

# Utah Revised Nonprofit Corporation Act

## Utah Code Ann. § 16-6a *et seq.*

### **16-6a-101. Title.**

This chapter is known as the "Utah Revised Nonprofit Corporation Act."

### **16-6a-102. Definitions.**

As used in this chapter:

- (34) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:
- (a) is not a foreign nonprofit corporation; and
  - (b) is incorporated under or subject to this chapter.

### **16-6a-105. Filing requirements.**

- (1) To be entitled to filing by the division, a document shall satisfy the requirements of:
  - (a) this section; and
  - (b) any other section of this chapter that adds to or varies the requirements of this section.
- (2) This chapter shall require or permit filing the document with the division.
- (3) (a) A document shall contain the information required by this chapter.
- (b) In addition to the document information required by this chapter, a document may contain other information.
- (4) A document shall be:
  - (a) typewritten; or
  - (b) machine printed.
- (5) (a) A document shall be in the English language.
- (b) A corporate name need not be in English if written in:
  - (i) English letters; or
  - (ii) Arabic or Roman numerals.
- (c) Notwithstanding Subsection (5)(a), a certificate of existence required of a foreign nonprofit corporation need not be in English if accompanied by a reasonably authenticated English translation.
- (6) (a) A document shall be:
  - (i) executed by a person in Subsection (6)(b); or
  - (ii) a true copy made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been executed by a person listed in Subsection (6)(b).
- (b) A document shall be executed by:
  - (i) the chair of the board of directors of a domestic or foreign nonprofit corporation;
  - (ii) all of the directors of a domestic or foreign nonprofit corporation;
  - (iii) an officer of the domestic or foreign nonprofit corporation;
  - (iv) if directors have not been selected or the domestic or foreign nonprofit corporation has not been formed, an incorporator;
  - (v) if the domestic or foreign nonprofit corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, that receiver, trustee, or court-appointed fiduciary;
  - (vi) if the document is that of a registered agent:
    - (A) the registered agent, if the person is an individual; or
    - (B) a person authorized by the registered agent to execute the document, if the registered agent is an entity; or
  - (vii) an attorney in fact if a nonprofit corporation retains the power of attorney with the nonprofit corporation's records.
- (7) A document shall state beneath or opposite the signature of the person executing the document:
  - (a) the signer's name; and

- (b) the capacity in which the document is signed.
- (8) A document may contain:
  - (a) the corporate seal;
  - (b) an attestation by the secretary or an assistant secretary; or
  - (c) an acknowledgment, verification, or proof.
- (9) The signature of each person signing a document, whether or not the document contains an acknowledgment, verification, or proof permitted by Subsection (8), constitutes the affirmation or acknowledgment of the person, under penalties of perjury, that:
  - (a) the document is:
    - (i) the person's act and deed; or
    - (ii) the act and deed of the entity on behalf of which the document is executed; and
  - (b) the facts stated in the document are true.
- (10) If the division has prescribed a mandatory form or cover sheet for the document under Section **16-6a-106**, a document shall be:
  - (a) in or on the prescribed form; or
  - (b) have the required cover sheet.
- (11) A document shall be:
  - (a) delivered to the division for filing; and
  - (b) accompanied by:
    - (i) one exact or conformed copy, except as provided in Section **16-6a-1510**;
    - (ii) the correct filing fee; and
    - (iii) any franchise tax, license fee, or penalty required by this chapter or other law.
- (12) Except with respect to a filing pursuant to Section **16-6a-1510**, a document shall state, or be accompanied by a writing stating, the address to which the division may send a copy upon completion of the filing.

**16-6a-116. Private foundations.**

Except as otherwise specified in the articles of incorporation or as provided by a court of competent jurisdiction, a nonprofit corporation that is a private foundation as defined in Section 509(a), Internal Revenue Code:

- (1) shall make distributions for each taxable year at the time and in the manner as not to subject the nonprofit corporation to tax under Section 4942, Internal Revenue Code;
- (2) may not engage in any act of self-dealing as defined in Section 4941(d), Internal Revenue Code;
- (3) may not retain any excess business holdings as defined in Section 4943(c), Internal Revenue Code;
- (4) may not make any investments that would subject the nonprofit corporation to taxation under Section 4944, Internal Revenue Code; and
- (5) may not make any taxable expenditures as defined in Section 4945(d), Internal Revenue Code.

**16-6a-201. Incorporators.**

- (1) One or more persons may act as incorporators of a nonprofit corporation by delivering to the division for filing articles of incorporation meeting the requirements of Section **16-6a-202**.
- (2) An incorporator who is a natural person shall be 18 years of age or older.

**16-6a-202. Articles of incorporation.**

- (1) The articles of incorporation shall set forth:
  - (a) one or more purposes for which the nonprofit corporation is organized;
  - (b) a corporate name for the nonprofit corporation that satisfies the requirements of Section **16-6a-401**;
  - (c) the information required by Subsection **16-17-203(1)**;
  - (d) the name and address of each incorporator;
  - (e) whether or not the nonprofit corporation will have voting members;

- (f) if the nonprofit corporation is to issue shares of stock evidencing membership in the nonprofit corporation or interests in water or other property rights:
  - (i) the aggregate number of shares that the nonprofit corporation has authority to issue; and
  - (ii) if the shares are to be divided into classes:
    - (A) the number of shares of each class;
    - (B) the designation of each class; and
    - (C) a statement of the preferences, limitations, and relative rights of the shares of each class; and
  - (g) provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (2) The articles of incorporation may but need not set forth:
  - (a) the names and addresses of the individuals who are to serve as the initial directors;
  - (b) provisions not inconsistent with law regarding:
    - (i) managing the business and regulating the affairs of the nonprofit corporation;
    - (ii) defining, limiting, and regulating the powers of:
      - (A) the nonprofit corporation;
      - (B) the board of directors of the nonprofit corporation; and
      - (C) the members of the nonprofit corporation or any class of members;
    - (iii) whether cumulative voting will be permitted; and
    - (iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; and
  - (c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws, including elective provisions that in accordance with this chapter shall be included in the articles of incorporation to be effective.
- (3) (a) It is sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the nonprofit corporation is to engage in any lawful act for which a nonprofit corporation may be organized under this chapter.
- (b) If the articles of incorporation include the statement described in Subsection (3)(a), all lawful acts and activities shall be within the purposes of the nonprofit corporation, except for express limitations, if any.
- (4) The articles of incorporation need not set forth any corporate power enumerated in this chapter.
- (5) The articles of incorporation shall:
  - (a) be signed by each incorporator; and
  - (b) meet the filing requirements of Section **16-6a-105**.
- (6) (a) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in: (i) the articles of incorporation; or (ii) the bylaws. (b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both: (i) the articles of incorporation; and (ii) the bylaws.

**16-6a-203. Incorporation.**

- (1) A nonprofit corporation is incorporated, and its corporate existence begins:
  - (a) when the articles of incorporation are filed by the division; or
  - (b) if a delayed effective date is specified pursuant to Subsection **16-6a-108(2)**, on the delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.
- (2) The filing of the articles of incorporation by the division is conclusive proof that all conditions precedent to incorporation have been satisfied, except in a proceeding by the state to:
  - (a) cancel or revoke the incorporation; or
  - (b) involuntarily dissolve the nonprofit corporation.

**16-6a-811. Compensation of directors.**

Unless otherwise provided in the bylaws, the board of directors may authorize and fix the compensation of directors.

**16-6a-904. Advance of expenses for directors.**

(1) A nonprofit corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the nonprofit corporation a written affirmation of the director's good faith belief that the director has met the applicable standard of conduct described in Section **16-6a-902**;

(b) the director furnishes the nonprofit corporation a written undertaking, executed personally or on the director's behalf, to repay the advance, if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b):

(a) shall be an unlimited general obligation of the director;

(b) need not be secured; and

(c) may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section **16-6a-906**.

### **16-6a-1008. Conversion to a business corporation.**

(1) (a) A domestic nonprofit corporation may convert to a corporation subject to Title 16, Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles of incorporation with the division pursuant to this section.

(b) The day on which a nonprofit domestic corporation files an amendment under this section, the domestic nonprofit corporation becomes a corporation subject to Title 16, Chapter 10a, Utah Revised Business Corporation Act, except that, notwithstanding Section **16-10a-203**, the existence of the nonprofit corporation is considered to commence on the day on which the converting corporation:

(i) commenced its existence under this chapter; or

(ii) otherwise was created, formed, incorporated, or came into being.

(2) The amendment of the articles of incorporation to convert to a corporation shall:

(a) revise the statement of purpose;

(b) delete:

(i) the authorization for members; and

(ii) any other provisions relating to memberships;

(c) authorize shares:

(i) stating the number of shares; and

(ii) including the information required by Section **16-10a-601** with respect to each class of shares the corporation is to be authorized to issue;

(d) make such other changes as may be necessary or desired; and

(e) if the corporation has any members, provide for:

(i) the cancellation of the memberships; or

(ii) the conversion of the memberships to shares of the corporation.

(3) If the nonprofit corporation has any voting members, an amendment to convert to a corporation shall be approved by all of the members regardless of limitations or restrictions on the voting rights of the members.

(4) If an amendment to the articles of incorporation filed pursuant to this section is included in a merger agreement, this section applies, except that any provisions for cancellation or conversion of memberships:

(a) shall be in the merger agreement; and

(b) may not be in the amendment of the articles of incorporation.

(5) A conversion under this section may not result in a violation, directly or indirectly, of:

(a) Section **16-6a-1301**; or

(b) any other provision of this chapter.

(6) The conversion of a nonprofit corporation into a corporation does not affect:

(a) an obligation or liability of the converting nonprofit corporation incurred before its

conversion to a corporation; or

(b) the personal liability of any person incurred before the conversion.

(7) (a) (i) When a conversion is effective under this section, for purposes of the laws of this state, the things listed in Subsection (7)(a)(ii):

(A) vest in the corporation to which the nonprofit corporation converts;

(B) are the property of the corporation; and

(C) are not considered transferred by the converting nonprofit corporation to the corporation by operation of this Subsection (7)(a). (ii) This Subsection (7)(a) applies to the following of the converting nonprofit corporation: (A) its rights, privileges, and powers; (B) its interests in property, whether real, personal, or mixed; (C) debts due to the converting nonprofit corporation; (D) the debts, liabilities, and duties of the converting nonprofit corporation; (E) the rights and obligations under contract of the converting nonprofit corporation; and (F) other things and causes of action belonging to the converting nonprofit corporation. (b) The title to any real property vested by deed or otherwise in a nonprofit corporation converting to a corporation does not revert and is not in any way impaired by reason of this chapter or of the conversion. (c) A right of a creditor or a lien on property of a converting nonprofit corporation that is described in Subsection (6)(a) or (b) is preserved unimpaired. (d) A debt, liability, or duty of a converting nonprofit corporation: (i) remains attached to the corporation to which the nonprofit corporation converts; and (ii) may be enforced against the corporation to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation in its capacity as a corporation. (e) A converted nonprofit corporation upon conversion to a corporation pursuant to this section is considered the same entity as the corporation. (f) In connection with a conversion of a nonprofit corporation to a corporation under this section, the interests or rights in the nonprofit corporation which is to be converted may be exchanged or converted into one or more of the following: (i) cash, property, interests, or rights in the corporation to which it is converted; or (ii) cash, property or interests in, or rights in another entity. (g) Unless otherwise agreed: (i) a converting nonprofit corporation is not required solely as a result of the conversion to: (A) wind up its affairs; (B) pay its liabilities; or (C) distribute its assets; and (ii) a conversion is not considered to constitute a dissolution of the nonprofit corporation, but constitutes a continuation of the existence of the nonprofit corporation in the form of a corporation.

#### **16-6a-1105. Merger with foreign nonprofit corporation.**

(1) One or more domestic nonprofit corporations may merge with one or more foreign nonprofit corporations if:

(a) the merger is permitted by the law of the state or country under whose law each foreign nonprofit corporation is incorporated;

(b) each foreign nonprofit corporation complies with the provisions of the law described in Subsection (1)(a) in effecting the merger;

(c) if the foreign nonprofit corporation is the surviving nonprofit corporation of the merger, the foreign nonprofit corporation:

(i) complies with Section 16-6a-1103; and

(ii) in addition to the information required by Section 16-6a-1103, provides the address of its principal office; and

(d) each domestic nonprofit corporation complies with:

(i) the applicable provisions of Sections 16-6a-1101 and 16-6a-1102; and

(ii) if it is the surviving nonprofit corporation of the merger, with Section 16-6a-1103.

(2) Upon the merger taking effect, a surviving foreign nonprofit corporation of a merger may be served with process in any proceeding brought against it as provided in Section 16-17-301.

(3) Service effected pursuant to Subsection (2) is perfected at the earliest of:

(a) the date the foreign nonprofit corporation receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the foreign nonprofit corporation;

or

(c) five days after mailing.

(4) Subsection (2) does not prescribe the only means, or necessarily the required means, of serving a surviving foreign nonprofit corporation of a merger.

**16-6a-1301. Distributions prohibited.**

Except as authorized by Section **16-6a-1302**, a nonprofit corporation may not make a distribution.

**16-6a-1601. Corporate records.**

- (1) A nonprofit corporation shall keep as permanent records:
  - (a) minutes of all meetings of its members and board of directors;
  - (b) a record of all actions taken by the members or board of directors without a meeting;
  - (c) a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the nonprofit corporation; and
  - (d) a record of all waivers of notices of meetings of members and of the board of directors or any committee of the board of directors.
- (2) A nonprofit corporation shall maintain appropriate accounting records.
- (3) A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members:
  - (a) in alphabetical order, by class; and
  - (b) showing the number of votes each member is entitled to vote.
- (4) A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:
  - (a) its articles of incorporation;
  - (b) its bylaws;
  - (c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
  - (d) the minutes of all members' meetings for a period of three years;
  - (e) records of all action taken by members without a meeting, for a period of three years;
  - (f) all written communications to members generally as members for a period of three years;
  - (g) a list of the names and business or home addresses of its current directors and officers;
  - (h) a copy of its most recent annual report delivered to the division under Section **16-6a-1607**;and
  - (i) all financial statements prepared for periods ending during the last three years that a member could have requested under Section **16-6a-1606**.

**16-6a-1604. Court-ordered inspection of corporate records.**

- (1) (a) A director or member may petition the applicable court if:
  - (i) a nonprofit corporation refuses to allow a director or member, or the director's or member's agent or attorney, to inspect or copy any records that the director or member is entitled to inspect or copy under Subsection **16-6a-1602(1)**; and
  - (ii) the director or member complies with Subsection **16-6a-1602(1)**.
- (b) If petitioned under Subsection (1)(a), the court may summarily order the inspection or copying of the records demanded at the nonprofit corporation's expense on an expedited basis.
- (2) (a) A director or member may petition the applicable court if:
  - (i) a nonprofit corporation refuses to allow a director or member, or the director's or member's agent or attorney, to inspect or copy any records that the director or member is entitled to inspect or copy pursuant to Subsections **16-6a-1602(2)** and (3) within a reasonable time following the director's or member's demand; and
  - (ii) the director or member complies with Subsections **16-6a-1602(2)** and (3).
- (b) If the court is petitioned under Subsection (2)(a), the court may summarily order the inspection or copying of the records demanded.

(3) If a court orders inspection or copying of the records demanded under Subsection (1) or (2), unless the nonprofit corporation proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the director or member, or the director's or member's agent or attorney, to inspect or copy the records demanded:

(a) the court shall also order the nonprofit corporation to pay the director's or member's costs, including reasonable counsel fees, incurred to obtain the order;

(b) the court may order the nonprofit corporation to pay the director or member for any damages the member incurred;

(c) if inspection or copying is ordered pursuant to Subsection (2), the court may order the nonprofit corporation to pay the director's or member's inspection and copying expenses; and

(d) the court may grant the director or member any other remedy provided by law.

(4) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding director or member.

(5) For purposes of this section, the applicable court is:

(a) the district court of the county in this state where the nonprofit corporation's principal office is located; or

(b) if the nonprofit corporation has no principal office in this state, the district court in and for Salt Lake County.

**16-6a-1605. Limitations on use of membership list.**

(1) Without consent of the board of directors, a membership list or any part of a membership list may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of Subsection (1), without the consent of the board of directors, a membership list or any part of a membership list may not be:

(a) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation;

(b) used for any commercial purpose; or

(c) sold to or purchased by any person.