

ARTICLE 8

Nonprofit Corporations

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53-8-1. Short title.

Chapter 53, Article 8 NMSA 1978 may be cited as the "Nonprofit Corporation Act".

53-8-2. Definitions.

As used in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], unless the context otherwise requires:

A. "corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of the Nonprofit Corporation Act, except a foreign corporation;

B. "foreign corporation" means a nonprofit corporation organized under laws other than the laws of New Mexico for a purpose for which a corporation may be organized under the Nonprofit Corporation Act;

C. "nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers;

D. "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;

E. "bylaws" means the code of rules adopted for the regulation or management of the affairs of the corporation, irrespective of the name by which such rules are designated;

F. "member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws;

G. "board of directors" means the group of persons vested with the management of the affairs of the corporation, irrespective of the name by which such group is designated;

H. "insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs;

I. "commission" or "corporation commission" means the public regulation commission [secretary of state] or its delegate;

J. "address" means:

(1) the mailing address and the street address, if within a municipality; or

(2) the mailing address and a rural route number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality;

K. "duplicate original" means a document that is signed or executed in duplicate;

L. "delivery" means:

(1) if personally served, the date documentation is received by the corporations bureau of the commission; and

(2) if mailed to the commission [secretary of state], the date of the postmark plus three days, upon proof thereof by the party delivering the documentation; and

M. "person" includes individuals, partnerships, corporations and other associations.

53-8-3. Applicability.

A. The provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] relating to domestic corporations apply to:

(1) all corporations organized under that act; and

(2) all nonprofit corporations organized under any acts repealed by the Nonprofit Corporation Act, for a purpose or purposes for which a corporation might be organized under that act.

B. The provisions of the Nonprofit Corporation Act relating to foreign corporations apply to all foreign nonprofit corporations conducting affairs in New Mexico for a purpose or purposes for which a corporation might be organized under that act.

53-8-4. Purposes.

Corporations may be organized under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association.

53-8-5. General powers.

Each corporation shall have power to:

- A. have perpetual succession by its corporate name unless a limited period of duration is stated in its article of incorporation;
- B. sue and be sued, complain and defend in its corporate name;
- C. have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in other manner reproduced, but failure to have or to affix a corporate seal does not affect the validity of any instrument or any action taken in pursuance thereof or in reliance thereon;
- D. purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
- E. sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- F. lend money to its directors, officers and employees and otherwise assist them;
- G. purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, limited partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;
- H. make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;
- I. lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
- J. conduct its affairs, carry on its operations, and have offices and exercise the powers granted by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] in any state, territory, district or possession of the United States, or in any foreign country;
- K. elect or appoint directors and define their duties and fix their compensation, if any;
- L. elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation;
- M. make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of New Mexico, for the administration and regulation of the affairs of the corporation;
- N. unless otherwise provided in the articles of incorporation, make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities;
- O. pay pensions and establish pension plans, pension trusts, profit-sharing plans and other incentive plans for any or all of its directors, officers and employees;
- P. cease its corporate activities and surrender its corporate franchise; and
- Q. have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

53-8-6. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do the act or to make or receive the conveyance or transfer, but such lack of capacity or power may be asserted:

A. in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained; or

B. in a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through members in a representative [representative] suit, against the officers or directors of the corporation for exceeding their authority.

53-8-7. Corporate name.

The corporate name:

A. shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and

B. shall not be the same as, or confusingly similar to, the name of any corporation, whether for profit or not for profit, existing under the laws of New Mexico, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in New Mexico, or a corporate name reserved or registered as permitted by the laws of New Mexico.

53-8-7.1. Reserved name.

A. The exclusive right to the use of a corporate name may be reserved by:

(1) any person intending to organize a corporation under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978];

(2) any domestic corporation intending to change its name;

(3) any foreign corporation intending to make application for a certificate of authority to conduct affairs in this state;

(4) any foreign corporation authorized to conduct affairs in this state and intending to change its name; or

(5) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to conduct affairs in this state.

B. The reservation shall be made by filing with the commission [secretary of state] an application to reserve a specified corporate name, executed by the applicant. If the commission [secretary of state] finds that the name is available for corporate use, it shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days.

C. The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the commission [secretary of state] a notice of transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

53-8-8. Registered office and registered agent.

Each corporation shall have and continuously maintain in New Mexico:

A. a registered office which may be, but need not be, the same as its principal office; and

B. a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in New Mexico, having an office identical with such registered office.

53-8-9. Change of registered office or registered agent.

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the public regulation commission [secretary of state] a statement setting forth:

- (1) the name of the corporation;
- (2) the address of its then registered office;
- (3) if the address of its registered office be changed, the address to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent be changed:
 - (a) the name of its successor registered agent; and
 - (b) a statement executed by the successor registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and
- (6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

B. The statement pursuant to the provisions of Subsection A of this section shall be executed by the corporation by an authorized officer of the corporation and delivered to the public regulation commission [secretary of state]. If the public regulation commission [secretary of state] finds that the statement conforms to the provisions of the Nonprofit Corporation Act, it shall file the statement in the office of the public regulation commission [secretary of state], and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

C. A registered agent of a corporation may resign as agent upon filing a written notice of resignation, including the original and a copy, with the public regulation commission [secretary of state]. The copy may be a photocopy of the original after it was signed or a photocopy that is conformed to the original. The commission [secretary of state] shall mail an endorsed copy to the corporation in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the corporation. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the public regulation commission [secretary of state].

D. If the registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the public regulation commission [secretary of state] for filing a statement that complies with the requirements of Subsection A of this section and recites that the corporation has been notified of the change.

53-8-10. Service of process on corporation.

The registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

53-8-11. Members.

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

53-8-12. Bylaws.

A. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

B. The initial bylaws and any subsequent bylaws whether by amendment, repeal or new adoption shall be executed by two authorized officers of the corporation. The bylaws in effect for the corporation shall be maintained at the corporation's principal office in New Mexico and shall be subject to inspection and copying by the public. If the most recently adopted bylaws are so maintained, they shall not be void, notwithstanding any requirements of prior law. The corporation may charge a reasonable fee for copying its bylaws, not to exceed one dollar (\$1.00) per page.

53-8-13. Meetings of members.

A. Meetings of members shall be held at such place, either within or without New Mexico as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in New Mexico.

B. An annual meeting of the members shall be held at such time as may be provided in the bylaws. If the annual meeting is not held within any thirteen-month period, the district court may, on the application of any member, order a meeting to be held. However, failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

C. Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

53-8-14. Notice of members' meetings; waiver.

A. Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at

the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

B. Attendance at any meeting by a member shall constitute a waiver of notice of the meeting, except where a member attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

53-8-15. Voting.

A. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

B. A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

C. The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of candidates.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

53-8-16. Quorum.

The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], the articles of incorporation or the bylaws.

53-8-17. Board of directors.

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of New Mexico or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

53-8-18. Number and election of directors.

A. The number of directors of a corporation shall be not less than three. Subject to that limitation, the number of directors shall be fixed by, or determined in the manner provided in, the articles of incorporation or the bylaws. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, unless the articles of incorporation provide that a change in the

number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. If the number of directors is not fixed by, or determined in a manner provided in, the articles of incorporation or the bylaws, the number shall be the same as that stated in the articles of incorporation.

B. The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

C. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified.

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

53-8-18.1. Repealed.

53-8-19. Vacancy.

A. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

B. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

C. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

53-8-20. Quorum of directors.

A. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], the articles of incorporation or the bylaws.

B. A quorum, once attained at a meeting, shall be deemed to continue until adjournment, notwithstanding the voluntary withdrawal of enough directors to leave less than a quorum.

53-8-21. Committees.

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors. The committees, to the extent provided in the resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no committee shall have the authority of the board of directors in reference to amending, altering or repealing the bylaws; electing, appointing or removing any member of any com-

mittee or any director or officer of the corporation; amending the articles of incorporation, restating articles of incorporation, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the corporation; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by the committee. The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law.

53-8-22. Directors' meetings.

Meetings of the board of directors, regular or special, may be held either within or without New Mexico and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of the meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of the meeting unless required by the bylaws. Except as otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

53-8-23. Officers.

A. Every corporation organized under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] shall have officers, with titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments required under the Nonprofit Corporation Act. One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book to be kept for that purpose. In the absence of any provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person.

B. The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

C. The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

53-8-24. Removal of officers.

Any officer elected or appointed may be removed by the persons authorized to elect or appoint the officer whenever, in their judgment, the best interest of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

53-8-25. Liability.

The directors, officers, employees and members of the corporation shall not be personally liable for the corporation's obligations.

53-8-25.1. Duties of directors.

A director shall perform his duties as a director including his duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the corporation and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a director shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

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

B. counsel, public accountants or other persons as to matters which the director reasonably believes to be within such persons' professional or expert competence; or

C. a committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

53-8-25.2. Liability of directors.

No director of the corporation shall be personally liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director unless:

A. the director has breached or failed to perform the duties of the director's office in compliance with Section 53-8-25.1 NMSA 1978; and

B. the breach or failure to perform constitutes willful misconduct or recklessness.

The provisions of this section shall, however, only eliminate the liability of a director for action taken as a director or any failure to take action as a director at meetings of the board of directors or of a committee of the board of directors or by virtue of action of the directors without a meeting pursuant to Section 53-8-97 NMSA 1978, on or after the date when the provisions of this section become effective.

53-8-25.3. Nonprofit corporations; boards of directors; liability; immunity.

A. Except as otherwise provided in this section, no member of a board of directors of a nonprofit corporation as defined in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] shall be held personally liable for any damages resulting from:

- (1) any negligent act or omission of an employee of that nonprofit corporation;
- (2) any negligent act or omission of another director of that nonprofit corporation; or
- (3) any action taken as a director or any failure to take any action as a director unless:

(a) the director has breached or failed to perform the duties of the director's office; and

(b) the breach or failure to perform constitutes willful misconduct or recklessness.

B. The immunity provided in Subsection A of this section shall not extend to acts or omissions of directors of nonprofit corporations that constitute willful misconduct or recklessness personal to the director. The immunity is limited to actions taken as a director at meetings of the board of directors or a committee of the board of directors or by action of the directors without a meeting pursuant to Section 53-8-97 NMSA 1978.

C. A nonprofit corporation shall not transfer assets in order to avoid claims against corporate assets resulting from a judgment against the corporation. If a director votes to do so, the immunity provided by this section shall have no force or effect as to that director.

53-8-26. Indemnification of officers and directors.

Each corporation shall have the power to indemnify any director or officer or former director or officer of the corporation against reasonable expenses, costs, and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director or officer shall not be indemnified if he shall be adjudged to be liable on the basis that he has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director or officer for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding provided that the director or officer must reimburse the corporation if it is subsequently determined that the director or officer was not entitled to indemnification. Each corporation may make any other indemnification as authorized by the articles of incorporation or bylaws or by a resolution adopted after notice by the members entitled to vote. As used in this section "director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of any foreign or domestic corporation or nonprofit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust.

53-8-27. Books and records.

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors. Each corporation shall keep at its registered office or principal office in New Mexico a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

53-8-28. Shares of stock and dividends prohibited; exemption from franchise tax.

A. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income, profit or assets of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered and may confer benefits upon its members in conformity with its purposes and upon dissolution or final liquidation may make distributions as permitted by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

B. A corporation incorporated under the Nonprofit Corporation Act shall not be subject to or required to pay a franchise tax unless the corporation receives unrelated business income, as that term is defined in the Internal Revenue Code of 1986, as amended.

53-8-29. Loans to directors and officers.

Any director or officer who assents to or participates in the making of any loan to a director or officer shall be personally liable to the corporation for the amount of the loan until the repayment thereof.

53-8-30. Incorporators.

One or more persons, including profit and nonprofit corporations, may incorporate a corporation by signing and delivering articles of incorporation in duplicate to the corporation commission [secretary of state].

53-8-31. Articles of incorporation.

- A. The articles of incorporation shall set forth:
- (1) the name of the corporation;
 - (2) the period of duration, which may be perpetual;
 - (3) the purpose for which the corporation is organized;
 - (4) any provisions not inconsistent with law that the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
 - (5) the address of its initial registered office and the name of its initial registered agent at such address;
 - (6) the names and addresses of the persons who have consented to serve as the initial directors; and
 - (7) the name and address of each incorporator.
- B. It is not necessary to set forth in the articles of incorporation any of the corporate powers enumerated in the Nonprofit Corporation Act.
- C. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

53-8-32. Filing of articles of incorporation.

- A. 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 articles of incorporation and a statement executed by the designated registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation, shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of incorporation and the statement conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:
- (1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;
 - (2) file the original and the statement in the office of the commission [secretary of state]; and
 - (3) issue a certificate of incorporation to which shall be affixed the copy.
- B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the commission [secretary of state], shall be returned to the incorporators or their representative.

53-8-33. Effect of incorporation.

Unless the corporation commission [secretary of state] disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, upon delivery of the articles of incorporation to the corporation commission [secretary of state], the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent, required

to be performed by the incorporators, have been complied with and that the corporation has been incorporated under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

53-8-34. Organization meetings.

A. An organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without New Mexico, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named. The notice shall state the time and place of the meeting. The notice shall be deemed to be delivered when deposited in the United States mail addressed to the director at his address as it appears on the records of the corporation, with postage thereon prepaid.

B. A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three days' notice, for the purposes stated in the notice of the meeting.

53-8-35. Right to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

53-8-36. Procedure to amend articles of incorporation.

A. Amendments to the articles of incorporation shall be made in the following manner:

(1) if there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment, or a summary of the changes to be effected thereby, shall be given to each member entitled to vote at the meeting within the time and in the manner provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast; or

(2) if there are no members, or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

B. Any number of amendments may be submitted and voted upon at any one meeting.

53-8-37. Articles of amendment.

The articles of amendment shall be executed by the corporation by two authorized officers of the corporation and shall set forth:

- A. the name of the corporation;
- B. the amendment so adopted;
- C. if there are members entitled to vote thereon:

(1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at the meeting and that the amendment received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(2) a statement that the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

D. if there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted and a statement of the fact that the amendment received the vote of a majority of the directors in office.

53-8-38. Effectiveness of amendment.

A. 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 articles of amendment shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles of amendment conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

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

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a certificate of amendment to which shall be affixed the copy.

B. The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative.

C. Unless the commission [secretary of state] disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission [secretary of state], or on such later date, not more than thirty days subsequent to the delivery thereof to the commission [secretary of state], as shall be provided for in the articles of amendment.

D. An amendment shall not affect any existing cause of action in favor of or against the corporation, or any pending action to which the corporation shall be a party or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against the corporation under its former name shall abate for that reason.

53-8-39. Restated articles of incorporation.

A. A domestic corporation may at any time restate its articles of incorporation as amended.

B. Upon approval by a majority of the directors in office, restated articles of incorporation shall be executed in duplicate by the corporation by two authorized officers of the corporation and shall set forth:

(1) the name of the corporation;

(2) the period of its duration;

(3) the purpose or purposes that the corporation is authorized to pursue; and

(4) any other provisions, not inconsistent with law, that are then set forth in the articles of incorporation as amended, except that it shall not be necessary to set forth in the restated articles of incorporation the registered office of the corporation, its registered agent, its directors or its incorporators.

C. The restated articles of incorporation shall state that they correctly set forth the provisions of the articles of incorporation as amended, that they have been duly approved as required by law and that they supersede the original articles of incorporation and all amendments thereto.

D. 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 restated articles of incorporation shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the restated articles conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

- (1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;
- (2) file the original in the office of the commission [secretary of state]; and
- (3) issue a restated certificate of incorporation to which shall be affixed the copy.

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative.

F. Upon the issuance of the restated certificate of incorporation by the commission [secretary of state], the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

53-8-40. Procedure for merger.

A. Any two or more domestic corporations may merge into one corporation pursuant to a plan of merger approved in the manner provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

B. Each corporation shall adopt a plan of merger setting forth:

- (1) the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;
- (2) the terms and conditions of the proposed merger;
- (3) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by the merger; and
- (4) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

53-8-41. Procedure for consolidation.

A. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

B. Each corporation shall adopt a plan of consolidation setting forth:

- (1) the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;
- (2) the terms and conditions of the proposed consolidation;
- (3) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under the Nonprofit Corporation Act; and
- (4) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

53-8-42. Adoption of merger or consolidation.

A. A plan of merger or consolidation shall be adopted in the following manner:

- (1) if the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of the corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at the meeting within the time and in the manner provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast; or

(2) if any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of the corporation upon receiving the vote of a majority of the directors in office.

B. After adoption, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

53-8-43. Articles of merger or consolidation.

A. Upon approval, articles of merger or articles of consolidation shall be executed by each corporation by two authorized officers of the corporation, and shall set forth:

(1) the plan of merger or the plan of consolidation;

(2) if the members of any merging or consolidating corporation are entitled to vote thereon, then as to each corporation:

(a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting and that the plan received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(3) if any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each corporation a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that the plan received the vote of a majority of the directors in office.

B. 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 articles of merger or articles of consolidation shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the articles conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

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

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a certificate of merger or a certificate of consolidation to which shall be affixed the copy.

C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the commission [secretary of state], shall be returned to the surviving or new corporation or its representative.

53-8-44. Effect of merger or consolidation.

A. Unless the corporation commission [secretary of state] disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, the merger or consolidation shall become effective upon delivery of the articles of merger or of consolidation to the corporation commission [secretary of state], or on such later date, not more than thirty days subsequent to the delivery thereof to the corporation commission [secretary of state], as shall be provided for in the articles.

B. When a merger or consolidation has been effected:

(1) the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(2) the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(3) the surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978];

(4) the surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in the single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the merger or consolidation;

(5) the surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of the corporations may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by the merger or consolidation; and

(6) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] shall be deemed to be the articles of incorporation of the new corporation.

53-8-45. Merger or consolidation of domestic and foreign corporations.

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each foreign corporation is organized:

(1) each domestic corporation shall comply with the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] with respect to the merger or consolidation, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) if the surviving or new corporation is to be governed by the laws of any state other than New Mexico it shall comply with the provisions of the Nonprofit Corporation Act with respect to foreign corporations if it is to conduct affairs in New Mexico, and in every case it shall file with the corporation commission [secretary of state] of New Mexico:

(a) an agreement that it may be served with process in New Mexico in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

(b) an irrevocable appointment of the secretary of state of New Mexico as its agent to accept service of process in any such proceeding.

B. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of New Mexico. If the surviving or new corporation is to be governed by laws of any state other than New Mexico, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of the other state provide otherwise.

C. After approval by the members or, if there are no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or con-

solidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

53-8-46. Sale, lease, exchange or mortgage of assets.

A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

A. if there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending the sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at the meeting, within the time and in the manner provided by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] for the giving of notice of meetings of members. At the meeting the members may authorize the sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon the sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members; or

B. if there are no members, or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

53-8-47. Voluntary dissolution.

A. A corporation may dissolve and wind up its affairs in the following manner:

(1) if there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at the meeting, within the time and in the manner provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast; or

(2) if there are no members, or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

B. Upon the adoption of such resolution by the members, or by the board of directors if there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

53-8-48. Distribution of assets.

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

A. all liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor;

B. assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

C. assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more nonprofit domestic or foreign corporations, nonprofit societies or nonprofit organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978];

D. other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws, but in no event may any member, former member, director, former director, officer or former officer receive directly or indirectly any distribution or portion of a distribution of any assets; and

E. any remaining assets may be distributed to such persons, nonprofit societies, nonprofit organizations or nonprofit domestic or foreign corporations whether for profit or nonprofit as may be specified in a plan of distribution adopted as provided in the Nonprofit Corporation Act.

53-8-49. Plan of distribution.

A plan providing for the distribution of assets, not inconsistent with the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which the Nonprofit Corporation Act requires a plan of distribution, in the following manner:

A. if there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at the meeting, within the time and in the manner provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] for the giving of notice of meetings of members. The plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast; or

B. if there are no members, or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

53-8-50. Revocation of voluntary dissolution proceedings.

A. A corporation may, at any time prior to the issuance of a certificate of dissolution by the corporation commission [secretary of state], revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) if there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of the revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. 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 member entitled to vote at such meeting, within the time and in the manner provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast; or

(2) if there are no members, or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

B. Upon the adoption of the resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again conduct its affairs.

53-8-51. Articles of dissolution.

If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation are paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation are transferred, conveyed or distributed in accordance with the provisions of the Nonprofit Corporation Act, articles of dissolution shall be executed by the corporation by two authorized officers of the corporation, which statement shall set forth:

A. the name of the corporation;

B. if there are members entitled to vote thereon:

(1) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at the meeting and that the resolution received at least two-thirds of the votes that members present at the meeting or represented by proxy were entitled to cast; or

(2) a statement that the resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

C. if there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that the resolution received the vote of a majority of the directors in office;

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

E. a copy of the plan of distribution, if any, as adopted by the corporation or a statement that no plan was so adopted;

F. that all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of the Nonprofit Corporation Act; and

G. 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.

53-8-52. Filing of articles of dissolution.

A. 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 articles of dissolution shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that such articles of dissolution conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

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

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a certificate of dissolution to which shall be affixed the copy.

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the commission [secretary of state], shall be returned to the representative of the dissolved corporation. Upon the issuance of a certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in the Nonprofit Corporation Act.

53-8-53. Revocation of certificate of incorporation.

A. The certificate of incorporation of a corporation to conduct affairs in New Mexico may be revoked by the commission [secretary of state] upon the conditions prescribed in this section when:

(1) the corporation has failed to file its annual report within the time required by the Nonprofit Corporation Act or has failed to pay any fees or penalties prescribed by that act when they have become due and payable;

(2) the certificate of incorporation of the corporation was procured through fraud practiced upon the state;

(3) the corporation has continued to exceed or abuse the authority conferred upon it by the Nonprofit Corporation Act; or

(4) a misrepresentation has been made of any material matter in any application, report, statement or other document submitted by the corporation pursuant to the Nonprofit Corporation Act.

B. A certificate of incorporation of a corporation shall not be revoked by the commission [secretary of state] unless:

(1) the commission [secretary of state] has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address as shown in the most recent corporate report filed with the commission [secretary of state]; and

(2) the corporation fails prior to revocation to file an annual report, pay fees or penalties, file articles of amendment or articles of merger or correct a material misrepresentation in a document submitted by the corporation pursuant to the Nonprofit Corporation Act.

53-8-54. Issuance of certificate of revocation.

A. Upon revoking a certificate of incorporation, the commission [secretary of state] shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the corporation at the corporation's mailing address as shown in the most recent corporate report filed with the commission [secretary of state] a notice of the revocation accompanied by one of the certificates.

B. Upon the issuance of a certificate of revocation, the authority of the corporation to conduct affairs in New Mexico ceases.

C. A corporation administratively revoked under Section 53-8-53 NMSA 1978 may apply to the commission [secretary of state] for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation's name satisfies the requirements of Section 53-8-7 NMSA 1978.

D. If the commission [secretary of state] determines that the application contains the information required by Subsection C of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

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

53-8-55. Jurisdiction of court to liquidate assets and affairs of corporation.

- A. District courts shall have full power to liquidate the assets and affairs of a corporation:
- (1) in an action by a member or director when it is made to appear that:
 - (a) the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or
 - (b) the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
 - (c) the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two years 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; or
 - (e) the corporation is unable to carry out its purposes;
 - (2) in an action by a creditor when:
 - (a) the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or
 - (b) 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; or
 - (3) upon application by a corporation to have its dissolution continued under the supervision of the court.
- B. Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.
- C. It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

53-8-56. Procedure in liquidation of corporation by court.

- A. In proceedings to liquidate the assets and affairs of a corporation the district court shall have the power to issue injunctions; to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct; and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.
- B. After a hearing had upon such notice as the district 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. The liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. 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 assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied and distributed as follows:
- (1) all costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with the requirements;

(3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others; and

(5) any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], or where no plan of distribution has been adopted, as the court may direct.

D. The district court shall have power to 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.

E. A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of the corporation. The district court appointing the receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

53-8-57. Qualification of receivers.

A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in New Mexico and shall in all cases give bond as the court may direct with sureties as the court may require.

53-8-58. Filing of claims in liquidation proceedings.

In proceedings to liquidate the assets and affairs of a corporation the district court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in a form 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.

53-8-59. Discontinuance of liquidation proceedings.

The liquidation of the assets and affairs 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.

53-8-60. Decree of involuntary dissolution.

In proceedings to liquidate the assets and affairs 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 in accordance with the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], or in case its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts and obligations, and all the property and assets have been applied so far as they will go to their payment, the district court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

53-8-61. Filing of decree of dissolution.

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

53-8-62. Deposits with state treasurer.

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person 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 such person or to his legal representative upon proof satisfactory to the state treasurer of his right thereto.

53-8-63. Survival of remedy after dissolution.

The dissolution of a corporation either by the issuance of a certificate of dissolution by the corporation commission [secretary of state], or by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], or by expiration of its period of duration, shall not take away or impair any remedy available to or against the corporation, its directors, officers or members, for any right or claim existing, or any liability incurred, prior to the dissolution if action or other proceeding thereon is commenced within two years after the date of dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If the corporation was dissolved by the expiration of its period of duration, the corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

53-8-64. Admission of foreign corporation.

A. No foreign corporation has the right to conduct affairs in New Mexico until it has procured a certificate of authority to do so from the corporation commission [secretary of state]. No foreign corporation is entitled to procure a certificate of authority under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] to conduct in New Mexico any affairs which a corporation organized under that act is prohibited from conducting. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which the corporation is organized governing its organization and internal affairs differ from the laws of this state. Nothing in the Nonprofit Corporation Act shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

B. Without excluding other activities which may not constitute conducting affairs in New Mexico, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of the Nonprofit Corporation Act, by reason of carrying on in this state any one or more of the following activities:

- (1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;
- (2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) creating evidences of debt, mortgages or liens on real or personal property;
- (5) securing or collecting debts due to it or enforcing any rights in property securing the same;
- (6) conducting its affairs in interstate commerce;
- (7) granting funds;
- (8) distributing information to its members; and
- (9) conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

53-8-65. Powers of foreign corporation.

A foreign corporation which has received a certificate of authority under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] shall, until a certificate of revocation or of withdrawal has been issued as provided in that act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authorization is issued; and, except as otherwise provided in the Nonprofit Corporation Act, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

53-8-66. Corporate name of foreign corporation.

No certificate of authority shall be issued to a foreign corporation unless the corporate name of the corporation:

- A. shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;
- B. shall not be the same as, or confusingly similar to, the name of any corporation, whether for profit or not for profit, existing under the laws of New Mexico, or foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state; and
- C. shall be expressed in English letters.

53-8-67. Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to conduct affairs in New Mexico changes its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of the corporation shall be suspended and it shall not conduct any affairs in New Mexico until it has changed its name to a name which is available to it under the laws of this state.

53-8-68. Application for certificate of authority.

A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in New Mexico, shall make application to the commission [secretary of state], which application shall set forth:

- (1) the name of the corporation and the state or country under the laws of which it is incorporated;
- (2) the date of incorporation and the period of duration of the corporation;
- (3) the address of the registered office of the corporation in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation, if different from the address of the registered office;
- (4) the address of the proposed registered office of the corporation in New Mexico and the name of its proposed registered agent in this state at such address;
- (5) the purpose or purposes of the corporation that it proposes to pursue in conducting its affairs in New Mexico;
- (6) the names and respective addresses of the directors and officers of the corporation; and
- (7) such additional information as may be necessary or appropriate in order to enable the commission [secretary of state] to determine whether the corporation is entitled to a certificate of authority to conduct affairs in New Mexico.

B. The application shall be made on forms prescribed by the commission [secretary of state], or on forms containing substantially the same information as forms prescribed by the commission [secretary of state], and shall be executed by the corporation by two authorized officers of the corporation.

53-8-69. Filing of application for certificate of authority.

A. The following documents shall be delivered to the commission [secretary of state]:

- (1) an original of the application of the corporation for a certificate of authority and a certificate of good standing and compliance issued by the appropriate official of the state or country under the laws of which the corporation is incorporated;
- (2) a statement executed by the designated registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent, in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and
- (3) a copy of whichever statement is filed pursuant to Paragraph (2) of this subsection, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original.

B. If the commission [secretary of state] finds that the application and the affidavit conform to law, it shall, when all fees have been paid as prescribed in the Nonprofit Corporation Act:

- (1) endorse on the original and copy the word "filed" and the month, day and year of the filing thereof;
- (2) file in the office of the commission [secretary of state] the original of the application and the statement; and
- (3) issue a certificate of authority to conduct affairs in New Mexico to which shall be affixed the application copy.

C. The certificate of authority, together with the application affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative.

53-8-70. Effect of [certificate of] authority.

Unless the corporation commission [secretary of state] disapproves pursuant to Subsection A of Section 53-8-91 NMSA 1978, upon delivery of the application for a certificate of authority to the corporation commission [secretary of state], the corporation shall be authorized to conduct affairs in New Mexico for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978].

53-8-71. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to conduct affairs in New Mexico shall have and continuously maintain in this state:

A. a registered office which may be, but need not be, the same as its principal office; and

B. a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with the registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with the registered office.

53-8-72. Change of registered office or registered agent of foreign corporation.

A. A foreign corporation authorized to conduct affairs in New Mexico may change its registered office or change its registered agent, or both, upon filing in the office of the commission [secretary of state] a statement setting forth:

- (1) the name of the corporation;
- (2) the address of its then registered office;
- (3) if the address of its registered office is changed, the address to which the registered office is to be changed;
- (4) the name of its registered agent;
- (5) if its registered agent is changed:
 - (a) the name of its successor registered agent; and
 - (b) a statement executed by the successor registered agent in which the agent acknowledges acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and
- (6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

B. Such statement shall be executed by the corporation by an authorized officer of the corporation and delivered to the commission [secretary of state]. If the commission [secretary of state] finds that such statement conforms to the provisions of the Nonprofit Corporation Act, it shall file the statement in its office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, shall become effective.

C. A registered agent in New Mexico appointed by a foreign corporation may resign as agent upon filing an originally executed notice and a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, with the commission [secretary of state], which shall mail a copy to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated as shown

by its most recent annual report. The appointment of an agent shall terminate upon the expiration of thirty days after receipt of such notice by the commission [secretary of state].

D. If a registered agent changes its business address to another place within the same county, it may change such address and the address of the registered office of any corporations of which it is the registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to the provisions of Paragraphs (5) and (7) of Subsection A of this section and must recite that a copy of the statement has been mailed to each such corporation.

53-8-73. Service of process on foreign corporation.

The registered agent appointed by a foreign corporation authorized to transact business in New Mexico shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

53-8-74. Repealed.

53-8-75. Merger of foreign corporation authorized to conduct affairs in this state.

Whenever a foreign corporation authorized to conduct affairs in New Mexico is a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, it shall, within thirty days after the merger becomes effective, file with the corporation commission [secretary of state] a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which the statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of the corporation is changed by the merger or unless the corporation desires to pursue in New Mexico other or additional purposes than those which it is then authorized to pursue in New Mexico or unless the surviving corporation is to conduct affairs in New Mexico but has not procured a certificate of authority to conduct affairs in this state.

53-8-76. Amended certificate of authority.

A. A foreign corporation authorized to conduct affairs in New Mexico shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in New Mexico other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the commission [secretary of state].

B. The requirements in respect to the form and contents of the application, the manner of its execution, the filing of 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, with the commission [secretary of state], the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

53-8-77. Withdrawal of foreign corporation.

A. A foreign corporation authorized to conduct affairs in New Mexico may withdraw from this state upon procuring from the commission [secretary of state] a certificate of withdrawal.

In order to procure the certificate of withdrawal, the foreign corporation shall deliver to the commission [secretary of state] an application for withdrawal, which shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) that the corporation is not conducting affairs in New Mexico;

(3) that the corporation surrenders its authority to conduct affairs in New Mexico;

(4) that the corporation revokes the authority of its registered agent in New Mexico to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on the corporation by service thereof on the secretary of state; and

(5) a post office address to which the commission [secretary of state] may mail a copy of any process against the corporation that may be served on it.

B. The application for withdrawal shall be made on forms prescribed and furnished by the commission [secretary of state] and shall be executed by the corporation by two authorized officers of the corporation or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by the receiver or trustee.

53-8-78. Filing of application for withdrawal.

A. 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 application for withdrawal shall be delivered to the commission [secretary of state]. If the commission [secretary of state] finds that the application conforms to the provisions of the Nonprofit Corporation Act, it shall, when all fees have been paid as prescribed in that act:

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

(2) file the original in the office of the commission [secretary of state]; and

(3) issue a certificate of withdrawal to which shall be affixed the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the commission [secretary of state], shall be returned to the corporation or its representative. Upon the issuance of the certificate of withdrawal, the authority of the corporation to conduct affairs in New Mexico shall cease.

53-8-79. Revocation of certificate of authority.

A. The certificate of authority of a foreign corporation to conduct affairs in New Mexico may be revoked by the commission [secretary of state] upon the conditions prescribed in this section when:

(1) the corporation has failed to file its annual report within the time required by the Nonprofit Corporation Act or has failed to pay any fees or penalties prescribed by that act when they have become due and payable;

(2) the corporation has failed to appoint and maintain a registered agent in New Mexico as required by the Nonprofit Corporation Act;

(3) the corporation has failed, after change of its registered agent, to file in the office of the commission [secretary of state] a statement of such change as required by the Nonprofit Corporation Act;

(4) the corporation has failed to file in the office of the commission [secretary of state] any amendment to its articles of incorporation or any articles of merger within the time prescribed by the Nonprofit Corporation Act;

(5) the certificate of authority of the corporation was procured through fraud practiced upon the state;

(6) the corporation has continued to exceed or abuse the authority conferred upon it by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978]; or

(7) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by the corporation pursuant to the Nonprofit Corporation Act.

B. A certificate of authority of a foreign corporation shall not be revoked by the commission [secretary of state] unless:

(1) the commission [secretary of state] has given the corporation not less than sixty days' notice thereof by mail addressed to the corporation's mailing address shown in the most recent annual report filed with the commission [secretary of state]; and

(2) the corporation fails prior to revocation to file an annual report, or pay fees or penalties, or file the required statement of change of registered agent, or file articles of amendment or articles of merger, or correct such misrepresentation pursuant to the Nonprofit Corporation Act.

53-8-80. Issuance of certificate of revocation.

A. Upon revoking a certificate of authority, the commission [secretary of state] shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the corporation at the corporation's mailing address as shown in the most recent annual report filed with the commission [secretary of state], a notice of the revocation accompanied by one of the certificates.

B. Upon the issuance of a certificate of revocation, the authority of the corporation to conduct affairs in New Mexico ceases.

53-8-81. Conducting affairs without certificate of authority.

A. No foreign corporation which is conducting affairs in New Mexico without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state until the corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of New Mexico by any successor or assignee of the corporation on any right, claim or demand arising out of the conduct of affairs by the corporation in this state, until a certificate of authority has been obtained by the corporation or by a corporation which has acquired all, or substantially all, of its assets.

B. The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in New Mexico shall not impair the validity of any contract or act of the corporation, and shall not prevent the corporation from defending any action, suit or proceeding in any district court of this state.

C. A foreign corporation which conducts affairs in New Mexico without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] upon the corporation had it duly applied for and received a certificate of authority to conduct affairs in this state as required by that act and thereafter filed all reports required by that act, plus all penalties imposed by that act for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due New Mexico under the provisions of this section.

53-8-82. Annual report.

A. Each domestic corporation and each foreign corporation authorized to conduct affairs in New Mexico shall file, within the time prescribed by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], on forms prescribed and furnished by the commission [secretary of state] to the corporation not less than thirty days prior to the date such report is due, an annual report setting forth:

- (1) the name of the corporation and the state or country under the laws of which it is incorporated;
- (2) the address of the registered office of the corporation in New Mexico, and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its registered office in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation, if different from the address of the registered office;
- (3) a brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in New Mexico; and
- (4) the names and respective addresses of the directors and officers of the corporation.

B. The report shall be signed and sworn to by any two of its directors or officers. If the corporation is in the hands of a receiver or trustee, the report shall be executed on behalf of the corporation by the receiver or trustee. A copy of the report shall be maintained at the corporation's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

53-8-83. Filing of annual report; initial report; supplemental report; extension of time.

A. The annual report of a domestic or foreign corporation shall be delivered to the commission [secretary of state] on or before the fifteenth day of the fifth month following the end of its taxable year, except that the first annual report of a domestic or foreign corporation shall be filed within thirty days of the date on which its certificate of incorporation or its certificate of authority was issued by the commission [secretary of state].

B. A supplemental report shall be filed with the commission [secretary of state] within thirty days if, after the filing of the annual report required under the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], a change is made in:

- (1) the name of the corporation;
- (2) the mailing address, street address or the geographical location of the corporation's registered office in this state and the name of the agent upon whom process against the corporation may be served;
- (3) the name or address of any of the directors or officers of the corporation or the date when the term of office of each expires; or
- (4) the corporation's principal place of business within or without the state.

C. Proof to the satisfaction of the commission [secretary of state] that prior to the due date of any report required by Subsection A or B of this section the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission [secretary of state] finds that the report conforms to the requirements of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], it shall file the same. If the commission [secretary of state] finds that it does not so conform, it shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed for failure to file the report within the time provided shall not apply, if the report is corrected to conform to the requirements of the Nonprofit Corporation Act and returned to the commission [secretary of state] within thirty days from the date on which it was mailed to the corporation by the commission [secretary of state].

D. Upon application by a corporation and for good cause shown, the commission [secretary of state] may extend, for no more than a total of twelve months, the date on which a return required by the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] must be filed or the date on which the payment of any fee is required, but no extension shall prevent the accrual of interest as otherwise provided by law. The commission [secretary of state] shall, when an extension of time has been granted a nonprofit corporation under the United States Internal Revenue Code of 1986 for the time in which

to file a return, grant the corporation the same extension of time to file the required return and to pay the required fees if a copy of the approved federal extension of time is attached to the corporation's report. An extension shall not prevent the accrual of interest as otherwise provided by law.

E. Nothing in this section prevents the collection of a fee or penalty due upon the failure of any corporation to submit the required report.

F. No annual or supplemental report required to be filed under this section shall be deemed to have been filed if the fees accompanying the report have been paid by check and the check is dishonored upon presentation.

53-8-84. Repealed.

53-8-85. Fees for filing documents and issuing certificates.

The public regulation commission [secretary of state] shall charge and collect for:

A. filing articles of incorporation and issuing a certificate of incorporation, twenty-five dollars (\$25.00);

B. filing articles of amendment and issuing a certificate of amendment, twenty dollars (\$20.00);

C. filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars (\$20.00);

D. filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars (\$20.00);

E. filing a statement of change of address of registered office or change of registered agent, or both, ten dollars (\$10.00);

F. filing an agent's statement of change of address of registered agent for each affected corporation, ten dollars (\$10.00);

G. filing articles of dissolution, ten dollars (\$10.00);

H. filing an application of a foreign corporation for a certificate of authority to conduct affairs in New Mexico and issuing a certificate of authority, twenty-five dollars (\$25.00);

I. filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in New Mexico and issuing an amended certificate of authority, twenty dollars (\$20.00);

J. filing an application to reserve a corporation name or filing a notice to transfer of a reserved corporate name, ten dollars (\$10.00);

K. filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in New Mexico, twenty-five dollars (\$25.00);

L. filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ten dollars (\$10.00);

M. filing any other statement or report, including an annual report, of a domestic or foreign corporation, ten dollars (\$10.00);

N. issuing a certificate of good standing and compliance, ten dollars (\$10.00); and

O. issuing a letter or reinstatement of a domestic or foreign corporation, a fee of twenty-five dollars (\$25.00).

53-8-86. Recordkeeping.

The commission [secretary of state] shall provide, pursuant to the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978], for the retention, storage and destruction of annual reports filed with the commission [secretary of state].

53-8-86.1. Fees of state corporation commission [secretary of state]; dishonored check; civil penalty.

Any person or corporation who pays a fee by check to the state corporation commission [secretary of state] and which check is dishonored upon presentation is liable to the commission [secretary of state] for such fees together with a civil penalty of twenty dollars (\$20.00) for each such check.

53-8-87. Miscellaneous charges.

The corporation commission [secretary of state] shall charge and collect for furnishing a copy of any document, instrument or paper relating to a corporation, one dollar (\$1.00) per page, but in no case less than five dollars (\$5.00). In addition, if certifying the document, ten dollars (\$10.00) shall be paid for the certificate and affixing the seal thereto.

53-8-88. Penalty imposed upon corporation.

Each corporation, domestic or foreign, that fails or refuses to file any report for any year within the time prescribed by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] shall be subject to a penalty of ten dollars (\$10.00) to be assessed by the corporation commission [secretary of state].

53-8-88.1. Dormant corporations; statement in lieu of annual report.

A. Whenever any corporation is no longer actively conducting affairs in this state or carrying out the purposes of its incorporation, any two of its directors or officers may unite in signing a statement to that effect; the statement shall be filed in lieu of the required annual report. Upon the filing of this statement and the payment of all fees, penalties and interest, the commission [secretary of state] shall be authorized to strike the name of the corporation from the list of active corporations in this state; but this action shall not be construed in any sense as a formal dissolution of the corporation nor shall the corporation be relieved thereby from any outstanding obligation. Any corporation in this class may be fully revived by the resumption of actively conducting affairs and the filing of an annual report by the provision of this section.

B. Any corporation in this class may continue in this class by filing a statement of renewal every five years to the effect that it is not actively conducting affairs in this state nor carrying out the purposes of its incorporation. Sixty days after written notice of failure to file a statement of renewal has been mailed to its registered agent and also to the principal office of the corporation as shown in the last report filed with the commission [secretary of state], the corporation shall have its certificate of incorporation or authority cancelled by the commission [secretary of state] without further proceedings unless the statement of renewal is filed and all fees are paid within that sixty-day period.

53-8-89. Reports; affirmation; penalty.

A. All reports required to be filed with the commission [secretary of state] pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct".

B. Any person who makes and subscribes any report required under the Nonprofit Corporation Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

53-8-90. Authority to make refunds.

In response to a written claim for a refund for overpayment of a fee collected by the commission [secretary of state] pursuant to the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], the commission [secretary of state] or its delegate may authorize the refund to a corporation, a foreign corporation, a nonprofit corporation or a person of any amount determined by the commission [secretary of state] or its delegate to have been erroneously paid to the commission [secretary of state].

53-8-91. Appeal from commission [secretary of state].

A. If the commission [secretary of state] fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] to be approved by the commission [secretary of state] before the same is filed in its office, the commission [secretary of state] shall, within fifteen working days after the delivery thereof, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. The person or corporation may appeal the disapproval to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. If the commission [secretary of state] revokes a certificate of authority to conduct affairs in New Mexico of any foreign corporation or a certificate of incorporation of a domestic corporation, pursuant to the provisions of the Nonprofit Corporation Act, the foreign or domestic corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

53-8-92. Issuance of certificate of good standing and compliance.

The commission [secretary of state] may issue a certificate of good standing and compliance if the corporation requesting the certificate has paid all fees due at the time of the request.

53-8-93. Certificates and certified copies to be received in evidence.

All certificates issued by the corporation commission [secretary of state] in accordance with the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], and all copies of documents filed in the commission's [secretary of state's] office in accordance with the provisions of the Nonprofit Corporation Act, when certified by the commission [secretary of state], shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated. A certificate by the corporation commission [secretary of state] under the great seal of New Mexico, as to the existence or nonexistence of the facts relating to the corporations which would not appear from a certified copy of any of the foregoing documents or certificates, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

53-8-94. Forms to be furnished by corporation commission [secretary of state].

Forms for all documents to be filed in the office of the corporation commission [secretary of state] may be furnished by the commission [secretary of state] on request therefor, but the use thereof, unless otherwise specifically prescribed in the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], shall not be mandatory.

53-8-95. Greater voting requirements.

Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the directors or members or any class of members than required by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], the provisions of the articles of incorporation or bylaws shall control.

53-8-96. Waiver of notice.

Whenever any notice is required to be given to any member or director of a corporation under the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

53-8-97. Action by members or directors without a meeting.

A. Any action required by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

B. The consent as provided for in Subsection A of this section shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the corporation commission [secretary of state] under the Nonprofit Corporation Act.

53-8-98. Unauthorized assumption of corporate powers.

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

53-8-99. Effect of repeal of prior acts.

The repeal of a prior act by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.