct affairs in this state ceases on the date shown on the certificate revoking its grant of authority.

D. The commission's revocation of a foreign corporation's grant of authority appoints the commission the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to conduct affairs in this state. Service of process on the commission under this subsection is service on the foreign corporation. On receipt of process, the commission shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign corporation stating the current mailing address of its principal office, or, if none is on file, in its application for authority.

E. Revocation of a foreign corporation's grant of authority does not terminate the authority of the statutory agent of the corporation.

F. A foreign corporation whose authority is revoked pursuant to this section may apply to the commission for reinstatement within six years after the effective date of the revocation. The application shall state both:

1. The name of the foreign corporation and the effective date of the foreign corporation's revocation of authority.
2. That the ground or grounds for the revocation either did not exist or have been eliminated.

G. If the commission determines that the application contains the information prescribed in subsection F of this section and that the information is correct, the commission shall do all of the following:

1. Cancel the certificate of revocation.
2. Prepare a certificate of reinstatement that states the determination and the effective date of the reinstatement.
3. File the original of the certificate of reinstatement.
4. Serve a copy on the foreign corporation pursuant to section 10-11510.

H. After the reinstatement becomes effective, the reinstatement relates back to and takes effect as of the effective date of the revocation, and the foreign corporation shall resume its business as if the revocation had never occurred.

I. If the corporation has not applied for reinstatement within six months after the effective date of the dissolution, the commission shall release the corporation name pursuant to chapters 24 through 40 of this title or for use by a person intending to register the name as a trade name pursuant to title 44, chapter 10, article 3.1. If another corporation has adopted the name of the foreign corporation or another person has adopted the name of the foreign corporation as a trade name, the foreign corporation shall attach to the application for reinstatement articles of amendment to application for authority and shall adopt a fictitious name for use in this state that satisfies the requirements of sections 10-11504 and 10-11506.

## **Title 10, Chapter 39 RECORDS AND REPORTS-NONPROFIT CORPORATIONS**

### **Article 1 Records**

#### **10-11601. Corporate records**

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting and a record of all actions taken by a committee of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members and in alphabetical order by class of membership showing the number of votes each member is entitled to cast and the class of memberships held by each member.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of all of the following records at its principal office, at its known place of business or at the office of its statutory agent:

1. Its articles or restated articles of incorporation and all amendments to them currently in effect.
2. Its bylaws or restated bylaws and all amendments to them currently in effect.



3. Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members.
4. The minutes of all members' meetings and records of all actions taken by members without a meeting for the past three years.
5. All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 10-11620.
6. A list of the names and business addresses of its current directors and officers.
7. Its most recent annual report delivered to the commission under section 10-11622.
8. An agreement among members under section 10-3732.

F. Notwithstanding this chapter, a condominium association shall comply with title 33, chapter 9 and a planned community association shall comply with title 33, chapter 16 to the extent that this chapter is inconsistent with title 33, chapters 9 and 16.

**10-11602. Inspection of records by members; applicability**

A. Subject to subsections E and F of this section, any member who has been a member of record at least six months immediately preceding its demand is entitled to inspect and copy any of the records of the corporation described in section 10-11601, subsection E during regular business hours at the corporation's principal office, if the member gives the corporation written notice of its demand as provided in section 10-3141 at least five business days before the date on which the member wishes to inspect and copy.

B. Subject to subsections E and F of this section, a member who has been a member of record at least six months immediately preceding its demand is entitled to inspect and copy any of the following records of the corporation during regular business hours at a reasonable location specified by the corporation, if the member meets the requirements of subsection C of this section and gives the corporation written notice of its demand as provided in section 10-3141 at least five business days before the date on which the member wishes to inspect and copy the following:

1. Excerpts from any records required to be maintained under section 10-11601, subsection A, to the extent not subject to inspection under subsection A of this section.
2. Accounting records of the corporation.
3. Subject to section 10-11605, the membership list described in section 10-11601, subsection C.
4. The corporation's most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

C. A member may inspect and copy the records identified in subsection B of this section only if the following conditions are met:

1. The member's demand is made in good faith and for a proper purpose.
2. The member describes with reasonable particularity the member's purpose and the records the member desires to inspect.
3. The records are directly connected with the member's purpose.

D. This section does not affect either:

1. The right of a member to inspect records under section 10-3720 or, if the member is in litigation with the corporation, to the same extent as any other litigant.
2. The power of a court, independently of chapters 24 through 40 of this title, to compel the production of corporate records for examination on proof by a member of proper purpose.

E. The articles of incorporation or bylaws of a corporation organized primarily for religious purposes may limit or abolish the right of a member under this section to inspect and copy any corporate record.

F. Unless the board of directors has provided express permission to the member, a member of a corporation that is a rural electric cooperative is not entitled to inspect or copy any records, documents or other materials that are maintained by or in the possession of the corporation and that relate to any of the following:

1. Personnel matters or a person's medical records.
2. Communications between an attorney for the corporation and the corporation.
3. Pending or contemplated litigation.
4. Pending or contemplated matters relating to enforcement of the corporation's documents or rules.

G. This section does not apply to any corporation that is a condominium as defined in section 33-1202 or a planned community as defined in section 33-1802.

H. This section does not apply to timeshare plans or associations that are subject to title 33, chapter 20.

**10-11603. Scope of inspection rights; charge**

A. A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

B. The right to copy records under section 10-11602 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

C. The corporation may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production or reproduction of the records.

D. The corporation may comply with a member's demand to inspect the record of members under section 10-11602, subsection B, paragraph 3 by providing the member with a list of the corporation's members that was compiled no earlier than the date of the member's demand.

**10-11604. Court ordered inspection**

A. If a corporation does not allow a member who complies with section 10-11602, subsection A to inspect and copy any records required by that subsection to be available for inspection, the court in the county where the corporation's known place of business is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not allow within a reasonable time a member to inspect and copy any other record, the member who complies with section 10-11602, subsections B and C may apply to the court in the county where the corporation's known place of business is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded. The court may order a member to pay all or a portion of the corporation's costs, including reasonable attorney fees, if the demand to inspect is denied in whole or in material part.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

**10-11605. Limitations on use of membership list; applicability**

A. Without the consent of the board of directors, no person may obtain or use a membership list or any part of the membership list for any purpose unrelated to a member's interest as a member.

B. Without the consent of the board of directors, the membership list or any part of the membership list shall not be:

1. Used to solicit money or property, unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation.

2. Used for any commercial purpose.

3. Sold to or purchased by any person.

C. This section does not apply to timeshare plans or associations that are subject to title 33, chapter 20.

**Article 2 Reports**

**10-11620. Financial statements for members**

A. Except as provided in the articles of incorporation or bylaws of a corporation organized primarily for religious purposes, a corporation on written demand from a member shall furnish that member its latest annual financial statements that may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, and that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

B. If the annual financial statements are reported on by a certified public accountant, that report shall accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records both:

1. Stating that person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation.
2. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

#### **10-11621. Report of indemnification to members**

If a corporation indemnifies or advances expenses to a director under sections 10-3851 through 10-3854, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members. Failure to report under this section does not invalidate otherwise valid indemnification.

#### **10-11622. Annual report**

A. Each domestic corporation and each foreign corporation authorized to conduct affairs in this state shall deliver to the commission for filing an annual report that sets forth all of the following:

1. The name of the corporation and the state or country under whose law it is incorporated.
2. The address of its known place of business and the name and address of its agent in this state.
3. The address of its principal office.
4. The names and business addresses of its directors and principal officers.
5. A brief description of the nature of its activities.
6. Whether or not it has members.
7. A certificate of disclosure containing the information set forth in section 10-3202, subsection D.
8. A statement that all corporate income tax returns required by title 43 have been filed with the

department of revenue.

B. A unit owners' association that is subject to title 33, chapter 9 or a planned community association that is subject to title 33, chapter 16 shall attach to and submit with the annual report a separate statement containing the name of the designated agent or management company for the association, the address for the association and the telephone number, e-mail address and website if any and fax number if any of the association or its designated agent or management company. Unit owners' associations and planned community associations shall file an amended statement reflecting changes in designated agent or management company within thirty days of any change.

C. The information in the annual report and the separate statement that is prescribed by subsection B of this section shall be current as of the date the annual report and separate statement are executed on behalf of the corporation.

D. The annual report for all corporations shall be delivered to the commission for filing, and the annual fee shall be paid on or before the date assigned by the commission. The commission may stagger the annual report filing date for all corporations and adjust the annual fee on a pro rata basis. The corporation shall deliver the annual report to the commission for filing each subsequent year in the anniversary month on the date assigned by the commission. If a corporation is unable to file the annual report required by this section on or before the date prescribed by this section, the corporation may file, but only on or before this date, a written request with the commission for an extension of time, not to exceed six months, in which to file the annual report. The request for an extension of time shall be accompanied by the annual registration fee required by law. After filing the request for an extension of time and on receipt of the annual registration fee, the commission shall grant the request.

E. If an annual report does not contain the information requested by this section, the commission shall promptly notify the reporting domestic or foreign corporation in writing and shall return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the commission within thirty days after the effective date of notice, it is deemed to be timely filed.

F. Any corporation that is exempt from the requirement of filing an annual report shall deliver annually a certificate of disclosure that contains the information set forth in section 10-3202, subsection D and that is executed by any two executive officers or directors of the corporation on or before May 31. If the certificate is not delivered within ninety days after the due date of the annual report or within ninety days after May 31 in the case of any corporation that is exempt from the requirement of filing an annual report,

the commission shall initiate administrative dissolution of that corporation or revoke the application for authority of that corporation pursuant to chapters 24 through 40 of this title.

**10-11623. Statement of bankruptcy or receivership; interrogatories before subsequent incorporation; violation; classification; definition**

A. On the filing of a petition for bankruptcy or the appointment of a receiver for any corporation, the corporation shall deliver a statement to the commission listing:

1. All officers, directors and trustees of the corporation within one year of filing the petition for bankruptcy or the appointment of a receiver.
2. Whether any such person has been an officer, director or trustee of any other corporation within one year of the bankruptcy or receivership of the other corporation.
3. If the answer in paragraph 2 of this subsection is in the affirmative, for each such corporation the following information:
  - (a) Name and address.
  - (b) States in which it:
    - (i) Was incorporated.
    - (ii) Conducted affairs.
  - (c) Dates of operation.

B. The commission shall maintain a suitably indexed list of all such persons. The index shall be a public record of the commission for purposes of title 39.

C. On receipt of the articles of incorporation of a new corporation or application for authority to conduct affairs by a foreign corporation, the commission shall determine whether any person, proposed as an officer, director, trustee or incorporator of the new or foreign corporation has been involved two or more times in a corporate bankruptcy, receivership, administrative dissolution, revocation or judicial dissolution commenced by any state. If so, the commission shall direct detailed interrogatories to those persons requiring any additional relevant information deemed necessary by the commission and at the same time provide public notice of the interrogatory procedure. Any person may request additional interrogatories or may provide additional information to the commission. The interrogatories shall be completely answered within thirty days after mailing. With respect to corporations incorporated or seeking authority to conduct affairs, articles of incorporation or application for authority shall not be filed until all outstanding interrogatories have been answered to the satisfaction of the commission.

D. Any applicant for filing articles of incorporation authority to conduct affairs who is dissatisfied with a determination of the commission or any other proceeding under this section may demand and the commission or its designee shall convene a public hearing at the county seat of the county of the corporate headquarters of the proposed corporation. The commission shall give public notice of the hearing at least twenty days before the hearing by publication in a newspaper of general circulation in any county in which a relevant prior bankruptcy or receivership occurred.

E. On a quarterly updated basis the commission shall provide the attorney general with a copy of statements furnished pursuant to subsection A and answers to interrogatories propounded pursuant to subsection C.

F. Any person or corporation failing to comply with the requirements of this section is guilty of a class 1 misdemeanor. Any person making a false statement or giving false information pursuant to this section is guilty of a class 5 felony.

## **Article 3 Miscellaneous Provisions**

**10-11630. Certificate of good standing; license and registration renewal**

If a state agency can confirm through the commission that an applicant for renewal of a license or registration is entitled to the issuance of a certificate of good standing at the time of the inquiry, the agency shall not require an applicant to obtain a certificate.

**10-11631. Civil liability for false statements**

A. If any report, certificate or other statement made or public notice given by the officers or directors of a corporation is false in a material representation or if any book, record or account of the corporation is knowingly or wrongfully altered, the officers, directors or agents knowingly or wrongfully authorizing, signing or making the false report, certificate, other statement or notice or authorizing or making the

wrongful alteration are jointly and severally personally liable to a person who has become a creditor or member of the corporation on the faith of the false material representation or alteration for all damages resulting.

B. An action for the liability imposed by this section shall be commenced within two years after discovery of the false representation or alteration and within six years after the certificate, report, public notice or other statement or the alteration has been made or given by the officers, directors or agents of the corporation.

#### **10-11632. Interrogatory or signature violations; corporate records; classification**

A. A person who knowingly fails or refuses within the time prescribed by this chapter to answer truthfully any interrogatories propounded to that person by the commission in accordance with this chapter or who signs any articles, statement, report, application or other document filed with the commission that is known to the person as false in any material respect is guilty of a class 4 felony.

B. A person who with the intent to defraud or deceive knowingly falsifies, alters, steals, destroys, mutilates, defaces, removes or secretes the books, records or accounts of a corporation is guilty of a class 5 felony.

#### **10-11633. Interrogatories by the commission**

The commission may propound to any domestic or foreign corporation subject to chapters 24 through 40 of this title and to any officer or director of the corporation interrogatories as may be reasonably necessary and proper to enable it to ascertain whether the corporation complied with all of the provisions of chapters 24 through 40 of this title applicable to the corporation. The interrogatories shall be answered within thirty days after the mailing of the interrogatories or within an additional time fixed by the commission, and the answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual they shall be answered by the individual, and if directed to a corporation they shall be answered by the president, vice-president, secretary or assistant secretary of the corporation. The commission need not file any document to which the interrogatories relate until the interrogatories have been answered as provided in this section, and not then if the answers to the interrogatories disclose that the document is not in conformity with the provisions of chapters 24 through 40 of this title. The commission shall certify to the attorney general, for such action as the attorney general deems appropriate, all interrogatories and answers to the interrogatories that disclose a violation of any of the provisions of chapters 24 through 40 of this title.

#### **10-11634. information disclosed by interrogatories**

Interrogatories propounded by the commission and the answers to the interrogatories shall not be open to public inspection and the commission shall not disclose any facts or information obtained from the interrogatories and answers except if its official duty requires the facts or information to be made public or if the interrogatories or the answers are required for evidence in any criminal proceeding or in any other action by this state.

#### **10-11635. Certified copies received in evidence**

All copies of documents delivered to and filed by the commission in accordance with chapters 24 through 40 of this title when certified by it shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts stated in the documents. A certificate by the commission under seal as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts stated in the certificate.

#### **10-11636. Civil liability for false or misleading filings; exceptions**

A. Except as provided in subsection C or D of this section, any person that authorizes or signs a report, certificate, notice or other document with respect to a corporation that is delivered for filing with the commission pursuant to this chapter and that has knowledge at the time of delivery to the commission for filing that the information contained in that report, certificate, notice or other document is materially false or misleading is liable to the corporation and its creditors for all damages resulting from the act. The prevailing party in an action for the liability imposed under this subsection is entitled to an award for the prevailing party's costs and reasonable attorney fees.

B. An action for the liability imposed by subsection A of this section must be commenced within two years after the discovery of the false or misleading statement or the time a reasonable person would have discovered it, but not later than six years after the report, certificate, notice or other document was filed or received by the commission.

C. Execution of a consent to serve as a statutory agent does not by itself constitute a certification of the truth or accuracy of the information contained in a report, certificate, notice or other document with respect to the corporation even if the consent is attached to another filing.

D. This section does not prevent the award of equitable remedies, if appropriate.

## **Title 10, Chapter 40 TRANSITION PROVISIONS-NONPROFIT CORPORATIONS**

### **Article 1 General Provisions**

#### **10-11701. Application to existing domestic corporations**

A. Except as provided in subsection B, chapters 24 through 40 of this title apply to all Arizona corporations that were incorporated under or that were subject to chapter 22 of this title on December 31, 1998.

B. Any existing corporation that was originally organized under the laws of the territory of Arizona may elect to amend or restate its articles of incorporation and retain any previously valid provisions of its articles of incorporation, even if the previously valid provisions of its articles of incorporation are in conflict with any provisions of chapters 24 through 40 of this title. Upon such amendment or restatement, all of the provisions of chapters 24 through 40 of this title which are not specifically in conflict with the amended or restated articles of incorporation shall be applicable to the existing corporations that were originally organized under the laws of the territory of Arizona. The previously valid provisions of its articles of incorporation that are retained shall apply to the existing corporations originally organized under the laws of the territory of Arizona and to all persons contracting or in any manner dealing with the corporation, including its members, subscribers, affiliates, directors, officers and employees.

#### **10-11702. Application to qualified foreign corporations**

A foreign corporation authorized to conduct affairs in this state on January 1, 1999 is subject to chapters 24 through 40 of this title but is not required to obtain a new grant of authority to conduct affairs under chapters 24 through 40 of this title, except as provided in section 10-11504.