

## ARTICLE 6

### Professional Corporations

Sec.

- 53-6-1. Purpose of act.
- 53-6-2. Short title.
- 53-6-3. Definitions.
- 53-6-4. Incorporation.
- 53-6-5. Purposes for which incorporated.
- 53-6-6. Corporate name.
- 53-6-7. Professional services through officers, employees, and agents.

Sec.

- 53-6-8. Professional relationships preserved.
- 53-6-9. Issuance and transfer of shares.
- 53-6-10. Sale and transfer of shares.
- 53-6-11. Contingent purchase or redemption price.
- 53-6-12. Disqualification; dissolution.
- 53-6-13. Mergers or consolidations.
- 53-6-14. Application to professional corporations.

#### **53-6-1. Purpose of act.**

The purpose of this act [53-6-1 to 53-6-13 NMSA 1978] is to provide for the incorporation of an individual, or group of individuals, to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.

#### **53-6-2. Short title.**

This act [53-6-1 to 53-6-13 NMSA 1978] may be cited as the "Professional Corporation Act".

#### **53-6-3. Definitions.**

As used in this act [53-6-1 to 53-6-13 NMSA 1978]:

A. "professional service" means any type of personal service to the public which requires, as a condition precedent to the rendering of such service, the obtaining of a license or other legal authorization and which, prior to the passage of the Professional Corporation Act [53-6-1 to 53-6-13 NMSA 1978] and by reason of law, could not be performed by a corporation. The term includes, but is not necessarily limited to, the personal services rendered by certified public accountants, registered public accountants, chiropractors, optometrists, dentists, osteopaths, podiatrists, architects, veterinarians, doctors of medicine, doctors of dentistry, physicians and surgeons, attorneys-at-law and life insurance agents; and

B. "professional corporation" means a corporation which is organized under the Professional Corporation Act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

#### **53-6-4. Incorporation.**

One or more individuals, each of whom is licensed to render a professional service, may incorporate a professional corporation for pecuniary profit and become shareholders therein in the manner provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978]. The Business Corporation Act applies to professional corporations. If the provisions of the Business Corporation Act conflict with the provisions of the Professional Corporation Act [53-6-1 to 53-6-13 NMSA 1978], the provisions of the Professional Corporation Act shall prevail.

**53-6-5. Purposes for which incorporated.**

A professional corporation may be organized only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other than rendering the professional service which it was organized to render and services ancillary thereto; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds and any other type of investments.

**53-6-6. Corporate name.**

The corporate name of a professional corporation shall contain the words "limited," "chartered," "professional association" or "professional corporation" or shall contain an abbreviation of those words.

**53-6-7. Professional services through officers, employees, and agents.**

A professional corporation shall render professional services only through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services; provided, however, this section shall not be interpreted to include in the term "employee", clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which the license is required.

**53-6-8. Professional relationships preserved.**

The Professional Corporation Act [53-6-1 to 53-6-13 NMSA 1978] does not modify the legal relationships, including confidential relationships, between a person performing professional services and the client or patient who receives such services; but the liability of shareholders shall be otherwise limited as provided in the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978] and as otherwise provided by law.

**53-6-9. Issuance and transfer of shares.**

Shares of stock of a professional corporation shall be issued and transferred only to persons who are duly licensed or legally authorized to render the professional service for which the corporation is organized, but such shares may be transferred:

A. by operation of law to persons or legal entities not so licensed or authorized, subject to the requirements of the Professional Corporation Act [53-6-1 to 53-6-13 NMSA 1978];

B. to a revocable trust the grantor of which is such a duly licensed or authorized person, provided that the trust contains provisions that require the trustee, upon the grantor's death or disqualification to render the professional service for which the grantor was licensed or authorized, to dispose of the shares as otherwise provided in the Professional Corporation Act; and

C. to a tax-qualified employee benefit plan established for the exclusive benefit of the professional corporation's employees, provided that the plan's trustee is required to dispose of the trust's shares as provided in the Professional Corporation Act [53-6-1 to 53-6-13 NMSA 1978] before transfer or distribution of the shares to beneficiaries of or participants in the plan who are not duly licensed or authorized to render the professional service for which the corporation is organized.

**53-6-10. Sale and transfer of shares.**

A. The articles of incorporation of any professional corporation shall provide for the purchase by the corporation, its shareholders, or any person duly licensed or authorized to render the service for which the corporation is organized, of all shares of its stock:

(1) held by any person who shall have become disqualified to render the professional service for which he was licensed or authorized; or

(2) which devolve by operation of law upon any person or legal entity not licensed or authorized.

B. Any purchase of shares under Paragraph (1) of Subsection A shall be effected within a period of thirty days after establishment of the disqualification. Any purchase of shares under Paragraph (2) of Subsection A shall be effected within eight months from the date of devolution. Any shares held in violation of such provisions may be cancelled by action of the board of directors.

**53-6-11. Contingent purchase or redemption price.**

If the articles of incorporation or the bylaws of a professional corporation fail to fix a price at which the corporation or its shareholders may purchase the shares of a deceased or disqualified shareholder, then the price for the shares shall be the book value of the shares as of the end of the month immediately preceding the death or disqualification of the shareholder.

**53-6-12. Disqualification; dissolution.**

If any officer, shareholder, agent or employee of a professional corporation who has been rendering professional service to the public becomes legally disqualified to render the professional service within this state, or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of a professional service, or accepts employment that, pursuant to existing law, places restriction or limitations upon his continued rendering of the professional service, he shall sever all employment with, and financial interest in, the professional corporation forthwith. A professional corporation's failure to require compliance with this section shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a professional corporation's failure to comply with this section is brought to the attention of the public regulation commission [secretary of state], the commission [secretary of state] shall certify to the attorney general that fact for appropriate action to dissolve the professional corporation.

**53-6-13. Mergers or consolidations.**

A professional corporation shall consolidate or merge only with another domestic professional corporation organized to render the same specific professional service.

**53-6-14. Application to professional corporations.**

The provisions of the Professional Corporation Act [53-6-1 to 53-6-14 NMSA 1978] shall apply to all professional corporations chartered in New Mexico. Professional corporations heretofore incorporated shall be required to file any amendments to their articles of incorporation necessary to conform to the requirements of the Professional Corporation Act within eight months from the effective date of this act. Any professional corporation which shall not have filed any necessary amendments within such eight-month period shall be involuntarily dissolved in conformity with the provisions of the Business Corporation Act [Chapter 53, Articles 11 to 18 NMSA 1978].