

ARIZONA

Title 10 - Corporations and Associations

Chapter 24 GENERAL PROVISIONS-NONPROFIT CORPORATIONS

Article 1 Short Title

10-3101. Short title

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

Article 2 Filing Documents and Fees-Nonprofit Corporations

10-3120. Filing requirements

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

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

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

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

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

F. The document shall be executed:

1. By the presiding officer or its board of directors of a domestic or foreign corporation, its president or by another of its officers.

2. If directors have not been selected or the corporation has not been formed, by an incorporator.

3. If the corporation is in the hands of a receiver, trustee or other court appointed fiduciary, by that fiduciary.

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

1. The corporate seal.

2. An attestation by the secretary or an assistant secretary.

3. An acknowledgment, verification or proof.

H. If the commission has prescribed a mandatory form for the document under section 10-3121, the document shall be in or on the prescribed form.

I. Except as provided in subsection J of this section and sections 10-3503 and 10-11509, the document shall be delivered to the office of the

commission for filing and shall be accompanied by the correct fee and any other payment or penalty required by chapters 24 through 42 of this title or other law.

J. Notwithstanding subsection I of this section:

1. A person may deliver by means of a fax or electronic transmission a document that is required or permitted by chapters 24 through 42 of this title to be delivered to the commission for filing. The person shall retain the original document for at least twelve months in the books and records of the corporation or of the person making the delivery for filing, if the delivery is not made on behalf of the corporation, and the person shall make the original documents available for inspection and copying by the commission on reasonable notice.

2. A document that is reproduced at a fax machine or through an electronic transmission at the commission is deemed delivered to the commission:

(a) On the date of the reproduction if reproduced on or before 5:00 p.m. mountain standard time and if the day is a business day of the commission.

(b) On the next succeeding business day if reproduced after 5:00 p.m. mountain standard time and if the day is a business day of the commission.

3. On the request of the person transmitting the document, the commission shall confirm by fax or electronic transmission or other writing the receipt of the document.

4. A person shall pay and deliver to the commission any fee or penalty imposed by this title with respect to delivery of a document to the commission for filing in the manner as the commission determines.

5. If the commission determines that the legality of the document reproduced by means of a fax or electronic transmission is not sufficient, the commission may require that either:

(a) The document be delivered to the commission by means of an additional fax or electronic transmission.

(b) An original document be delivered to the commission by means other than a fax or electronic transmission.

6. The commission shall not file a document if any required amount is not paid as provided in paragraph 4 of this subsection or if any required additional counterpart is not delivered as provided in paragraph 5 of this subsection.

7. A reproduced document delivered under this subsection is deemed to satisfy any requirement in chapters 24 through 42 of this title for delivery of an original and one or more copies of the document. A document subject to this paragraph is deemed to have been delivered on the date on which it was delivered as provided in paragraph 2 of this subsection only if the first reproduction at a minimum permits identification of the corporation to which the document pertains and of the general nature of the document and the commission subsequently determines that paragraphs 4 and 5 of this subsection and any other requirements of chapters 24 through 42 of this

title regarding the document have been satisfied.

8. The commission may prescribe the format of an electronic document delivered to the commission pursuant to this subsection.

Chapter 25 INCORPORATION AND TRANSFER OF DOMICILE-NONPROFIT CORPORATIONS

Article 1 Incorporation

10-3201. Incorporators

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

10-3202. Articles of incorporation

A. The articles of incorporation shall set forth:

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

B. The articles of incorporation may set forth:

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

for liability, as defined in section 10-3850, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the exceptions described in paragraph 1 of this subsection.

3. Any other provision, not inconsistent with law.

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

D. The certificate of disclosure shall set forth all of the following:

1. The following information regarding all persons who at the time of its delivery are officers, directors, trustees and incorporators:

(a) Whether any of the persons have been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven year period immediately preceding the execution of the certificate.

(b) Whether any of the persons have been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven year period immediately preceding the execution of the certificate.

(c) Whether any of the persons are or have been subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven year period immediately preceding the execution of the certificate, if the injunction, judgment, decree or permanent order involved any of the following:

(i) The violation of fraud or registration provisions of the securities laws of that jurisdiction.

(ii) The violation of consumer fraud laws of that jurisdiction.

(iii) The violation of the antitrust or restraint of trade laws of that jurisdiction.

(d) With regard to any of the persons who have been convicted of the crimes or who are the subject of the judicial action described in subdivisions (a), (b) and (c) of this paragraph, information regarding:

(i) Identification of the persons, including present full name, all prior names or aliases, including full birth name, present home address, all prior addresses for the immediately preceding seven year period and date and location of birth.

(ii) The nature and description of each conviction or judicial action, the date and location, the court and public agency involved, and the file or case number of the case.

2. A brief statement disclosing whether any persons who at the time of its delivery are officers, directors, trustees and incorporators and who have served in any such capacity in any other corporation on the bankruptcy or receivership of the other corporation. If so, for each corporation, the certificate shall include:

(a) The names and addresses of each corporation and the person or persons

involved.

(b) The state in which each corporation:

(i) Was incorporated.

(ii) Transacted business.

(c) The dates of corporate operation.

3. The signatures of all the incorporators.

4. The date of its execution, which shall be not more than thirty days before its delivery to the commission.

5. A declaration by each signer that the signer swears to its contents under penalty of law.

E. The certificate of disclosure may set forth the name and address of any other person whom the incorporator or incorporators choose to be the subject of those disclosures required under subsection D, paragraph 1 of this section.

F. If within sixty days after delivering the articles of incorporation and certificate of disclosure to the commission any person becomes an officer, director or trustee and the person was not the subject of the disclosures set forth in the certificate of disclosure, the incorporator or incorporators or, if the organization of the corporation has been completed as provided in section 10-3205, the corporation shall execute and deliver to the commission within the sixty day period a declaration, sworn to under penalty of law, setting forth all information required by subsection D, paragraph 1 of this section, regarding the person. If the incorporator or incorporators or, as applicable, the corporation fails to comply with this subsection, the commission may administratively dissolve the corporation pursuant to section 10-11421.

G. If any of the persons described in subsection D, paragraph 1 of this section have been convicted of the crimes or are the subject of the judicial action described in subsection D, paragraph 1 of this section, the commission may direct detailed interrogatories to the persons requiring any additional relevant information deemed necessary by the commission. The interrogatories shall be completely answered within thirty days after mailing of the interrogatories. With respect to corporations incorporating or seeking authority to conduct affairs, articles of incorporation or an application for authority shall not be filed until all outstanding interrogatories have been answered to the satisfaction of the commission. With respect to existing domestic and foreign corporations, if the interrogatories are not answered as provided in this subsection or the answers to the interrogatories otherwise indicate proper grounds for an administrative dissolution, the commission shall initiate an administrative dissolution in accordance with chapters 24 through 40 of this title.

H. On a quarterly updated basis, the commission shall provide to the attorney general a list of all persons who are convicted of the crimes or who are the subject of the judicial action described in subsection D, paragraph 1

of this section as indicated by the certificate of disclosure filed during the preceding three months.

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

10-3203. Incorporation

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

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

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

D. Within sixty days after the commission approves the filing, a copy of the articles of incorporation shall be published. An affidavit evidencing the publication may be filed with the commission.

10-3205. Organization of corporation

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

Chapter 26 PURPOSES AND POWERS-NONPROFIT CORPORATIONS

Article 1 General Provisions

10-3301. Purposes

Subject to any limitations or requirements contained in its articles of incorporation or in any other applicable law, a corporation shall have the purpose of engaging in and may engage in any lawful activity including the practice of medicine as defined in section 32-1401 or the practice of dentistry as described in section 32-1202, or both, provided that the

corporation engages in the practice of medicine or dentistry only through individuals licensed to practice in this state. This section does not alter any law or change any liability that might otherwise be applicable to the relationship between persons furnishing a professional service and persons receiving a professional service, including liability arising from that relationship.

Chapter 34 MERGERS-NONPROFIT CORPORATIONS

Article 1 General Provisions

10-11108. Requests, devises and gifts

Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

Chapter 38 FOREIGN CORPORATIONS-NONPROFIT CORPORATIONS

Article 1 Grant of Authority

10-11501. Authority to conduct affairs required

A. A foreign corporation shall not conduct affairs in this state until it is granted authority to transact business in this state as provided in this chapter from the commission.

B. The following activities, among others, do not constitute conducting affairs within the meaning of subsection A:

1. Maintaining, defending or settling any proceeding.
2. Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.
3. Maintaining bank accounts.
4. Maintaining offices or agencies for the transfer, exchange and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities.
5. Selling through independent contractors.
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
7. Creating or acquiring indebtedness, mortgages and security interests in real or personal property.
8. Securing or collecting debts or enforcing mortgages and security interests in property securing the same.
9. Owning, without more, real or personal property.

10. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.
 11. Conducting affairs in interstate commerce.
 12. Being a limited partner of a limited partnership or a member of a limited liability company.
- C. The list of activities in subsection B is not exhaustive.

10-11503. Application for certificate of authority

A. A foreign corporation may apply for authority to conduct affairs in this state by delivering an application and a certificate of disclosure to the commission for filing. The certificate of disclosure shall contain the information set forth in section 10-3202, subsection D and is subject to the requirements of section 10-3202, subsection F. The application shall be executed by the corporation and shall set forth:

1. The name of the foreign corporation and, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 10-11506.
2. The name of the state or country under whose law it is incorporated.
3. Its date of incorporation and period of duration.
4. The street address of its principal office in its state or country of incorporation.
5. The street address of the proposed known place of business of the corporation in this state and the name and street address of its proposed statutory agent in this state.
6. If its purpose or purposes are narrower than the transaction of any or all lawful affairs in which corporations may engage in the state or country under whose law it is incorporated, a statement of the limitations on its purpose.
7. The names and usual business addresses of its current directors and officers.
8. Whether the foreign corporation has members.
9. A brief statement of the character of business that the corporation initially intends actually to conduct in this state. This statement does not limit the character of business that the corporation ultimately conducts.

B. The foreign corporation shall deliver the application and the certificate of disclosure to the commission, together with a copy of its articles of incorporation, any amendments to the articles of incorporation and a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated, and the nonrefundable fees required by law.

C. After determining that the application sets forth the information required by this section, does not use as the name of the corporation in this state a name that is in violation of section 10-11506 and appears in all other respects to conform to the requirements of this article, the commission shall

file the application. The date of filing shall be the date on which the corporation is granted authority to transact business in this state.

D. Within sixty days after the commission approves the filing, a copy of the application shall be published. An affidavit evidencing the publication may be filed with the commission.

E. A foreign corporation authorized to transact business in this state is subject to section 10-11623.

Chapter 39 RECORDS AND REPORTS-NONPROFIT CORPORATIONS

Article 1 Records

10-11604. Court ordered inspection

A. If a corporation does not allow a member who complies with section 10-11602, subsection A to inspect and copy any records required by that subsection to be available for inspection, the court in the county where the corporation's known place of business is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not allow within a reasonable time a member to inspect and copy any other record, the member who complies with section 10-11602, subsections B and C may apply to the court in the county where the corporation's known place of business is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded. The court may order a member to pay all or a portion of the corporation's costs, including reasonable attorney fees, if the demand to inspect is denied in whole or in material part.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.