

CHAPTER 317A

NONPROFIT CORPORATIONS

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317A.001 CITATION.

This chapter may be cited as the Minnesota nonprofit corporation act.

History: 1989 c 304 s 1

DEFINITIONS

317A.011 DEFINITIONS.

Subdivision 1. Scope. For purposes of this chapter, the terms in this section have the meanings given them, unless the language or context clearly shows that a different meaning is intended.

Subd. 2. Address. "Address" means mailing address, including a zip code, except that in the case of a registered office, address means the mailing address and the actual office location, which may not be a post office box.

Subd. 3. Articles. "Articles" means, in the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

Subd. 4. Board of directors. "Board of directors" or "board" means the group of persons vested with the general management of the internal affairs of a corporation, regardless of how they are identified.

Subd. 5. Bylaws. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.

Subd. 6. Corporation. "Corporation" means a corporation that is governed by this chapter. A corporation may not:

(1) be formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a state or local government; and

(2) pay dividends or other pecuniary remuneration, directly or indirectly, to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a state or local government.

Subd. 7. Director. "Director" means a member of the board.

Subd. 8. Filed with the secretary of state. "Filed with the secretary of state" means

that an original of a document meeting the requirements of this chapter, signed, and accompanied by a filing fee of \$35, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original the word "Filed" and the month, day, year, and time of filing, record the document in the office of the secretary of state, and return the document to the person who delivered it for filing.

Subd. 9. **Foreign corporation.** "Foreign corporation" means a corporation that is formed under laws other than the laws of this state.

Subd. 10. **Good faith.** "Good faith" means honesty in fact in the conduct of an act or transaction.

Subd. 11. **Legal representative.** "Legal representative" means a person empowered to act for another person, including, but not limited to, an agent, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver, guardian, custodian, or conservator.

Subd. 12. **Member.** "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.

Subd. 13. **Members with voting rights.** "Members with voting rights" or "voting members" means members or a class of members that has voting rights with respect to the purpose or matter involved.

Subd. 14. **Notice.** (a) "Notice" is given by a member of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office of the corporation.

(b) Notice is given by the corporation to an officer, member, or other person:

(1) when mailed to the person at an address designated by the person, at the last known address of the person or, in the case of an officer or member, at the address of the person in the corporate records;

(2) when communicated to the person orally;

(3) when handed to the person;

(4) when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office;

(5) if the person's office is closed or the person to be notified has no office, when left at the dwelling or usual place of abode of the person with a person of suitable age and discretion residing in the house; or

(6) when the method is fair and reasonable when all the circumstances are considered.

(c) Notice by mail is given when deposited in the United States mail with sufficient postage. Notice is considered received when it is given.

Subd. 15. **Officer.** "Officer" means a person elected, appointed, or otherwise designated as an officer by the board or the members, and a person considered elected an officer under section 317A.321.

Subd. 16. **Organization.** "Organization" means a domestic or foreign business or nonprofit corporation, partnership, limited partnership, joint venture, association, trust, estate, enterprise, or other legal or commercial entity.

Subd. 17. **Registered office.** "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.

Subd. 18. **Related organization.** "Related organization" means an organization that controls, is controlled by, or is under common control with, another corporation. Control exists if an organization:

(1) owns, directly or indirectly, at least 50 percent of the stock ownership or membership interests of another organization;

(2) has the right, directly or indirectly, to elect, appoint, or remove 50 percent or more of the voting members of the governing body of another organization; or

(3) has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

Subd. 19. **Signed.** (a) "Signed" means that the signature of a person is written on a document, as provided in section 645.44, subdivision 14. A document required by this chapter to be filed with the secretary of state must be signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors, or the required proportion or number of members with voting rights, if any.

(b) A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

Subd. 20. **Written action.** "Written action" means a written document signed by all of the persons required to take the action. The term also means the counterparts of a written document signed by any of the persons taking the action. A counterpart is the action of the persons signing it, and all the counterparts are one written action by all of the persons signing them.

History: 1989 c 304 s 2; 1989 c 335 art 1 s 203; 1990 c 488 s 1

APPLICATION

317A.021 APPLICATION AND ELECTION.

Subdivision 1. **Election by chapter 300, 309, or 315 corporations.** A corporation incorporated under or governed by chapter 300, 309, or 315 that has not later become governed by Minnesota Statutes 1988, chapter 317, may elect to be governed by this chapter.

Subd. 2. **Election by corporations.** On or after August 1, 1989, and before January 1, 1991, a corporation incorporated under or governed by Minnesota Statutes 1988, chapter 317, may elect to become governed by this chapter.

Subd. 3. **Conforming articles of electing corporations.** If the articles of an electing corporation include a provision prohibited by this chapter, omit a provision required by this chapter, or are inconsistent with this chapter, the electing corporation shall amend its articles to conform to the requirements of this chapter. The appropriate provisions of the corporation's articles or bylaws or the law by which it was governed before the effective date of the election made under this section control the manner of adoption of the amendment.

Subd. 4. **Method of election.** An election by a corporation to become governed by this chapter must be made by resolution approved by the affirmative vote of the members with voting rights of the same proportion that is required for amendment of the articles of the corporation before the election. If there are no members with voting rights, the corporation must elect to be governed by this chapter by a resolution adopted by a majority vote of the directors entitled to vote at a meeting of the board, with proper notice given. The notice must include a statement that a purpose of the meeting is to consider an election to become governed by this chapter. The resolution, articles of amendment, if required, and a certified copy of corporate documents previously filed with the county recorder that would be filed with the secretary of state under this chapter, must be filed with the secretary of state and are effective upon filing. If an amendment of the articles is not required, the resolution must state that the articles of the corporation conform to the requirements of this chapter.

Subd. 5. **Effect of election upon bylaws.** Upon filing an election under subdivision 4, provisions of the bylaws that are consistent with this chapter remain or become effective and provisions of the bylaws that are inconsistent with this chapter are not effective.

Subd. 6. **Choice of incorporation until January 1, 1990.** From August 1, 1989, to December 31, 1990, a corporation may be incorporated under this chapter or under Minnesota Statutes 1988, chapter 317.

Subd. 7. **Nonelecting nonprofit corporations subject to this chapter as of January 1, 1991.** (a) A corporation in existence on January 1, 1991, that is within the scope of

this chapter and incorporated under another statute of this state, other than a corporation incorporated under chapter 300, 309, or 315 that has not later become governed by Minnesota Statutes 1988, chapter 317, is governed by this chapter as of January 1, 1991, as though the corporation had been incorporated under this chapter. The provisions of the articles and bylaws of the corporation that may be included in the articles or bylaws under this chapter remain in effect. The provisions of the articles and bylaws of the corporation that are inconsistent with this chapter are not effective as of January 1, 1991. Provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

(b) On and after January 1, 1991, a corporation that elected to reject Laws 1951, chapter 500, sections 1 to 25, that does not elect to be governed by this entire chapter is governed by sections 317A.131 to 317A.151; 317A.461; and 317A.601 to 317A.791.

Subd. 8. Incorporation after January 1, 1991. On and after January 1, 1991, a corporation that is within the scope of this chapter may be incorporated only under this chapter.

Subd. 9. Applicability of other laws. (a) Except as provided in paragraphs (b) and (c), chapters 300, 316, 317A, and 556 do not apply to corporations.

(b) Sections 300.60, 300.61, and 300.63 apply to corporations.

(c) This subdivision does not affect the applicability of chapter 300 to a corporation that elected to reject Laws 1951, chapter 500, sections 1 to 25.

History: 1989 c 304 s 3,137; 1990 c 488 s 2-5

317A.031 TRANSITION; CONTINUATION OF LEGAL ACTS.

The continuation or completion of an act by a corporation that is not incorporated under, but has become governed by, this chapter, and the continuation or performance of an executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, is valid if otherwise lawful before the corporation became governed by this chapter. The act may be continued, completed, enforced, or ended as required or permitted by a statute applicable before the date on which the corporation became governed by this chapter.

History: 1989 c 304 s 4

317A.041 RESERVATION OF RIGHT.

The state reserves the right to amend or repeal this chapter. A corporation governed by this chapter is subject to this reserved right.

History: 1989 c 304 s 5

317A.051 SCOPE OF CHAPTER.

Subdivision 1. General. This chapter does not apply to cooperative associations, public cemetery corporations and associations, and private cemeteries.

Subd. 2. Religious corporations. This chapter does not apply to a religious corporation authorized by chapter 315 unless it is formed under this chapter or elects to be governed by this chapter as provided in section 317A.021. Regardless of whether it is formed or elects to be governed by this chapter, a religious corporation may elect to be governed by sections 317A.601 to 317A.671 without electing to come under the entire chapter. If a religious corporation elects to be governed by sections 317A.601 to 317A.671, it shall file its documents with the county recorder of the county where its registered office is located instead of the secretary of state.

History: 1989 c 304 s 6

317A.061 FOREIGN NONPROFIT CORPORATIONS; SECTIONS APPLICABLE.

Subdivision 1. General. Except for this section and section 317A.651 concerning merger or consolidation, this chapter does not apply to foreign nonprofit corporations.

Subd. 2. **Sections applicable.** (a) Except as provided in paragraph (b), a foreign nonprofit corporation is subject to chapter 303. Unless it complies with chapter 303, a foreign corporation may not transact business in this state.

(b) Sections 303.02, subdivision 2; 303.07; 303.14; 303.16; subdivision 2, clauses (6) and (7); and 303.22 do not apply to foreign nonprofit corporations.

History: 1989 c 304 s 7

INCORPORATION; ARTICLES

317A.101 PURPOSES.

A corporation may be incorporated under this chapter for any lawful purpose, unless another statute requires incorporation for a purpose under a different law. Unless otherwise limited in its articles, a corporation has a general purpose of engaging in any lawful activity. A corporation engaging in conduct that is regulated by another statute is subject to the limitations of the other statute.

History: 1989 c 304 s 8

317A.105 INCORPORATORS.

One or more adult natural persons may act as incorporators of a corporation by filing articles of incorporation for the corporation with the secretary of state.

History: 1989 c 304 s 9

317A.111 ARTICLES.

Subdivision 1. **Required provisions.** The articles of incorporation must contain:

- (1) the name of the corporation;
- (2) the address of the registered office of the corporation and the name of its registered agent, if any, at that address;
- (3) the name and address of each incorporator; and
- (4) a statement that the corporation is organized under this chapter.

Subd. 2. **Statutory provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:

- (1) a corporation has a general purpose of engaging in any lawful activity (section 317A.101);
- (2) the power to initially adopt, amend, or repeal the bylaws is vested in the board (section 317A.181);
- (3) cumulative voting for directors is prohibited (section 317A.215);
- (4) a written action by the board taken without a meeting must be signed by all directors (section 317A.239); and
- (5) members are of one class (section 317A.401).

Subd. 3. **Statutory provisions that may be modified in articles or bylaws.** The following provisions govern a corporation unless modified in the articles or bylaws:

- (1) a certain method must be used for amending the articles (section 317A.133);
- (2) a corporation has perpetual duration and certain powers (section 317A.161);
- (3) certain procedures apply to the adoption, amendment, or repeal of bylaws by the members (section 317A.181);
- (4) a director holds office until expiration of the director's term and election of a successor (section 317A.207);
- (5) the term of a director filling a vacancy expires at the end of the term the director is filling (section 317A.207);
- (6) the compensation of directors is fixed by the board (section 317A.211);
- (7) a certain method must be used for removal of directors (section 317A.223);

- (8) a certain method must be used for filling board vacancies (section 317A.227);
 - (9) board meetings must be held at least once per year and if the board fails to select a place for a board meeting, it must be held at the registered office (section 317A.231);
 - (10) a director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting (section 317A.231);
 - (11) a majority of the board is a quorum (section 317A.235);
 - (12) the affirmative vote of the majority of directors present is required for board action (section 317A.237);
 - (13) a committee consists of one or more persons, who need not be directors, appointed by the board (section 317A.241);
 - (14) the president and treasurer have certain duties, until the board determines otherwise (section 317A.305);
 - (15) officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (section 317A.351);
 - (16) a corporation does not have members (section 317A.401);
 - (17) the board may determine the consideration required to admit members (section 317A.401);
 - (18) all members are entitled to vote and have equal rights and preferences in matters not otherwise provided for by the board or members (section 317A.401);
 - (19) memberships may not be transferred (section 317A.405);
 - (20) a corporation with voting members must hold a regular meeting of voting members annually (section 317A.431);
 - (21) if a specific minimum notice period has not been fixed by law, at least five days' notice is required for a meeting of members (section 317A.435);
 - (22) the board may fix a date up to 60 days before the date of a members meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting (section 317A.437);
 - (23) each member has one vote (section 317A.441);
 - (24) the affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class (section 317A.443);
 - (25) members may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication (section 317A.443);
 - (26) the number of members required for a quorum is ten percent of the members entitled to vote (section 317A.451);
 - (27) certain procedures govern acceptance of member acts (section 317A.455);
- and
- (28) indemnification of certain persons is required (section 317A.521).

Subd. 4. Optional provisions; specific subjects. The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:

- (1) the first board of directors may be named in the articles (section 317A.171);
- (2) additional qualifications for directors may be imposed (section 317A.205);
- (3) terms of directors may be staggered (section 317A.207);
- (4) the day or date, time, and place of board meetings may be fixed (section 317A.231);
- (5) in addition to the president, authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation (section 317A.305);
- (6) additional officers may be designated (section 317A.311);
- (7) additional powers, rights, duties, and responsibilities may be given to officers (section 317A.311);

- (8) a method for filling vacant offices may be specified (section 317A.341);
- (9) membership criteria and procedures for admission may be established (section 317A.401);
- (10) membership terms may be fixed (section 317A.401);
- (11) a corporation may levy dues, assessments, or fees on members (section 317A.407);
- (12) a corporation may buy memberships (section 317A.413);
- (13) a corporation may have delegates with some or all the authority of members (section 317A.415);
- (14) the day or date, time, and place of regular member meetings or the place of special meetings may be fixed (section 317A.431);
- (15) certain persons may be authorized to call special meetings of members (section 317A.433);
- (16) notices of special member meetings may be required to contain certain information (section 317A.433);
- (17) a larger than majority vote may be required for member action (section 317A.443);
- (18) members may vote by proxy (section 317A.453); and
- (19) members may enter into voting agreements (section 317A.457).

Subd. 5. Optional provisions; generally. The articles may contain other provisions consistent with law relating to the management or regulation of the affairs of the corporation.

Subd. 6. Powers need not be stated. It is not necessary to state the corporate powers granted by this chapter in the articles.

Subd. 7. Substantive law controls. If there is a conflict between subdivision 2, 3, or 4 and another section of this chapter, the other section controls.

History: 1989 c 304 s 10; 1990 c 488 s 6,7

317A.113 PRIVATE FOUNDATIONS; PROVISIONS CONSIDERED CONTAINED IN ARTICLES.

Subdivision 1. Provisions required. The articles of incorporation of a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986 and an instrument governing the use, retention, or disposition by the corporation of its income or property must contain the provisions contained in this section. If the articles and instrument do not contain these provisions, they are considered to have incorporated the language in clauses (1) to (5) with the same effect as though the language was set forth verbatim. Except as provided in subdivision 2, these provisions govern the corporation as to the use, retention, and disposition of its income and property regardless of provisions of the articles or instrument or other law of this state to the contrary:

(1) the corporation shall distribute for each of its taxable years amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1986;

(2) the corporation may not engage in an act of "self-dealing" as defined in section 4941(d) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1986;

(3) the corporation may not retain "excess business holdings" as defined in section 4943(c) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1986;

(4) the corporation may not make investments that would jeopardize the carrying out of the exempt purposes of the corporation, within the meaning of section 4944 of the Internal Revenue Code of 1986, so as to give rise to liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1986; and

(5) the corporation may not make a "taxable expenditure" as defined in section 4945(d) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1986.

Subd. 2. Exception. Subdivision 1 does not apply to a corporation if a court of competent jurisdiction determines that the application would be contrary to the terms of an instrument described in subdivision 1 and that the instrument may not properly be changed to conform to subdivision 1.

Subd. 3. Future references. A reference in subdivision 1 to a particular section of the Internal Revenue Code of 1986 includes the corresponding provision of a future United States Internal Revenue law.

Subd. 4. Application. This section applies to all corporations that could be governed by this chapter, notwithstanding sections 317A.021 and 317A.051.

Subd. 5. Rights reserved. This section does not impair the rights and powers of the attorney general or the courts of this state with respect to a corporation.

History: 1989 c 304 s 11

317A.115 CORPORATE NAME.

Subdivision 1. Requirements. (a) The corporate name must be in the English language or in another language expressed in English letters or characters.

(b) A corporate name may not contain a word or phrase that shows or implies that it may not be incorporated under this chapter.

(c) A corporate name need not contain the word "corporation," "incorporated," "company," or "limited," or an abbreviation of one of these words.

Subd. 2. Name must be distinguishable. (a) A corporate name must be distinguishable upon the records in the office of the secretary of state from the name of a domestic corporation or limited partnership, a foreign corporation or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved, registered, or provided for in section 317A.117, 302A.117, 322A.03, or sections 333.001 to 333.54, unless one of the following is filed with the articles:

(1) the written consent of the organization having the name that is not distinguishable;

(2) a certified copy of a final decree of a court in this state establishing the prior right of the applicant to use its corporate name in this state; or

(3) an affidavit of nonuse of the kind required by section 302A.115, subdivision 1, paragraph (d), clause (3).

(b) The secretary of state shall determine whether a name is distinguishable from another name for purposes of this section and section 317A.117.

(c) This subdivision does not affect the right of a corporation existing on January 1, 1991, or a foreign corporation authorized to do business in this state on that date, to use its corporate name.

Subd. 3. Other laws affecting use of names. This section and sections 317A.117 and 317A.823, subdivision 2, do not abrogate or limit the law of unfair competition or unfair practices, sections 333.001 to 333.54, the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.

Subd. 4. Use of name by successor corporation. A corporation that is merged with another domestic or foreign corporation, that is incorporated by the reorganization of one or more domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation all or substantially all of the assets of another domestic or foreign corporation, including its name, may have the same name as that used in this state by any of the other corporations, if the other corporation was incorporated under the laws of, or is authorized to transact business in, this state.

Subd. 5. Effect of wrongful use; injunction. The use of a name by a corporation in violation of this section does not affect or impair its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

Subd. 6. Contest of registration of name. A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 5.22.

History: 1989 c 292 s 12,13; 1989 c 304 s 12; 1990 c 488 s 8

317A.117 RESERVED NAME.

Subdivision 1. Who may reserve. A corporate name permitted by section 317A.115 may be reserved in the records of the secretary of state by:

- (1) a person doing business in this state under that name;
- (2) a person intending to incorporate under this chapter;
- (3) a domestic corporation intending to change its name;
- (4) a foreign corporation intending to make application for a certificate of authority to transact business in this state;
- (5) a foreign corporation authorized to transact business in this state and intending to change its name;
- (6) a person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business in this state; or
- (7) a foreign corporation doing business under that name or a name deceptively similar to that name in a state other than this state and not described in clauses (4) to (6).

Subd. 2. Method of reservation. The reservation must be made by filing with the secretary of state a request that the name be reserved. If the name is available for reservation by the applicant, the secretary of state shall reserve the name for the applicant for 12 months. The reservation may be renewed for successive 12-month periods.

Subd. 3. Transfer of reservation. The right to a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee.

History: 1989 c 292 s 14; 1989 c 304 s 13

317A.121 REGISTERED OFFICE; REGISTERED AGENT.

Subdivision 1. Registered office. A corporation shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business of the corporation.

Subd. 2. Registered agent. A corporation may designate in its articles a registered agent. The registered agent may be a natural person residing in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state. The registered agent must maintain an office that is identical with the registered office.

History: 1989 c 304 s 14

317A.123 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT; CHANGE OF NAME OF REGISTERED AGENT.

Subdivision 1. Statement. A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state a statement containing:

- (1) the name of the corporation;

(2) if the address of its registered office is to be changed, the new address of its registered office;

(3) if its registered agent is to be designated or changed, the name of its new registered agent;

(4) if the name of its registered agent is to be changed, the name of its registered agent as changed;

(5) a statement that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and

(6) a statement that the change of registered office or registered agent was authorized by resolution approved by the board.

Subd. 2. Resignation of agent. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its registered office. The appointment of the agent ends 30 days after the notice is filed with the secretary of state.

Subd. 3. Change of address or name of agent. If the address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent of a corporation represented by that agent by filing with the secretary of state the statement required in subdivision 1, except that it need be signed only by the registered agent, need not be responsive to subdivision 1, clause (3) or (6), and must state that a copy of the statement has been mailed to the corporation.

History: 1989 c 304 s 15

317A.131 AMENDMENT OF ARTICLES.

The articles of a corporation may be amended to include or modify a provision that is required or permitted to appear in the articles or to omit a provision not required to be included in the articles. When articles are amended to restate them, the name and address of each incorporator may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only under sections 317A.133 and 317A.139.

History: 1989 c 304 s 16

317A.133 PROCEDURE FOR AMENDMENT OF ARTICLES.

Subdivision 1. Approval by incorporators or board. A majority of incorporators may amend the articles by written action if no directors are named in the original articles, if no directors have been elected, and if there are no members with voting rights. A majority of directors may amend the articles if there are no members with voting rights, if members with voting rights have authorized the board to amend the articles under subdivision 3, or if the amendment merely restates the existing articles, as amended. Notice of the meeting and of the proposed amendment must be given to the board. An amendment restating the existing articles may, but need not, be submitted to and approved by the members as provided in subdivision 2.

Subd. 2. Approval by board and members with voting rights. Amendments to the articles must be approved by a majority of the directors and by the members with voting rights. If an amendment is initiated by the directors, proper notice of the proposed amendment must precede a member meeting at which the amendment will be considered and must include the substance of the proposed amendment. If an amendment is proposed and approved by the members, the members may demand a special board meeting within 60 days for consideration of the proposed amendment if a regular board meeting would not occur within 60 days.

Subd. 3. Approval by board where members have voting rights. (a) The members with voting rights may authorize the board of directors, subject to paragraph (c), to exercise from time to time the power of amendment of the articles without member approval.

(b) When the members have authorized the board of directors to amend the articles, the board of directors, by a majority vote, unless the articles, bylaws, or the members' resolution authorizing the board action require a greater vote, may amend the articles at a meeting of the board. Notice of the meeting and of the proposed amendment must be given to the board.

(c) The members with voting rights voting at a meeting duly called for the purpose, may prospectively revoke the authority of the board to exercise the power of the members to amend the articles.

Subd. 4. Restriction of approval methods. Articles or bylaws may require greater than majority approval by the board or approval by greater than a majority of a quorum of the voting members for an action under this section and may limit or prohibit the use of mail ballots by voting members.

Subd. 5. Approval of class. The articles or bylaws may provide that an amendment also must be approved by the members of a class.

History: 1989 c 304 s 17; 1990 c 488 s 9-12

317A.139 ARTICLES OF AMENDMENT.

When an amendment has been adopted, articles of amendment must be prepared that contain:

- (1) the name of the corporation;
- (2) the amendment adopted;
- (3) with respect to an amendment restating the articles, a statement that the amendment correctly sets forth without change the corresponding provisions of the articles as previously amended, if the amendment was approved only by the board; and
- (4) a statement that the amendment has been adopted under this chapter.

History: 1989 c 304 s 18

317A.141 EFFECT OF AMENDMENT.

Subdivision 1. Effect on cause of action. An amendment does not affect an existing cause of action in favor of or against the corporation, a pending suit to which the corporation is a party, nor the existing rights of persons other than members.

Subd. 2. Effect of change of name. If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

Subd. 3. Effect of amendments restating articles. When effective under section 317A.151, an amendment restating the articles in their entirety supersedes the original articles and amendments to the original articles.

History: 1989 c 304 s 19

317A.151 FILING; EFFECTIVE DATE OF ARTICLES.

Subdivision 1. Filing required. Articles of incorporation and articles of amendment must be filed with the secretary of state.

Subd. 2. Effective date. Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the secretary of state accompanied by a payment of \$70, which includes a \$35 incorporation fee in addition to the \$35 filing fee required by section 317A.011, subdivision 8. Articles of amendment are effective when filed with the secretary of state or at another time within 31 days after filing if the articles of amendment so provide.

History: 1989 c 304 s 20; 1989 c 335 art 1 s 204

317A.155 PRESUMPTION; CERTIFICATE OF INCORPORATION.

When the articles of incorporation have been filed with the secretary of state and the required fee has been paid to the secretary of state, it is presumed that conditions

precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the secretary of state shall issue a certificate of incorporation to the corporation. This presumption does not apply against this state in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

History: 1989 c 304 s 21

POWERS

317A.161 POWERS.

Subdivision 1. Generally; limitations. A corporation has the powers in this section, subject to limitations provided in applicable federal or state law or in its articles or bylaws.

Subd. 2. Duration. A corporation has perpetual duration.

Subd. 3. Legal capacity. A corporation may sue and be sued, and participate in a legal, administrative, or arbitration proceeding, in its corporate name.

Subd. 4. Property ownership. A corporation may buy, lease, acquire, own, hold, improve, use, and deal in and with, real or personal property, or an interest in property, wherever located.

Subd. 5. Property disposition. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or dispose of all or a part of its real or personal property, or an interest in property, wherever located.

Subd. 6. Trading in securities; obligations. A corporation may buy, subscribe for, acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, dispose of, use, and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of a domestic or foreign government or instrumentality.

Subd. 7. Contracts; mortgages. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure its obligations by mortgage of or creation of a security interest in its property, franchises, and income.

Subd. 8. Investment. A corporation may invest and reinvest its funds.

Subd. 9. Holding property as security. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.

Subd. 10. Location. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

Subd. 11. Donations. A corporation may make donations for religious, scientific, educational, or charitable purposes, and for other purposes consistent with law, that further the corporate interest.

Subd. 12. Pensions; benefits. A corporation may pay pensions, retirement allowances, and compensation for past services and establish employee or incentive benefit plans, trusts, and provisions for the benefit of its officers, directors, employees, and agents and their families, dependents, and beneficiaries. It may indemnify and buy insurance for a fiduciary of an employee benefit and incentive plan, trust, or provision.

Subd. 13. Participations. (a) A corporation may participate in the promotion, organization, management, and operation of an organization or in a transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.

(b) A corporation may participate with others in a corporation, partnership, limited partnership, joint venture, trust, or other association of any kind that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.

Subd. 14. Insurance. A corporation may provide for its benefit life insurance and

other insurance with respect to the services of its officers, directors, employees, and agents.

Subd. 15. Corporate seal. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 317A.163.

Subd. 16. Bylaws. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 317A.181.

Subd. 17. Committees. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, define their duties, and fix their compensation as provided in section 317A.241.

Subd. 18. Officers; employees; agents. A corporation may elect or appoint officers, employees, and agents of the corporation, define their duties, and fix their compensation as provided in sections 317A.301 to 317A.361.

Subd. 19. Loans; guaranties; sureties. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 317A.501.

Subd. 20. Advances. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 317A.505.

Subd. 21. Indemnification. A corporation shall indemnify those persons identified in section 317A.521 against certain expenses and liabilities only as provided in section 317A.521 and may indemnify other persons.

Subd. 22. Assumed names. A corporation may conduct all or part of its business under one or more assumed names as provided in sections 333.001 to 333.06.

Subd. 23. May take and hold trust property. A corporation may take, receive, and hold real and personal property, including the principal and interest of money or other fund, that is given, conveyed, bequeathed, devised to, or vested in the corporation in trust where the corporation or a related organization has a vested or contingent interest in the trust.

Subd. 24. May invest trust property. Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with section 501B.10.

Subd. 25. Membership. A corporation may be a member of another foreign or domestic nonprofit corporation.

Subd. 26. Dissolution. A corporation may dissolve and wind up.

Subd. 27. Merger and consolidation. A corporation may merge and consolidate with other domestic or foreign nonprofit corporations organized for related purposes.

Subd. 28. Other powers. A corporation has other powers necessary or convenient to effect a lawful purpose for which the corporation is incorporated.

History: 1989 c 304 s 22; 1989 c 340 art 2 s 8

317A.163 CORPORATE SEAL.

Subdivision 1. Seal not required. A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

Subd. 2. Required words; use. If a corporation has a corporate seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed on it, or a facsimile or reproduction of either. The seal may include a part or all of the name of the corporation and a combination, derivation, or abbreviation of either or both of the phrases "a Minnesota Nonprofit Corporation" and "Corporate Seal." If a corporation has a corporate seal, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document.

History: 1989 c 304 s 23

317A.165 EFFECT OF LACK OF POWER; ULTRA VIRES.

Subdivision 1. **General.** Except as provided in this section, the doing, continuing, or performing by a corporation of an act, or an executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, if otherwise lawful, is not invalid because the corporation was without the power under this chapter or its articles or bylaws to do, continue, or perform the act, contract, conveyance, or transfer.

Subd. 2. **Action by member.** At least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, may bring an action against the corporation to enjoin the doing, continuing, or performing of an unauthorized act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and allow to the corporation or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the court in setting aside and enjoining the performance of the contract.

Subd. 3. **Action by corporation.** The corporation may bring an action, directly or through a director or member with voting rights in a representative or derivative suit, against the incumbent or former officers or directors of the corporation for exceeding or violating their authority.

History: 1989 c 304 s 24

ORGANIZATION; BYLAWS**317A.171 ORGANIZATION.**

Subdivision 1. **Role of incorporators.** If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with the powers, rights, duties, and liabilities of directors, until directors are elected.

Subd. 2. **Meeting.** After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation. If a meeting is held, the persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting.

History: 1989 c 304 s 25

317A.181 BYLAWS.

Subdivision 1. **Generally.** A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or regulation of the affairs of the corporation consistent with law or the articles, including but not limited to:

- (1) the number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
- (2) the qualifications of members;
- (3) different classes of membership;
- (4) the manner of admission, withdrawal, suspension, and expulsion of members;
- (5) property, voting, and other rights and privileges of members;
- (6) the appointment and authority of committees;
- (7) the appointment or election, duties, compensation, and tenure of officers;
- (8) the time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;
- (9) the making of reports and financial statements to members; or

(10) the number establishing a quorum for meetings of members and the board.

Subd. 2. Adoption; amendments. (a) Initial bylaws may be adopted under section 317A.171 by the incorporators or by the first board. Unless reserved by the articles to the members, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members with voting rights under paragraph (b) to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws and if there are members with voting rights, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of members, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors. A bylaw amendment to increase or decrease the vote required for a member action must be approved by the members.

(b) Unless the articles or bylaws provide otherwise, at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, may propose a resolution for action by the members to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. The resolution must contain the provisions proposed for adoption, amendment, or repeal. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 317A.133, for amendment of the articles, except that board approval is not required. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.

History: 1989 c 304 s 26; 1990 c 488 s 13

BOARD

317A.201 BOARD.

The business and affairs of a corporation must be managed by or under the direction of a board of directors. All directors are entitled to vote and have equal rights and preferences except as otherwise provided in the articles or bylaws. The members of the first board may be named in the articles, designated or appointed pursuant to the articles, or elected by the incorporators under section 317A.171.

History: 1989 c 304 s 27; 1990 c 488 s 14

317A.203 NUMBER.

A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws, except that if the corporation has either one or two members with voting rights, the number of directors may be less than three but not less than the number of members with voting rights.

History: 1989 c 304 s 28

317A.205 QUALIFICATIONS; ELECTION.

The qualifications and method of election or appointment of directors may be imposed by or in the manner provided in the articles or bylaws, provided that directors must be natural persons and a majority of the directors must be adults. The articles or bylaws may provide for ex officio directors who are directors because they hold another office or position.

History: 1989 c 304 s 29; 1990 c 488 s 15

317A.207 TERMS.

Subdivision 1. Length. (a) Directors are elected or appointed and hold office for fixed terms provided for in the articles or bylaws. A term of a director, other than an ex officio director, may not exceed ten years. If the articles or bylaws do not provide for a fixed term, the term is one year. An ex officio director serves as long as the director holds the office or position designated in the articles or bylaws.

(b) Unless the articles or bylaws provide otherwise, a director holds office until expiration of the term for which the director was elected or appointed and until a successor is elected and qualified, or until the earlier death, resignation, removal, or disqualification of the director.

(c) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(d) Except as provided in the articles or bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling.

Subd. 2. **Staggered terms.** The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

History: 1989 c 304 s 30; 1990 c 488 s 16

317A.209 ACTS NOT VOID OR VOIDABLE.

The expiration of a director's term with or without the election of a qualified successor does not make prior or later acts of the officers or the board void or voidable.

History: 1989 c 304 s 31

317A.211 COMPENSATION.

Subject to a limitation in the articles or bylaws, the board may fix the compensation of directors.

History: 1989 c 304 s 32

317A.213 CLASSIFICATION OF DIRECTORS.

(a) Except as provided in paragraph (b), directors may be divided into classes.

(b) Directors of a corporation described in section 317A.811, subdivision 1, may not vote by class except when the articles or bylaws provide that only one class of directors may vote on a particular matter.

History: 1989 c 304 s 33; 1990 c 488 s 17

317A.215 CUMULATIVE VOTING FOR DIRECTORS.

Unless the articles provide otherwise, there is no cumulative voting.

History: 1989 c 304 s 34

317A.221 RESIGNATION.

(a) A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

(b) 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.

History: 1989 c 304 s 35

317A.223 REMOVAL OF DIRECTORS.

Subdivision 1. **Modification.** The provisions of this section apply unless a different method of removal is provided for in the articles or bylaws.

Subd. 2. **Removal by directors when there are members with voting rights.** If there are members with voting rights, a director may be removed at any time, with or without cause, if:

(1) the director was named by the board to fill a vacancy;

(2) the members with voting rights have not elected directors in the interval between the time of the appointment to fill the vacancy and the time of the removal; and

(3) a majority of the remaining directors present affirmatively vote to remove the director.

Subd. 3. Removal by directors when there are no members with voting rights. If there are no members with voting rights, a director may be removed at any time, with or without cause, by those directors eligible to elect the director.

Subd. 4. Removal by members with voting rights. A director may be removed at any time, with or without cause, by those members eligible to elect the director.

History: 1989 c 304 s 36

317A.225 REMOVAL OF APPOINTED DIRECTORS.

Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary. A removal is effective when the notice is effective unless the notice states a future effective date.

History: 1989 c 304 s 37; 1990 c 488 s 18

317A.227 VACANCIES.

(a) Unless the articles or bylaws provide otherwise, and except as provided in paragraphs (b), (c), and (d), if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the members with voting rights, if any, may fill the vacancy; or

(2) the remaining members of the board, though less than a quorum, may fill the vacancy.

(b) If a vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy.

(c) 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 must be filled as provided in the articles or bylaws. The vacancy may not be filled by the board unless authorized by the articles or bylaws.

(e) A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

History: 1989 c 304 s 38

317A.231 BOARD MEETINGS.

Subdivision 1. Time; place. Meetings of the board may be held as provided in the articles or bylaws in or out of this state. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year. If the articles or bylaws or the board fail to select a place for a meeting, the meeting must be held at the registered office.

Subd. 2. Electronic communications. (a) A conference among directors by a means of communication through which the directors may simultaneously hear each other during the conference is a board meeting, if the same notice is given of the conference as would be required for a meeting, and if the number of directors participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting.

(b) A director may participate in a board meeting by any means of communication through which the director, other directors participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by this means is personal presence at the meeting.

Subd. 3. Calling meetings; notice. (a) Unless the articles or bylaws provide other-

wise, a director may call a board meeting by giving five days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

(b) If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, notice is not required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Subd. 4. Waiver of notice. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting.

History: 1989 c 304 s 39

317A.235 QUORUM.

A majority, or a larger or smaller proportion or number provided in the articles or bylaws but not less than one-third, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of directors originally present leaves less than the proportion or number otherwise required for a quorum.

History: 1989 c 304 s 40

317A.237 ACT OF THE BOARD.

The board shall take action by the affirmative vote of a majority of directors with voting rights present and entitled to vote at a duly held meeting, unless this chapter or the articles or bylaws require the affirmative vote of a larger proportion or number.

History: 1989 c 304 s 41; 1990 c 488 s 19

317A.239 ACTION WITHOUT MEETING.

Subdivision 1. Method. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, an action, other than an action requiring member approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

Subd. 2. Effective time. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

Subd. 3. Notice; liability. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action is not liable for the action.

History: 1989 c 304 s 42

317A.241 COMMITTEES.

Subdivision 1. Generally. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation to the extent provided in the resolution. Committees are subject at all times to the direction and control of the board.

Subd. 2. Membership. Committee members must be natural persons. Unless the articles or bylaws provide otherwise, a committee must consist of one or more persons, who need not be directors, appointed by the board.

Subd. 3. **Procedure.** Sections 317A.231 to 317A.239 apply to committees and members of committees to the same extent as those sections apply to the board.

Subd. 4. **Minutes.** Minutes, if any, of committee meetings must be made available upon request to members of the committee and to a director.

Subd. 5. **Standard of conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 317A.251.

Subd. 6. **Committee members considered directors.** Committee members are considered to be directors for purposes of sections 317A.251, 317A.255, and 317A.521.

History: 1989 c 304 s 43

317A.251 STANDARD OF CONDUCT.

Subdivision 1. **Standard; liability.** A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

Subd. 2. **Reliance.** (a) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board upon which the director does not serve, duly established under section 317A.241, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a director who has actual knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

Subd. 3. **Presumption of assent; dissent.** A director who is present at a meeting of the board when an action is approved by the board is presumed to have assented to the action approved, unless the director:

(1) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting, in which case the director is not considered to be present at the meeting for purposes of this chapter;

(2) votes against the action at the meeting; or

(3) is prohibited by the articles or bylaws or by section 317A.255 from voting on the action.

Subd. 4. **Not considered trustee.** A director, regardless of how identified, is not considered to be a trustee with respect to the corporation or with respect to property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

History: 1989 c 304 s 44; 1990 c 488 s 20

317A.255 DIRECTOR CONFLICTS OF INTEREST.

Subdivision 1. **Conflict; procedure when conflict arises.** A contract or other transaction between a corporation and its director, or between its director and a related organization, or between a corporation and an organization in or of which its director is a director, officer, or legal representative or has a material financial interest, is not void or voidable because the director or the other organization are parties or because the director is present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified if:

(1) the contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

(2) the material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, other than the interested director or directors, or the unanimous affirmative vote of all members, whether or not entitled to vote;

(3) the material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director may not be counted in determining the presence of a quorum and may not vote; or

(4) the contract or transaction is a merger or consolidation described in section 317A.601.

Subd. 2. Material financial interest. For purposes of this section:

(1) a director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation; and

(2) a director has a material financial interest in an organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters or spouses of brothers and sisters of the director, have a material financial interest.

Subd. 3. Exception. The procedures described under subdivision 1, clauses (1) to (3), are not required if the contract or other transaction is between related organizations.

History: 1989 c 304 s 45

317A.257 UNPAID DIRECTORS; LIABILITY FOR DAMAGES.

Subdivision 1. Generally. Except as provided in subdivision 2, a person who serves without compensation as a director, officer, trustee, member, or agent of an organization exempt from state income taxation under section 290.05, subdivision 2, or who serves without compensation as a fire chief of a nonprofit firefighting corporation or municipal volunteer fire department, or of a public corporation established by law but not considered a municipality, is not civilly liable for an act or omission by that person if the act or omission was in good faith, was within the scope of the person's responsibilities as a director, officer, trustee, member, agent, or fire chief of the organization, and did not constitute willful or reckless misconduct.

Subd. 2. Exceptions. (a) Subdivision 1 does not apply to:

(1) an action or proceeding brought by the attorney general for a breach of a fiduciary duty as a director;

(2) a cause of action to the extent it is based on federal law;

(3) a cause of action based on the person's express contractual obligation; or

(4) an action or proceeding based on a breach of public pension plan fiduciary responsibility.

(b) Subdivision 1 does not limit an individual's liability for physical injury to the person of another or for wrongful death that is personally and directly caused by the individual, nor the liability of a municipality arising out of the performance of firefighting or related activities.

Subd. 3. Definition. For purposes of this section, the term "compensation" means any thing of value received for services rendered, except:

(1) reimbursement for expenses actually incurred;

(2) a per diem in an amount not more than the per diem authorized for state advisory councils and committees under section 15.059, subdivision 3; or

(3) payment by an organization of insurance premiums on behalf of a person who is or was a director, officer, trustee, member, or agent of an organization, or who, while a director, officer, trustee, member, or agent of the organization, is or was serving at the request of the organization as a director, officer, partner, trustee, employee, or agent of another organization or employee benefit plan against liability asserted against and incurred by the person in or arising from that capacity.

History: 1989 c 304 s 46

OFFICERS

317A.301 OFFICERS REQUIRED.

A corporation must have one or more natural persons exercising the functions of the offices of president and treasurer, however designated. The board shall elect or appoint officers, except to the extent that the articles or bylaws provide that the members may elect or appoint officers.

History: 1989 c 304 s 47; 1990 c 488 s 21

317A.305 DUTIES OF REQUIRED OFFICERS.

Subdivision 1. **Presumption; modification.** Unless the articles, the bylaws, or a resolution adopted by the board and consistent with the articles or bylaws provide otherwise, the president and treasurer have the duties in this section.

Subd. 2. **President.** The president shall:

- (1) have general active management of the business of the corporation;
- (2) when present, preside at meetings of the board and of the members;
- (3) see that orders and resolutions of the board are carried into effect;
- (4) sign and deliver in the name of the corporation deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to another officer or agent of the corporation;
- (5) maintain records of and, when necessary, certify proceedings of the board and the members; and
- (6) perform other duties prescribed by the board.

Subd. 3. **Treasurer.** The treasurer shall:

- (1) keep accurate financial records for the corporation;
- (2) deposit money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
- (3) endorse for deposit notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers for the deposit;
- (4) disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
- (5) upon request, provide the president and the board an account of transactions by the treasurer and of the financial condition of the corporation; and
- (6) perform other duties prescribed by the board or by the president.

History: 1989 c 304 s 48

317A.311 OTHER OFFICERS.

Except to the extent that the articles or bylaws provide that the members may exercise the powers under this section, the board may elect or appoint, in a manner set forth in the articles or bylaws or in a resolution adopted by the board, other officers or agents the board considers necessary for the operation and management of the corporation, each of whom has the powers, rights, duties, responsibilities, and terms in office provided for in the articles or bylaws or determined by the board.

History: 1989 c 304 s 49; 1990 c 488 s 22

317A.315 MULTIPLE OFFICES.

Any number of offices or functions of those offices may be held or exercised by the same person. If a document must be signed by persons holding different offices or functions and a person holds or exercises more than one of those offices or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

History: 1989 c 304 s 50

317A.321 OFFICERS CONSIDERED ELECTED.

In the absence of an election or appointment of officers by the board or the members, the person exercising the principal functions of the president or the treasurer is considered to have been elected to the office.

History: 1989 c 304 s 51; 1990 c 488 s 23

317A.331 CONTRACT RIGHTS.

The election or appointment of a person as an officer or agent does not, of itself, create contract rights. A corporation may enter into a contract with an officer or agent for a period if, in the board's judgment, the contract would be in the best interests of the corporation. The fact that the contract may be for a term longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

History: 1989 c 304 s 52

317A.341 RESIGNATION; REMOVAL; VACANCIES.

Subdivision 1. Resignation. An officer may resign by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is named in the notice.

Subd. 2. Removal. An officer may be removed, with or without cause, by a resolution adopted by the board or by the members, whichever elected or appointed the officer. The removal is without prejudice to contractual rights of the officer.

Subd. 3. Vacancy. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of president or treasurer must, be filled for the unexpired part of the term in the manner provided in the articles or bylaws, or as determined by the board or under section 317A.321.

History: 1989 c 304 s 53; 1990 c 488 s 24

317A.351 DELEGATION.

Unless prohibited by the articles or bylaws or by a resolution adopted by the board, an officer may, without the approval of the board, delegate some or all the duties and powers of an office to other persons. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of the delegated duties and powers.

History: 1989 c 304 s 54

317A.361 STANDARD OF CONDUCT.

Subdivision 1. Standard; liability. An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated under section 317A.351 is considered an officer for purposes of this section and sections 317A.467 and 317A.521.

Subd. 2. Not considered trustee. An officer is not considered to be a trustee with respect to the corporation or with respect to property held or administered by the cor-

poration, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

History: 1989 c 304 s 55

MEMBERS

317A.401 MEMBERS.

Subdivision 1. Existence. (a) A corporation may have one or more classes of members or may have no members. In the absence of a provision in its articles or bylaws providing for members, a corporation has no members.

(b) If a corporation has no members, an action for which there is no specific provision of this chapter applicable to a corporation without members and that would otherwise require approval of the members requires only the approval of the board.

(c) A reference in this chapter to a corporation that has no members includes a corporation in which the directors are the only members.

Subd. 2. Admission. A corporation may admit any person as a member. The articles or bylaws may establish criteria or procedures for admission. A person may not be admitted as a member without the person's express or implied consent. For purposes of this subdivision, consent includes, but is not limited to, acceptance of membership benefits knowing that the benefits are available only to members, or taking some other affirmative action that confers membership benefits. If the articles or bylaws provide that a person who contributes to the corporation is a member, a contribution is consent.

Subd. 3. Consideration. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for consideration as is determined by the board.

Subd. 4. Rights. Members are of one class unless the articles establish, or authorize the bylaws to establish, more than one class. Members are entitled to vote and have equal rights and preferences except to the extent that the articles or bylaws have fixed or limited the rights and preferences of members or different classes of members or provide for nonvoting members. The articles or bylaws may fix the term of membership.

History: 1989 c 304 s 56; 1990 c 488 s 25

317A.403 MEMBERSHIP CERTIFICATES.

A corporation may issue certificates showing membership in the corporation. In lieu of a membership certificate, a corporation may issue preferred or common stock. Stock may be issued upon the terms and conditions that the board considers appropriate.

History: 1989 c 304 s 57; 1990 c 488 s 26

317A.405 TRANSFER OF MEMBERSHIP.

(a) Except as provided in the articles or bylaws, a member of a corporation may not transfer a membership or a right arising from it.

(b) Where transfer rights have been provided, a restriction on them is not binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

History: 1989 c 304 s 58

317A.407 LIABILITY OF MEMBERS.

Subdivision 1. Third parties. A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

Subd. 2. Dues, assessments, or fees. (a) When authority to do so is conferred by the articles or bylaws and subject to any limitations, a corporation may levy dues, assessments, or fees upon its members. The dues, assessments, or fees may be imposed

upon all classes of members alike or differently upon different classes of members. Members of one or more classes may be exempted.

(b) Articles or bylaws may:

(1) fix the amount of the levy and the method of collection of dues, assessments, or fees; or

(2) authorize the directors to fix the amount from time to time and determine the methods of collection.

(c) Articles or bylaws may provide for:

(1) enforcement or collection of dues, assessments, or fees;

(2) cancellation of membership, on reasonable notice, for nonpayment of dues, assessments, or fees; or

(3) reinstatement of membership.

History: 1989 c 304 s 59

317A.409 RESIGNATION.

A member may resign at any time. The resignation of a member does not relieve the member from any obligations the member may have to the corporation for dues, assessments, or fees or charges for goods or services.

History: 1989 c 304 s 60

317A.411 TERMINATION.

Subdivision 1. **Fair and reasonable procedure required.** A member may not be expelled or suspended, and a membership may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. This section does not apply to the termination of a membership at the end of a fixed term.

Subd. 2. **Standards.** A procedure is fair and reasonable when it is fair and reasonable taking into consideration all of the relevant facts and circumstances. In addition, a procedure is fair and reasonable if it provides:

(1) not less than 15 days' prior written notice of the expulsion, suspension, or termination, and the reasons for it; and

(2) an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person authorized to decide that the proposed expulsion, termination, or suspension not take place.

Subd. 3. **Time limit to challenge.** A proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be begun within one year after the effective date of the expulsion, suspension, or termination.

Subd. 4. **Member liability.** The expulsion, suspension, or termination of a member does not relieve the member from obligations the member may have to the corporation for dues, assessments, or fees or charges for goods or services.

History: 1989 c 304 s 61

317A.413 PURCHASE OF MEMBERSHIPS.

If authorized in its articles or bylaws, a corporation may buy the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions in the articles or bylaws.

History: 1989 c 304 s 62

317A.415 DELEGATES.

A corporation may provide in its articles or bylaws for delegates having some or all the authority of members. The articles or bylaws may set forth provisions relating to:

- (1) the characteristics, qualifications, rights, limitations, and obligations of the delegates, including their selection and removal;
- (2) calling, noticing, holding, and conducting meetings of delegates; and
- (3) carrying on corporate activities during and between meetings of delegates.

History: 1989 c 304 s 63

317A.431 ANNUAL MEETINGS OF VOTING MEMBERS.

Subdivision 1. Frequency. Unless the articles or bylaws provide otherwise, a corporation with voting members shall hold at least an annual meeting of voting members.

Subd. 2. Demand by members. If an annual meeting of voting members has not been held during the preceding 15 months, at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, may demand an annual meeting of members by written notice of demand given to the president or the treasurer of the corporation. Within 30 days after receipt of the demand, the board shall cause a meeting of members to be called and held at the expense of the corporation on notice no later than 90 days after receipt of the demand. If the board fails to cause a meeting to be called and held as required by this subdivision, the members making the demand may call the meeting at the expense of the corporation by giving notice as required by section 317A.435.

Subd. 3. Time; place. An annual meeting of members must be held at the time and place stated in or fixed in accordance with the articles or bylaws. If a place is not stated or if a demand for a meeting is made under subdivision 2, the meeting must be held in the county where the corporation's registered office is located.

Subd. 4. Elections; business. At an annual meeting of members:

- (1) there must be an election of successors for directors elected by members and whose terms have expired or whose terms expire at an annual meeting;
- (2) there must be a report on the activities and financial condition of the corporation; and
- (3) the members shall consider and act upon other matters as may be raised consistent with the notice of meeting requirements.

Subd. 5. Effect of failure to hold meeting. The failure to hold a meeting in accordance with a corporation's articles or bylaws does not affect the validity of a corporate action.

History: 1989 c 304 s 64; 1990 c 488 s 27

317A.433 SPECIAL MEETINGS OF VOTING MEMBERS.

Subdivision 1. Who may call. A corporation with voting members shall hold a special meeting of members:

- (1) on call of its board or persons authorized to do so by the articles or bylaws; or
- (2) if at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, sign, date, and deliver to the president or the treasurer one or more written demands for the meeting describing the purpose for which it is to be held.

Subd. 2. Notice. Within 30 days after receipt of a demand for a special meeting from voting members, the board shall cause a special meeting to be called and held on notice no later than 90 days after receipt of the demand at the expense of the corporation. If the board fails to cause a special meeting to be called and held as required by this subdivision, a voting member making the demand may call the meeting by giving notice under section 317A.435 at the expense of the corporation.

Subd. 3. Time; place. Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the articles, bylaws, or by the president or the board. If a special meeting is demanded by the members, the meeting must be held in the county where the corporation's registered office is located.

Subd. 4. Notice requirements; business limited. The notice of a special meeting must contain a statement of the purposes of the meeting. The notice may also contain other information required by the articles or bylaws or considered necessary or desirable by the board or by another person calling the meeting. The business transacted at a special meeting is limited to the purposes stated within the notice of the meeting. Business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the members with voting rights have waived notice of the meeting under section 317A.435.

History: 1989 c 304 s 65

317A.434 COURT-ORDERED MEETING OF VOTING MEMBERS.

Subdivision 1. When authorized. The district court of the county where a corporation's registered office is located may order a meeting to be held:

(1) on application of at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, or of another person entitled to participate in the annual meeting, if a meeting was not held within the earlier of six months after the end of the corporation's fiscal year or 15 months after its last meeting; or

(2) on application of a voting member who signed a demand for a special meeting valid under section 317A.433 or a person entitled to call a special meeting if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or

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

Subd. 2. Scope of order. The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purposes of the meeting.

Subd. 3. Costs and attorneys fees. If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorneys fees, incurred to obtain the order.

History: 1989 c 304 s 66

317A.435 NOTICE REQUIREMENTS.

Subdivision 1. To whom given. Notice of meetings of members must be given to every voting member as of the record date determined under section 317A.437. If the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment, notice is not required unless a new record date for the adjourned meeting is or must be fixed under section 317A.437.

Subd. 2. When given; contents. In all cases where a specific minimum notice period has not been fixed by law, the notice must be given at least five days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than 60 days before the date of the meeting. The notice must contain the date, time, and place of the meeting, and other information required by this chapter. If proxies are permitted at the meeting, the notice must so inform members and state the procedure for appointing proxies.

Subd. 3. Waiver of notice; objections. A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, unless the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

History: 1989 c 304 s 67; 1990 c 488 s 28

317A.437 RECORD DATE; DETERMINING MEMBERS ENTITLED TO NOTICE AND VOTE.

Subdivision 1. Determination. The board may fix a date not more than 60 days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of members as the date for the determination of the members entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only voting members on that date are entitled to notice of and permitted to vote at that meeting of members.

Subd. 2. Adjourned meeting. (a) A determination of members entitled to notice and to vote at a membership meeting is effective for an adjournment of the meeting unless the board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than 60 days after the record date for determining members entitled to notice of the original meeting.

(b) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice and voting continues in effect or it may fix a new record date for notice and voting.

History: 1989 c 304 s 68

317A.439 MEMBERS' LIST FOR MEETING.

Subdivision 1. Preparation. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical list of the names of its members who are entitled to notice and to vote. The list must show the address and number of votes each member is entitled to vote at the meeting.

Subd. 2. Inspection. The list of members must be available for inspection by a member with voting rights for the purpose of communication with other members concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the corporation's registered office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. The list also must be available at the meeting. A member, a member's agent, or attorney is entitled on written demand to inspect and to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.

Subd. 3. Enforcement. If the corporation refuses to allow a member with voting rights, the member's agent, or attorney to inspect the list of members before or at the meeting, the district court of the county where a corporation's registered office is located, on application of the member, may:

- (1) order the inspection or copying at the corporation's expense;
- (2) postpone the meeting until the inspection or copying is complete; or
- (3) order the corporation to pay the member's costs, including reasonable attorneys fees, incurred to obtain the order.

Subd. 4. Effect of failure to comply. Unless a written demand to inspect and copy a membership list has been made under subdivision 2 before the membership meeting and a corporation improperly refuses to comply with the demand, refusal, or failure to comply with this section does not affect the validity of action taken at the meeting.

Subd. 5. Improper use prohibited. A member, agent, or attorney who gains access to a membership list under this section may not use or give to another for use the membership list for any purpose other than a proper purpose. Upon application of the corporation, the district court may issue a protective order or order other relief necessary to enforce this subdivision.

History: 1989 c 304 s 69

317A.441 RIGHT TO VOTE.

Unless the articles or bylaws provide otherwise, each member with voting rights is entitled to one vote on each matter voted on by the members. If a membership stands

of record in the names of two or more persons, their acts with respect to voting have the following effect:

- (1) if only one votes, the act binds all; and
- (2) if more than one votes, the vote must be divided on a pro rata basis.

History: 1989 c 304 s 70

317A.443 ACT OF THE MEMBERS.

Subdivision 1. **General.** Unless this chapter or the articles or bylaws require a greater vote or voting by class, if a quorum is present, or if a quorum has been present at a meeting, the affirmative vote of the majority of the members with voting rights present and entitled to vote, which must also be a majority of the required quorum, is the act of the members.

Subd. 2. **Methods.** Unless otherwise provided in the articles or bylaws, members may take action at a meeting by voice or ballot, by unanimous action without a meeting under section 317A.445, by written ballot under section 317A.447, or by electronic communication under section 317A.449.

History: 1989 c 304 s 71; 1990 c 488 s 29

317A.445 UNANIMOUS ACTION WITHOUT A MEETING.

An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. The written action is effective when it has been signed by all of those members, unless a different effective time is provided in the written action. When this chapter requires a certificate concerning an action to be filed with the secretary of state, the officers signing the certificate must indicate that the action was taken under this section.

History: 1989 c 304 s 72

317A.447 ACTION BY WRITTEN BALLOT.

(a) Except as provided in paragraph (e) and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the corporation mails or delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot must:

- (1) set forth each proposed action; and
- (2) provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot under this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and 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) Solicitations for votes by written ballot must:

- (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; and
- (3) specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

History: 1989 c 304 s 73

317A.449 ACTION BY ELECTRONIC COMMUNICATION.

(a) A conference among members by a means of communication through which

the participants may simultaneously hear each other during the conference is a meeting of the members, if the same notice is given of the conference as would be required for a meeting and if the number of persons participating in the conference is a quorum. Participation in a meeting by this means is personal presence at the meeting.

(b) A member may participate in a meeting of the membership by a means of communication through which the member, other persons participating, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by this means is personal presence at the meeting.

History: 1989 c 304 s 74

317A.451 QUORUM.

Subdivision 1. **Number required.** Unless otherwise provided by the articles or bylaws, a quorum for a meeting of members is ten percent of the members entitled to vote at the meeting.

Subd. 2. **Action.** (a) Except as provided in paragraph (b), a quorum is necessary for the transaction of business at a meeting of members. If a quorum is not present, a meeting may be adjourned from time to time for that reason.

(b) If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

History: 1989 c 304 s 75

317A.453 PROXIES.

Subdivision 1. **Authorization.** If the articles or bylaws permit 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 an attorney-in-fact.

Subd. 2. **Effective period.** An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form provided, however, that a proxy is not valid for more than three years from its date of execution.

Subd. 3. **Revocation.** An appointment of a proxy is revocable by the member. Appointment of a proxy is revoked by the person appointing the proxy by:

- (1) attending a meeting and voting in person; or
- (2) signing and delivering to the officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a later appointment form.

Subd. 4. **Death.** The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

Subd. 5. **Acceptance of vote; liability.** (a) Subject to section 317A.455 and an 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 that of the member making the appointment.

(b) The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

Subd. 6. **Multiple proxies.** Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:

- (1) any one of them may vote on each item of business in accordance with specific instructions contained in the appointment; or
- (2) if no specific instructions are contained in the appointment with respect to voting on a particular item of business, a majority of the proxies have the authority conferred by the instrument. If the proxies are equally divided, they share the vote equally.

History: 1989 c 304 s 76; 1990 c 488 s 30

317A.455 CORPORATION'S ACCEPTANCE OF MEMBER ACT.

Subdivision 1. **Name of member.** If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a member, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

Subd. 2. **Name other than member.** Unless the articles or bylaws provide otherwise, 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 may 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, 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; or

(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.

Subd. 3. **Rejection of vote.** The corporation may reject a vote, consent, waiver, or proxy appointment if the 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.

Subd. 4. **Liability.** The corporation or 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 is not liable in damages to the member for the consequences of the acceptance or rejection.

Subd. 5. **Validity of corporate action.** 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.

History: 1989 c 304 s 77; 1990 c 488 s 31

317A.457 VOTING AGREEMENTS.

(a) To the extent permitted in the articles or bylaws, two or more members may provide for how they will vote by signing an agreement for that purpose. An agreement may be valid for a period of up to ten years. The agreement must have a reasonable purpose consistent with the corporation's purposes.

(b) A voting agreement created under this section is specifically enforceable.

(c) A voting agreement is not effective until it is filed with the corporation.

History: 1989 c 304 s 78

317A.461 BOOKS AND RECORDS; FINANCIAL STATEMENT.

Subdivision 1. **Articles and bylaws; minutes.** A corporation shall keep at its registered office correct and complete copies of its articles and bylaws, accounting records, and minutes of meetings of members, board of directors, and committees having any of the authority of the board of directors.

Subd. 2. Inspection. A member, or the agent or attorney of a member, may inspect all books and records and voting agreements for any proper purpose at any reasonable time.

Subd. 3. Financial statement. Upon request, a corporation shall give the member a statement showing the financial result of all operations and transactions affecting income and surplus during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period.

History: 1989 c 304 s 79

317A.467 EQUITABLE REMEDIES.

If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, or by the attorney general, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorney fees and disbursements, to the members.

History: 1989 c 304 s 80

LOANS; OBLIGATIONS

317A.501 LOANS; GUARANTEES; SURETYSHIP.

Subdivision 1. Prerequisites. A corporation may lend money to, guarantee or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the board and:

- (1) is in the usual and regular course of activities of the corporation;
- (2) is with, or for the benefit of, a related organization, an organization in which the corporation has a financial interest, a person with whom the corporation has a relationship in the course of its activities, or an organization to which the corporation has the power to make donations;
- (3) is with, or for the benefit of, an officer, director, or employee of the corporation or a related organization, and is authorized under subdivision 2; or
- (4) subject to subdivision 2, has been approved by two-thirds of the members with voting rights or, if there are no members with voting rights, by two-thirds of the board.

Subd. 2. Limitation on loans and guarantees for officers, directors, and employees. A corporation may not lend money to or guarantee the obligation of a director, officer, or employee of the corporation or a related organization, or of the spouse, parents, children and spouses of children, brothers and sisters or spouses of brothers and sisters of the director, officer, or employee, unless the loan or guarantee may reasonably be expected, in the judgment of the board, to benefit the corporation. If a loan or guarantee is made in violation of this subdivision, the borrower's liability on the loan is not affected. The officers and directors who make a loan in violation of this subdivision or assent to it are jointly and severally liable for its repayment. This subdivision does not prohibit an advance of money for expenses authorized by section 317A.505.

Subd. 3. Interest; security. A loan, guaranty, surety contract, or other financial assistance under subdivision 1 or 2 may be with or without interest and may be unsecured or secured.

Subd. 4. Banking authority not granted. This section does not grant authority to act as a bank or to carry on the business of banking.

History: 1989 c 304 s 81

317A.505 ADVANCES.

A corporation may, without a vote of the directors, advance money to its directors, officers, employees, or agents to cover expenses that can reasonably be anticipated to

be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

History: 1989 c 304 s 82

317A.521 INDEMNIFICATION.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger, consolidation, or other transaction in which the predecessor's existence ended upon completion of the transaction.

(c) "Official capacity" means:

(1) with respect to a director, the position of director in a corporation;

(2) with respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and

(3) with respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(d) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

(e) "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.

Subd. 2. **Indemnification mandatory; standard.** (a) Subject to subdivision 4, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) has not been indemnified by another organization or employee benefit plan for the same liability described in the preceding paragraph with respect to the same acts or omissions;

(2) acted in good faith;

(3) received no improper personal benefit and section 317A.255, if applicable, has been satisfied;

(4) in the case of a criminal proceeding, did not have reasonable cause to believe the conduct was unlawful; and

(5) in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria in this subdivision.

Subd. 3. Advances. Subject to subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:

(1) upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification in subdivision 2 have been satisfied and a written undertaking by the person to repay the amounts paid or reimbursed by the corporation, if it is determined that the criteria for indemnification have not been satisfied; and

(2) after a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by clause (1) is an unlimited general obligation of the person making it, but need not be secured and must be accepted without reference to financial ability to make the repayment.

Subd. 4. Prohibition or limit on indemnification or advances. The articles or bylaws may prohibit indemnification or advances of expenses required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to acts or omissions of the person occurring before the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

Subd. 5. Reimbursement to witnesses. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

Subd. 6. Determination of eligibility. (a) Determinations as to whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding under subdivision 3 must be made:

(1) by the board by a majority of a quorum; directors who are at the time parties to the proceeding are not counted for determining a majority or the presence of a quorum;

(2) if a quorum under clause (1) cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;

(3) if a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board or a committee by vote under clause (1) or (2) or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;

(4) if a determination is not made under clauses (1) to (3), by the members with voting rights, other than members who are parties to the proceeding; or

(5) if an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after the termination of a proceeding or after a request for an advance of expenses, by a court in this state, which may be the court in which the proceeding

involving the person's liability took place, upon application of the person and notice the court requires.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person having, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding under subdivision 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

Subd. 7. **Insurance.** A corporation may buy and maintain insurance on behalf of a person in that person's official capacity against liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under this section.

Subd. 8. **Disclosure.** A corporation with members with voting rights that indemnifies or advances expenses to a person under this section in connection with a proceeding by or on behalf of the corporation shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members.

Subd. 9. **Indemnification of other persons.** This section does not limit the power of a corporation to indemnify other persons.

History: 1989 c 304 s 83

MERGER; CONSOLIDATION; TRANSFER

317A.601 MERGER, CONSOLIDATION, OR TRANSFER.

Subdivision 1. **Merger or consolidation.** Two or more corporations may merge or consolidate, resulting in a single corporation subject to this chapter. A merger or consolidation must be made as provided in sections 317A.611 to 317A.651.

Subd. 2. **Transfer.** A corporation may sell, lease, transfer, or dispose of all or substantially all of its property and assets under section 317A.661.

Subd. 3. **Notice to attorney general.** If applicable, a corporation shall comply with section 317A.811 before it may merge or consolidate or transfer all or substantially all of its assets.

History: 1989 c 304 s 84

317A.611 PLAN OF MERGER OR CONSOLIDATION.

A plan of merger or consolidation must contain:

- (1) the names of the corporations proposing to merge or consolidate;
- (2) the name of the surviving or new corporation;
- (3) the terms and conditions of the proposed merger or consolidation;
- (4) in the case of a merger, the manner and basis of converting the memberships of the constituent corporations into memberships of the surviving corporation or of any other corporation;
- (5) in the case of a merger, a statement of amendments to the articles of the surviving corporation proposed as part of the merger;
- (6) in the case of a consolidation, the provisions required by section 317A.111 to be set out in the articles of the new corporation; and
- (7) other provisions with respect to the proposed merger or consolidation that are considered necessary or desirable.

History: 1989 c 304 s 85

317A.613 PLAN APPROVAL.

Subdivision 1. **Approval required.** A plan of merger or consolidation must be approved and adopted by each constituent corporation as provided in this section.

Subd. 2. **Approval by board and members with voting rights.** When a constituent corporation has members with voting rights, the board of directors of the corporation shall adopt a resolution by a majority vote of all directors approving a proposed plan of merger or consolidation and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of merger or consolidation is adopted upon receiving the affirmative vote of a majority of the members who vote upon the proposed plan.

Subd. 3. **Approval by board.** When a constituent corporation does not have members with voting rights, and unless the articles or bylaws require a greater vote, a plan of merger or consolidation is adopted at a meeting of the board of directors of the corporation upon receiving the affirmative votes of a majority of all directors. Notice of the meeting must be given accompanied by a copy of the proposed plan of merger or consolidation.

History: 1989 c 304 s 86

317A.615 ARTICLES OF MERGER OR CONSOLIDATION; CERTIFICATE.

Subdivision 1. **Contents of articles.** Upon receiving the approval required by section 317A.613 and after compliance with section 317A.811, if applicable, articles of merger or consolidation must be prepared that contain:

- (1) the plan of merger or consolidation;
- (2) a statement that the plan has been approved by each corporation under this chapter; and
- (3) a statement that the notice to the attorney general required by section 317A.811 has been given and the waiting period has expired or has been waived by the attorney general or a statement that section 317A.811 is not applicable.

Subd. 2. **Articles signed, filed.** The articles of merger or consolidation must be signed on behalf of each constituent corporation and filed with the secretary of state.

Subd. 3. **Certificate.** The secretary of state shall issue a certificate of merger to the surviving corporation or a certificate of consolidation and incorporation to the new corporation.

History: 1989 c 304 s 87; 1990 c 488 s 32

317A.631 ABANDONMENT.

Subdivision 1. **By members or board of each corporation; under terms of plan.** After a plan of merger or consolidation has been approved by each constituent corporation under section 317A.613 and before the effective date of the plan, it may be abandoned:

- (1) if each constituent corporation has approved the abandonment at a meeting by a majority of the members with voting rights voting on the issue, or if the corporation does not have voting members, by a majority of all directors; or
- (2) if the plan itself provides for abandonment and the conditions for abandonment in the plan are met.

Subd. 2. **By board of one corporation.** A plan of merger or consolidation may be abandoned after it has been approved by each constituent corporation and before the effective date of the plan, by a resolution approved by a majority of all directors of the constituent corporation abandoning the plan of merger or consolidation, subject to the contract rights of any other person under the plan.

Subd. 3. **Filing of articles.** If articles of merger or consolidation have been filed with the secretary of state, but have not yet become effective, the constituent corporations, in the case of abandonment under subdivision 1, clause (1), the constituent corporations or any one of them, in the case of abandonment under subdivision 1, clause

(2), or the abandoning corporation in the case of abandonment under subdivision 2, shall file with the secretary of state articles of abandonment that contain:

- (1) the names of the constituent corporations;
- (2) the provision of this section under which the plan is abandoned; and
- (3) if the plan is abandoned under subdivision 2, the text of the resolution approved by the directors abandoning the plan.

History: 1989 c 304 s 88

317A.641 EFFECTIVE DATE OF MERGER OR CONSOLIDATION; EFFECT.

Subdivision 1. Effective date. A merger or consolidation is effective when the articles of merger or consolidation are filed with the secretary of state or on a later date named in the articles.

Subd. 2. Effect on corporation; general. When a merger or consolidation becomes effective:

- (1) the constituent corporations become a single corporation, which in case of merger is a surviving corporation, or in case of consolidation is a new corporation;
- (2) subject to clause (3) and section 317A.643, the separate existence of the constituent corporations except the surviving corporation ends;
- (3) when the agreement of merger or consolidation expressly provides for the continuance of the corporate existence of a constituent corporation and expressly declares the purpose for the continuance, the corporate existence of the constituent corporation continues in the single corporation for the purpose declared in the agreement;
- (4) the single corporation has the rights, privileges, immunities, and powers, and is subject to the duties and liabilities, of a corporation formed under this chapter;
- (5) the single corporation has the rights, privileges, immunities, powers, and franchises, public and private, of each constituent corporation;
- (6) all real or personal property, debts, including debts arising from a subscription for membership, and interests belonging to each constituent corporation are transferred to the single corporation without further act or deed;
- (7) interest in real estate possessed by a constituent corporation does not revert to the grantor, or otherwise, nor is it in any way impaired by reason of the merger or consolidation; and the personal property of a constituent corporation does not revert by reason of the merger or consolidation;
- (8) except where the will or other instrument provides otherwise, and subject to section 317A.671, a devise, bequest, gift, or grant contained in a will or other instrument, in trust or otherwise, made before or after the merger or consolidation has become effective, to or for any of the constituent corporations, inures to the single corporation;
- (9) debts, liabilities, and obligations of each constituent corporation become the debts, liabilities, and obligations of the single corporation, just as if the debts, liabilities, and obligations had been incurred or contracted by the single corporation;
- (10) existing claims or a pending action or proceeding by or against a constituent corporation may be prosecuted to judgment as though the merger or consolidation had not been effected, or the single corporation may be substituted for the constituent corporation;
- (11) the liabilities of the members, officers, directors, or similar groups or persons, however denominated, of a constituent corporation are not affected by the merger or consolidation of a constituent corporation;
- (12) the rights of creditors or liens upon the property of a constituent corporation are not impaired by the merger or consolidation, but the liens are limited to the property upon which they were liens immediately before the merger or consolidation;
- (13) the articles of the surviving corporation are considered to be amended to the extent that changes in its articles are contained in a plan of merger; and

(14) in the case of a consolidation, the plan of consolidation constitutes the articles of incorporation of the new corporation.

Subd. 3. Effect on fiduciary capacity. (a) For purposes of this subdivision, "fiduciary capacity" means the capacities of trustee, executor, administrator, personal representative, guardian, conservator, receiver, escrow agent, agent for the investment of money, attorney-in-fact, or a similar capacity.

(b) Except where the will, declaration of trust, or other instrument provides otherwise, the single corporation is, without further act or deed, the successor of the constituent corporations in fiduciary capacities in which a constituent corporation was acting at the time of the merger or consolidation and is liable to the beneficiaries as fully as if the constituent corporation had continued its separate corporate existence.

(c) If a constituent corporation is nominated and appointed, or has been nominated and appointed, in a fiduciary capacity in a will, declaration of trust, or other instrument, order, or judgment before or after the merger or consolidation, then even if the will or other instrument, order, or judgment does not become operative or effective until after the merger or consolidation becomes effective, every fiduciary capacity and the rights, powers, privileges, duties, discretions, and responsibilities provided for in the nomination or appointment fully vest in and are to be exercised by the single corporation, whether there are one or more successive mergers or consolidations.

History: 1989 c 304 s 89

317A.643 CONTINUANCE OF CORPORATE AUTHORITY.

When an act or instrument is considered necessary or appropriate to evidence the vesting of property or other rights in the single corporation, the persons with authority to do so under the articles or bylaws of each constituent corporation shall do the act or execute and deliver the instrument and for this purpose, the existence of the constituent corporations and the authority of those persons is continued.

History: 1989 c 304 s 90

317A.651 MERGER OR CONSOLIDATION WITH FOREIGN CORPORATION.

Subdivision 1. When permitted. A corporation may merge or consolidate with a foreign corporation by following the procedures set forth in this section, if the merger or consolidation is permitted by the laws of the state under which the foreign corporation is incorporated.

Subd. 2. Laws applicable before transaction. Each corporation shall comply with sections 317A.601 to 317A.643 with respect to the merger or consolidation of corporations and each foreign corporation shall comply with the laws under which it was incorporated or by which it is governed.

Subd. 3. Surviving corporation. If the single corporation will be incorporated under this chapter, it shall comply with this chapter.

Subd. 4. Foreign surviving corporation. If the single corporation will be a foreign corporation and will transact business in this state, it shall comply with the provisions of chapter 303 with respect to foreign corporations. In every case the single corporation shall file with the secretary of state:

(1) an agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent corporation; and

(2) an irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding and an address to which process may be forwarded.

History: 1989 c 304 s 91

317A.661 TRANSFER OF ASSETS; WHEN PERMITTED.

Subdivision 1. Member approval; when not required. Unless otherwise provided in its articles or bylaws, a corporation, by affirmative vote of the board of directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets in the

usual and regular course of its activities and, subject to section 317A.501, subdivision 1, grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, in which case no member approval is required.

Subd. 2. Voting member approval; when required. A corporation, by affirmative vote of the board of directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights. If there are no members with voting rights, member approval is not required. Notice of the meeting must be given to the members with voting rights. The notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

Subd. 3. Notice to attorney general. If applicable, a corporation shall comply with section 317A.811 before transferring all or substantially all of its assets under this section.

Subd. 4. Signing of documents. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.

Subd. 5. Transferee liability. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

History: 1989 c 304 s 92

317A.671 CERTAIN ASSETS NOT TO BE DIVERTED.

Except as provided in section 501B.31, when a corporation dissolves, merges or consolidates, transfers its assets, or grants a mortgage or other security interest in its assets, assets of the corporation or a constituent corporation, and assets subsequently received by a single corporation after a merger or consolidation, may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

History: 1989 c 304 s 93; 1989 c 340 art 2 s 9

DISSOLUTION

317A.701 METHODS OF DISSOLUTION.

(a) Subject to section 317A.811, a corporation may be dissolved:

- (1) by the incorporators under section 317A.711;
- (2) by the board and members with voting rights under sections 317A.721 to 317A.733; or
- (3) by order of a court under sections 317A.741 to 317A.765.

(b) A corporation also may be dissolved by the secretary of state under section 317A.827.

History: 1989 c 304 s 94

317A.711 VOLUNTARY DISSOLUTION BY INCORPORATORS.

Subdivision 1. Manner. If the first board of directors has not been named in the articles, designated or appointed pursuant to the articles, or elected under section 317A.171, a corporation may be dissolved by the incorporators as provided in this section.

Subd. 2. Articles of dissolution. (a) A majority of the incorporators shall sign articles of dissolution containing:

- (1) the name of the corporation;
- (2) the date of incorporation;
- (3) a statement that the first board of directors has not been named in the articles, designated or appointed pursuant to the articles, or elected at an organizational meeting;
- (4) a statement that no debts remain unpaid; and
- (5) a statement that notice to the attorney general required by section 317A.811 has been given and the waiting period has expired or has been waived by the attorney general or a statement that section 317A.811 is not applicable.

(b) The articles of dissolution must be filed with the secretary of state.

Subd. 3. Effective date. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.

Subd. 4. Certificate. The secretary of state shall issue to the dissolved corporation a certificate of dissolution that contains:

- (1) the name of the corporation;
- (2) the date and time the articles of dissolution were filed with the secretary of state; and
- (3) a statement that the corporation is dissolved.

History: 1989 c 304 s 95; 1990 c 488 s 33

317A.721 VOLUNTARY DISSOLUTION BY BOARD AND MEMBERS WITH VOTING RIGHTS.

Subdivision 1. Manner. A corporation may be dissolved by the board and members with voting rights as provided in this section.

Subd. 2. Approval by board; plan of dissolution. The board shall adopt a resolution proposing dissolution of the corporation by the affirmative vote of a majority of all directors. The resolution must include a plan of dissolution that states to whom the assets owned or held by the corporation will be distributed after creditors are paid. The plan must comply with the requirements of section 317A.735. If the board will have discretion in distributing assets, the plan must state that the assets will be distributed to persons the board subsequently identifies. If there are members with voting rights, the resolution and plan of dissolution must be submitted to the members under subdivision 3.

Subd. 3. Approval by members with voting rights. (a) Written notice must be given to each member with voting rights, within the time and in the manner provided in section 317A.435 for notice of meetings of members and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.

(b) The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved by the members, the dissolution must be started.

History: 1989 c 304 s 96

317A.723 FILING NOTICE OF INTENT TO DISSOLVE; EFFECT.

Subdivision 1. Contents. If dissolution of the corporation is approved under section 317A.721, the corporation shall file with the secretary of state a notice of intent to dissolve. The notice must contain:

- (1) the name of the corporation;
- (2) the date and place of the meeting at which the resolution was approved by the board under section 317A.721, subdivision 2, and by the members under section 317A.721, subdivision 3, if applicable; and

(3) a statement that the requisite approval of the directors and members was received.

If applicable, the corporation also shall notify the attorney general under section 317A.811.

Subd. 2. Winding up. When the notice of intent to dissolve has been filed with the secretary of state and subject to section 317A.731, the corporation may not carry on its activities, except to the extent necessary for the winding up of the corporation. The board and members with voting rights have the right to revoke the dissolution proceedings under section 317A.731 and the members with voting rights have the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.

Subd. 3. Remedies continued. The filing with the secretary of state of a notice of intent to dissolve does not affect a remedy in favor of the corporation or a remedy against it or its directors, officers, or members in those capacities, except as provided in section 317A.781.

History: 1989 c 304 s 97

317A.725 PROCEDURE IN DISSOLUTION.

Subdivision 1. Collection; payment. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:

(1) to collect or make provision for the collection of debts due or owing to the corporation; and

(2) to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.

Subd. 2. Transfer of assets. Notwithstanding section 317A.661, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 317A.671 and 317A.811.

Subd. 3. Distribution of assets. Tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 317A.735.

History: 1989 c 304 s 98

317A.727 NOTICE TO CREDITORS AND CLAIMANTS.

Subdivision 1. When permitted; how given. When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper in the county where the registered office of the corporation is located and by giving written notice to known creditors and claimants under section 317A.011, subdivision 14.

Subd. 2. Contents. The notice to creditors and claimants must contain:

(1) a statement that the corporation is in the process of dissolving;

(2) a statement that the corporation has filed a notice of intent to dissolve with the secretary of state;

(3) the date of filing the notice of intent to dissolve;

(4) the address of the office to which written claims against the corporation must be presented; and

(5) the date by which the claims must be received, which is the later of 90 days after published notice or, with respect to a particular known creditor or claimant, 90

days after the date on which written notice is given to that creditor or claimant. Published notice is considered given on the date of first publication for determining this date.

History: 1989 c 304 s 99

317A.729 CLAIMS IN DISSOLUTION.

If the corporation gives notice to creditors and claimants under section 317A.727:

(1) the corporation has 30 days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it, a claim not expressly rejected in this manner is considered accepted; and

(2) a creditor or claimant to whom notice is given and whose claim is rejected by the corporation has 60 days from the date of rejection, or 180 days from the date the corporation filed the notice of intent to dissolve with the secretary of state, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue other remedies with respect to the claim.

History: 1989 c 304 s 100

317A.730 STATUTE OF LIMITATIONS.

Subdivision 1. Corporations that give notice. If the corporation gives notice to creditors and claimants under section 317A.727:

(1) the claim of a creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is subject to section 317A.781; and

(2) the claim of a creditor or claimant that is rejected by the corporation under section 317A.729 is subject to section 317A.781 if the creditor or claimant does not begin legal, administrative, or arbitration proceedings with respect to the claim during the period set forth in section 317A.729, clause (2).

Subd. 2. Other corporations. If the corporation does not give notice to creditors and claimants under section 317A.727, the claim of a creditor or claimant who does not begin legal, administrative, or arbitration proceedings concerning the claim within two years after the date of filing the notice of intent to dissolve is subject to section 317A.781.

History: 1989 c 304 s 101

317A.731 REVOCATION OF DISSOLUTION PROCEEDINGS.

Subdivision 1. Generally. Dissolution proceedings begun under section 317A.721 may be revoked before the articles of dissolution are filed as provided in this section.

Subd. 2. Revocation by board. The board may adopt a resolution revoking the proposed dissolution by the affirmative vote of a majority of all directors. If there are members with voting rights, the resolution must be submitted to the members under subdivision 3.

Subd. 3. Approval by members with voting rights. Written notice must be given to the members with voting rights within the time and in the manner provided in section 317A.435 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation must be submitted to the members at the meeting. If the proposed revocation is approved by the members with voting rights, the dissolution proceedings are revoked.

Subd. 4. Effective date; effect. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state. After the notice is filed, the corporation may resume business. If notice to the attorney general has been given under section 317A.811, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

History: 1989 c 304 s 102

317A.733 ARTICLES OF DISSOLUTION; CERTIFICATE OF DISSOLUTION; EFFECT.

Subdivision 1. Articles; when filed. Articles of dissolution for a corporation dissolving under section 317A.721 must be filed with the secretary of state after compliance with section 317A.811, if applicable, and:

(1) the payment of claims of known creditors and claimants has been made or provided for;

(2) if the corporation has given notice to creditors and claimants in the manner provided in section 317A.727: (i) the 90-day period in section 317A.727, subdivision 2, clause (4), has expired and the payment of claims of the creditors and claimants filing a claim within that period has been made or provided for; or (ii) the longer of the periods described in section 317A.729, clause (2), has expired; or, in all other cases;

(3) the two-year period described in section 317A.730 has expired.

Subd. 2. Contents of articles. The articles of dissolution must state:

(a)(1) whether notice has been given to the creditors and claimants of the corporation in the manner provided in section 317A.727 and, if notice has been given, the last date on which the notice was given and: (i) that the payment of the creditors and claimants filing a claim within the 90-day period set forth in section 317A.727, subdivision 2, clause (4), has been made or provided for; or (ii) the date on which the longer of the periods described in section 317A.729, clause (2), expired; or

(2) if notice was not given and articles of dissolution are being filed under subdivision 1, clause (1), that the debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provisions have been made for them;

(b) that the remaining assets of the corporation have been distributed under section 317A.735 or that adequate provision has been made for the distribution;

(c) that there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of a judgment, order, or decree that may be entered against it in a pending proceeding; and

(d) if applicable, that notice to the attorney general required by section 317A.811 has been given and the waiting period has expired or has been waived by the attorney general.

Subd. 3. Effective date. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.

Subd. 4. Certificate. The secretary of state shall issue to the dissolved corporation a certificate of dissolution that contains:

(1) the name of the corporation;

(2) the date and time the articles of dissolution were filed with the secretary of state; and

(3) a statement that the corporation is dissolved.

History: 1989 c 304 s 103

317A.735 DISTRIBUTION OF ASSETS.

Subdivision 1. General. In performing their duties under section 317A.725, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:

(1) distribution of assets received and held for a special use or purpose under subdivision 2;

(2) payment of costs and expenses of the dissolution proceedings, including attorney fees and disbursements;

(3) payment of debts, obligations, and liabilities of the corporation;

(4) distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subdivision 3; and

(5) distribution of remaining assets under subdivision 4.

Subd. 2. Special use or purpose. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

Subd. 3. Articles, bylaws, or another organization. Where the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.

Subd. 4. Remainder. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section 501B.31.

History: 1989 c 304 s 104; 1989 c 340 art 2 s 10; 1990 c 488 s 34,35

317A.741 SUPERVISED VOLUNTARY DISSOLUTION.

After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, the attorney general, or, for good cause, a creditor or at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, may apply to a court within the county in which the registered office of the corporation is located to have the dissolution conducted or continued under the supervision of the court under sections 317A.751 to 317A.765.

History: 1989 c 304 s 105

317A.751 JUDICIAL INTERVENTION; EQUITABLE REMEDIES OR DISSOLUTION.

Subdivision 1. General; when permitted. A court may grant equitable relief if considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business as provided in this section.

Subd. 2. Supervised voluntary dissolution. A court may grant equitable relief in a supervised voluntary dissolution under section 317A.741.

Subd. 3. Action by members with voting rights. A court may grant equitable relief in an action by at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that:

(1) the directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the members cannot break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;

(2) the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;

(3) the members of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) the corporate assets are being misapplied or wasted; or

(5) the period of duration as provided in the articles has expired and has not been extended as provided in section 317A.801.

Subd. 4. Action by creditor. A court may grant equitable relief in an action by a creditor when:

(1) the claim of the creditor has been reduced to judgment and an execution on it has been returned unsatisfied; or

(2) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation cannot pay its debts in the ordinary course of its activities.

Subd. 5. Action by attorney general. A court may grant equitable relief in an action by the attorney general when it is established that:

- (1) the articles and certificate of incorporation were obtained through fraud;
- (2) the corporation should not have been formed under this chapter;
- (3) the corporation failed to comply with the requirements of sections 317A.021 to 317A.155 essential to incorporation under or election to become governed by this chapter;
- (4) the corporation has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter;
- (5) the corporation has engaged in an unauthorized act, contract, conveyance, or transfer or has exceeded its powers;
- (6) the corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate purpose, franchise, privileges, or enterprise;
- (7) the corporation has liabilities and obligations exceeding the corporate assets;
- (8) the period of corporate existence has ended without extension;
- (9) the corporation has failed for a period of 90 days to pay fees, charges, or penalties required by this chapter;
- (10) the corporation has failed for a period of 30 days after changing its registered office to file with the secretary of state a statement of the change;
- (11) the corporation has answered falsely or failed to answer a reasonable written interrogatory from the secretary of state, the attorney general, the commissioner of human services, commissioner of commerce, or commissioner of revenue, to the corporation, its officers, or directors;
- (12) the corporation has solicited property and has failed to use it for the purpose solicited; or
- (13) the corporation has fraudulently used or solicited property.

Subd. 6. Condition of corporation. In determining whether to order equitable relief or dissolution under this section, the court shall consider the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation is solvent.

Subd. 7. Dissolution as remedy. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision 3, 4, or 5. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

Subd. 8. Expenses. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may award reasonable expenses, including attorneys fees and disbursements, to any of the other parties.

Subd. 9. Venue; parties. Proceedings under this section must be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

History: 1989 c 304 s 106

317A.753 PROCEDURE IN INVOLUNTARY OR SUPERVISED VOLUNTARY DISSOLUTION.

Subdivision 1. Action before hearing. In dissolution proceedings the court may issue injunctions, appoint receivers with powers and duties the court directs, take other actions required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Subd. 2. Notice to attorney general; intervention. When a proceeding involving a

corporation described in section 317A.811, subdivision 1, is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.

Subd. 3. Action after hearing. After a full hearing has been held, upon whatever notice the court directs to be given to the parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the assets of the corporation at a public or private sale.

Subd. 4. Discharge of obligations. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:

(1) the costs and expenses of the dissolution proceedings, including attorneys fees and disbursements;

(2) debts, taxes, and assessments due the United States, the state of Minnesota and their subdivisions, and other states and their subdivisions, in that order;

(3) claims duly proved and allowed to employees under the workers' compensation act, provided that claims under this clause are not allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(4) claims, including the value of compensation paid in a medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

(5) other claims duly proved and allowed.

Subd. 5. Remainder. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed as provided in section 317A.735.

History: 1989 c 304 s 107

317A.755 QUALIFICATIONS OF RECEIVERS; POWERS.

Subdivision 1. Qualifications. A receiver must be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

Subd. 2. Powers. A receiver may sue and defend in courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

History: 1989 c 304 s 108

317A.759 FILING CLAIMS IN PROCEEDINGS TO DISSOLVE.

Subdivision 1. Filing may be required. In a proceeding under section 317A.751 to dissolve a corporation, the court may require creditors and claimants of the corporation to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

Subd. 2. Date; claims barred. If the court requires the filing of claims, it shall fix a date, which may not be less than 120 days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the assets of the corporation.

History: 1989 c 304 s 109

317A.763 DECREE OF DISSOLUTION.

Subdivision 1. Procedure; when entered. In an involuntary or supervised voluntary

dissolution, the court shall provide for the discharge of obligations and the distribution of the assets as set forth in section 317A.753, subdivision 4, and shall enter a decree dissolving the corporation.

Subd. 2. **Effective date.** When the decree dissolving the corporation has been entered, the corporation is dissolved.

History: 1989 c 304 s 110

317A.765 FILING DECREE.

After the court enters a decree dissolving a corporation, the court administrator shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

History: 1989 c 304 s 111

317A.771 DEPOSIT WITH STATE TREASURER OF AMOUNT DUE CERTAIN PERSONS.

Upon dissolution of a corporation, the part of the assets distributable to a person who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive it, must be reduced to money and deposited with the state treasurer. The amount deposited is appropriated to the state treasurer and must be paid over to the person, upon proof satisfactory to the state treasurer of a right to payment.

History: 1989 c 304 s 112

317A.781 CLAIMS BARRED; EXCEPTIONS.

Subdivision 1. **Claims barred.** A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in section 317A.730, 317A.741, 317A.751, or 317A.759, or has not begun a legal, administrative, or arbitration proceeding before the beginning of the dissolution proceedings, and a person claiming through or under the creditor or claimant, is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

Subd. 2. **Claims reopened.** Within one year after articles of dissolution have been filed with the secretary of state under section 317A.733, subdivision 1, clause (1) or (2), or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim against the corporation to the extent of undistributed assets.

Subd. 3. **Claims permitted.** Debts, obligations, and liabilities incurred during dissolution proceedings must be paid or provided for by the corporation before the distribution of assets under section 317A.735. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers or directors of the corporation before the expiration of the applicable statute of limitations. This subdivision does not apply to dissolution under the supervision or order of a court.

History: 1989 c 304 s 113

317A.783 RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.

After a corporation has been dissolved, its former officers, directors, or members with voting rights may assert or defend, in the name of the corporation, a claim by or against the corporation.

History: 1989 c 304 s 114

317A.791 OMITTED ASSETS.

Title to assets remaining after payment of the debts, obligations, or liabilities and after distributions may be transferred by a court in this state.

History: 1989 c 304 s 115

EXTENSION

317A.801 EXTENSION AFTER DURATION EXPIRED.

Subdivision 1. **Extension by amendment.** A corporation whose period of duration provided in the articles has expired and that has continued to operate despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, after the date of expiration by filing an amendment to the articles as set forth in this section.

Subd. 2. **Contents of amendment.** An amendment to the articles must be approved by the board of directors and must include:

- (1) the date the period of duration expired under the articles;
- (2) a statement that the period of duration will be perpetual or, if a shorter period is to be provided, the date to which the period of duration is extended; and
- (3) a statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

Subd. 3. **Approval by members with voting rights.** If the corporation has members with voting rights, the amendment to the articles must be presented, after notice, to a meeting of those members. The amendment is adopted when approved by the members with voting rights under section 317A.133.

Subd. 4. **Filing.** Articles of amendment conforming to section 317A.111 must be filed with the secretary of state.

History: 1989 c 304 s 116

317A.805 EFFECT OF EXTENSION.

Filing with the secretary of state of articles of amendment extending the period of duration of a corporation:

- (1) relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;
- (2) validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and
- (3) restores to the corporation the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

History: 1989 c 304 s 117

ATTORNEY GENERAL

317A.811 NOTICE TO ATTORNEY GENERAL; WAITING PERIOD.

Subdivision 1. **When required.** (a) Except as provided in subdivision 6, the following corporations shall notify the attorney general of their intent to dissolve, merge, or consolidate, or to transfer all or substantially all of their assets:

- (1) a corporation that holds assets for a charitable purpose as defined in section 501B.35, subdivision 2; or
 - (2) a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986, or any successor section.
- (b) The notice must include:
- (1) the purpose of the corporation that is giving the notice;
 - (2) a list of assets owned or held by the corporation for charitable purposes;
 - (3) a description of restricted assets and purposes for which the assets were received;
 - (4) a description of debts, obligations, and liabilities of the corporation;
 - (5) a description of tangible assets being converted to cash and the manner in which they will be sold;

- (6) anticipated expenses of the transaction, including attorney fees;
- (7) a list of persons to whom assets will be transferred, if known;
- (8) the purposes of persons receiving the assets; and
- (9) the terms, conditions, or restrictions, if any, to be imposed on the transferred assets.

The notice must be signed on behalf of the corporation by an authorized person.

Subd. 2. Restriction on transfers. Subject to subdivision 3, a corporation described in subdivision 1 may not transfer or convey assets as part of a dissolution, merger or consolidation, or transfer of assets under section 317A.661 until 45 days after it has given written notice to the attorney general, unless the attorney general waives all or part of the waiting period.

Subd. 3. Extension of waiting period. The attorney general may extend the waiting period under subdivision 2 for one additional 30-day period by notifying the corporation in writing of the extension. The attorney general shall notify the secretary of state if the waiting period is extended.

Subd. 4. Notice after transfer. When all or substantially all of the assets of a corporation described in subdivision 1 have been transferred or conveyed following expiration or waiver of the waiting period, the board shall deliver to the attorney general a list of persons to whom the assets were transferred or conveyed. The list must include the addresses of each person who received assets and show what assets the person received.

Subd. 5. Effect. Failure of the attorney general to take an action with respect to a transaction under this section does not constitute approval of the transaction and does not prevent the attorney general from taking other action.

Subd. 6. Exception. Subdivisions 1 to 4 do not apply to a merger with, consolidation into, or transfer of assets to an organization exempt under section 501(c)(3) of the Internal Revenue Code of 1986, or any successor section. A corporation that is exempt under this subdivision shall send a copy of the certificate of merger or certificate of consolidation and incorporation to the attorney general.

History: 1989 c 304 s 118; 1990 c 488 s 36-38

317A.813 REMEDIAL POWERS OF ATTORNEY GENERAL.

The attorney general has the powers in sections 8.31 and 501B.40 and 501B.41, to supervise and investigate corporations under this chapter and to bring proceedings to secure compliance.

History: 1989 c 304 s 119; 1989 c 340 art 2 s 11

CORPORATE REGISTRATION

317A.821 INITIAL CORPORATE REGISTRATION WITH SECRETARY OF STATE.

Subdivision 1. Notice from secretary of state; registration required. (a) Before February 1, 1990, the secretary of state shall mail a corporate registration form by first-class mail to each corporation at its last registered office address listed in the records of the secretary of state. The form must include the exact legal corporate name and registered office address currently on file with the secretary of state.

(b) A corporation that is subject to chapter 317 shall file an initial corporate registration with the secretary of state between January 1, 1990, and December 31, 1990. The registration must include the exact legal corporate name and registered office address of the corporation and must be signed by an authorized person. If the current registered office address listed in the records of the secretary of state is not in compliance with section 317A.011, subdivision 2, or if the corporation has changed its registered office address to an address other than that listed with the secretary of state, the corporation shall list a new registered office address that complies with section 317A.

011, subdivision 2, on the registration form. A fee of \$35 must be paid for filing the registered office address change, provided that a fee may not be charged if the registered office address is being changed only because of failure to comply with section 317A.011, subdivision 2. The new registered office address must have been approved by the board.

Subd. 2. Loss of good standing; corporate name. A corporation that does not file the initial corporate registration required under subdivision 1 with the secretary of state on or before December 31, 1990, loses its good standing. To regain its good standing, the corporation must file the initial corporate registration. If a corporation loses its good standing under this subdivision, its corporate name or a name that is not distinguishable may be registered after January 1, 1992, by another person before the corporation regains its good standing. If the name or a name that is not distinguishable has been registered by another person, the corporation may not file its initial corporate registration and regain its good standing unless it obtains the consent of the other person as provided in section 317A.115, subdivision 2, or adopts a new corporate name that complies with section 317A.115.

Subd. 3. Dissolution; extension. If a corporation fails to regain its good standing under subdivision 2 on or before December 31, 2000, the corporation is dissolved under section 317A.827. After December 31, 2000, the corporate existence of a corporation dissolved under this subdivision may be extended by filing the initial corporate registration with the secretary of state and payment of a \$1,000 fee. The extension relates back to December 31, 2000.

Subd. 4. [Repealed, 1989 c 304 s 139]

History: 1989 c 304 s 120; 1989 c 335 art 1 s 205; 1990 c 488 s 39,40

317A.823 ANNUAL CORPORATE REGISTRATION.

Subdivision 1. Notice from secretary of state; registration required. (a) Before February 1 of each year, the secretary of state shall mail a corporate registration form by first-class mail to each corporation that incorporated or filed a corporate registration during either of the previous two calendar years at its last registered office address listed on the records of the secretary of state. The form must include the exact legal corporate name and registered office address currently on file with the secretary of state.

(b) A corporation shall file a corporate registration with the secretary of state once each calendar year. The registration must include the exact legal corporate name and registered office address of the corporation and must be signed by an authorized person. If the corporation has changed its registered office address to an address other than that listed on the records of the secretary of state, the corporation shall list the new registered office address on the registration form. A fee of \$35 must be paid for filing the registered office address change. The new address must comply with section 317A.011, subdivision 2, and must have been approved by the board.

Subd. 2. Loss of good standing; corporate name. A corporation that files an initial corporate registration under section 317A.821 or that is incorporated on or after January 1, 1990, and that does not file a corporate registration during a calendar year loses its good standing after December 31 of that year. To regain its good standing, the corporation must file the annual corporate registration and pay a \$25 fee. If a corporation loses its good standing under this subdivision, its corporate name or a name that is not distinguishable may be registered by another person before the corporation regains its good standing. If the name or a name that is not distinguishable has been registered by another person, the corporation may not file its corporate registration and regain its good standing unless it obtains the consent of the other person as provided in section 317A.115, subdivision 2, or adopts a new corporate name that complies with section 317A.115.

Subd. 3. Notice; dissolution. If a corporation fails to file a report required under this section for three consecutive calendar years, the secretary of state shall give notice to the corporation by first-class mail at its registered office that it has violated this section and is subject to dissolution under section 317A.827 if the delinquent registrations

are not filed with a \$25 fee within 60 days after the mailing of the notice. A corporation that fails to file the delinquent annual registrations within the 60 days is dissolved under section 317A.827.

History: 1989 c 304 s 121; 1989 c 335 art 1 s 206,207; 1990 c 488 s 41,42

317A.825 ACCEPTANCE OF REGISTRATION BY SECRETARY OF STATE.

The secretary of state may accept a registration under section 317A.821 or 317A.823 if the information on the registration is in substantial compliance with these sections, even if the information on the registration is not identical to equivalent information in the records of the secretary of state.

History: 1989 c 304 s 122

317A.827 ADMINISTRATIVE DISSOLUTION.

Subdivision 1. Procedure. If a corporation requests dissolution as part of the initial registration under section 317A.821, if it fails to file the initial registration by December 31, 2000, or if it fails to file the delinquent registrations before expiration of the 60-day period in section 317A.823, subdivision 3, the secretary of state shall immediately issue a certificate of dissolution and file a copy in the office of the secretary of state. If the corporation is dissolved for failure to file a registration, the secretary of state shall issue a certificate of involuntary dissolution. The secretary of state shall send the original certificate and a notice that the corporation has been dissolved to the registered office of the corporation. The secretary of state shall annually inform the attorney general of the names of corporations dissolved under this section during the previous year and indicate whether the dissolution was voluntary or involuntary. A corporation dissolved under this section is not entitled to the benefits of section 317A.781, subdivision 1.

Subd. 2. Attorney general powers continued. A corporation dissolved under this section continues for three years after the dissolution date for the sole purpose of supervision, investigation, and other actions by the attorney general under sections 8.31 and 501B.40 and 501B.41.

History: 1989 c 304 s 123; 1989 c 340 art 2 s 12

ACTIONS AGAINST CORPORATIONS

317A.901 SERVICE OF PROCESS ON CORPORATION.

Subdivision 1. Who may be served. A process, notice, or demand required or permitted by law to be served upon a corporation may be served upon the registered agent, if any, of the corporation named in the articles, upon an officer of the corporation, or upon the secretary of state as provided in this section.

Subd. 2. Service on secretary of state; when permitted. If a corporation has appointed and maintained a registered agent in this state but its registered agent or an officer of the corporation cannot be found at the registered office, or if a corporation fails to appoint or maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person not a party, that no registered agent or officer can be found at the registered office in a county is conclusive evidence that the corporation has no registered agent or officer at its registered office. Service on the secretary of state of a process, notice, or demand is personal service upon the corporation and must be made by filing with the secretary of state duplicate copies of the process, notice, or demand. The secretary of state shall immediately forward, by certified mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than 30 days notwithstanding a shorter period named in the process, notice, or demand.

Subd. 3. Record of service. The secretary of state shall maintain at its office a record

of processes, notices, and demands served upon the secretary of state under this section, including the date and time of service and the action taken with reference to it.

Subd. 4. Other methods of service. This section does not limit the right of a person to serve a process, notice, or demand required or permitted by law to be served upon a corporation in another manner permitted by law.

History: 1989 c 304 s 124

317A.903 STATE INTERESTED; PROCEEDINGS.

If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested in the proceeding, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

History: 1989 c 304 s 125

SPECIAL PROVISIONS

317A.905 CHAMBERS OF COMMERCE, BOARDS OF TRADE, EXCHANGES.

Subdivision 1. Special purposes. A corporation may be formed under this chapter to:

- (1) acquire and disseminate useful business information;
- (2) promote equitable principles of trade; or
- (3) establish, maintain, and enforce uniformity in the commercial usages, business transactions, and trade relations in the municipality in which it is located.

Subd. 2. Arbitration of differences. A corporation, formed for a purpose in subdivision 1, may, through its articles or bylaws, arbitrate and adjust differences between:

- (1) the corporation and its members;
- (2) the members; or
- (3) a member and a third person who has given written consent.

The corporation may take testimony, make awards, and enforce an award by a fine or by a forfeiture of the membership of a person or of the person's other rights or privileges.

Subd. 3. Public markets. A corporation that is a chamber of commerce, board of trade, or exchange, and that maintains or operates a regular place of business or trading room for members only, in which the members buy, sell, or exchange grain, livestock, or other farm products for themselves or for others, is a public market.

Subd. 4. Association or corporation defined. As used in subdivisions 5 and 6, the words "association or corporation" include a cooperative corporation or association authorized to do business in this state.

Subd. 5. Membership in public market. Membership in a public market is open to a person, association, or corporation:

- (1) having a method of business operation or plan of organization that does not conflict with a reasonable rule of the public market; and
- (2) desiring to deal or trade in the commodities usually dealt in on the public market.

Application for membership must be made in the manner provided in the articles or bylaws of the public market.

Subd. 6. Rules and bylaws of public markets. A public market may make reasonable rules, regulations, and bylaws, including provisions for membership fees and uniform reasonable assessments. A rule, regulation, or bylaw of a public market is unreasonable when it modifies a provision in the articles, constitution, or bylaws of an

association or corporation, governing the distribution of profits to the shareholders or members of the association or corporation. Members of a public market shall comply with reasonable rules, regulations, and bylaws established by the market.

Subd. 7. Monopoly in restraint of trade. A public market is a monopoly in restraint of trade when it:

- (1) wrongfully or unreasonably refuses to admit or delays the admission of an applicant for membership;
- (2) discriminates, or causes another to discriminate, among members; or
- (3) violates this section.

Subd. 8. Prosecution by attorney general. When a public market is a monopoly in restraint of trade under subdivision 7, trading or dealing in it is prohibited, and the attorney general shall bring an action to terminate the existence of the corporation under section 317A.751, or sue to enjoin further operation of the market or further violations of this chapter.

History: 1989 c 304 s 126

317A.907 CORPORATIONS TO SECURE OR MAINTAIN HOMES FOR DEPENDENT CHILDREN.

Subdivision 1. Purposes. A corporation may be formed for the following purposes:

- (1) securing homes for orphaned, homeless, abandoned, neglected, or mistreated children; or
- (2) establishing and maintaining homes for those children.

Subd. 2. Certificate of trustworthiness. When it files its articles with the secretary of state, the corporation shall file an accompanying certificate of the commissioner of human services declaring that the corporation has complied with applicable rules of the commissioner of human services governing the operation of child caring agencies or child caring institutions and is reputable and trustworthy.

Subd. 3. Comply with rules; open books to public inspection. A corporation formed under subdivision 1 shall:

- (1) comply with rules established by the commissioner of human services to govern its operation; and
- (2) maintain the financial records of the corporation open to public inspection.

Subd. 4. Visitorial powers of court. Upon its own motion, or upon application, a court of equity has visitorial powers over the corporation, its affairs and officers.

Subd. 5. Legal guardian. If the commissioner of human services currently certifies that a corporation formed for the purpose set out in subdivision 1, clause (1), is a licensed child caring agency complying with the rules established by the commissioner of human services to govern its operation, the corporation has the power to become the guardian of a child in the manner prescribed for securing the guardianship of children in need of protection or services under chapter 260.

Subd. 6. Expense reimbursement. (a) An organization, association, or society licensed by the commissioner of human services may receive payment for expenses related to adoption services in an amount that fairly reflects the agency's reasonable and necessary expenses of:

- (1) adoptive counseling, whether or not legal adoption is completed;
- (2) provision of services to children before adoptive placement; or
- (3) the supervision of children in the home until legal adoption is completed.

Only that part of the expenses may be requested that the person seeking to adopt is financially able to meet. No person may be barred from receiving a child for adoption because of inability to pay part of the expenses referred to in this subdivision. In addition to other reports as may be required, a licensed agency shall file annually with the commissioner of human services a full accounting of expense reimbursement received under this subdivision, together with the record of the services given for which the

reimbursement was made. If the person returns the child to the corporation, the person may not receive compensation for the care, clothing, or medical expenses of the child. This paragraph does not preclude voluntary contributions by an individual or organization. A pledge by an adoption applicant to make a voluntary contribution is voidable at the option of the person pledging.

(b) No organization, association, or society is eligible to receive an expense reimbursement from a person who takes a child into the person's home or who adopts a child during the first 12 months that the organization, association, or society is licensed by the commissioner of human services.

Subd. 7. Exemption of property from taxation. A corporation formed for one or both of the purposes set out in subdivision 1 and personal and real property owned by it are exempt from taxation.

History: 1989 c 304 s 127

317A.909 CORPORATIONS FOR RELIGIOUS PURPOSES.

Subdivision 1. Benefits for members. When authorized by its members or otherwise, a corporation formed for a religious purpose may provide directly or through a church benefits board for:

(1) support and payment of benefits to its ministers, teachers, employees, or functionaries and to the ministers, teachers, employees, or functionaries of a nonprofit organization affiliated with it or under its jurisdiction;

(2) payment of benefits to the surviving spouses, children, dependents, or other beneficiaries of the persons named in clause (1);

(3) collection of contributions and other payments; or

(4) creation, maintenance, investment, management, and disbursement of necessary endowment, reserve, and other funds for these purposes, including a trust fund or corporation that funds a "church plan" as defined in section 414(e) of the Internal Revenue Code of 1986, as amended through December 31, 1988.

Subd. 2. Insurance laws not applicable. The insurance laws of this state do not apply to the operations of a corporation under subdivision 1.

Subd. 3. Property exempt from taxation. Except for property leased or used for profit, personal and real property that a religious corporation necessarily uses for a religious purpose is exempt from taxation.

Subd. 4. Peace officer powers. The governing board of a religious corporation may appoint peace officers to keep order on its grounds. The peace officers shall be paid by the corporation. When on duty, these officers have the authority of constables.

Subd. 5. Church benefits board. A "church benefits board" is an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986, as amended through December 31, 1988, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits for the employees of a church or a convention or association of churches, if the organization is controlled by or associated with a church or a convention or association of churches.

History: 1989 c 304 s 128