

ARTICLE 16

Business Corporations; Dissolution of Corporations

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53-16-1. Voluntary dissolution by incorporators.

A corporation that has or has not commenced business and has not issued any shares may be voluntarily dissolved by its incorporators in the following manner:

A. articles of dissolution shall be executed by a majority of the incorporators and shall set forth:

- (1) the name of the corporation;
- (2) the date of issuance of its certificate of incorporation;
- (3) that none of its shares has been issued;
- (4) that the corporation has or has not commenced business;
- (5) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;
- (6) that no debts of the corporation remain unpaid; and
- (7) that a majority of the incorporators elect that the corporation be dissolved;

B. the original of the articles of dissolution together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of dissolution conform to law and that the corporation has complied with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] and has paid all contributions required by the Unemployment Compensation Law [Chapter 51 NMSA 1978], it shall, when all fees have been paid:

- (1) endorse on the original and copy the word "filed" and the month, day and year of the filing;
- (2) file the original in its office; and
- (3) issue a certificate of dissolution to which it shall affix the file-stamped copy;

and

C. the certificate of dissolution, together with the file-stamped copy of the articles of dissolution affixed to it, shall be returned by the commission [secretary of state] to the incorporators or their representative. Upon the issuance of the certificate of dissolution by the commission [secretary of state] the existence of the corporation shall cease.

53-16-2. Voluntary dissolution by consent of shareholders.

A corporation may be voluntarily dissolved by the written consent of all of its shareholders. Upon the execution of the written consent, a statement of intent to dissolve shall be executed by the corporation by an authorized officer, which statement shall set forth:

- A. the name of the corporation;
- B. the names and respective addresses of its officers;
- C. the names and respective addresses of its directors;
- D. a copy of the written consent signed by all shareholders of the corporation; and
- E. a statement that the written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys in fact authorized to consent on their behalf.

53-16-3. Voluntary dissolution by act of corporation.

A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

A. the board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

B. written notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] for the giving of notice of meetings of shareholders and, whether the meeting is an annual or special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the corporation;

C. at the meeting, a vote of shareholders entitled to vote shall be taken on a resolution to dissolve the corporation, and the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote on the resolution, unless any class of shares is entitled to vote on it as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote on it as a class and of the total shares entitled to vote on the resolution; and

D. upon the adoption of the resolution, a statement of intent to dissolve shall be executed by the corporation by an authorized officer, which statement shall set forth:

- (1) the name of the corporation;
- (2) the names and respective addresses of its officers;
- (3) the names and respective addresses of its directors;
- (4) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;
- (5) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and
- (6) the number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class for and against the resolution, respectively.

53-16-4. Filing statement of intent to dissolve.

An original and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to law, it shall:

- A. endorse on the original and copy the word "filed" and the month, day and year of the filing;
- B. file the original in its office; and

- C. return the copy to the corporation or its representative.

53-16-5. Effect of statement of intent to dissolve.

Upon the filing by the commission [secretary of state] of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the commission [secretary of state] or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].

53-16-6. Procedure after filing of statement of intent to dissolve.

After the filing by the commission [secretary of state] of a statement of intent to dissolve, the corporation:

- A. shall immediately cause notice thereof to be mailed to each known creditor of the corporation;
- B. shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests; and
- C. at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the county in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].

53-16-7. Revocation of voluntary dissolution proceedings by consent of shareholders.

By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the commission [secretary of state], revoke voluntary dissolution proceedings. Upon the execution of the written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by an authorized officer, which statement shall set forth:

- A. the name of the corporation;
- B. the names and respective addresses of its officers;
- C. the names and respective addresses of its directors;
- D. a copy of the written consent signed by all shareholders of the corporation revoking the voluntary dissolution proceedings; and
- E. that the written consent has been signed by all shareholders of the corporation or signed in their names by their authorized attorneys.

53-16-8. Revocation of voluntary dissolution proceedings by act of corporation.

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the commission [secretary of state], revoke voluntary dissolution proceedings taken, in the following manner:

A. the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of revocation be submitted to a vote at a special meeting of shareholders;

B. written notice stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] for the giving of notice of special meetings of shareholders;

C. at the meeting, a vote of the shareholders entitled to vote shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon; and

D. upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by an authorized officer, which statement shall set forth:

- (1) the name of the corporation;
- (2) the names and respective addresses of its officers;
- (3) the names and respective addresses of its directors;
- (4) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;
- (5) the number of shares outstanding; and
- (6) the number of shares voted for and against the resolution, respectively.

53-16-9. Filing statement of revocation of voluntary dissolution proceedings.

An original of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the statement conforms to law, it shall, when all fees have been paid:

- A. endorse on the original and copy the word "filed" and the month, day and year of the filing;
- B. file the original in its office; and
- C. return the file-stamped copy to the corporation or its representative.

53-16-10. Effect of statement of revocation of voluntary dissolution proceedings.

Upon the filing by the commission [secretary of state] of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

53-16-11. Articles of dissolution.

If voluntary dissolution proceedings have not been revoked, then, when all debts, liabilities and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by an authorized officer, which statement shall set forth:

- A. the name of the corporation;
- B. that the commission [secretary of state] has previously filed a statement of intent to dissolve the corporation and the date on which the statement was filed;

C. that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

D. that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and

E. that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in any pending suit.

53-16-12. Filing of articles of dissolution.

A. An original of articles of dissolution together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of dissolution conform to law and that the corporation has complied with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] and has paid all contributions required by the Unemployment Compensation Law [Chapter 51 NMSA 1978], it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of dissolution to which it shall affix the file-stamped copy.

B. The certificate of dissolution, together with the file-stamped copy of the articles of dissolution affixed to it, shall be returned by the commission [secretary of state] to the representative of the dissolved corporation. Upon the issuance of the certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].

53-16-13. Involuntary dissolution.

A corporation may be dissolved involuntarily by a decree of the district court of Santa Fe county in an action filed by the attorney general when it is established that the corporation:

A. procured its articles of incorporation through fraud; or

B. has continued to exceed or abuse the authority conferred upon it by law.

53-16-14. Notification to attorney general.

The commission [secretary of state] shall certify to the attorney general, from time to time, the names of all corporations which have given cause for dissolution as provided by the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978], together with the facts pertinent thereto. Whenever the commission [secretary of state] certifies the name of a corporation to the attorney general as having given cause for dissolution, the commission [secretary of state] shall concurrently mail to the corporation at its registered office a notice that the certification has been made. Upon the receipt of the certification, the attorney general shall file an action in the name of the state against the corporation for its dissolution.

53-16-15. Venue and process.

Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general in the district court of Santa Fe county. Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of the action, the title of the court, the title of the action and the date on or after which default

may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of the notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of the notice is prima facie evidence thereof. The notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation has been served with summons, no default shall be taken against it earlier than thirty days after the first publication of the notice.

53-16-16. Jurisdiction of court to liquidate assets and business of corporation.

A. The district courts may liquidate the assets and business of a corporation:

(1) in an action by a shareholder when it is established that:

(a) the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(b) the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(c) the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

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

(2) in an action by a creditor:

(a) when the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(b) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(3) upon application by a corporation which has filed a statement of intent to dissolve, as provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978], to have its liquidation continued under the supervision of the court; or

(4) when an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

B. Proceedings under Subsections A(1), A(2) or A(3) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

C. It is not necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

53-16-17. Procedure in liquidation of corporation by court.

A. In proceedings to liquidate the assets and business of a corporation, the court may issue injunctions, appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and take other proceedings necessary to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

B. After a hearing upon notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. The liquidating receiver or receivers may, subject to the order of the court, sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall

be applied to the expenses of the liquidation and then to the payment of reasonable wages to employees of the corporation for work done within four months of the liquidation proceedings, and then to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing the liquidating receiver or receivers shall state their powers and duties. The powers and duties may be increased or diminished at any time during the proceedings.

C. The court may allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of the assets.

D. A receiver of a corporation appointed under the provisions of this section may sue and defend in all courts in his own name as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property, wherever situated.

53-16-18. Qualifications of receivers.

A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give bond as the court may direct with sureties as the court may require.

53-16-19. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

53-16-20. Discontinuance of liquidation proceedings.

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event, the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

53-16-21. Decree of involuntary dissolution.

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of the proceedings and all debts, obligations and liabilities of the corporation have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

53-16-22. Filing of decree of dissolution.

In case the court enters a decree dissolving a corporation, the clerk of the court shall cause a certified copy of the decree to be filed with the commission [secretary of state]. No fee shall be charged by the commission [secretary of state] for the filing.

53-16-23. Deposit with state treasurer of amount due certain shareholders.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive the distributive portion, shall be reduced to cash and deposited with the state treasurer and shall be paid over to the creditor or shareholder or to his legal representative upon proof satisfactory to the state treasurer of his right thereto.

53-16-24. Survival of remedy after dissolution.

The dissolution of a corporation does not take away or impair any remedy available to or against the corporation, its directors, officers or shareholders, for any right or claim existing, or any liability incurred, prior to the dissolution and any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers may take such corporate or other action as appropriate to protect the remedy, right or claim.