Nonprofit Corporations

ARTICLE 121

General Provisions - Nonprofit Corporations

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PART 1

SHORT TITLE AND RESERVATION OF POWER

7-121-101. Short title.

Articles 121 to 137 of this title shall be known and may be cited as the "Colorado Revised Nonprofit Corporation Act".

Source: L. 97: Entire article added, p. 646, § 3, effective July 1, 1998.

ANNOTATION

Annotator's note. Since § 7-121-101 is similar to § 7-20-101 as it existed prior to the 1997 recodification of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, a case construing that provision has been included in the annotations to this section.

A school building authority created as a nonprofit pursuant to this section was not

a governmental entity, nor did it possess the requisite authority to file a Chapter 9 petition in bankruptcy. In Re Ellicott Sch. Bldg. Auth., 150 B.R. 261 (Bankr. D. Colo. 1992).

7-121-102. Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of articles 121 to 137 of this title at any time and all domestic and foreign nonprofit corporations subject to said articles shall be governed by the amendment or repeal.

Source: L. 97: Entire article added, p. 646, § 3, effective July 1, 1998.

PART 2

FILING DOCUMENTS

Editor's note: This article was added in 1997, and this part 2 was subsequently repealed and reenacted in 2003, effective July 1, 2004, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 2004, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

7-121-201. Filing requirements.

Part 3 of article 90 of this title, providing for the filing of documents, applies to any document filed or to be filed by the secretary of state pursuant to articles 121 to 137 of this title.

Source: L. 2003: Entire part R&RE, p. 2332, § 279, effective July 1, 2004.

PART 3

SECRETARY OF STATE

7-121-301. Powers - repeal. (Repealed)

Source: L. 97: Entire article added, p. 652, § 3, effective July 1, 1998. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: (1) This article was added in 1997. This part 3 was subsequently repealed in 2003, effective July 1, 2004, and was not amended prior to its repeal. For the text of this part 3 prior to 2004, consult the 2003 Colorado Revised Statutes.

(2) Subsection (2) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

PART 4

DEFINITIONS

7-121-401. General definitions.

As used in articles 121 to 137 of this title 7, unless the context otherwise requires:

(1) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(2) "Articles of incorporation" includes amended articles of incorporation, restated articles of incorporation, and other instruments, however designated, on file in the records of the secretary of state that have the effect of amending or supplementing in some respect the original or amended articles of incorporation, and shall also include:

(a) For a corporation created by special act of the general assembly or pursuant to general law, which corporation has elected to accept the provisions of articles 121 to 137 of this title, the special charter and any amendments thereto made by special act of the general assembly or pursuant to general law prior to the corporation's election to accept the provisions of said articles;

(b) For a corporation formed or incorporated under article 40, 50, or 51 of this title, which corporation has elected to accept the provisions of articles 121 to 137 of this title, the certificate of incorporation or affidavit and any amendments thereto made prior to the corporation's election to accept the provisions of said articles.

(3) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(4) "Board of directors" means the body authorized to manage the affairs of the domestic or foreign nonprofit corporation; except that no person or group of persons are the board of directors because of powers delegated to that person or group of persons pursuant to section 7-128-101 (2).

(5) "Bylaws" means the code or codes of rules, other than the articles of incorporation, adopted pursuant to articles 121 to 137 of this title for the regulation or management of the affairs of the domestic or foreign nonprofit corporation irrespective of the name or names by which such rules are designated, and includes amended bylaws and restated bylaws.

(6) "Cash" and "money" are used interchangeably in articles 121 to 137 of this title. Each of these terms includes:

(a) Legal tender;

(b) Negotiable instruments readily convertible into legal tender; and

(c) Other cash equivalents readily convertible into legal tender.

(7) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption, and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly to a group of memberships.

(8) (Deleted by amendment, L. 2000, p. 982, § 76, effective July 1, 2000.)

(9) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of articles 101 to 117 of this title.

(10) "Delegate" means any person elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(11) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(12) "Director" means a member of the board of directors.

(13) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(14) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(15) "Effective date of notice" has the meaning set forth in section 7-121-402.

(16) "Employee" includes an officer but not a director; except that a director may accept duties that make said director also an employee.

(16.5) "Entrance fee" means any fee or charge, including a damage deposit, paid by a person to a residential nonprofit corporation in order to become a resident member. "Entrance fee" does not include regular periodic payments for the purchase or lease of residential real estate or for the day-to-day use of facilities or services.

(17) to (20) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(21) "Internal revenue code" means the federal "Internal Revenue Code of 1986", as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

(22) and (23) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(24) "Member" means any person or persons identified as such in the articles of incorporation or bylaws pursuant to a procedure stated in the articles of incorporation or bylaws or by a resolution of the board of directors. The term "member" includes "voting member" and a stockholder in a cooperative housing corporation formed pursuant to section 38-33.5-101, C.R.S.

(25) "Membership" refers to the rights and obligations of a member or members.

(25.5) "Mutual ditch company" means a nonprofit corporation that complies with article 42 of this title.

(26) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity, which is not a foreign nonprofit corporation, incorporated under or subject to the provisions of articles 121 to 137 of this title.

(27) to (29) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(30) "Receive", when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means that the writing or other document is actually received:

(a) By the domestic or foreign nonprofit corporation at its registered office or at its principal office;

(b) By the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or

(c) By any other person authorized by the bylaws or the board of directors to receive such writings, wherever such person is found.

(31) "Record date" means the date, established under article 127 of this title, on which a nonprofit corporation determines the identity of its members. The determination shall be made as of the close of business on the record date unless another time for doing so is stated when the record date is fixed.

(32) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(32.5) "Residential member" means a member of a residential nonprofit corporation whose status as a member is dependent upon, or whose membership is accorded voting rights as a result of, owning or leasing specified residential real estate.

(33) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(33.5) (a) Except as otherwise provided in paragraph (b) of this subsection (33.5), "residential nonprofit corporation" means a nonprofit corporation that has residential members.

(b) Notwithstanding subsection (33.5)(a) of this section, "residential nonprofit corporation" does not include:

(I) A unit owners' association or any other entity subject to the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., regardless of whether it was formed before, on, or after July 1, 1992;

(II) A nursing care facility licensed by the department of public health and environment under section 25-3-101, C.R.S.;

(III) An assisted living residence licensed under section 25-3-101, C.R.S.;

(IV) A life care institution regulated under article 49 of title 11; or

(V) A continuing care retirement community, as described in section 25.5-4-402.4 (4.5)(d)(II)(A), operated by an entity that is licensed or otherwise subject to state regulation.

(34) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under section 7-128-301 (3) for the preparation and maintenance of minutes of the meetings of the board of directors and of the members and of the other records and information required to be kept by the nonprofit corporation under section 7-136-101 and for authenticating records of the nonprofit corporation.

(35) to (37) (Deleted by amendment, L. 2003, p. 2332, § 280, effective July 1, 2004.)

(38) "Vote" includes authorization by written ballot and written consent.

(39) "Voting group" means all the members of one or more classes of members or directors that, under articles 121 to 137 of this title or the articles of incorporation or bylaws, are entitled to vote and be counted together collectively on a matter. All members or directors entitled by articles 121 to 137 of this title or the articles of incorporation or bylaws to vote generally on the matter are for that purpose a single voting group.

(40) "Voting member" means any person or persons who on more than one occasion, pursuant to a provision of a nonprofit corporation's articles of incorporation or bylaws, have the right to vote for the election of a director or directors. A person is not a voting member solely by virtue of any of the following:

(a) Any rights such person has as a delegate;

(b) Any rights such person has to designate a director or directors; or

(c) Any rights such person has as a director.

Source: L. 97: Entire article added, p. 652, § 3, effective July 1, 1998. **L. 98:** (24) amended, p. 622, § 24, effective July 1. **L. 2000:** (3) and (8) amended, p. 982, § 76, effective July 1. **L. 2002:** (14) amended, p. 1859, § 158, effective July 1; (14) amended, p. 1719, § 132, effective October 1. **L. 2003:** (1), (2)(b), (3), (11), (14), (17), (18), (19), (20), (22), (23), (24), (27), (28), (29), (31),

(32), (33), (34), (35), (36), and (37) amended, p. 2332, § 280, effective July 1, 2004. **L. 2004:** IP(2) amended, p. 1509, § 290, effective July 1. **L. 2006:** IP(2) amended and (25.5) added, p. 881, §§ 77, 78, effective July 1. **L. 2011:** (16.5), (32.5), and (33.5) added, (HB 11-1110), ch. 22, p. 54, § 1, effective March 11. **L. 2017:** IP, IP(33.5)(b), and (33.5)(b)(IV) amended, (SB 17-226), ch. 159, p. 588, § 3, effective August 9. **L. 2025:** (33.5)(b)(V) amended, (SB 25-270), ch. 151, p. 604, § 10, effective May 1.

Cross references: For additional definitions applicable to this article, see § 7-90-102.

ANNOTATION

Annotator's note. Since § 7-121-401 is similar to § 7-20-102 as it existed prior to the 1997 recodification of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, a case construing that provision has been included in the annotations to this section.

To determine whether a corporation is "nonprofit", the basic question to be answered is whether the corporation is being exploited for direct monetary gain. People ex rel. Meiresonne v. Arnold, 37 Colo. App. 414, 553 P.2d 79 (1976).

7-121-402. Notice.

(1) Notice given pursuant to articles 121 to 137 of this title shall be in writing unless otherwise provided in the bylaws.

(2) Notice may be given in person; by telephone, telegraph, teletype, electronically transmitted, or other form of wire or wireless communication; or by mail or private carrier. The bylaws may provide that if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published.

(3) Written notice by a nonprofit corporation to its members, if mailed, is correctly addressed if addressed to the member's address shown in the nonprofit corporation's current record of members. If three successive notices given to a member pursuant to subsection (5) of this section have been returned as undeliverable, no further notices to such member shall be necessary until another address for the member is made known to the nonprofit corporation.

(4) Written notice to a domestic nonprofit corporation or to a foreign nonprofit corporation authorized to transact business or conduct activities in this state, other than in its capacity as a member, is correctly addressed if addressed to the registered agent address of its registered agent or to the domestic or foreign nonprofit corporation or its secretary at its principal office.

(5) Written notice by a nonprofit corporation to its members, if in a comprehensible form, is effective at the earliest of:

(a) The date received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with first-class postage affixed;

(c) The date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(d) Thirty days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with other than first-class, registered, or certified postage affixed.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) Notice by publication is effective on the date of first publication.

(8) If articles 121 to 137 of this title prescribe notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of articles 121 to 137 of this title, those requirements govern.

(9) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the nonprofit corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the nonprofit corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

Source: L. 97: Entire article added, p. 657, § 3, effective July 1, 1998. **L. 2000:** (4) amended, p. 982, § 77, effective July 1. **L. 2003:** (4) amended, p. 2335, § 281, effective July 1, 2004.

PART 5

PRIVATE FOUNDATIONS

7-121-501. Private foundations.

(1) Except where otherwise determined by a court of competent jurisdiction, a nonprofit corporation that is a private foundation as defined in section 509 (a) of the internal revenue code:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the nonprofit corporation to tax under section 4942 of the internal revenue code;

(b) Shall not engage in any act of self-dealing as defined in section 4941 (d) of the internal revenue code;

(c) Shall not retain any excess business holdings as defined in section 4943 (c) of the internal revenue code;

(d) Shall not make any investments that would subject the nonprofit corporation to taxation under section 4944 of the internal revenue code;

(e) Shall not make any taxable expenditures as defined in section 4945 (d) of the internal revenue code.

Source: L. 97: Entire article added, p. 658, § 3, effective July 1, 1998. **L. 98:** (1)(d) amended, p. 623, § 25, effective July 1.

PART 6

JUDICIAL RELIEF

7-121-601. Judicial relief.

(1) If for any reason it is impractical or impossible for any nonprofit corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by articles 121 to 137 of this title, its articles of incorporation, or bylaws, then upon petition of a director, officer, delegate, or member the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located, or if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located, or if the nonprofit corporation has no registered agent, the district court for the city and county of Denver, may order that such a meeting be called or that a written consent or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to articles 121 to 137 of this title, the articles of incorporation, or bylaws and whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by articles 121 to 137 of this title, the articles of incorporation, or bylaws.

(4) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles of incorporation or bylaws, the resolution of which will or may enable the nonprofit corporation to continue managing its affairs without further resort to this section; except that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section and that complies with all the provisions of such order is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by articles 121 to 137 of this title, the articles of incorporation, or bylaws.

(6) Court ordered meetings may also be held pursuant to section 7-127-103.

Source: L. 97: Entire article added, p. 659, § 3, effective July 1, 1998. **L. 2003:** (1) amended, p. 2335, § 282, effective July 1, 2004.

ANNOTATION

This section is not a substitute for a declaratory judgment. The purpose of relief under this section is to extricate the corporation from an impasse and enable the corporation to amend its governing instruments so as to avert future impasses without further resort to the statute. Bd. of Dirs. of the Alpaca Owners & Breeders Ass'n v. Clang, 80 P.3d 945 (Colo. App. 2003).

ARTICLE 122

Incorporation

7-122-101. Incorporators.
7-122-102. Articles of incorporation.
7-122-103. Incorporation.
7-122-104. Unauthorized assumption of corporate powers.
7-122-105. Organization of nonprofit corporation.

7-122-106. Bylaws. 7-122-107. Emergency bylaws.

7-122-101. Incorporators.

One or more persons may act as the incorporator or incorporators of a nonprofit corporation by delivering articles of incorporation to the secretary of state for filing pursuant to part 3 of article 90 of this title. An incorporator who is an individual shall be eighteen years of age or older.

Source: L. 97: Entire article added, p. 660, § 3, effective July 1, 1998. **L. 2002:** Entire section amended, p. 1854, § 132, effective July 1; entire section amended, p. 1719, § 133, effective October 1. **L. 2004:** Entire section amended, p. 1510, § 291, effective July 1.

7-122-102. Articles of incorporation.

(1) The articles of incorporation shall state:

(a) The domestic entity name for the nonprofit corporation, which domestic entity name shall comply with part 6 of article 90 of this title;

(b) The registered agent name and registered agent address of the nonprofit corporation's initial registered agent;

(c) The principal office address of the nonprofit corporation's initial principal office;

(d) The true name and mailing address of each incorporator;

(e) Whether or not the nonprofit corporation will have voting members; and

(f) Repealed.

(g) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may but need not state:

(a) The names and addresses of the individuals who are elected to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(I) The purpose or purposes for which the nonprofit corporation is incorporated;

(II) Managing and regulating the affairs of the nonprofit corporation;

(III) Defining, limiting, and regulating the powers of the nonprofit corporation, its board of directors, and its members, or any class of members; and

(IV) Whether cumulative voting will be permitted;

(c) Any provision that under articles 121 to 137 of this title is required or permitted to be stated in the bylaws;

(d) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

(3) The articles of incorporation need not state any of the corporate powers enumerated in articles 121 to 137 of this title.

(4) If articles 121 to 137 of this title condition any matter upon the presence of a provision in the bylaws, the condition is satisfied if such provision is present either in the articles of incorporation or the bylaws. If articles 121 to 137 of this title condition any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both the articles of incorporation and the bylaws.

Source: L. 97: Entire article added, p. 660, § 3, effective July 1, 1998. **L. 2000:** (1)(a) amended, p. 982, § 78, effective July 1. **L. 2002:** (1)(f) repealed p. 1854, § 133, effective July 1; (1)(f) repealed, p. 1719, § 134, effective October 1. **L. 2003:** IP(1), (1)(a), (1)(b), (1)(c), IP(2), (2)(c), and (3) amended, p. 2335, § 283, effective July 1, 2004. **L. 2004:** (1)(d) and (2)(a) amended, p. 1510, § 292, effective July 1. **L. 2006:** (2)(a) amended, p. 881, § 79, effective July 1.

ANNOTATION

Law reviews. For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988). For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988).

7-122-103. Incorporation.

(1) A nonprofit corporation is incorporated when the articles of incorporation are filed by the secretary of state or, if a delayed effective date is stated pursuant to section 7-90-304 in the articles of incorporation as filed by the secretary of state and if a statement of change revoking the articles of incorporation is not filed before such effective date, on such delayed effective date. The corporate existence begins upon incorporation.

(2) The secretary of state's filing of the articles of incorporation is conclusive that all conditions precedent to incorporation have been met.

Source: L. 97: Entire article added, p. 661, § 3, effective July 1, 1998. **L. 2002:** (1) amended, p. 1859, § 159, effective July 1; (1) amended, pp. 1719, 1724, §§ 135, 158, effective October 1. **L. 2003:** (1) amended, p. 2336, § 284, effective July 1, 2004. **L. 2004:** (1) amended, p. 1510, § 293, effective July 1.

ANNOTATION

Action filed by nonexistent corporation is a nullity. A nonprofit corporation's lawsuit is void ab initio when it was filed after the secretary of state rejected the corporation's articles of incorporation but before the secretary of state accepted and filed amended articles. Black Canyon Citizens Coalition, Inc. v. Bd. of County Comm'rs of Montrose County, 80 P.3d 932 (Colo. App. 2003).

7-122-104. Unauthorized assumption of corporate powers.

All persons purporting to act as or on behalf of a nonprofit corporation without authority to do so and without good-faith belief that they have such authority shall be jointly and severally liable for all liabilities incurred or arising as a result thereof.

Source: L. 97: Entire article added, p. 661, § 3, effective July 1, 1998.

ANNOTATION

Annotator's note. Since § 7-122-104 is similar to § 7-20-106 as it existed prior to the 1997 recodification of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, a case construing that provision has been included in the annotations to this section.

Directors of dissolved corporation were not statutorily liable for negligent acts of employee where the directors had no knowledge of the dissolved status of the corporation at the time of plaintiff's accident. Sims v. Ottenhoff, 879 P.2d 436 (Colo. App. 1994).

7-122-105. Organization of nonprofit corporation.

(1) After incorporation:

(a) If initial directors are not named in the articles of incorporation, the incorporators shall hold a meeting, at the call of a majority of the incorporators, to adopt initial bylaws, if desired, and to elect a board of directors; and

(b) If initial directors are named in the articles of incorporation, the initial directors shall hold a meeting, at the call of a majority of the directors, to adopt bylaws, if desired, to appoint officers, and to carry on any other business.

(2) Action required or permitted by articles 121 to 137 of this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action is taken in the manner provided in section 7-128-202 for action by directors without a meeting.

(3) An organizational meeting may be held in or out of this state.

Source: L. 97: Entire article added, p. 662, § 3, effective July 1, 1998.

7-122-106. Bylaws.

(1) The board of directors or, if no directors have been named or elected, the incorporators may adopt initial bylaws. If neither the incorporators nor the board of directors have adopted initial bylaws, the members may do so.

(2) The bylaws of a nonprofit corporation may contain any provision for managing and regulating the affairs of the nonprofit corporation that is not inconsistent with law or with the articles of incorporation.

Source: L. 97: Entire article added, p. 662, § 3, effective July 1, 1998.

ANNOTATION

A nonprofit corporation may alter the default structure set forth in the Nonprofit Corporation Act (NCA) through its articles of incorporation or bylaws, and it may provide different or additional rights and obligations to its members. Krystkowiak v. W.O. Brisben Cos., 90 P.3d 859 (Colo. 2004).

Default structure established by the NCA controls, and the signature of settlement agreement with respondent real estate developer by one member of neighborhood association, its president, insufficient to bind its members, including petitioner. The articles of incorporation and bylaws of the neighborhood association do not deviate from the NCA in terms of the rights and duties of its members. The articles of incorporation and bylaws contain no provisions either binding a member by a contract signed by the neighborhood association or stating that the association's members have authorized it to represent their individual interests. Krystkowiak v.

W.O. Brisben Cos., 90 P.3d 859 (Colo. 2004).

7-122-107. Emergency bylaws.

(1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt bylaws to be effective only in an emergency as defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may include all provisions necessary for managing the nonprofit corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws shall remain in effect during the emergency. The emergency bylaws shall not be effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the nonprofit corporation; and

(b) May not be the basis for imposition of liability on any director, officer, employee, or agent of the nonprofit corporation on the ground that the action was not authorized corporate action.

(4) An emergency exists for the purposes of this section if a quorum of the directors cannot readily be obtained because of some catastrophic event.

Source: L. 97: Entire article added, p. 662, § 3, effective July 1, 1998.

ARTICLE 123

Purposes and Powers

7-123-101. Purposes and applicability.
7-123-102. General powers.
7-123-103. Emergency powers.
7-123-104. Ultra vires.
7-123-105. Actions against nonprofit corporations.

7-123-101. Purposes and applicability.

(1) Every nonprofit corporation incorporated under articles 121 to 137 of this title has the purpose of engaging in any lawful business or activity unless a more limited purpose is stated in the articles of incorporation.

(2) Where another statute of this state requires that corporations of a particular class be formed or incorporated exclusively under that statute, corporations of that class shall be formed or incorporated under such other statute. The corporation shall be subject to all limitations of the other statute.

(3) Where another statute of this state requires nonprofit corporations of a particular class to be formed or incorporated under that statute and also under general nonprofit corporation statutes, such nonprofit corporations shall be formed or incorporated under such other statute and, in addition thereto, under articles 121 to 137 of this title to the extent general nonprofit corporation law is applicable.

(4) Where another statute of this state permits nonprofit corporations of a particular class to be formed or incorporated either under that statute or under the general nonprofit corporation statutes, a nonprofit corporation of that class may at the election of its incorporators be formed or incorporated under articles 121 to 137 of this title. Unless the articles of incorporation of a nonprofit corporation indicate that it is formed or incorporated under another statute, the nonprofit corporation shall for all purposes be considered as formed and incorporated under articles 121 to 137 of this title.

(5) Articles 121 to 137 of this title shall apply to nonprofit corporations of every class, whether or not included in the term "nonprofit corporation" as defined in section 7-121-401 (26), that are formed or incorporated under and governed by other statutes of this state to the extent that said articles are not inconsistent with such other statutes.

(6) Articles 121 to 137 of this title shall apply to any nonprofit corporation formed prior to January 1, 1968, under article 40 or 50 of this title without shares or capital stock and for a purpose for which a nonprofit corporation might be formed under articles 121 to 137 of this title and that elects to accept said articles as provided therein.

(7) Articles 121 to 137 of this title shall apply to any corporation having shares or capital stock and formed under article 40, 50, or 51 of this title, and each nonprofit corporation whether with or without shares or capital stock formed prior to January 1, 1968, under general law or created by special act of the general assembly for a purpose for which a nonprofit corporation may be formed under articles 121 to 137 of this title, but not otherwise entitled to the rights, privileges, immunities, and franchises provided by said articles that elects to accept said articles as provided therein.

(8) A mutual ditch company may elect by a statement in its articles of incorporation that one or more of the provisions of the "Colorado Business Corporation Act", articles 101 to 117 of this title, apply to the mutual ditch company in lieu of one or more of the provisions of articles 121 to 137 of this title.

Source: L. 97: Entire article added, p. 663, § 3, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2336, § 285, effective July 1, 2004. **L. 2006:** (8) added, p. 882, § 80, effective July 1. **L. 2007:** (8) amended, p. 249, § 50, effective May 29.

7-123-102. General powers.

(1) Unless otherwise provided in the articles of incorporation, every nonprofit corporation has perpetual duration and succession in its domestic entity name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including the power:

(a) To sue and be sued, complain, and defend in its name;

(b) To have a corporate seal, which may be altered at will, and to use such seal, or a facsimile thereof, including a rubber stamp, by impressing or affixing it or by reproducing it in any other manner;

(c) To make and amend bylaws;

(d) To purchase, receive, lease, and otherwise acquire, and to own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;

(e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) To purchase, receive, subscribe for, and otherwise acquire shares and other interests in, and obligations of, any other entity; and to own, hold, vote, use, sell, mortgage, lend, pledge, and otherwise dispose of, and deal in and with, the same;

(g) To make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment; except that a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the nonprofit corporation;

(i) To be an agent, an associate, a fiduciary, a manager, a member, a partner, a promoter, or a trustee of, or to hold any similar position with, any entity;

(j) To conduct its activities, locate offices, and exercise the powers granted by articles 121 to 137 of this title within or without this state;

(k) To elect or appoint directors, officers, employees, and agents of the nonprofit corporation, define their duties, and fix their compensation;

(l) To pay pensions and establish pension plans, pension trusts, profit sharing plans, and other benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(m) To make donations for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(n) To impose dues, assessments, admission, and transfer fees upon its members;

(o) To establish conditions for admission of members, admit members, and issue or transfer memberships;

(p) To carry on a business;

(q) To make payments or donations and to do any other act, not inconsistent with law, that furthers the affairs of the nonprofit corporation;

(r) To indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in article 129 of this title;

(s) To limit the liability of its directors as provided in section 7-128-402 (1); and

(t) To cease its corporate activities and dissolve.

(2) Unless permitted by another statute of this state or otherwise permitted pursuant to section 7-123-101 (5), 7-123-101 (7), or 7-137-201, a nonprofit corporation shall not authorize or issue shares of stock.

Source: L. 97: Entire article added, p. 664, § 3, effective July 1, 1998. **L. 2000:** IP(1) and (1)(a) amended, p. 983, § 79, effective July 1. **L. 2003:** IP(1) amended, p. 2337, § 286, effective July 1, 2004. **L. 2004:** (1)(a) amended, p. 1510, § 294, effective July 1.

ANNOTATION

Law reviews. For article, "Corporate Director Liability", see 65 Den. U. L. Rev.

59 (1988). For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988).

Annotator's note. Since § 7-123-102 is similar to § 7-22-101 as it existed prior to the 1997 recodification of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, a case construing that provision has been included in the annotations to this section.

Charter school retains status as a public school even if organized as a nonprofit corporation. Standing to sue as a nonprofit corporation under this section is precluded by § 22-30.5-104 (4), which grants that "while a charter school 'may' organize as a nonprofit corporation, this 'shall not affect its status as a public school for any purposes under Colorado law.'" Therefore, plaintiff charter school lacked standing to sue school district under this section. Dolores Huerta Prep. High v. Colo. State Bd. of Educ., 215 P.3d 1229 (Colo. App. 2009).

Applied in People ex rel. Meiresonne v. Arnold, 37 Colo. App. 414, 553 P.2d 79 (1976).

7-123-103. Emergency powers.

(1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office or designate additional offices, or authorize officers to do so.

(2) During an emergency as contemplated in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication or radio; and

(b) One or more officers of the nonprofit corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the nonprofit corporation:

(a) Binds the nonprofit corporation; and

(b) May not be the basis for the imposition of liability on any director, officer, employee, or agent of the nonprofit corporation on the ground that the action was not authorized corporate action.

(4) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of some catastrophic event.

Source: L. 97: Entire article added, p. 665, § 3, effective July 1, 1998. **L. 2003:** (1)(b) amended, p. 2337, § 287, effective July 1, 2004.

7-123-104. Ultra vires.

(1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.

(2) A nonprofit corporation's power to act may be challenged:

(a) In a proceeding against the nonprofit corporation to enjoin the act. The proceeding may be brought by a director or by a voting member or voting members in a derivative proceeding.

(b) In a proceeding by or in the right of the nonprofit corporation, whether directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the nonprofit corporation; or

(c) In a proceeding by the attorney general under section 7-134-301.

(3) In a proceeding under paragraph (a) of subsection (2) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if it would be equitable to do so and if all affected persons are parties to the proceeding, and may award damages for loss, including anticipated profits, suffered by the nonprofit corporation or another party because of the injunction.

Source: L. 97: Entire article added, p. 666, § 3, effective July 1, 1998.

ANNOTATION

Annotator's note. Since § 7-123-104 is similar to § 7-22-102 as it existed prior to the 1997 recodification of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, a case construing that provision has been included in the annotations to this section.

Ultra vires is not a defense under this section to an injunctive action. Am. Ski Ass'n v. Bergstedt, 682 P.2d 57 (Colo. App. 1984).

Court has the authority under subsection (2)(a) to enjoin a board of directors of a homeowners' association from

conducting a meeting in violation of its bylaws. Anderson v. Applewood Water Ass'n, 2016 COA 162, 409 P.3d 611.

7-123-105. Actions against nonprofit corporations.

Any other provision of law to the contrary notwithstanding, any civil action permitted under the law of this state may be brought against any nonprofit corporation, and the assets of any nonprofit corporation that would, but for articles 121 to 137 of this title, be immune from levy and execution on any judgment shall nonetheless be subject to levy and execution to the extent that such nonprofit corporation would be reimbursed by proceeds of liability insurance policies carried by it were judgment levied and executed against its assets.

Source: L. 97: Entire article added, p. 667, § 3, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2337, § 288, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "The Homeowner Protection Act Charitable Organization Exemption", see 53 Colo. Law. 20 (Nov. 2024).

The existence and amount of a nonprofit or charitable defendant's liability insurance provides no basis for limiting a judgment against the defendant. The issue of liability insurance is relevant only when a plaintiff seeks to levy and execute on a judgment. Wycoff v. Grace Cmty. Church, 251 P.3d 1260 (Colo. App. 2010).

ARTICLE 124

Name

7-124-101. Corporate name. (Repealed)

Source: L. 97: Entire article added, p. 667, § 3, effective July 1, 1998. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-124-102. Reserved name. (Repealed)

Source: L. 97: Entire article added, p. 668, § 3, effective July 1, 1998. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

ARTICLE 125

Office and Agent

7-125-101. Registered office and registered agent.

7-125-101. Registered office and registered agent.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to nonprofit corporations incorporated under or subject to articles 121 to 137 of this title.

Source: L. 2003: Entire article R&RE, p. 2337, § 289, effective July 1, 2004. **L. 2007:** Entire section amended, p. 249, § 51, effective May 29.

ARTICLE 126

Members and Memberships

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ADMISSION OF MEMBERS AND LIABILITY TO THIRD PARTIES

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7-126-301. Resignation.

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DERIVATIVE SUITS

7-126-401. Derivative suits.

PART 5
DELEGATES

7-126-501. Delegates.

PART 1

ADMISSION OF MEMBERS AND LIABILITY TO THIRD PARTIES

7-126-101. No requirement of members.

A nonprofit corporation is not required to have members.

Source: L. 97: Entire article added, p. 671, § 3, effective July 1, 1998.

7-126-102. Admission.

(1) The bylaws may establish criteria or procedures for admission of members.

(2) No person shall be admitted as a member without such person's consent.

(3) A nonprofit corporation may issue certificates evidencing membership therein.

Source: L. 97: Entire article added, p. 671, § 3, effective July 1, 1998.

7-126-103. Liability to third parties.

The directors, officers, employees, and members of a nonprofit corporation are not, as such, personally liable for the acts, debts, liabilities, or obligations of a nonprofit corporation.

Source: L. 97: Entire article added, p. 671, § 3, effective July 1, 1998.

ANNOTATION

Members of a nonprofit corporation may not be held liable for the corporation's tortious acts or breaches of contract merely by virtue of their membership or management authority in

the corporation. Krystkowiak v. W.O. Brisben Cos., 90 P.3d 859 (Colo. 2004).

Under the default governance structure of the Nonprofit Corporation Act (NCA), petitioner is not bound by agreement entered into by respondent real estate developer and neighborhood association of which petitioner was a member, and petitioner fits none of the enumerated exceptions to the general rule of limited liability of members of a nonprofit corporation for contracts entered into by the corporation. Petitioner did not treat the neighborhood association as his or her alter ego, nor did he or she owe money to it. Petitioner did not enter into a contract purporting to act as or on behalf of the neighborhood association, did not expressly become a party to the agreement, and specifically refused to sign it. Krystkowiak v. W.O. Brisben Cos., 90 P.3d 859 (Colo. 2004).

Default structure established by the NCA controls, and the signature of settlement agreement with respondent real estate developer by one member of neighborhood association, its president, insufficient to bind its members, including petitioner. The articles of incorporation and bylaws of the neighborhood association do not deviate from the NCA in terms of the rights and duties of its members. The articles of incorporation and bylaws contain no provisions either binding a member by a contract signed by the neighborhood association or stating that the association's members have authorized it to represent their individual interests. Krystkowiak v. W.O. Brisben Cos., 90 P.3d 859 (Colo. 2004).

7-126-104. Consideration.

Unless otherwise provided by the bylaws, a nonprofit corporation may admit members for no consideration or for such consideration as is determined by the board of directors.

Source: L. 97: Entire article added, p. 671, § 3, effective July 1, 1998.

PART 2

TYPES OF MEMBERSHIPS - MEMBERS' RIGHTS AND OBLIGATIONS

7-126-201. Differences in rights and obligations of members.

(1) Unless otherwise provided by articles 121 to 137 of this title or the bylaws:

(a) All voting members shall have the same rights and obligations with respect to voting and all other matters that articles 121 to 137 of this title specifically reserve to voting members; and

(b) With respect to matters not so reserved, all members, including voting members, shall have the same rights and obligations.

Source: L. 97: Entire article added, p. 671, § 3, effective July 1, 1998.

7-126-202. Transfers.

(1) Unless otherwise provided by the bylaws, no member of a nonprofit corporation may transfer a membership or any right arising therefrom.

(2) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the affected member.

Source: L. 97: Entire article added, p. 671, § 3, effective July 1, 1998.

7-126-203. Creditor's action against member.

No proceeding may be brought by a creditor to reach the liability, if any, of a member to the nonprofit corporation unless final judgment has been rendered in favor of the creditor against the nonprofit corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

Source: L. 97: Entire article added, p. 672, § 3, effective July 1, 1998.

PART 3

RESIGNATION AND TERMINATION

7-126-301. Resignation.

(1) Unless otherwise provided by the bylaws, a member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the nonprofit corporation as a result of obligations incurred or commitments made prior to resignation.

Source: L. 97: Entire article added, p. 672, § 3, effective July 1, 1998.

7-126-302. Termination, expulsion, or suspension.

(1) Unless otherwise provided by the bylaws, no member of a nonprofit corporation may be expelled or suspended, and no membership or memberships in such nonprofit corporation may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) For purposes of this section, a procedure is fair and reasonable when either:

(a) The bylaws or a written policy of the board of directors state a procedure that provides:

(I) Not less than fifteen days prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(II) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) For purposes of this section, any written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the nonprofit corporation's records.

(4) Unless otherwise provided by the bylaws, any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

(5) Unless otherwise provided by the bylaws, a member who has been expelled or suspended may be liable to the nonprofit corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

Source: L. 97: Entire article added, p. 672, § 3, effective July 1, 1998. **L. 2003:** IP(2)(a) amended, p. 2337, § 290, effective July 1, 2004.

ANNOTATION

Where the nonprofit corporation is a church, a civil court has no authority to reverse the church's decision, no matter how arbitrary or unfair, to expel a member. Levitt

v. Calvary Temple of Denver, 33 P.3d 1227 (Colo. App. 2001).

7-126-303. Purchase of memberships.

Unless otherwise provided by the bylaws, a nonprofit corporation shall not purchase the membership of a member who resigns or whose membership is terminated. If so authorized, a nonprofit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions stated in or authorized by its bylaws. No payment shall be made in violation of article 133 of this title.

Source: L. 97: Entire article added, p. 673, § 3, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2338, § 291, effective July 1, 2004.

7-126-304. Residential membership - return of consideration - cessation of periodic payments - time limits - effective date.

(1) Notwithstanding any provision of the articles of incorporation or bylaws to the contrary:

(a) (I) A residential nonprofit corporation shall refund the entrance fee of a residential member to the member or his or her heirs within ninety days after a transfer of the residential membership.

(II) (A) This paragraph (a) applies only to contracts entered into on or after March 11, 2011.

(B) (Deleted by amendment, L. 2012.)

(b) (Deleted by amendment, L. 2012.)

Source: L. 2011: Entire section added, (HB 11-1110), ch. 22, p. 55, § 2, effective March 11; (1)(a) amended, (HB 11-1324), ch. 268, p. 1222, § 1, effective June 2. **L. 2012:** (1) amended, (SB 12-024), ch. 39, p. 137, § 1, effective March 22.

PART 4

DERIVATIVE SUITS

7-126-401. Derivative suits.

(1) Without affecting the right of a member or director to bring a proceeding against a nonprofit corporation or its officers or directors, a proceeding may be brought in the right of a nonprofit corporation to procure a judgment in its favor by:

(a) Any voting member or voting members having five percent or more of the voting power; or

(b) Any director.

(2) In any such proceeding, each complainant shall be a voting member or director at the time of bringing the proceeding.

(3) A complaint in a proceeding brought in the right of a nonprofit corporation must be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the nonprofit corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(4) In any action instituted in the right of a nonprofit corporation by one or more voting members, the court having jurisdiction over the matter may, at any time before final judgment, require the plaintiff to give security for the costs and reasonable expenses that may be directly attributable to and incurred by the nonprofit corporation in the defense of such action or may be incurred by other parties named as defendant for which the nonprofit corporation may become legally liable, but not including fees of attorneys. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. If the court finds that the action was commenced without reasonable cause, the nonprofit corporation shall have recourse to such security in such amount as the court shall determine upon the termination of such action.

(5) No action shall be commenced in this state by a member of a foreign nonprofit corporation in the right of a foreign nonprofit corporation unless such action is permitted by the law of the state under which such foreign nonprofit corporation is incorporated.

Source: L. 97: Entire article added, p. 673, § 3, effective July 1, 1998. **L. 2003:** (5) amended, p. 2338, § 292, effective July 1, 2004.

PART 5

DELEGATES

7-126-501. Delegates.

(1) A nonprofit corporation may provide in its bylaws for delegates having some or all of the authority of members.

(2) The bylaws may state provisions relating to:

(a) The characteristics, qualifications, rights, limitations, and obligations of delegates, including their selection and removal;

(b) Calling, noticing, holding, and conducting meetings of delegates; and

(c) Carrying on corporate activities during and between meetings of delegates.

Source: L. 97: Entire article added, p. 674, § 3, effective July 1, 1998. **L. 2003:** IP(2) amended, p. 2338, § 293, effective July 1, 2004.

ARTICLE 127

Members' Meetings and Voting

PART 1
MEETINGS

7-127-101. Annual and regular meetings.
7-127-102. Special meeting.
7-127-103. Court-ordered meeting.
7-127-104. Notice of meeting.
7-127-105. Waiver of notice.
7-127-106. Record date - determining members entitled to notice and vote.
7-127-107. Action without meeting.
7-127-108. Meetings by telecommunication.
7-127-109. Action by written ballot.

PART 2
VOTING

7-127-201. Members list for meeting and action by written ballot.
7-127-202. Voting entitlement generally.
7-127-203. Proxies.
7-127-204. Nonprofit corporation's acceptance of votes.
7-127-205. Quorum and voting requirements for voting groups.

7-127-206. Action by single and multiple voting groups.

7-127-207. Lesser or greater quorum or greater voting requirements.

7-127-208. Voting for directors - cumulative voting.

7-127-209. Other methods of electing directors.

PART 3
VOTING AGREEMENTS

7-127-301. Voting agreements.

PART 1

MEETINGS

7-127-101. Annual and regular meetings.

(1) Unless the bylaws eliminate the requirement for holding an annual meeting, a nonprofit corporation that has voting members shall hold a meeting of the voting members annually at a time stated in or fixed in accordance with the bylaws, or, if not so fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(2) A nonprofit corporation with members may hold regular membership meetings at a time and date stated in or fixed in accordance with the bylaws, or, if not so fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(3) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, annual and regular meetings shall be held at the nonprofit corporation's principal office.

(4) The failure to hold an annual or regular meeting at the time and date determined pursuant to subsection (1) of this section does not affect the validity of any corporate action and does not work a forfeiture or dissolution of the nonprofit corporation.

Source: L. 97: Entire article added, p. 674, § 3, effective July 1, 1998.

7-127-102. Special meeting.

(1) A nonprofit corporation shall hold a special meeting of its members:

(a) On call of its board of directors or the person or persons authorized by the bylaws or resolution of the board of directors to call such a meeting; or

(b) Unless otherwise provided by the bylaws, if the nonprofit corporation receives one or more written demands for the meeting, stating the purpose or purposes for which it is to be held, signed and dated by members holding at least ten percent of all the votes entitled pursuant to the bylaws to be cast on any issue proposed to be considered at the meeting.

(2) If not otherwise fixed under section 7-127-103 or 7-127-106, the record date for determining the members entitled to demand a special meeting pursuant to paragraph (b) of subsection (1) of this section is the date of the earliest of any of the demands pursuant to which the meeting is called, or the date that is sixty days before the date the first of such demands is received by the nonprofit corporation, whichever is later.

(3) If a notice for a special meeting demanded pursuant to paragraph (b) of subsection (1) of this section is not given pursuant to section 7-127-104 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (4) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 7-127-104.

(4) Special meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, special meetings shall be held at the nonprofit corporation's principal office.

(5) Unless otherwise provided by the bylaws, only business within the purpose or purposes described in the notice of the meeting required by section 7-127-104 (3) may be conducted at a special meeting of the members.

Source: L. 97: Entire article added, p. 675, § 3, effective July 1, 1998.

7-127-103. Court-ordered meeting.

(1) The holding of a meeting of the members may be summarily ordered by the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, by the district court for the county in which the street address of its registered agent is located or, if the nonprofit corporation has no registered agent, by the district court for the city and county of Denver:

(a) On application of any voting member entitled to participate in an annual meeting if an annual meeting was required to be held and was not held within the earlier of six months after the close of the nonprofit corporation's most recently ended fiscal year or fifteen months after its last annual meeting; or

(b) On application of any person who participated in a call of or demand for a special meeting effective under section 7-127-102 (1), if:

(I) Notice of the special meeting was not given within thirty days after the date of the call or the date the last of the demands necessary to require the calling of the meeting was received by the nonprofit corporation pursuant to section 7-127-102 (1)(b), as the case may be; or

(II) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, fix a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the notice of the meeting, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary or appropriate to accomplish the holding of the meeting.

Source: L. 97: Entire article added, p. 675, § 3, effective July 1, 1998. **L. 2003:** IP(1) and (2) amended, p. 2338, § 294, effective July 1, 2004.

7-127-104. Notice of meeting.

(1) A nonprofit corporation shall give to each member entitled to vote at the meeting notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection (3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(3) Notice is fair and reasonable if:

(a) The nonprofit corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten days, or if notice is mailed by other than first-class or registered mail, no fewer than thirty days, nor more than sixty days before the meeting date, and if notice is given by newspaper as provided in section 7-121-402 (2), the notice must be published five separate times with the first such publication no more than sixty days, and the last such publication no fewer than ten days, before the meeting date;

(b) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members or for which the members' approval is sought under sections 7-128-501, 7-129-110, 7-130-103, 7-130-201, 7-131-102, 7-132-102, and 7-134-102; and

(c) Unless otherwise provided by articles 121 to 137 of this title or the bylaws, notice of a special meeting includes a description of the purpose or purposes for which the meeting is called.

(4) Unless otherwise provided by the bylaws, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7-127-106, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular, or special meeting of members, a nonprofit corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) Requested in writing to do so by a person entitled to call a special meeting; and

(b) The request is received by the secretary or president of the nonprofit corporation at least ten days before the nonprofit corporation gives notice of the meeting.

Source: L. 97: Entire article added, p. 676, § 3, effective July 1, 1998. **L. 98:** (3)(a) amended, p. 623, § 26, effective July 1.

7-127-105. Waiver of notice.

(1) A member may waive any notice required by articles 121 to 137 of this title or by the bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. The waiver shall be in writing, be signed by the member entitled to the notice, and be delivered to the nonprofit corporation for inclusion in the minutes or filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

(2) A member's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Source: L. 97: Entire article added, p. 677, § 3, effective July 1, 1998.

7-127-106. Record date - determining members entitled to notice and vote.

(1) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board of directors may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting.

(2) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as the record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(4) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a meeting of members is effective for any adjournment of the meeting unless the board of directors fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

Source: L. 97: Entire article added, p. 678, § 3, effective July 1, 1998.

7-127-107. Action without meeting.

(1) Unless otherwise provided by the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a members' meeting may be taken without a meeting if members entitled to vote thereon unanimously agree and consent to such action in writing.

(2) No action taken pursuant to this section shall be effective unless writings describing and consenting to the action, signed by members sufficient under subsection (1) of this section to take the action and not revoked pursuant to subsection (3) of this section, are received by the nonprofit corporation within sixty days after the date the earliest dated writing describing and consenting to the action is received by the nonprofit corporation. Unless otherwise provided by the bylaws, any such writing may be received by the nonprofit corporation by electronically transmitted facsimile or other form of wire or wireless communication providing the nonprofit corporation with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the nonprofit corporation, unless the writings describing and consenting to the action state a different effective date.

(3) Any member who has signed a writing describing and consenting to action taken pursuant to this section may revoke such consent by a writing signed and dated by the member describing the action and stating that the member's prior consent thereto is revoked, if such writing is received by the nonprofit corporation before the last writing necessary to effect the action is received by the nonprofit corporation.

(4) Subject to subsection (8) of this section, the record date for determining members entitled to take action without a meeting or entitled to be given notice under subsection (7) of this section of action so taken is the date a writing upon which the action is taken pursuant to subsection (1) of this section is first received by the nonprofit corporation.

(5) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

(6) In the event voting members are entitled to vote cumulatively in the election of directors, voting members may take action under this section to elect or remove directors only pursuant to section 7-127-208 and only if the required signed writings describing and consenting to the election or removal of the directors are received by the nonprofit corporation.

(7) In the event action is taken under subsection (1) of this section with less than unanimous consent of all members entitled to vote upon the action, the nonprofit corporation or the members taking the action shall, promptly after all of the writings necessary to effect the action have been received by the nonprofit corporation, give notice of such action to all members who were entitled to vote upon the action. The notice shall contain or be accompanied by the same material, if any, that under articles 121 to 137 of this title would have been required to be given

to members in or with a notice of the meeting at which the action would have been submitted to the members for action.

(8) The district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the nonprofit corporation has no registered agent, the district court for the city and county of Denver may, upon application of the nonprofit corporation or any member who would be entitled to vote on the action at a members' meeting, summarily state a record date for determining members entitled to sign writings consenting to an action under this section and may enter other orders necessary or appropriate to effect the purposes of this section.

(9) All signed written instruments necessary for any action taken pursuant to this section shall be filed with the minutes of the meetings of the members.

Source: L. 97: Entire article added, p. 678, § 3, effective July 1, 1998. **L. 2003:** (2) and (8) amended, p. 2338, § 295, effective July 1, 2004.

ANNOTATION

This section controls the timing of action taken without a meeting by a unit owners' association that is organized as a nonprofit corporation. Triple Crown v. Vill. Homes of Colo., 2013 COA 150M, 328 P.3d 275.

7-127-108. Meetings by telecommunication.

Unless otherwise provided in the bylaws, any or all of the members may participate in an annual, regular, or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

Source: L. 97: Entire article added, p. 680, § 3, effective July 1, 1998.

7-127-109. Action by written ballot.

(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot shall:

(a) State each proposed action; and

(b) Provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors;

(c) State the time by which a ballot must be received by the nonprofit corporation in order to be counted; and

(d) Be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

Source: L. 97: Entire article added, p. 680, § 3, effective July 1, 1998. **L. 2003:** (2)(a) and (4)(c) amended, p. 2339, § 296, effective July 1, 2004.

PART 2

VOTING

7-127-201. Members list for meeting and action by written ballot.

(1) Unless otherwise provided by the bylaws, after fixing a record date for a notice of a meeting or for determining the members entitled to take action by written ballot, a nonprofit corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of, and to vote at, the meeting or to take such action by written ballot. The list shall show the address of each member entitled to notice of, and to vote at, the meeting or to take such action by written ballot and the number of votes each member is entitled to vote at the meeting or by written ballot.

(2) If prepared in connection with a meeting of the members, the members list shall be available for inspection by any member entitled to vote at the meeting, beginning the earlier of ten days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing through the meeting, and any adjournment thereof, at the nonprofit corporation's principal office or at a place identified in the notice of the meeting in the city where the meeting will be held. The nonprofit corporation shall make the members list available at the meeting, and any member entitled to vote at the meeting or an agent or attorney of a member entitled to vote at the meeting is entitled to inspect the list at any time during the meeting or any adjournment. If prepared in connection with action to be taken by the members by written ballot, the members list shall be available for inspection by any member entitled to cast a vote by such written ballot, beginning on the date that the first written ballot is delivered to the members and continuing through the time when such written ballots must be received by the nonprofit corporation in order to be counted, at the nonprofit corporation's principal office. A member entitled to vote at the meeting or by such written ballot, or an agent or attorney of a member entitled to vote at the meeting or by such written ballot, is entitled on written demand to inspect and, subject to the requirements of section 7-136-102 (3) and the provisions of section 7-136-103 (2) and (3), to copy the list, during regular business hours, at the member's expense, and during the period it is available for inspection.

(3) If the nonprofit corporation refuses to allow a member entitled to vote at the meeting or by such written ballot, or an agent or attorney of a member entitled to vote at the meeting or by such written ballot, to inspect the members list or to copy the list during the period it is required to be available for inspection under subsection (2) of this section, the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located, or if the nonprofit corporation has no registered agent in this state, the district court for the city and county of Denver may, on application of the member, summarily order the inspection or copying of the list

at the nonprofit corporation's expense and may postpone or adjourn the meeting for which the list was prepared, or postpone the time when the nonprofit corporation must receive written ballots in connection with which the list was prepared, until the inspection or copying is complete.

(4) If a court orders inspection or copying of the list of members pursuant to subsection (3) of this section, unless the nonprofit corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the member or the agent or attorney of the member to inspect or copy the list of members:

(a) The court shall also order the nonprofit corporation to pay the member's costs, including reasonable counsel fees, incurred in obtaining the order;

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

(c) The court may grant the member any other remedy afforded the member by law.

(5) If a court orders inspection or copying of the list of members pursuant to subsection (3) of this section, the court may impose reasonable restrictions on the use or distribution of the list by the member.

(6) Failure to prepare or make available the list of members does not affect the validity of action taken at the meeting or by means of such written ballot.

Source: L. 97: Entire article added, p. 681, § 3, effective July 1, 1998. **L. 2003:** (3) amended, p. 2339, § 297, effective July 1, 2004.

7-127-202. Voting entitlement generally.

(1) Unless otherwise provided by the bylaws:

(a) Only voting members shall be entitled to vote with respect to any matter required or permitted under articles 121 to 137 of this title to be submitted to a vote of the members;

(b) All references in articles 121 to 137 of this title to votes of or voting by the members shall be deemed to permit voting only by the voting members; and

(c) Voting members shall be entitled to vote with respect to all matters required or permitted under articles 121 to 137 of this title to be submitted to a vote of the members.

(2) Unless otherwise provided by the bylaws, each member entitled to vote shall be entitled to one vote on each matter submitted to a vote of members.

(3) Unless otherwise provided by the bylaws, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

(a) If only one votes, such act binds all; and

(b) If more than one votes, the vote shall be divided on a pro rata basis.

Source: L. 97: Entire article added, p. 683, § 3, effective July 1, 1998.

7-127-203. Proxies.

(1) Unless otherwise provided by the bylaws, a member entitled to vote may vote or otherwise act in person or by proxy.

(2) Without limiting the manner in which a member may appoint a proxy to vote or otherwise act for the member, the following shall constitute valid means of such appointment:

(a) A member may appoint a proxy by signing an appointment form, either personally or by the member's attorney-in-fact.

(b) A member may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy or to the nonprofit corporation; except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the member transmitted or authorized the transmission of the appointment.

(3) An appointment of a proxy is effective against the nonprofit corporation when received by the nonprofit corporation, including receipt by the nonprofit corporation of an appointment transmitted pursuant to paragraph (b) of subsection (2) of this section. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form.

(4) Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.

(5) An appointment of a proxy is revocable by the member.

(6) Appointment of a proxy is revoked by the person appointing the proxy:

(a) Attending any meeting and voting in person; or

(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(7) The death or incapacity of the member appointing a proxy does not affect the right of the nonprofit corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(8) Subject to section 7-127-204 and to any express limitation on the proxy's authority appearing on the appointment form, a nonprofit corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

Source: L. 97: Entire article added, p. 683, § 3, effective July 1, 1998.

7-127-204. Nonprofit corporation's acceptance of votes.

(1) If the name signed on a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a member, the nonprofit corporation, if acting in good faith, is entitled to accept the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the member.

(2) If the name signed on a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a member, the nonprofit corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the member if:

(a) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the nonprofit corporation requests, evidence of fiduciary status acceptable to the nonprofit corporation has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the nonprofit corporation requests, evidence of this status acceptable to the nonprofit corporation has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and, if the nonprofit corporation requests, evidence acceptable to the nonprofit corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation;

(e) Two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all the cotenants or fiduciaries; or

(f) The acceptance of the vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the nonprofit corporation that are not inconsistent with the provisions of this subsection (2).

(3) The nonprofit corporation is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The nonprofit corporation and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

Source: L. 97: Entire article added, p. 684, § 3, effective July 1, 1998.

7-127-205. Quorum and voting requirements for voting groups.

(1) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter. Unless otherwise provided in articles 121 to 137 of this title or the bylaws, twenty-five percent of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a member is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless otherwise provided in the bylaws or unless a new record date is or shall be set for that adjourned meeting.

(3) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless a greater number of affirmative votes is required by articles 121 to 137 of this title or the bylaws.

(4) An amendment to the articles of incorporation or the bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than that specified in subsection (1) or (3) of this section is governed by section 7-127-207 (2).

(5) The election of directors is governed by section 7-127-208.

Source: L. 97: Entire article added, p. 686, § 3, effective July 1, 1998.

7-127-206. Action by single and multiple voting groups.

(1) If articles 121 to 137 of this title or the bylaws provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 7-127-205.

(2) If articles 121 to 137 of this title or the bylaws provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 7-127-205. One voting group may vote on a matter even though no action is taken by another voting group entitled to vote on the matter.

Source: L. 97: Entire article added, p. 686, § 3, effective July 1, 1998.

7-127-207. Lesser or greater quorum or greater voting requirements.

(1) The bylaws may provide for a lesser or a greater quorum requirement, or a greater voting requirement for members or voting groups than is provided for by articles 121 to 137 of this title.

(2) An amendment to the articles of incorporation or the bylaws that adds, changes, or deletes a lesser or a greater quorum requirement or a greater voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Source: L. 97: Entire article added, p. 686, § 3, effective July 1, 1998. **L. 98:** Entire section amended, p. 623, § 27, effective July 1.

7-127-208. Voting for directors - cumulative voting.

(1) If the bylaws provide for cumulative voting for directors by the voting members, voting members may so vote, by multiplying the number of votes the voting members are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) A voting member gives notice during the meeting and before the vote is taken of the voting member's intent to cumulate votes, and if one voting member gives this notice all other voting members participating in the election are entitled to cumulate their votes without giving further notice.

(3) If cumulative voting is in effect, a director may not be removed if the number of votes cast against such removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election for such director.

(4) Members may not vote cumulatively if the directors and members are identical.

(5) In an election of multiple directors, that number of candidates equaling the number of directors to be elected, having the highest number of votes cast in favor of their election, are elected to the board of directors. When only one director is being voted upon, the affirmative vote of a majority of the members constituting a quorum at the meeting at which the election occurs shall be required for election to the board of directors.

Source: L. 97: Entire article added, p. 687, § 3, effective July 1, 1998.

7-127-209. Other methods of electing directors.

(1) A nonprofit corporation may provide in its bylaws for election of directors by voting members or delegates:

(a) On the basis of chapter or other organizational unit;

(b) By region or other geographic unit;

(c) By preferential voting; or

(d) By any other reasonable method.

Source: L. 97: Entire article added, p. 687, § 3, effective July 1, 1998.

PART 3

VOTING AGREEMENTS

7-127-301. Voting agreements.

(1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose.

(2) A voting agreement created under this section is specifically enforceable.

Source: L. 97: Entire article added, p. 688, § 3, effective July 1, 1998.

ARTICLE 128

Directors and Officers

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PART 1

BOARD OF DIRECTORS

7-128-101. Requirement for board of directors.

(1) Unless otherwise provided in the articles of incorporation, each nonprofit corporation shall have a board of directors. The board of directors and the directors may be known by any other names designated in the bylaws.

(2) Subject to any provision stated in the articles of incorporation, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the nonprofit corporation managed under the direction of, the board of directors or such other persons as the articles of incorporation provide shall have the authority and perform the duties of a board of directors. To the extent the articles of incorporation provide that other persons shall have the authority and perform the duties of the board of directors, the directors shall be relieved to that extent from such authority and duties.

Source: L. 97: Entire article added, p. 688, § 3, effective July 1, 1998. **L. 2003:** (2) amended, p. 2340, § 298, effective July 1, 2004.

7-128-102. Qualifications of directors.

A director shall be an individual. The bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a member of the nonprofit corporation unless the bylaws so prescribe.

Source: L. 97: Entire article added, p. 688, § 3, effective July 1, 1998. **L. 2004:** Entire section amended, p. 1510, § 295, effective July 1; entire section amended, p. 342, § 1, effective August 4.

Editor's note: Amendments to this section by House Bill 04-1398 and House Bill 04-1224 were harmonized.

7-128-103. Number of directors.

(1) A board of directors shall consist of one or more directors, with the number stated in, or fixed in accordance with, the bylaws.

(2) The bylaws may establish, or permit the voting members or the board of directors to establish, a range for the size of the board of directors by fixing a minimum and maximum number of directors. If a range is established, the number of directors may be fixed or changed from time to time within the range by the voting members or the board of directors.

Source: L. 97: Entire article added, p. 688, § 3, effective July 1, 1998. **L. 2003:** (1) amended, p. 2340, § 299, effective July 1, 2004.

7-128-104. Election, appointment, and designation of directors.

(1) All directors except the initial directors shall be elected, appointed, or designated as provided in the bylaws. If no method of election, appointment, or designation is stated in the bylaws, the directors other than the initial directors shall be elected as follows:

(a) If the nonprofit corporation has voting members, all directors except the initial directors shall be elected by the voting members at each annual meeting of the voting members; and

(b) If the nonprofit corporation does not have voting members, all directors except the initial directors shall be elected by the board of directors.

(2) The bylaws may authorize the election of all or a stated number or portion of directors, except the initial directors, by the members of one or more voting groups of voting members or by the directors of one or more authorized classes of directors. A class of voting members or directors entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

(3) The bylaws may authorize the appointment of one or more directors by such person or persons, or by the holder of such office or position, as the bylaws shall state.

(4) For purposes of articles 121 to 137 of this title, designation occurs when the bylaws name an individual as a director or designate the holder of some office or position as a director.

Source: L. 97: Entire article added, p. 688, § 3, effective July 1, 1998. **L. 2003:** IP(1), (2), and (3) amended, p. 2340, § 300, effective July 1, 2004.

7-128-105. Terms of directors generally.

(1) The bylaws may state the terms of directors. In the absence of any term stated in the bylaws, the term of each director shall be one year. Unless otherwise provided in the bylaws, directors may be elected for successive terms.

(2) Unless otherwise provided in the bylaws, the terms of the initial directors of a nonprofit corporation expire at the first meeting at which directors are elected or appointed.

(3) A decrease in the number of directors or in the term of office does not shorten an incumbent director's term.

(4) Unless otherwise provided in the bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that such director is filling.

(5) Despite the expiration of a director's term, a director continues to serve until the director's successor is elected, appointed, or designated and qualifies, or until there is a decrease in the number of directors.

(6) Repealed.

Source: L. 97: Entire article added, p. 689, § 3, effective July 1, 1998. **L. 98:** (6) added, p. 623, § 28, effective July 1. **L. 2000:** (6) amended, p. 983, § 81, effective July 1. **L. 2002:** (6) amended, p. 1855, § 136, effective July 1; (6) amended, p. 1720, § 138, effective October 1. **L. 2003:** (1) amended, p. 2340, § 302, effective July 1, 2004. **L. 2004:** (6) repealed, p. 1511, § 296, effective July 1.

7-128-106. Staggered terms for directors.

The bylaws may provide for staggering the terms of directors by dividing the total number of directors into any number of groups. The terms of office of the several groups need not be uniform.

Source: L. 97: Entire article added, p. 689, § 3, effective July 1, 1998.

7-128-107. Resignation of directors.

(1) A director may resign at any time by giving written notice of resignation to the nonprofit corporation.

(2) A resignation of a director is effective when the notice is received by the nonprofit corporation unless the notice states a later effective date.

(3) Repealed.

(4) If, at the beginning of a director's term on the board, the bylaws provide that a director may be deemed to have resigned for failing to attend a stated number of board meetings, or for failing to meet other stated obligations of directors, and if such failure to attend or meet obligations is confirmed by an affirmative vote of the board of directors, then such failure to attend or meet obligations shall be effective as a resignation at the time of such vote of the board.

Source: L. 97: Entire article added, p. 690, § 3, effective July 1, 1998. **L. 2000:** (3) amended, p. 983, § 82, effective July 1. **L. 2002:** (3) amended, p. 1855, § 137, effective July 1; (3) amended, p. 1720, § 139, effective October 1. **L. 2003:** (2) and (4) amended, p. 2340, § 302, effective July 1, 2004. **L. 2004:** (3) repealed, p. 1511, § 297, effective July 1.

7-128-108. Removal of directors.

(1) Directors elected by voting members or directors may be removed as follows:

(a) The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause.

(b) If a director is elected by a voting group, only that voting group may participate in the vote to remove that director.

(c) Subject to section 7-127-208 (3), a director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) A director elected by voting members may be removed by the voting members only at a meeting called for the purpose of removing that director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(e) An entire board of directors may be removed under paragraphs (a) to (d) of this subsection (1).

(f) A director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is stated in the bylaws; except that a director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members, but not the board of directors.

(g) (Deleted by amendment, L. 2000, p. 983, § 83, effective July 1, 2000.)

(2) Unless otherwise provided in the bylaws:

(a) An appointed director may be removed without cause by the person appointing the director;

(b) The person removing the director shall do so by giving written notice of the removal to the director and to the nonprofit corporation; and

(c) A removal is effective when the notice is received by both the director to be removed and the nonprofit corporation unless the notice states a later effective date.

(3) A designated director may be removed by an amendment to the bylaws deleting or changing the designation.

(4) Repealed.

Source: L. 97: Entire article added, p. 690, § 3, effective July 1, 1998. **L. 2000:** (1)(g) amended and (4) added, p. 983, § 83, effective July 1. **L. 2002:** (4) amended, p. 1855, § 138, effective July 1; (4) amended, p. 1720, § 140, effective October 1. **L. 2003:** (1)(f) and (2)(c) amended, p. 2341, § 303, effective July 1, 2004. **L. 2004:** (4) repealed, p. 1511, § 298, effective July 1.

7-128-109. Removal of directors by judicial proceeding.

(1) A director may be removed by the district court for the county in this state in which the address of the nonprofit corporation's principal office is located or, if the nonprofit corporation

has no principal office in this state, by the district court for the county in which the street address of its registered agent is located, or, if the nonprofit corporation has no registered agent, by the district court for the city and county of Denver, in a proceeding commenced either by the nonprofit corporation or by voting members holding at least ten percent of the votes entitled to be cast in the election of such director's successor, if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the nonprofit corporation, or a final judgment has been entered finding that the director has violated a duty set forth in part 4 of this article, and that removal is in the best interests of the nonprofit corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If voting members commence a proceeding under subsection (1) of this section, they shall make the nonprofit corporation a party defendant.

(4) Repealed.

Source: L. 97: Entire article added, p. 691, § 3, effective July 1, 1998. **L. 2000:** (4) amended, p. 983, § 84, effective July 1. **L. 2002:** (4) amended, p. 1855, § 139, effective July 1; (4) amended, p. 1720, § 141, effective October 1. **L. 2003:** (1) amended, p. 2341, § 304, effective July 1, 2004. **L. 2004:** (4) repealed, p. 1511, § 299, effective July 1.

ANNOTATION

Law reviews. For article, "Removing Common Interest Community Association Board Members", see 51 Colo. Law. 38 (Feb. 2022).

7-128-110. Vacancy on board.

(1) Unless otherwise provided in the bylaws, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The voting members, if any, may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board of directors, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Notwithstanding subsection (1) of this section, unless otherwise provided in the bylaws, if the vacant office was held by a director elected by a voting group of voting members:

(a) If one or more of the remaining directors were elected by the same voting group of voting members, only such directors are entitled to vote to fill the vacancy if it is filled by directors, and they may do so by the affirmative vote of a majority of such directors remaining in office; and

(b) Only that voting group is entitled to vote to fill the vacancy if it is filled by the voting members.

(3) Notwithstanding subsection (1) of this section, unless otherwise provided in the bylaws, if the vacant office was held by a director elected by a voting group of directors, and if any persons in that voting group remain as directors, only such directors are entitled to vote to fill the vacancy.

(4) Unless otherwise provided in the bylaws, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(5) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the bylaws. In the absence of an applicable bylaw provision, the vacancy may not be filled by the board.

(6) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 7-128-107 (2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Source: L. 97: Entire article added, p. 691, § 3, effective July 1, 1998.

7-128-111. Compensation of directors.

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

Source: L. 97: Entire article added, p. 692, § 3, effective July 1, 1998.

PART 2

MEETINGS AND ACTION OF THE BOARD

7-128-201. Meetings.

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless otherwise provided in the bylaws, the board of directors may permit any director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Source: L. 97: Entire article added, p. 692, § 3, effective July 1, 1998.

7-128-202. Action without meeting.

(1) Unless otherwise provided in the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a board of directors' meeting may be taken without a meeting if notice is transmitted in writing to each member of the board and each member of the board by the time stated in the notice:

(a) Votes in writing for such action; or

(b) (I) Votes in writing against such action, abstains in writing from voting, or fails to respond or vote; and

(II) Fails to demand in writing that action not be taken without a meeting.

(2) The notice required by subsection (1) of this section shall state:

(a) The action to be taken;

(b) The time by which a director must respond;

(c) That failure to respond by the time stated in the notice will have the same effect as abstaining in writing by the time stated in the notice and failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and

(d) Any other matters the nonprofit corporation determines to include.

(3) Action is taken under this section only if, at the end of the time stated in the notice transmitted pursuant to subsection (1) of this section:

(a) The affirmative votes in writing for such action received by the nonprofit corporation and not revoked pursuant to subsection (5) of this section equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted; and

(b) The nonprofit corporation has not received a written demand by a director that such action not be taken without a meeting other than a demand that has been revoked pursuant to subsection (5) of this section.

(4) A director's right to demand that action not be taken without a meeting shall be deemed to have been waived unless the nonprofit corporation receives such demand from the director in writing by the time stated in the notice transmitted pursuant to subsection (1) of this section and such demand has not been revoked pursuant to subsection (5) of this section.

(5) Any director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this section may revoke such vote, abstention, or demand in writing received by the nonprofit corporation by the time stated in the notice transmitted pursuant to subsection (1) of this section.

(6) Unless the notice transmitted pursuant to subsection (1) of this section states a different effective date, action taken pursuant to this section shall be effective at the end of the time stated in the notice transmitted pursuant to subsection (1) of this section.

(7) A writing by a director under this section shall be in a form sufficient to inform the nonprofit corporation of the identity of the director, the vote, abstention, demand, or revocation of the director, and the proposed action to which such vote, abstention, demand, or revocation relates. Unless otherwise provided by the bylaws, all communications under this section may be transmitted or received by the nonprofit corporation by electronically transmitted facsimile, email, or other form of wire or wireless communication. For purposes of this section, communications to the nonprofit corporation are not effective until received.

(8) Action taken pursuant to this section has the same effect as action taken at a meeting of directors and may be described as such in any document.

(9) All writings made pursuant to this section shall be filed with the minutes of the meetings of the board of directors.

Source: L. 97: Entire article added, p. 693, § 3, effective July 1, 1998. **L. 98:** (1)(b)(II) and (3) amended, p. 624, § 29, effective July 1. **L. 2003:** (3) amended, p. 2341, § 305, effective July 1, 2004. **L. 2008:** (1) amended, p. 36, § 2, effective August 5. **L. 2009:** Entire section R&RE, (HB 09-1248), ch. 252, p. 1134, § 20, effective May 14.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1), see section 1 of chapter 16, Session Laws of Colorado 2008.

7-128-203. Notice of meeting - rights of residential members.

(1) Unless otherwise provided in articles 121 to 137 of this title or in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless otherwise required by articles 121 to 137 of this title or the bylaws.

(3) Notwithstanding subsections (1) and (2) of this section, and notwithstanding any provision of the articles of incorporation or bylaws to the contrary, the following rules and procedures apply to meetings of the board of directors of a residential nonprofit corporation or any committee of the board:

(a) (I) (A) All regular and special meetings of the residential nonprofit corporation's board of directors or executive committee, or any committee of the board that is authorized to take final action on the board's behalf, must be open to attendance by all residential members or their representatives. The board shall make agendas for meetings of the board, and agendas for meetings of committees of the board that are authorized to take final action on the board's behalf, reasonably available for examination in advance by all residential members or their representatives. If there is no formal agenda, residential members or their representatives are nonetheless entitled to a general description of the purpose of the meeting and the subject matter that will be discussed.

(B) The board shall inform all members, at least annually, of the method by which meeting agendas and other information required by sub-subparagraph (A) of this subparagraph (I) will be provided, including the physical location of places where agendas and meeting notices may be posted or the web address where online postings may be made. The board shall give at least thirty days' advance notice of any change in the manner or means by which meeting information will be provided.

(II) The residential nonprofit corporation is encouraged to provide all notices and agendas required by this article in electronic form, by posting on a website or otherwise, in addition to printed form. If such electronic means are available, the corporation shall provide notice of all regular and special meetings of residential members by electronic mail to all residential members who so request and who furnish the corporation with their electronic mail addresses. Electronic

notice of a special meeting must be given as soon as possible but at least twenty-four hours before the meeting.

(b) At an appropriate time determined by the board of directors, but before the board votes on an issue under discussion, the board shall permit residential members or their designated representatives to speak regarding the issue. The board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the board shall provide for a reasonable number of persons to speak on each side of the issue.

(c) The board of directors or any committee of the board may hold an executive or closed-door session and may restrict attendance to board members and such other persons requested by the board during a regular or specially announced meeting or a part thereof. The matters to be discussed at such an executive session may include only matters enumerated in paragraph (d) of this subsection (3).

(d) Matters for discussion by an executive or closed session are limited to:

(I) Matters pertaining to employees of the residential nonprofit corporation or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the corporation;

(II) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(III) Investigative proceedings concerning possible or actual criminal misconduct;

(IV) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(V) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;

(VI) Review of or discussion relating to any written or oral communication from legal counsel.

(e) Upon the final resolution of any matter for which the board of directors received legal advice or that concerned pending or contemplated litigation, the board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

(f) Before the board of directors or any committee of the board convenes in executive session, the chair of the body shall announce the general matter of discussion as enumerated in paragraph (d) of this subsection (3).

(g) The board of directors shall not adopt any change to the residential nonprofit corporation's articles of incorporation or bylaws during an executive session. An articles of incorporation or bylaw change may be validly adopted only during a regular or special meeting or after the board of directors goes back into regular session following an executive session.

(h) The minutes of all meetings at which an executive session was held must indicate that an executive session was held and the general subject matter of the executive session.

Source: L. 97: Entire article added, p. 694, § 3, effective July 1, 1998. **L. 2011:** (3) added, (HB 11-1110), ch. 22, p. 55, § 3, effective March 11. **L. 2012:** (3)(a)(I) amended, (SB 12-024), ch. 39, p. 137, § 2, effective March 22.

7-128-204. Waiver of notice.

(1) A director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice. Except as provided by subsection (2) of this section, the waiver shall be in writing and signed by the director entitled to the notice. Such waiver shall be delivered to the nonprofit corporation for filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

(2) A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless:

(a) At the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting; or

(b) If special notice was required of a particular purpose pursuant to section 7-128-203 (2), the director objects to transacting business with respect to the purpose for which such special notice was required and does not thereafter vote for or assent to action taken at the meeting with respect to such purpose.

Source: L. 97: Entire article added, p. 694, § 3, effective July 1, 1998.

7-128-205. Quorum and voting.

(1) Unless a greater or lesser number is required by the bylaws, a quorum of a board of directors consists of a majority of the number of directors in office immediately before the meeting begins.

(2) The bylaws may authorize a quorum of a board of directors to consist of:

(a) No fewer than one-third of the number of directors fixed if the corporation has a fixed board size; or

(b) No fewer than one-third of the number of directors fixed or, if no number is fixed, of the number in office immediately before the meeting begins, if a range for the size of the board is established pursuant to section 7-128-103 (2).

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the vote of a greater number of directors is required by articles 121 to 137 of this title or the bylaws.

(4) If provided in the bylaws, for purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a director may be deemed to be present at a meeting and to vote if the director has granted a signed written proxy to another director who is present at the meeting, authorizing the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this subsection (4) and as permitted by section 7-128-202, directors may not vote or otherwise act by proxy.

(5) A director who is present at a meeting of the board of directors when corporate action is taken is deemed to have assented to all action taken at the meeting unless:

(a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;

(b) The director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or

(c) The director causes written notice of the director's dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the nonprofit corporation promptly after adjournment of the meeting.

(6) The right of dissent or abstention pursuant to subsection (5) of this section as to a specific action is not available to a director who votes in favor of the action taken.

Source: L. 97: Entire article added, p. 694, § 3, effective July 1, 1998.

7-128-206. Committees of the board.

(1) Unless otherwise provided in the bylaws and subject to the provisions of section 7-129-106, the board of directors may create one or more committees of the board and appoint one or more directors to serve on them.

(2) Unless otherwise provided in the bylaws, the creation of a committee of the board and appointment of directors to it shall be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the bylaws to take action under section 7-128-205.

(3) Unless otherwise provided in the bylaws, sections 7-128-201 to 7-128-205, which govern meetings, action without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees of the board and their members as well.

(4) To the extent stated in the bylaws or by the board of directors, each committee of the board shall have the authority of the board of directors under section 7-128-101; except that a committee of the board shall not:

(a) Authorize distributions;

(b) Approve or propose to members action that articles 121 to 137 of this title require to be approved by members;

(c) Elect, appoint, or remove any director;

(d) Amend articles of incorporation pursuant to section 7-130-102;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of conversion or plan of merger not requiring member approval; or

(g) Approve a sale, lease, exchange, or other disposition of all, or substantially all, of its property, with or without goodwill, otherwise than in the usual and regular course of business subject to approval by members.

(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 7-128-401.

(6) Nothing in this part 2 shall prohibit or restrict a nonprofit corporation from establishing in its bylaws or by action of the board of directors or otherwise one or more committees, advisory boards, auxiliaries, or other bodies of any kind, having such members and rules of procedure as the bylaws or board of directors may provide, in order to provide such advice, service, and assistance to the nonprofit corporation, and to carry out such duties and responsibilities for the nonprofit corporation, as may be stated in the bylaws or by the board of directors; except that, if any such committee or other body has one or more members thereof who are entitled to vote on committee matters and who are not then also directors, such

committee or other body may not exercise any power or authority reserved to the board of directors in articles 121 to 137 of this title, in the articles of incorporation, or in the bylaws.

Source: L. 97: Entire article added, p. 695, § 3, effective July 1, 1998. **L. 2003:** IP(4) and (6) amended, p. 2342, § 306, effective July 1, 2004. **L. 2007:** (4)(f) amended, p. 249, § 52, effective May 29.

PART 3

OFFICERS

7-128-301. Officers.

(1) Unless otherwise provided in the bylaws, a nonprofit corporation shall have a president, a secretary, a treasurer, and such other officers as may be designated by the board of directors. An officer shall be an individual who is eighteen years of age or older. An officer need not be a director or a member of the nonprofit corporation, unless the bylaws so prescribe.

(2) Officers may be appointed by the board of directors or in such other manner as the board of directors or bylaws may provide. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to the secretary or to one or more other persons responsibility for the preparation and maintenance of minutes of the directors' and members' meetings and other records and information required to be kept by the nonprofit corporation under section 7-136-101 and for authenticating records of the nonprofit corporation.

(4) The same individual may simultaneously hold more than one office in the nonprofit corporation.

Source: L. 97: Entire article added, p. 696, § 3, effective July 1, 1998. **L. 2004:** (1) amended, p. 1511, § 300, effective July 1.

7-128-302. Duties of officers.

Each officer shall have the authority and shall perform the duties stated with respect to such office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to such office by the board of directors or by an officer authorized by the board of directors.

Source: L. 97: Entire article added, p. 697, § 3, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2342, § 307, effective July 1, 2004.

7-128-303. Resignation and removal of officers.

(1) An officer may resign at any time by giving written notice of resignation to the nonprofit corporation.

(2) A resignation of an officer is effective when the notice is received by the nonprofit corporation unless the notice states a later effective date.

(3) If a resignation is made effective at a later date, the board of directors may permit the officer to remain in office until the effective date and may fill the pending vacancy before the effective date with the provision that the successor does not take office until the effective date, or the board of directors may remove the officer at any time before the effective date and may fill the resulting vacancy.

(4) Unless otherwise provided in the bylaws, the board of directors may remove any officer at any time with or without cause. The bylaws or the board of directors may make provisions for the removal of officers by other officers or by the voting members.

(5) Repealed.

Source: L. 97: Entire article added, p. 697, § 3, effective July 1, 1998. **L. 2000:** (5) amended, p. 984, § 85, effective July 1. **L. 2002:** (5) amended, p. 1855, § 140, effective July 1; (5) amended, p. 1720, § 142, effective October 1. **L. 2003:** (2) amended, p. 2342, § 308, effective July 1, 2004. **L. 2004:** (5) repealed, p. 1511, § 301, effective July 1.

7-128-304. Contract rights with respect to officers.

(1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the nonprofit corporation. An officer's resignation does not affect the nonprofit corporation's contract rights, if any, with the officer.

Source: L. 97: Entire article added, p. 697, § 3, effective July 1, 1998.

PART 4

STANDARDS OF CONDUCT

Law reviews: For article, "Owner Association Board Member Duties and Liabilities -- Part 1", see 50 Colo. Law. 20 (June 2021).

7-128-401. General standards of conduct for directors and officers.

(1) Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee of the board, and each officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation.

(2) In discharging duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence;

(c) Religious authorities or ministers, priests, rabbis, or other persons whose position or duties in the nonprofit corporation, or in a religious organization with which the nonprofit corporation is affiliated, the director or officer believes justify reliance and confidence and who the director or officer believes to be reliable and competent in the matters presented; or

(d) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director or officer is not acting in good faith if the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director or officer is not liable as such to the nonprofit corporation or its members for any action taken or omitted to be taken as a director or officer, as the case may be, if, in

connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.

(5) A director, regardless of title, shall not be deemed to be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the nonprofit corporation including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

(6) A director or officer of a nonprofit corporation, in the performance of duties in that capacity, shall not have any fiduciary duty to any creditor of the nonprofit corporation arising only from the status as a creditor.

(7) No person shall be liable in contract or tort merely by reason of being a director, officer, or member of a nonprofit corporation that was suspended, declared defunct, administratively dissolved, or dissolved by operation of law, and the business or activities of which have been continued for nonprofit purposes, with or without knowledge of the suspension, declaration, or dissolution, and the business and activities of which have not been wound up.

Source: L. 97: Entire article added, p. 698, § 3, effective July 1, 1998. **L. 2006:** (6) and (7) added, p. 882, § 81, effective July 1.

Editor's note: Subsections (6) and (7) were originally enacted as subsections (5) and (6), respectively, in Senate Bill 06-187 but were renumbered on revision for ease of location.

ANNOTATION

Law reviews. For article, "Owner Association Board Member Duties and Liabilities — Part 3", see 50 Colo. Law. 30 (Aug.-Sept. 2021). For article, "The Business Judgment Rule and Common Interest Communities", see 53 Colo. Law. 34 (June 2024).

7-128-402. Limitation of certain liabilities of directors and officers.

(1) If so provided in the articles of incorporation, the nonprofit corporation shall eliminate or limit the personal liability of a director to the nonprofit corporation or to its members for monetary damages for breach of fiduciary duty as a director; except that any such provision shall not eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any breach of the director's duty of loyalty to the nonprofit corporation or to its members, acts or omissions not in good faith or that involve intentional misconduct or a

knowing violation of law, acts specified in section 7-128-403 or 7-128-501 (2), or any transaction from which the director directly or indirectly derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the nonprofit corporation or to its members for monetary damages for any act or omission occurring before the date when such provision becomes effective.

(2) No director or officer shall be personally liable for any injury to person or property arising out of a tort committed by an employee unless such director or officer was personally involved in the situation giving rise to the litigation or unless such director or officer committed a criminal offense in connection with such situation. The protection afforded in this subsection (2) shall not restrict other common law protections and rights that a director or officer may have. This subsection (2) shall not restrict the nonprofit corporation's right to eliminate or limit the personal liability of a director to the nonprofit corporation or to its members for monetary damages for breach of fiduciary duty as a director as provided in subsection (1) of this section.

Source: L. 97: Entire article added, p. 699, § 3, effective July 1, 1998. **L. 98:** (1) amended, p. 624, § 30, effective July 1.

7-128-403. Liability of directors for unlawful distributions.

(1) A director who votes for or assents to a distribution made in violation of section 7-133-101 or the articles of incorporation is personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been distributed without violating said section or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 7-128-401. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each person who accepted the distribution knowing the distribution was made in violation of section 7-133-101 or the articles of incorporation, the amount of the contribution from such person being the amount of the distribution to that person that exceeds what could have been distributed to that person without violating section 7-133-101 or the articles of incorporation.

Source: L. 97: Entire article added, p. 699, § 3, effective July 1, 1998.

PART 5

DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

Law reviews: For article, "Owner Association Board Member Duties and Liabilities -- Part 1", see 50 Colo. Law. 20 (June 2021).

7-128-501. Conflicting interest transaction.

(1) As used in this section, "conflicting interest transaction" means: A contract, transaction, or other financial relationship between a nonprofit corporation and a director of the nonprofit corporation, or between the nonprofit corporation and a party related to a director, or between the nonprofit corporation and an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest.

(2) No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

(3) No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because the conflicting interest transaction involves a director of the nonprofit corporation or a party related to a director or an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest or solely because the director is present at or participates in the meeting of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction or solely because the director's vote is counted for such purpose if:

(a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or

(b) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; or

(c) The conflicting interest transaction is fair as to the nonprofit corporation.

(4) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies the conflicting interest transaction.

(5) For purposes of this section, a "party related to a director" shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the director or a party related to a director has a beneficial interest, or an entity in which a party related to a director is a director, officer, or has a financial interest.

Source: L. 97: Entire article added, p. 700, § 3, effective July 1, 1998. **L. 98:** (3)(b) amended, p. 624, § 31, effective July 1.

ANNOTATION

Law reviews. For article, "Owner Association Board Member Duties and Liabilities — Part 3", see 50 Colo. Law. 30 (Aug.-Sept. 2021). For article, "The Business Judgment Rule and Common Interest Communities", see 53 Colo. Law. 34 (June 2024).

ARTICLE 129

Indemnification

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7-129-102. Authority to indemnify directors.
7-129-103. Mandatory indemnification of directors.
7-129-104. Advance of expenses to directors.
7-129-105. Court-ordered indemnification of directors.
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7-129-108. Insurance.
7-129-109. Limitation of indemnification of directors.
7-129-110. Notice to voting members of indemnification of director.

7-129-101. Indemnification definitions.

As used in this article:

(1) "Director" means an individual who is or was a director of a nonprofit corporation or an individual who, while a director of a nonprofit corporation, is or was serving at the nonprofit corporation's request as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of another domestic or foreign entity or of an employee benefit plan. A director is considered to be serving an employee benefit plan at the nonprofit corporation's request if the director's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a deceased director.

(2) "Expenses" includes counsel fees.

(3) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses.

(4) "Nonprofit corporation" includes any domestic or foreign entity that is a predecessor of a nonprofit corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(5) "Official capacity" means, when used with respect to a director, the office of director in a nonprofit corporation and, when used with respect to a person other than a director as contemplated in section 7-129-107, the office in a nonprofit corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the employee, fiduciary, or agent on behalf of the nonprofit corporation. "Official capacity" does not include service for any other domestic or foreign corporation, nonprofit corporation, or other person or employee benefit plan.

(6) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Source: L. 97: Entire article added, p. 701, § 3, effective July 1, 1998. **L. 2003:** (1) amended, p. 2342, § 309, effective July 1, 2004. **L. 2004:** (1) amended, p. 1511, § 302, effective July 1.

7-129-102. Authority to indemnify directors.

(1) Except as provided in subsection (4) of this section, a nonprofit corporation may indemnify a person made a party to a proceeding because the person is or was a director against liability incurred in the proceeding if:

(a) The person's conduct was in good faith; and

(b) The person reasonably believed:

(I) In the case of conduct in an official capacity with the nonprofit corporation, that the conduct was in the nonprofit corporation's best interests; and

(II) In all other cases, that the conduct was at least not opposed to the nonprofit corporation's best interests; and

(c) In the case of any criminal proceeding, the person had no reasonable cause to believe the conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in or beneficiaries of the plan is conduct that satisfies the requirement of subparagraph (II) of paragraph (b) of subsection (1) of this section. A director's conduct with respect to an employee benefit plan for a purpose that the director did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of paragraph (a) of subsection (1) of this section.

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A nonprofit corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the nonprofit corporation in which the director was adjudged liable to the nonprofit corporation; or

(b) In connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in an official capacity, in which proceeding the director was adjudged liable on the basis that the director derived an improper personal benefit.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the nonprofit corporation is limited to reasonable expenses incurred in connection with the proceeding.

Source: L. 97: Entire article added, p. 702, § 3, effective July 1, 1998.

7-129-103. Mandatory indemnification of directors.

Unless limited by its articles of incorporation, a nonprofit corporation shall indemnify a person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a director, against reasonable expenses incurred by the person in connection with the proceeding.

Source: L. 97: Entire article added, p. 703, § 3, effective July 1, 1998.

7-129-104. Advance of expenses to 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 to the nonprofit corporation a written affirmation of the director's good-faith belief that the director has met the standard of conduct described in section 7-129-102;

(b) The director furnishes to 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 article.

(2) The undertaking required by paragraph (b) of subsection (1) of this section shall be an unlimited general obligation of the director but need not be secured and 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 7-129-106.

Source: L. 97: Entire article added, p. 703, § 3, effective July 1, 1998.

7-129-105. Court-ordered indemnification of directors.

(1) Unless otherwise provided in the articles of incorporation, a director who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to

another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(a) If it determines that the director is entitled to mandatory indemnification under section 7-129-103, the court shall order indemnification, in which case the court shall also order the nonprofit corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(b) If it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 7-129-102 (1) or was adjudged liable in the circumstances described in section 7-129-102 (4), the court may order such indemnification as the court deems proper; except that the indemnification with respect to any proceeding in which liability shall have been adjudged in the circumstances described in section 7-129-102 (4) is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

Source: L. 97: Entire article added, p. 703, § 3, effective July 1, 1998.

7-129-106. Determination and authorization of indemnification of directors.

(1) A nonprofit corporation may not indemnify a director under section 7-129-102 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 7-129-102. A nonprofit corporation shall not advance expenses to a director under section 7-129-104 unless authorized in the specific case after the written affirmation and undertaking required by section 7-129-104 (1)(a) and (1)(b) are received and the determination required by section 7-129-104 (1)(c) has been made.

(2) The determinations required by subsection (1) of this section shall be made:

(a) By the board of directors by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or

(b) If a quorum cannot be obtained, by a majority vote of a committee of the board of directors designated by the board of directors, which committee shall consist of two or more directors not parties to the proceeding; except that directors who are parties to the proceeding may participate in the designation of directors for the committee.

(3) If a quorum cannot be obtained as contemplated in paragraph (a) of subsection (2) of this section, and a committee cannot be established under paragraph (b) of subsection (2) of this

section, or, even if a quorum is obtained or a committee is designated, if a majority of the directors constituting such quorum or such committee so directs, the determination required to be made by subsection (1) of this section shall be made:

(a) By independent legal counsel selected by a vote of the board of directors or the committee in the manner specified in paragraph (a) or (b) of subsection (2) of this section or, if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full board of directors; or

(b) By the voting members, but voting members who are also directors and who are at the time seeking indemnification may not vote on the determination.

(4) Authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible; except that, if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected such counsel.

Source: L. 97: Entire article added, p. 704, § 3, effective July 1, 1998.

7-129-107. Indemnification of officers, employees, fiduciaries, and agents.

(1) Unless otherwise provided in the articles of incorporation:

(a) An officer is entitled to mandatory indemnification under section 7-129-103, and is entitled to apply for court-ordered indemnification under section 7-129-105, in each case to the same extent as a director;

(b) A nonprofit corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the nonprofit corporation to the same extent as to a director; and

(c) A nonprofit corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent, if not inconsistent with public policy, and if provided for by its bylaws, general or specific action of its board of directors or voting members, or contract.

Source: L. 97: Entire article added, p. 705, § 3, effective July 1, 1998.

7-129-108. Insurance.

A nonprofit corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the nonprofit corporation, or who, while a director, officer, employee, fiduciary, or agent of the nonprofit corporation, is or was serving at the request of the nonprofit corporation as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of any domestic or foreign entity or of any employee benefit plan, against liability asserted against or incurred by the person in that capacity or arising from the person's status as a director, officer, employee, fiduciary, or agent, whether or not the nonprofit corporation would have power to indemnify the person against the same liability under section 7-129-102, 7-129-103, or 7-129-107. Any such insurance may be procured from any insurance company designated by the board of directors, whether such insurance company is formed under the law of this state or any other jurisdiction, including any insurance company in which the nonprofit corporation has an equity or any other interest through stock ownership or otherwise.

Source: L. 97: Entire article added, p. 705, § 3, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2343, § 310, effective July 1, 2004.

7-129-109. Limitation of indemnification of directors.

(1) A provision treating a nonprofit corporation's indemnification of, or advance of expenses to, directors that is contained in its articles of incorporation or bylaws, in a resolution of its members or board of directors, or in a contract, except an insurance policy, or otherwise, is valid only to the extent the provision is not inconsistent with sections 7-129-101 to 7-129-108. If the articles of incorporation limit indemnification or advance of expenses, indemnification and advance of expenses are valid only to the extent not inconsistent with the articles of incorporation.

(2) Sections 7-129-101 to 7-129-108 do not limit a nonprofit corporation's power to pay or reimburse expenses incurred by a director in connection with an appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent in the proceeding.

Source: L. 97: Entire article added, p. 706, § 3, effective July 1, 1998.

7-129-110. Notice to voting members of indemnification of director.

If a nonprofit corporation indemnifies or advances expenses to a director under this article in connection with a proceeding by or in the right of the nonprofit corporation, the nonprofit corporation shall give written notice of the indemnification or advance to the voting members with or before the notice of the next voting members' meeting. If the next voting member action is taken without a meeting at the instigation of the board of directors, such notice shall be given to the voting members at or before the time the first voting member signs a writing consenting to such action.

Source: L. 97: Entire article added, p. 706, § 3, effective July 1, 1998.

ARTICLE 130

Amendment of Articles of Incorporation and Bylaws

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PART 1

AMENDMENT OF ARTICLES OF INCORPORATION

7-130-101. Authority to amend articles of incorporation.

(1) A nonprofit corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A member does not have a vested property right resulting from any provision in the articles of incorporation or the bylaws, including any provision relating to management, control, purpose, or duration of the nonprofit corporation.

Source: L. 97: Entire article added, p. 706, § 3, effective July 1, 1998. **L. 98:** (2) amended, p. 625, § 32, effective July 1.

7-130-102. Amendment of articles of incorporation by board of directors or incorporators.

(1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt, without member approval, one or more amendments to the articles of incorporation to:

(a) Delete the statement of the names and addresses of the incorporators or of the initial directors;

(b) Delete the statement of the registered agent name and registered agent address of the initial registered agent, if a statement of change changing the registered agent name and registered agent address of the registered agent is on file in the records of the secretary of state;

(b.4) Delete the statement of the principal office address of the initial principal office, if a statement of change changing the principal office address is on file in the records of the secretary of state;

(b.5) Delete the statement of the names and addresses of any or all of the individuals named in the articles of incorporation, pursuant to section 7-90-301 (6), as being individuals who caused the articles of incorporation to be delivered for filing;

(c) Extend the duration of the nonprofit corporation if it was incorporated at a time when limited duration was required by law;

(d) Change the domestic entity name by substituting the word "corporation", "incorporated", "company", or "limited", or an abbreviation of any such word for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution; or

(e) Make any other change expressly permitted by articles 121 to 137 of this title to be made without member action.

(2) The board of directors may adopt, without member action, one or more amendments to the articles of incorporation to change the entity name, if necessary, in connection with the reinstatement of a nonprofit corporation pursuant to part 10 of article 90 of this title.

(3) If a nonprofit corporation has no members or no members entitled to vote on amendments or no members yet admitted to membership, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the nonprofit corporation's articles of incorporation subject to any approval required pursuant to section 7-130-301. The nonprofit corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with section 7-128-203. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles of incorporation and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment shall be approved by a majority of the incorporators, until directors have been chosen, and thereafter by a majority of the directors in office at the time the amendment is adopted.

Source: L. 97: Entire article added, p. 707, § 3, effective July 1, 1998. **L. 98:** (3) amended, p. 625, § 33, effective July 1. **L. 2000:** (1)(d) and (2) amended, p. 984, § 86, effective July 1. **L. 2003:** (1)(a), (1)(b), (1)(d), and (2) amended and (1)(b.5) added, p. 2343, § 311, effective July 1, 2004. **L. 2004:** (1)(b) amended and (1)(b.4) added, p. 1512, § 303, effective July 1.

7-130-103. Amendment of articles of incorporation by board of directors and members.

(1) Unless articles 121 to 137 of this title, the articles of incorporation, the bylaws, or the members or the board of directors acting pursuant to subsection (5) of this section require a different vote or voting by class, the board of directors or the members representing at least ten

percent of all of the votes entitled to be cast on the amendment may propose an amendment to the articles of incorporation for submission to the members.

(2) For an amendment to the articles of incorporation to be adopted pursuant to subsection (1) of this section:

(a) The board of directors shall recommend the amendment to the members unless the amendment is proposed by members or unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members with the amendment; and

(b) The members entitled to vote on the amendment shall approve the amendment as provided in subsection (5) of this section.

(3) The proposing board of directors or the proposing members may condition the effectiveness of the amendment on any basis.

(4) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the amendment of the members' meeting at which the amendment will be voted upon. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment, and the notice shall contain or be accompanied by a copy or a summary of the amendment or shall state the general nature of the amendment.

(5) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the proposing board of directors or the proposing members acting pursuant to subsection (3) of this section require a greater vote, the amendment shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the amendment.

(6) If the board of directors or the members seek to have the amendment approved by the members by written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Source: L. 97: Entire article added, p. 708, § 3, effective July 1, 1998. **L. 98:** (1) and (4) amended, p. 625, § 34, effective July 1.

7-130-104. Voting on amendments of articles of incorporation by voting groups.

(1) Unless otherwise provided by articles 121 to 137 of this title or the articles of incorporation, if membership voting is otherwise required by articles 121 to 137 of this title, the

members of a class who are entitled to vote are entitled to vote as a separate voting group on an amendment to the articles of incorporation if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) Increase or decrease the number of memberships authorized for that class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, reclassification, or termination of the memberships of that class; or

(f) Authorize a new class of memberships.

(2) If a class is to be divided into two or more classes as a result of an amendment to the articles of incorporation, the amendment shall be approved by the members of each class that would be created by the amendment.

Source: L. 97: Entire article added, p. 708, § 3, effective July 1, 1998.

7-130-105. Articles of amendment to articles of incorporation.

(1) A nonprofit corporation amending its articles of incorporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment stating:

(a) The domestic entity name of the nonprofit corporation; and

(b) The text of each amendment adopted.

(c) to (f) (Deleted by amendment, L. 2005, p. 1217, § 24, effective October 1, 2005.)

Source: L. 97: Entire article added, p. 709, § 3, effective July 1, 1998. **L. 2002:** IP(1) amended, p. 1855, § 141, effective July 1; IP(1) amended, p. 1720, § 143, effective October 1. **L. 2003:** IP(1) and (1)(a) amended, p. 2344, § 312, effective July 1, 2004. **L. 2005:** Entire section amended, p. 1217, § 24, effective October 1.

7-130-106. Restated articles of incorporation.

(1) The board of directors may restate the articles of incorporation at any time with or without member action. If the nonprofit corporation has no members and no directors have been elected, its incorporators may restate the articles of incorporation at any time.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in section 7-130-103.

(3) If the board of directors submits a restatement for member action, the nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the restatement of the members' meeting at which the restatement will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the restatement, and the notice shall contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A nonprofit corporation restating its articles of incorporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of restatement stating:

(a) The domestic entity name of the nonprofit corporation;

(b) The text of the restated articles of incorporation; and

(c) (Deleted by amendment, L. 2008, p. 1879, § 8, effective August 5, 2008.)

(d) If the restatement was adopted by the board of directors or incorporators without member action, a statement to that effect and that member action was not required.

(5) Upon filing by the secretary of state or at any later effective date determined pursuant to section 7-90-304, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to them.

Source: L. 97: Entire article added, p. 710, § 3, effective July 1, 1998. **L. 2002:** IP(4) and (5) amended, p. 1856, § 142, effective July 1; IP(4) and (5) amended, p. 1721, § 144, effective October 1. **L. 2003:** IP(4) and (4)(a) amended, p. 2344, § 313, effective July 1, 2004. **L. 2008:** (4)(b) and (4)(c) amended, p. 1879, § 8, effective August 5.

7-130-107. Amendment of articles of incorporation pursuant to reorganization.

(1) Articles of incorporation may be amended, without action by the board of directors or members, to carry out a plan of reorganization ordered or decreed by a court of competent

jurisdiction under a statute of this state or of the United States if the articles of incorporation after amendment contain only provisions required or permitted by section 7-122-102.

(2) For an amendment to the articles of incorporation to be made pursuant to subsection (1) of this section, an individual or individuals designated by the court shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment stating:

(a) The domestic entity name of the nonprofit corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under a specified statute of this state or of the United States.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source: L. 97: Entire article added, p. 710, § 3, effective July 1, 1998. **L. 2002:** IP(2) amended, p. 1856, § 143, effective July 1; IP(2) amended, p. 1721, § 145, effective October 1. **L. 2003:** IP(2) and (2)(a) amended, p. 2344, § 314, effective July 1, 2004.

7-130-108. Effect of amendment of articles of incorporation.

An amendment to the articles of incorporation does not affect any existing right of persons other than members, any cause of action existing against or in favor of the nonprofit corporation, or any proceeding to which the nonprofit corporation is a party. An amendment changing a nonprofit corporation's domestic entity name does not abate a proceeding brought by or against a nonprofit corporation in its former entity name.

Source: L. 97: Entire article added, p. 711, § 3, effective July 1, 1998. **L. 2000:** Entire section amended, p. 984, § 87, effective July 1. **L. 2003:** Entire section amended, p. 2344, § 315, effective July 1, 2004.

PART 2

AMENDMENT OF BYLAWS

7-130-201. Amendment of bylaws by board of directors or members.

(1) The board of directors may amend the bylaws at any time to add, change, or delete a provision, unless:

(a) Articles 121 to 137 of this title or the articles of incorporation reserve such power exclusively to the members in whole or part; or

(b) A particular bylaw expressly prohibits the board of directors from doing so; or

(c) It would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(2) The members may amend the bylaws even though the bylaws may also be amended by the board of directors. In such instance, the action shall be taken in accordance with sections 7-130-103 and 7-130-104 as if each reference therein to the articles of incorporation was a reference to the bylaws.

Source: L. 97: Entire article added, p. 711, § 3, effective July 1, 1998. **L. 98:** (2) amended, p. 626, § 35, effective July 1. **L. 2007:** (2) amended, p. 249, § 53, effective May 29.

7-130-202. Bylaw changing quorum or voting requirement for members.

(1) (Deleted by amendment, L. 98, p. 626, § 36, effective July 1, 1998.)

(2) A bylaw that fixes a lesser or greater quorum requirement or a greater voting requirement for members pursuant to section 7-127-207 shall not be amended by the board of directors.

Source: L. 97: Entire article added, p. 712, § 3, effective July 1, 1998. **L. 98:** Entire section amended, p. 626, § 36, effective July 1.

7-130-203. Bylaw changing quorum or voting requirement for directors.

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended:

(a) If adopted by the members, only by the members; or

(b) If adopted by the board of directors, either by the members or by the board of directors.

(2) A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended only by a stated vote of either the members or the board of directors.

(3) Action by the board of directors under paragraph (b) of subsection (1) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Source: L. 97: Entire article added, p. 712, § 3, effective July 1, 1998. **L. 2003:** (2) amended, p. 2344, § 316, effective July 1, 2004.

PART 3

APPROVAL BY THIRD PERSONS AND TERMINATING MEMBERS OR REDEEMING OR CANCELING MEMBERSHIPS

7-130-301. Approval by third persons.

The articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a stated person or persons other than the board of directors. Such a provision may only be amended with the approval in writing of such person or persons.

Source: L. 97: Entire article added, p. 712, § 3, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2345, § 317, effective July 1, 2004.

7-130-302. Amendment terminating members or redeeming or canceling memberships.

(1) Any amendment to the articles of incorporation or bylaws of a nonprofit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships shall meet the requirements of articles 121 to 137 of this title and this section.

(2) Before adopting a resolution proposing an amendment as described in subsection (1) of this section, the board of directors of a nonprofit corporation shall give notice of the general nature of the amendment to the members.

Source: L. 97: Entire article added, p. 713, § 3, effective July 1, 1998.

ARTICLE 131

Merger

7-131-101. Merger.
7-131-101.5. Conversion.
7-131-102. Action on plan of conversion or merger.
7-131-103. Statement of merger or conversion.
7-131-104. Effect of merger or conversion.
7-131-105. Merger with foreign entity.

7-131-101. Merger.

(1) One or more domestic nonprofit corporations may merge into another domestic entity if the board of directors of each nonprofit corporation that is a party to the merger and each other entity that is a party to the merger adopts a plan of merger complying with section 7-90-203.3 and the members entitled to vote thereon, if any, of each such nonprofit corporation, if required by section 7-131-102, approve the plan of merger.

(2) and (3) (Deleted by amendment, L. 2007, p. 249, § 54, effective May 29, 2007.)

Source: L. 97: Entire article added, p. 713, § 3, effective July 1, 1998. **L. 2003:** (2) and (3) amended, p. 2345, § 318, effective July 1, 2004. **L. 2007:** Entire section amended, p. 249, § 54, effective May 29.

7-131-101.5. Conversion.

A nonprofit corporation may convert into any form of entity permitted by section 7-90-201 if the board of directors of the nonprofit corporation adopts a plan of conversion that complies with section 7-90-201.3 and the members entitled to vote thereon, if any, if required by section 7-131-102, approve the plan of conversion.

Source: L. 2007: Entire section added, p. 250, § 55, effective May 29.

7-131-102. Action on plan of conversion or merger.

(1) After adopting a plan of conversion complying with section 7-90-201.3 or a plan of merger complying with section 7-90-203.3, the board of directors of the converting nonprofit corporation or the board of directors of each nonprofit corporation that is a party to the merger shall also submit the plan of conversion or plan of merger to its members, if any are entitled to vote thereon, for approval.

(2) If the nonprofit corporation does have members entitled to vote with respect to the approval of a plan of conversion or plan of merger, a plan of conversion or a plan of merger is approved by the members if:

(a) The board of directors recommends the plan of conversion or plan of merger to the members entitled to vote thereon unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members with the plan; and

(b) The members entitled to vote on the plan of conversion or plan of merger approve the plan as provided in subsection (7) of this section.

(3) After adopting the plan of conversion or plan of merger, the board of directors of the converting nonprofit corporation or the board of directors of each nonprofit corporation party to the merger shall submit the plan of conversion or plan of merger for written approval by any person or persons whose approval is required by a provision of the articles of incorporation of the nonprofit corporation and as recognized by section 7-130-301 for an amendment to the articles of incorporation or bylaws.

(4) If the nonprofit corporation does not have members entitled to vote on a conversion or merger, the conversion or merger shall be approved and adopted by a majority of the directors elected and in office at the time the plan of conversion or plan of merger is considered by the board of directors. In addition, the nonprofit corporation shall provide notice of any meeting of the board of directors at which such approval is to be obtained in accordance with section 7-128-203. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed conversion or merger.

(5) The board of directors may condition the effectiveness of the plan of conversion or plan of merger on any basis.

(6) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the plan of conversion or plan of merger of the members'

meeting at which the plan will be voted on. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion or plan of merger, and the notice shall contain or be accompanied by a copy of the plan or a summary thereof.

(7) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (5) of this section require a greater vote, the plan of conversion or plan of merger shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the plan of conversion or plan of merger.

(8) Separate voting by voting groups is required on a plan of conversion or plan of merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment.

Source: L. 97: Entire article added, p. 713, § 3, effective July 1, 1998. **L. 2007:** Entire section amended, p. 250, § 56, effective May 29.

7-131-103. Statement of merger or conversion.

(1) After a plan of merger is approved, the surviving nonprofit corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of merger pursuant to section 7-90-203.7. If the plan of merger provides for amendments to the articles of incorporation of the surviving nonprofit corporation, articles of amendment effecting the amendments shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.

(2) (Deleted by amendment, L. 2002, p. 1856, § 144, effective July 1, 2002; p. 1721, § 146, effective October 1, 2002.)

(3) Repealed.

(4) After a plan of conversion is approved, the converting nonprofit corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of conversion pursuant to section 7-90-201.7.

Source: L. 97: Entire article added, p. 715, § 3, effective July 1, 1998. **L. 2002:** IP(1), (2), and (3) amended, p. 1856, § 144, effective July 1; IP(1), (2), and (3) amended, p. 1721, § 146, effective October 1. **L. 2003:** (1) amended, p. 2345, § 319, effective July 1, 2004. **L. 2004:** (1) amended, p. 1512, § 304, effective July 1. **L. 2006:** (3) repealed, p. 884, § 87, effective July 1. **L. 2007:** (1) amended and (4) added, p. 251, § 57, effective May 29.

7-131-104. Effect of merger or conversion.

(1) The effect of a merger shall be as provided in section 7-90-204.

(2) The effect of a conversion shall be as provided in section 7-90-202.

(3) Nothing in this title shall limit the common law powers of the attorney general concerning the merger or conversion of a nonprofit corporation.

Source: L. 97: Entire article added, p. 715, § 3, effective July 1, 1998. **L. 2005:** Entire section amended, p. 1218, § 25, effective October 1. **L. 2007:** Entire section amended, p. 251, § 58, effective May 29.

7-131-105. Merger with foreign entity.

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

(a) The merger is permitted by section 7-90-203 (2);

(b) (Deleted by amendment, L. 2007, p. 252, § 59, effective May 29, 2007.)

(c) The foreign entity complies with section 7-90-203.7, if it is the surviving entity of the merger; and

(d) Each domestic nonprofit corporation complies with the applicable provisions of sections 7-131-101 and 7-131-102 and, if it is the surviving nonprofit corporation of the merger, with section 7-131-103.

(2) Upon the merger taking effect, the surviving foreign entity of a merger shall comply with section 7-90-204.5.

(3) and (4) (Deleted by amendment, L. 2006, p. 882, § 82, effective July 1, 2006.)

Source: L. 97: Entire article added, p. 716, § 3, effective July 1, 1998. **L. 2003:** (1)(a) and (2) amended, p. 2346, § 320, effective July 1, 2004. **L. 2006:** (2) to (4) amended, p. 882, § 82, effective July 1. **L. 2007:** IP(1), (1)(a) to (1)(c), and (2) amended, p. 252, § 59, effective May 29.

ARTICLE 132

Sale of Property

7-132-101. Sale of property.

7-132-102. Sale of property other than in regular course of activities.

7-132-101. Sale of property.

(1) Unless the bylaws otherwise provide, a nonprofit corporation may, as authorized by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber all or substantially all of its property whether or not in the usual and regular course of business.

(2) Unless otherwise provided in the bylaws, approval by the members of a transaction described in this section is not required.

Source: L. 97: Entire article added, p. 717, § 3, effective July 1, 1998.

7-132-102. Sale of property other than in regular course of activities.

(1) A nonprofit corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without its good will, other than in the usual and regular course of business on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the members entitled to vote thereon approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, in connection with its dissolution, other than in the usual and regular course of business, and other than pursuant to a court order, shall be subject to the requirements of this section; but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a nonprofit corporation, with or without its good will, pursuant to a court order shall not be subject to the requirements of this section.

(2) If a nonprofit corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition

of all, or substantially all, of the property with or without the good will of another entity which it controls, and if the property interests held by the nonprofit corporation in such other entity constitute all, or substantially all, of the property of the nonprofit corporation, then the nonprofit corporation shall consent to such transaction only if the board of directors proposes and the members, if any are entitled to vote thereon, approve the giving of consent.

(3) For a transaction described in subsection (1) of this section or a consent described in subsection (2) of this section to be approved by the members:

(a) The board of directors shall recommend the transaction or the consent to the members unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members at a membership meeting with the submission of the transaction or consent; and

(b) The members entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in subsection (6) of this section.

(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.

(5) The nonprofit corporation shall give notice, in accordance with section 7-127-104 to each member entitled to vote on the transaction described in subsection (1) of this section or the consent described in subsection (2) of this section, of the members' meeting at which the transaction or the consent will be voted upon. The notice shall:

(a) State that the purpose, or one of the purposes, of the meeting is to consider:

(I) In the case of action pursuant to subsection (1) of this section, the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the nonprofit corporation; or

(II) In the case of action pursuant to subsection (2) of this section, the nonprofit corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, which entity shall be identified in the notice, property interests of which are held by the nonprofit corporation and constitute all, or substantially all, of the property of the nonprofit corporation; and

(b) Contain or be accompanied by a description of the transaction, in the case of action pursuant to subsection (1) of this section, or by a description of the transaction underlying the consent, in the case of action pursuant to subsection (2) of this section.

(6) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (4) of this section require a greater vote, the transaction described in subsection (1) of this section or the consent described in

subsection (2) of this section shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the transaction or the consent.

(7) After a transaction described in subsection (1) of this section or a consent described in subsection (2) of this section is authorized, the transaction may be abandoned or the consent withheld or revoked, subject to any contractual rights or other limitations on such abandonment, withholding, or revocation, without further action by the members.

(8) A transaction that constitutes a distribution is governed by article 133 and not by this section.

Source: L. 97: Entire article added, p. 717, § 3, effective July 1, 1998.

ARTICLE 133

Distributions

7-133-101. Distributions prohibited. 7-133-102. Authorized distributions.

7-133-101. Distributions prohibited.

Except as authorized by section 7-133-102, a nonprofit corporation shall not make any distributions.

Source: L. 97: Entire article added, p. 719, § 3, effective July 1, 1998.

7-133-102. Authorized distributions.

(1) A nonprofit corporation may:

(a) Make distributions of its income or assets to its members that are domestic or foreign nonprofit corporations;

(b) Pay compensation in a reasonable amount to its members, directors, or officers for services rendered; and

(c) Confer benefits upon its members in conformity with its purposes.

(2) Nonprofit corporations may make distributions upon dissolution in conformity with article 134 of this title.

Source: L. 97: Entire article added, p. 719, § 3, effective July 1, 1998.

ARTICLE 134

Dissolution

PART 1
VOLUNTARY DISSOLUTION

7-134-101. Dissolution by incorporators or directors if no members.

7-134-102. Dissolution by directors and members.

7-134-103. Articles of dissolution.

7-134-104. Revocation of dissolution. (Repealed)

7-134-105. Effect of dissolution.

7-134-106. Disposition of known claims by notification. (Repealed)

7-134-107. Disposition of claims by publication. (Repealed)

7-134-108. Enforcement of claims against dissolved nonprofit corporation. (Repealed)

7-134-109. Service on dissolved nonprofit corporation - repeal. (Repealed)

PART 2
ADMINISTRATIVE DISSOLUTION

7-134-201 to

7-134-205. (Repealed)

PART 3
JUDICIAL DISSOLUTION

7-134-301. Grounds for judicial dissolution.

7-134-302. Procedure for judicial dissolution.

7-134-303. Receivership or custodianship.

7-134-304. Decree of dissolution.

PART 4
DISSOLUTION UPON EXPIRATION OF PERIOD OF DURATION

7-134-401. Dissolution upon expiration of period of duration.

PART 5
MISCELLANEOUS

7-134-501. Deposit with state treasurer.

PART 1

VOLUNTARY DISSOLUTION

7-134-101. Dissolution by incorporators or directors if no members.

(1) If a nonprofit corporation has no members, a majority of its directors or, if there are no directors, a majority of its incorporators may authorize the dissolution of the nonprofit corporation.

(2) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

Source: L. 97: Entire article added, p. 719, § 3, effective July 1, 1998.

7-134-102. Dissolution by directors and members.

(1) Unless otherwise provided in the bylaws, dissolution of a nonprofit corporation may be authorized in the manner provided in subsection (2) of this section.

(2) For a proposal to dissolve the nonprofit corporation to be authorized:

(a) The board of directors shall adopt the proposal to dissolve;

(b) The board of directors shall recommend the proposal to dissolve to the members entitled to vote thereon unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the members; and

(c) The members entitled to vote on the proposal to dissolve shall approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition the effectiveness of the dissolution, and the members may condition their approval of the dissolution, on any basis.

(4) The nonprofit corporation shall give notice, in accordance with section 7-127-104, to each member entitled to vote on the proposal of the members' meeting at which the proposal to dissolve will be voted on. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposal to dissolve the nonprofit corporation, and the notice shall contain or be accompanied by a copy of the proposal or a summary thereof.

(5) Unless articles 121 to 137 of this title, the articles of incorporation, bylaws adopted by the members, or the board of directors acting pursuant to subsection (3) of this section require a

greater vote, the proposal to dissolve shall be approved by the votes required by sections 7-127-205 and 7-127-206 by every voting group entitled to vote on the proposal to dissolve.

(6) The plan of dissolution shall indicate to whom the assets owned or held by the nonprofit corporation will be distributed after all creditors have been paid.

Source: L. 97: Entire article added, p. 720, § 3, effective July 1, 1998. **L. 2008:** (2)(b) amended, p. 21, § 9, effective August 5.

7-134-103. Articles of dissolution.

(1) At any time after dissolution is authorized, the nonprofit corporation may dissolve by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of dissolution stating:

(a) The domestic entity name of the nonprofit corporation;

(b) The principal office address of the nonprofit corporation's principal office; and

(c) That the nonprofit corporation is dissolved.

(d) to (f) (Deleted by amendment, L. 2004, p. 1513, § 305, effective July 1, 2004.)

(2) A nonprofit corporation is dissolved upon the effective date of its articles of dissolution.

(3) Articles of dissolution need not be filed by a nonprofit corporation that is dissolved pursuant to section 7-134-401.

Source: L. 97: Entire article added, p. 720, § 3, effective July 1, 1998. **L. 2002:** IP(1) amended, p. 1856, § 145, effective July 1; IP(1) amended, p. 1721, § 147, effective October 1. **L. 2003:** IP(1), (1)(a), and (1)(b) amended, p. 2346, § 321, effective July 1, 2004. **L. 2004:** (1) amended, p. 1513, § 305, effective July 1.

7-134-104. Revocation of dissolution. (Repealed)

Source: L. 97: Entire article added, p. 721, § 3, effective July 1, 1998. **L. 98:** (4) amended, p. 626, § 37, effective July 1. **L. 2000:** (3)(a) and (5) amended, p. 984, § 88, effective July 1. **L. 2002:** IP(3) and (4) amended, p. 1856, § 146, effective July 1; IP(3) and (4) amended, p. 1721, §

148, effective October 1. **L. 2003:** IP(3), (3)(a), (4), and (5) amended, p. 2347, § 322, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1513, § 306, effective July 1.

7-134-105. Effect of dissolution.

(1) A dissolved nonprofit corporation continues its corporate existence but may not carry on any activities except as is appropriate to wind up and liquidate its affairs, including:

(a) Collecting its assets;

(b) Returning, transferring, or conveying assets held by the nonprofit corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(c) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(d) Discharging or making provision for discharging its liabilities;

(e) Doing every other act necessary to wind up and liquidate its assets and affairs.

(2) Upon dissolution of a nonprofit corporation exempt under section 501 (c)(3) of the internal revenue code or corresponding section of any future federal tax code, the assets of such nonprofit corporation shall be distributed for one or more exempt purposes under said section, or to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located, or, if the nonprofit corporation has no principal office in this state, by the district court of the county in which the street address of its registered agent is located, or, if the nonprofit corporation has no registered agent, the district court of the city and county of Denver exclusively for such purposes or to such organization or organizations, as said court shall determine, that are formed and operated exclusively for such purposes.

(3) Dissolution of a nonprofit corporation does not:

(a) Transfer title to the nonprofit corporation's property;

(b) Subject its directors or officers to standards of conduct different from those prescribed in article 128 of this title;

(c) Change quorum or voting requirements for its board of directors or members, change provisions for selection, resignation, or removal of its directors or officers, or both, or change provisions for amending its bylaws or its articles of incorporation;

(d) Prevent commencement of a proceeding by or against the nonprofit corporation in its entity name; or

(e) Abate or suspend a proceeding pending by or against the nonprofit corporation on the effective date of dissolution.

(4) (Deleted by amendment, L. 2003, p. 2347, § 323, effective July 1, 2004.)

(5) A dissolved nonprofit corporation may dispose of claims against it pursuant to sections 7-90-911 and 7-90-912.

Source: L. 97: Entire article added, p. 722, § 3, effective July 1, 1998. **L. 2000:** (3)(d) and (4) amended, p. 985, § 89, effective July 1. **L. 2003:** (2) and (4) amended, p. 2347, § 323, effective July 1, 2004. **L. 2006:** (5) added, p. 883, § 83, effective July 1.

7-134-106. Disposition of known claims by notification. (Repealed)

Source: L. 97: Entire article added, p. 723, § 3, effective July 1, 1998. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-134-107. Disposition of claims by publication. (Repealed)

Source: L. 97: Entire article added, p. 724, § 3, effective July 1, 1998. **L. 2003:** (2)(a) amended, p. 2348, § 324, effective July 1, 2004. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-134-108. Enforcement of claims against dissolved nonprofit corporation. (Repealed)

Source: L. 97: Entire article added, p. 725, § 3, effective July 1, 1998. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-134-109. Service on dissolved nonprofit corporation - repeal. (Repealed)

Source: L. 97: Entire article added, p. 725, § 3, effective July 1, 1998. **L. 2003:** (4) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

PART 2

ADMINISTRATIVE DISSOLUTION

7-134-201. Grounds for administrative dissolution. (Repealed)

Source: L. 97: Entire article added, p. 726, § 3, effective July 1, 1998. **L. 2000:** (1)(b) amended, p. 985, § 90, effective July 1. **L. 2003:** Entire section amended, p. 2348, § 325, effective July 1, 2004. **L. 2004:** (1)(b) amended, p. 1514, § 307, effective July 1. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-134-202. Procedure for and effect of administrative dissolution. (Repealed)

Source: L. 97: Entire article added, p. 726, § 3, effective July 1, 1998. **L. 2000:** (3) amended, p. 985, § 91, effective July 1. **L. 2003:** (2), (3), (4), and (5) amended, p. 2348, § 326, effective July 1, 2004. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-134-203. Reinstatement following administrative dissolution - repeal. (Repealed)

Source: L. 97: Entire article added, p. 727, § 3, effective July 1, 1998. **L. 2000:** (1)(a) and (1)(c) amended, p. 985, § 92, effective July 1. **L. 2002:** IP(1), (2), and (3) amended, p. 1857, § 147, effective July 1; IP(1), (2), and (3) amended, p. 1722, § 149, effective October 1. **L. 2003:** (5) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

7-134-204. Appeal from denial of reinstatement - repeal. (Repealed)

Source: L. 97: Entire article added, p. 728, § 3, effective July 1, 1998. **L. 2003:** (5) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

7-134-205. Continuation as unincorporated association. (Repealed)

Source: L. 97: Entire article added, p. 728, § 3, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2349, § 327, effective July 1, 2004. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

PART 3

JUDICIAL DISSOLUTION

7-134-301. Grounds for judicial dissolution.

(1) A nonprofit corporation may be dissolved in a proceeding by the attorney general if it is established that:

(a) The nonprofit corporation obtained its articles of incorporation through fraud; or

(b) The nonprofit corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) A nonprofit corporation may be dissolved in a proceeding by a director or member if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the members, if any, are unable to break the deadlock, and irreparable injury to the nonprofit corporation is threatened or being suffered;

(b) The directors or those otherwise in control of the nonprofit corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

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

(d) The corporate assets are being misapplied or wasted.

(3) A nonprofit corporation may be dissolved in a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the nonprofit corporation is insolvent; or

(b) The nonprofit corporation is insolvent and the nonprofit corporation has admitted in writing that the creditor's claim is due and owing.

(4) (a) If a nonprofit corporation has been dissolved by voluntary action taken under part 1 of this article:

(I) The nonprofit corporation may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with section 7-134-105; and

(II) The attorney general, a director, a member, or a creditor may bring a proceeding to wind up and liquidate the affairs of the nonprofit corporation under judicial supervision in accordance with section 7-134-105, upon establishing the grounds set forth in subsections (1) to (3) of this section.

(b) As used in sections 7-134-302 to 7-134-304, a "proceeding to dissolve a nonprofit corporation" includes a proceeding brought under this subsection (4), and a "decree of dissolution" includes an order of court entered in a proceeding under this subsection (4) that directs that the affairs of a nonprofit corporation shall be wound up and liquidated under judicial supervision.

Source: L. 97: Entire article added, p. 728, § 3, effective July 1, 1998. **L. 2004:** (4)(b) amended, p. 1514, § 308, effective July 1. **L. 2005:** IP(4)(a) amended, p. 1219, § 30, effective October 1.

7-134-302. Procedure for judicial dissolution.

(1) (a) A proceeding by the attorney general to dissolve a nonprofit corporation must be brought:

(I) In the district court for the county in this state in which the street address of the nonprofit corporation's principal office or the street address of its registered agent is located;

(II) If the nonprofit corporation has no principal office in this state and no registered agent, in the district court for the city and county of Denver; or

(III) If the dissolution is based on a fraudulent filing with the secretary of state, in the district court for the city and county of Denver.

(b) If subsection (1)(a) of this section does not apply, a proceeding brought by any other party named in section 7-134-301 must be brought:

(I) In the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located;

(II) If the nonprofit corporation has no principal office in this state, in the district court for the county in which the street address of its registered agent is located; or

(III) If the nonprofit corporation has no registered agent, in the district court for the city and county of Denver.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a nonprofit corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the nonprofit corporation until a full hearing can be held.

Source: L. 97: Entire article added, p. 729, § 3, effective July 1, 1998. **L. 2003:** (1) amended, p. 2349, § 328, effective July 1, 2004. **L. 2026:** (1) amended, (HB 26-1088), ch. 226, p. 1316, § 7, effective August 12.

Editor's note: Section 9(2) of chapter 226 (HB 26-1088), Session Laws of Colorado 2026, provides that the act changing this section applies to complaints filed on or after August 12, 2026.

7-134-303. Receivership or custodianship.

(1) A court in a judicial proceeding to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the nonprofit corporation. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or

custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the nonprofit corporation and all of its property, wherever located.

(2) The court may appoint an individual, a domestic entity, or a foreign entity authorized to transact business or conduct activities in this state, or a domestic or foreign nonprofit corporation authorized to transact business or conduct activities in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount stated by the court.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order which may be amended from time to time. Among other powers the receiver shall have the power to:

(a) Dispose of all or any part of the property of the nonprofit corporation, wherever located, at a public or private sale, if authorized by the court; and

(b) Sue and defend in the receiver's own name as receiver of the nonprofit corporation in all courts.

(4) The custodian may exercise all of the powers of the nonprofit corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the nonprofit corporation in the best interests of its members and creditors.

(5) The court, during a receivership, may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the nonprofit corporation and its members and creditors.

(6) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and such person's counsel from the assets of the nonprofit corporation or proceeds from the sale of the assets.

Source: L. 97: Entire article added, p. 730, § 3, effective July 1, 1998. **L. 2003:** (2) amended, p. 2349, § 329, effective July 1, 2004. **L. 2004:** (1) amended, p. 1515, § 309, effective July 1.

7-134-304. Decree of dissolution.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 7-134-301 exist, it may enter a decree dissolving the nonprofit corporation and stating the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state for filing pursuant to part 3 of article 90 of this title.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the nonprofit corporation's activities in accordance with section 7-134-105 and the giving of notice to claimants in accordance with sections 7-90-911 and 7-90-912.

(3) The court's order or decision may be appealed as in other civil proceedings.

Source: L. 97: Entire article added, p. 731, § 3, effective July 1, 1998. **L. 2003:** (1) and (2) amended, p. 2350, § 330, effective July 1, 2004. **L. 2004:** (2) amended, p. 1515, § 310, effective July 1. **L. 2006:** (2) amended, p. 883, § 84, effective July 1.

PART 4

DISSOLUTION UPON EXPIRATION OF PERIOD OF DURATION

7-134-401. Dissolution upon expiration of period of duration.

(1) A nonprofit corporation shall be dissolved upon and by reason of the expiration of its period of duration, if any, stated in its articles of incorporation.

(2) A provision in the articles of incorporation to the effect that the nonprofit corporation or its existence shall be terminated at a stated date or after a stated period of time or upon a contingency, or any similar provision, shall be deemed to be a provision for a period of duration within the meaning of this section. The occurrence of such date, the expiration of the stated period of time, the occurrence of such contingency, or the satisfaction of such provision shall be deemed to be the expiration of the nonprofit corporation's period of duration for purposes of this section.

Source: L. 97: Entire article added, p. 731, § 3, effective July 1, 1998. **L. 2003:** (2) amended, p. 2350, § 331, effective July 1, 2004.

PART 5

MISCELLANEOUS

7-134-501. Deposit with state treasurer.

Assets of a dissolved nonprofit corporation that should be transferred to a creditor, claimant, or member of the nonprofit corporation who cannot be found or who is not legally competent to

receive them shall be reduced to cash and deposited with the state treasurer as property presumed to be abandoned under the provisions of article 13 of title 38, C.R.S.

Source: L. 97: Entire article added, p. 732, § 3, effective July 1, 1998.

ARTICLE 135

Foreign Nonprofit Corporations - Authority to Conduct Activities

7-135-101. Authority to conduct activities required.

7-135-101. Authority to conduct activities required.

Part 8 of article 90 of this title, providing for the transaction of business or the conduct of activities by foreign entities, applies to foreign nonprofit corporations.

Source: L. 2003: Entire article R&RE, p. 2350, § 332, effective July 1, 2004.

ARTICLE 136

Records, Information, and Reports

7-136-101. Corporate records.
7-136-102. Inspection of corporate records by members.
7-136-103. Scope of member's inspection right.
7-136-104. Court-ordered inspection of corporate records.
7-136-105. Limitations on use of membership list.
7-136-106. Financial statements.
7-136-107. Periodic report to secretary of state.
7-136-108. Statement of person named as director or officer. (Repealed)
7-136-109. Interrogatories by secretary of state. (Repealed)

7-136-101. Corporate records.

(1) A nonprofit corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, 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 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 in alphabetical order, by class, 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, and records of all action taken by members without a meeting, for the past three years;

(e) All written communications within the past three years to members generally as members;

(f) A list of the names and business or home addresses of its current directors and officers;

(g) A copy of its most recent periodic report pursuant to part 5 of article 90 of this title; and

(h) All financial statements prepared for periods ending during the last three years that a member could have requested under section 7-136-106.

Source: L. 97: Entire article added, p. 742, § 3, effective July 1, 1998. **L. 2000:** (5)(g) amended, p. 987, § 98, effective July 1. **L. 2003:** (5)(g) amended, p. 2350, § 333, effective July 1, 2004. **L. 2010:** (5)(g) amended, (HB 10-1403), ch. 404, p. 2000, § 27, effective August 11.

7-136-102. Inspection of corporate records by members.

(1) A member is entitled to inspect and copy, during regular business hours at the nonprofit corporation's principal office, any of the records of the nonprofit corporation described in section 7-136-101 (5) if the member gives the nonprofit corporation written demand at least five business days before the date on which the member wishes to inspect and copy such records.

(2) Pursuant to subsection (5) of this section, a member is entitled to inspect and copy, during regular business hours at a reasonable location stated by the nonprofit corporation, any of the other records of the nonprofit corporation if the member meets the requirements of subsection (3) of this section and gives the nonprofit corporation written demand at least five business days before the date on which the member wishes to inspect and copy such records.

(3) A member may inspect and copy the records described in subsection (2) of this section only if:

(a) The member has been a member for at least three months immediately preceding the demand to inspect or copy or is a member holding at least five percent of the voting power as of the date the demand is made;

(b) The demand is made in good faith and for a proper purpose;

(c) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(d) The records are directly connected with the described purpose.

(4) For purposes of this section:

(a) "Member" includes a beneficial owner whose membership interest is held in a voting trust and any other beneficial owner of a membership interest who establishes beneficial ownership.

(b) "Proper purpose" means a purpose reasonably related to the demanding member's interest as a member.

(5) The right of inspection granted by this section may not be abolished or limited by the articles of incorporation or bylaws.

(6) This section does not affect:

(a) The right of a member to inspect records under section 7-127-201;

(b) The right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the nonprofit corporation; or

(c) The power of a court, independent of articles 121 to 137 of this title, to compel the production of corporate records for examination.

Source: L. 97: Entire article added, p. 743, § 3, effective July 1, 1998. **L. 2003:** (2) amended, p. 2351, § 334, effective July 1, 2004.

ANNOTATION

Expelled member has no standing to inspect the financial records of the nonprofit corporation. Levitt v. Calvary Temple of Denver, 33 P.3d 1227 (Colo. App. 2001).

7-136-103. Scope of member's inspection right.

(1) A member's agent or attorney has the same inspection and copying rights as the member.

(2) The right to copy records under section 7-136-102 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.

(3) Except as provided in section 7-136-106, the nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production and reproduction of the records.

(4) The nonprofit corporation may comply with a member's demand to inspect the record of members under section 7-136-102 (2) by furnishing to the member a list of members that complies with section 7-136-101 (3) and was compiled no earlier than the date of the member's demand.

Source: L. 97: Entire article added, p. 744, § 3, effective July 1, 1998. **L. 2016:** (4) amended, (SB 16-189), ch. 210, p. 754, § 8, effective June 6.

7-136-104. Court-ordered inspection of corporate records.

(1) If a nonprofit corporation refuses to allow a member, or the member's agent or attorney, who complies with section 7-136-102 (1) to inspect or copy any records that the member is entitled to inspect or copy by said section, the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the nonprofit corporation has no registered agent, the district court for the city and county of Denver may, on application of the member,

summarily order the inspection or copying of the records demanded at the nonprofit corporation's expense.

(2) If a nonprofit corporation refuses to allow a member, or the member's agent or attorney, who complies with section 7-136-102 (2) and (3) to inspect or copy any records that the member is entitled to inspect or copy pursuant to section 7-136-102 (2) and (3) within a reasonable time following the member's demand, the district court for the county in this state in which the street address of the nonprofit corporation's principal office is located or, if the nonprofit corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the nonprofit corporation has no registered agent, the district court for the city and county of Denver may, on application of the member, summarily order the inspection or copying of the records demanded.

(3) If a court orders inspection or copying of the records demanded, 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 member, or the member's agent or attorney, to inspect or copy the records demanded:

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

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

(c) If inspection or copying is ordered pursuant to subsection (2) of this section, the court may order the nonprofit corporation to pay the member's inspection and copying expenses; and

(d) The court may grant the 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 member.

Source: L. 97: Entire article added, p. 745, § 3, effective July 1, 1998. **L. 2003:** (1) and (2) amended, p. 2351, § 335, effective July 1, 2004.

7-136-105. Limitations on use of membership list.

(1) Without consent of the board of directors, a membership list or any part thereof 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) of this section, without the consent of the board of directors a membership list or any part thereof may not be:

(a) Used to solicit money or property unless such 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.

Source: L. 97: Entire article added, p. 746, § 3, effective July 1, 1998.

7-136-106. Financial statements.

Upon the written request of any member, a nonprofit corporation shall mail to such member its most recent annual financial statements, if any, and its most recently published financial statements, if any, showing in reasonable detail its assets and liabilities and results of its operations.

Source: L. 97: Entire article added, p. 746, § 3, effective July 1, 1998.

7-136-107. Periodic report to secretary of state.

Part 5 of article 90 of this title, providing for periodic reports from reporting entities, applies to domestic nonprofit corporations and applies to foreign nonprofit corporations that are authorized to transact business or conduct activities in this state.

Source: L. 97: Entire article added, p. 746, § 3, effective July 1, 1998. **L. 2000:** Entire section R&RE, p. 987, § 99, effective July 1. **L. 2003:** Entire section amended, p. 2351, § 336, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1515, § 311, effective July 1. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 2000, § 28, effective August 11.

7-136-108. Statement of person named as director or officer. (Repealed)

Source: L. 97: Entire article added, p. 748, § 3, effective July 1, 1998. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-136-109. Interrogatories by secretary of state. (Repealed)

Source: L. 97: Entire article added, p. 748, § 3, effective July 1, 1998. **L. 2002:** (4) amended, p. 1859, § 154, effective July 1; (4) amended, p. 1724, § 156, effective October 1. **L. 2003:** (4) and (5) amended, p. 2351, § 337, effective July 1, 2004. **L. 2004:** (1) amended, p. 1515, § 312, effective July 1. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

ARTICLE 137

Transition Provisions

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7-137-101. Application to existing corporations.

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PART 2
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PART 3
SAVING PROVISIONS

7-137-301. Saving provisions.

PART 1

APPLICATION OF ACT

7-137-100.3. Definitions.

As used in this article 137, unless the context otherwise requires:

(1) "Existing corporate entity" means any corporate entity that was in existence on June 30, 1998, and that was incorporated under articles 20 to 29 of this title 7 or elected to accept such articles as provided therein.

Source: L. 2025: Entire section added with relocations, (SB 25-275), ch. 377, p. 2033, § 27, effective August 6.

Editor's note: This section is similar to former § 7-137-101 (1)(a) as it existed prior to 2025.

7-137-101. Application to existing corporations.

(1) (a) Repealed.

(b) A corporate entity that was either incorporated under or elected to accept articles 20 to 29 of this title and that was suspended or, as a consequence of such suspension, dissolved by operation of law before July 1, 1998, and was eligible for reinstatement or restoration, renewal, and revival on June 30, 1998, shall be deemed to be in existence on that date for purposes of this subsection (1) and shall be deemed administratively dissolved on the date of such suspension for purposes of section 7-134-105.

(c) A corporate entity that was either incorporated under or elected to accept articles 20 to 29 of this title and that was suspended or, as a consequence of such suspension, dissolved by operation of law before July 1, 1998, and was not eligible for reinstatement or restoration, renewal, and revival on June 30, 1998, shall be treated as a domestic entity as to which a constituent filed document has been filed by, or placed in the records of, the secretary of state and that has been dissolved for purposes of section 7-90-1001.

(2) Subject to this section, articles 121 to 137 of this title apply to all existing corporate entities subject to articles 20 to 29 of this title.

(3) Unless the articles of incorporation or bylaws of an existing corporate entity recognize the right of a member to transfer such member's membership interests in such corporate entity, such interests shall be presumed to be nontransferable. However, if the transferability of such interests is not prohibited by such articles of incorporation or bylaws, such transferability may be established by a preponderance of the evidence taking into account any representation made by the corporate entity, the practice of such corporate entity, other transactions involving such interests, and other facts bearing on the existence of the rights to transfer such interests.

(4) Until the articles of incorporation of an existing corporate entity are amended or restated on or after July 1, 1998, they need not be amended or restated to comply with articles 121 to 137 of this title.

(5) Unless changed by an amendment to its articles of incorporation, members or classes of members of an existing corporate entity shall be deemed to be voting members for purposes of articles 121 to 137 of this title if such members or classes of members, on June 30, 1998, had the right by reason of a provision of the corporate entity's articles of incorporation or bylaws, or by a custom, practice, or tradition, to vote for the election of a director or directors.

(6) The bylaws of an existing corporate entity may be amended as provided in its articles of incorporation or bylaws. Unless otherwise so provided, the power to amend such bylaws shall be vested in the board of directors.

Source: L. 97: Entire article added, p. 749, § 3, effective July 1, 1998. **L. 98:** (6) added, p. 626, § 38, effective July 1. **L. 2005:** (1)(b) amended, p. 1219, § 31, effective October 1. **L. 2006:** (1)(b) amended and (1)(c) added, p. 883, § 85, effective July 1. **L. 2025:** (1)(a) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

Editor's note: Subsection (1)(a) was relocated to § 7-137-100.3 in 2025.

7-137-102. Pre-1968 corporate entities - failure to file reports and designate registered agents - dissolution.

(1) Corporate entities that were formed prior to January 1, 1968, and that did not elect to be governed by articles 20 to 29 of this title and could, if they so elected, elect to be governed by articles 121 to 137 of this title, but that have not done so, are nevertheless reporting entities that are subject to part 5 of article 90 of this title, providing for periodic reports from reporting entities, and are domestic entities that are subject to part 7 of article 90 of this title, providing for registered agents and service of process.

(2) Every corporate entity that could or has elected to be governed by articles 20 to 29 or 121 to 137 of this title whose articles of incorporation, affidavit of incorporation, or other basic corporate charter, by whatever name denominated, is not on file in the records of the secretary of state shall file a certified copy of such articles of incorporation, affidavit of incorporation, or other basic corporate charter in the office of the secretary of state. Such certified copy may be secured from any clerk or recorder with whom the instrument may be filed or recorded.

(3) If any corporate entity, formed prior to January 1, 1968, that could elect to be governed by articles 20 to 29 or 121 to 137 of this title, but that has not so elected and has failed to file

periodic reports or maintain a registered agent, may be declared delinquent pursuant to section 7-90-902.

(4) Any corporate entity formed prior to January 1, 1968, that could elect to be governed by articles 20 to 29 of this title, that was suspended or was declared defunct, but not dissolved by operation of law under section 7-20-105 before July 1, 1998, and that was eligible for reinstatement on June 30, 1998, shall be deemed administratively dissolved on the date of such suspension for purposes of section 7-134-105 and may reinstate itself as a nonprofit corporation as provided in part 10 of article 90 of this title.

(5) Any nonprofit corporate entity formed prior to January 1, 1968, that could elect to be governed by articles 20 to 29 of this title, that was suspended, declared defunct, administratively dissolved, or dissolved by operation of law, and continues to operate for nonprofit purposes and does not wind up its business and affairs, shall be deemed an unincorporated organization that qualifies as a nonprofit association as provided in section 7-30-101.1 for purposes of the "Uniform Unincorporated Nonprofit Association Act", article 30 of this title, unless such corporate entity is eligible to reinstate itself as a nonprofit corporation as provided in part 10 of article 90 of this title and does so reinstate itself.

Source: L. 97: Entire article added, p. 750, § 3, effective July 1, 1998. **L. 2000:** (1) and (3) amended, p. 987, § 100, effective July 1. **L. 2003:** (1), (3), (4), and (5) amended, p. 2352, § 338, effective July 1, 2004. **L. 2004:** (1) and (2) amended, p. 1516, § 313, effective July 1. **L. 2005:** (3) and (4) amended, p. 1219, § 32, effective October 1. **L. 2006:** (4) amended, p. 884, § 86, effective July 1. **L. 2010:** (1) and (3) amended, (HB 10-1403), ch. 404, p. 2000, § 29, effective August 11.

Editor's note: Section 7-20-105, referred to in subsection (4), was repealed, effective July 1, 1998.

7-137-103. Application to foreign nonprofit corporations.

A foreign nonprofit corporation authorized to transact business or conduct activities in this state on June 30, 1998, is subject to articles 121 to 137 of this title but is not required to obtain new authorization to transact business or conduct activities under said articles.

Source: L. 97: Entire article added, p. 751, § 3, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2353, § 339, effective July 1, 2004.

PART 2

ELECTION BY PRE-1968 CORPORATE ENTITIES

7-137-201. Procedure to elect to accept articles 121 to 137 of this title.

(1) Any corporate entity with shares of capital stock formed before January 1, 1968, under article 40, 50, or 51 of this title, any corporate entity formed before January 1, 1968, under article 40 or 50 of this title without shares of capital stock, and any corporate entity whether with or without shares of capital stock and formed before January 1, 1968, under any general law or created by any special act of the general assembly for a purpose for which a nonprofit corporation may be formed under articles 121 to 137 of this title may elect to accept said articles in the following manner:

(a) If there are members or stockholders entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporate entity accept articles 121 to 137 of this title and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon, which may be either an annual or special meeting. The question shall also be submitted whenever one-twentieth of the members or stockholders entitled to vote thereon so request. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider electing to accept said articles shall be given to each member or stockholder entitled to vote at the meeting within the time and in the manner provided in said articles for the giving of notice of meetings to members or stockholders. Such election to accept said articles shall require for adoption at least two-thirds of the votes that members or stockholders present at such meeting in person or by proxy are entitled to cast.

(b) If there are no members or stockholders entitled to vote thereon, election to accept articles 121 to 137 of this title may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

(2) In effecting acceptance of articles 121 to 137 of this title, the corporate entity shall follow the requirements of the law under which it was formed, its articles of incorporation, and its bylaws so far as applicable.

(3) If the domestic entity name of the corporate entity accepting articles 121 to 137 of this title is not in conformity with part 6 of article 90 of this title, the corporate entity shall change its domestic entity name to conform with part 6 of article 90 of this title. The adoption of a domestic entity name that is in conformity with said part 6 by the members or stockholders of the corporate entity, and its inclusion in the statement of election to accept articles 121 to 137 as the entity name, shall be the only action necessary to effect the change. The articles of incorporation, affidavit, or other basic organizational charter shall be deemed for all purposes amended to conform to the entity name.

(4) All corporate entities accepting articles 121 to 137 of this title whose articles of incorporation, affidavits of incorporation, or other basic charters, by whatever names denominated, are not on file in the records of the secretary of state as required by section 7-137-102 (2) shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a certified copy of such articles of incorporation, affidavits of incorporation, or other basic charters at the time of delivery of the statement of election to accept articles 121 to 137 of this title.

(5) All corporate entities accepting articles 121 to 137 of this title are reporting entities subject to part 5 of article 90 of this title, providing for periodic reports from reporting entities, and are subject to part 7 of article 90 of this title, providing for registered agents and service of process.

Source: L. 97: Entire article added, p. 751, § 3, effective July 1, 1998. **L. 2000:** IP(1) and (1)(d) amended, p. 987, § 101, effective July 1. **L. 2003:** Entire section amended, p. 2353, § 340, effective July 1, 2004. **L. 2004:** (4) and (5) amended, p. 1516, § 314, effective July 1. **L. 2008:** (3) amended, p. 24, § 20, effective August 5. **L. 2010:** (5) amended, (HB 10-1403), ch. 404, p. 2001, § 30, effective August 11.

7-137-202. Statement of election to accept articles 121 to 137 of this title.

(1) A statement of election to accept articles 121 to 137 of this title shall state:

(a) The domestic entity name of the corporate entity;

(b) A statement by the corporate entity that it has elected to accept said articles and that all required reports have been or will be filed and all fees, taxes, and penalties due to the state of Colorado accruing under any law to which the corporate entity heretofore has been subject have been paid;

(c) If there are members or stockholders entitled to vote thereon, a statement stating the date of the meeting of such members or stockholders at which the election to accept articles 121 to 137 of this title was made, that a quorum was present at the meeting, and that such acceptance was authorized by at least two-thirds of the votes that members or stockholders present at such meeting in person or by proxy were entitled to cast;

(d) If there are no members or stockholders entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which election to accept said articles was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors in office;

(e) A statement that the corporate entity followed the requirements of the law under which it was formed, its articles of incorporation, and its bylaws so far as applicable in effecting such acceptance;

(f) and (g) Repealed.

(h) A statement that any attached copy of the articles of incorporation, affidavit, or other basic corporate charter of the corporate entity is true and correct;

(i) If the corporate entity has issued shares of stock, a statement of such fact including the number of shares heretofore authorized, the number issued and outstanding, and a statement that all issued and outstanding shares of stock have been delivered to the corporate entity to be canceled upon the acceptance of articles 121 to 137 of this title by the corporate entity becoming effective and that from and after the effective date of said acceptance the authority of the corporate entity to issue shares of stock is terminated; except that this shall not apply to corporate entities formed for the acquisition and distribution of water to their stockholders.

Source: L. 97: Entire article added, p. 753, § 3, effective July 1, 1998. **L. 2003:** IP(1), (1)(a), (1)(c), (1)(e), (1)(f), and (1)(i) amended, p. 2354, § 341, effective July 1, 2004. **L. 2004:** (1)(f) and (1)(g) repealed, p. 1516, § 315, effective July 1.

7-137-203. Filing statement of election to accept articles 121 to 137 of this title.

The statement of election to accept articles 121 to 137 of this title shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.

Source: L. 97: Entire article added, p. 754, § 3, effective July 1, 1998. **L. 2002:** Entire section amended, p. 1859, § 155, effective July 1; entire section amended, p. 1724, § 157, effective October 1.

7-137-204. Effect of certificate of acceptance.

(1) Upon the filing by the secretary of state of the statement of election to accept articles 121 to 137 of this title, the election of the corporate entity to accept said articles shall become effective.

(2) A corporate entity so electing under articles 121 to 137 of this title or corresponding provision of prior law shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though such corporate entity had been originally

formed under said articles and shall also be subject to any duties or obligations expressly imposed upon the corporate entity by a special charter, subject to the following:

(a) If no period of duration is expressly fixed in the articles of incorporation of such corporate entity, its period of duration shall be deemed to be perpetual.

(b) No amendment to the articles of incorporation adopted after such election to accept articles 121 to 137 of this title shall release or terminate any duty or obligation expressly imposed upon any such corporate entity under and by virtue of a special charter or enlarge any right, power, or privilege granted to any such corporate entity under a special charter, except to the extent that such right, power, or privilege might have been included in the articles of incorporation of a corporate entity formed under said articles.

(c) In the case of any corporate entity with issued shares of stock, the holders of such issued shares who surrender them to the corporate entity to be canceled upon the acceptance of said articles by the corporate entity becoming effective shall become members of the corporate entity with one vote for each share of stock so surrendered until such time as the corporate entity by proper corporate action relative to the election, qualification, terms, and voting power of members shall otherwise prescribe.

Source: L. 97: Entire article added, p. 754, § 3, effective July 1, 1998. **L. 2003:** IP(2) and (2)(b) amended, p. 2355, § 342, effective July 1, 2004.

PART 3

SAVING PROVISIONS

7-137-301. Saving provisions.

(1) Except as provided in subsection (3) of this section, the repeal of any provision of the "Colorado Nonprofit Corporation Act", articles 20 to 29 of this title, does not affect:

(a) The operation of the statute, or any action taken under it, before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the provision before its repeal;

(c) Any violation of the provision, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding or reorganization commenced under the provision before its repeal, and the proceeding or reorganization may be completed in accordance with the provision as if it had not been repealed.

(2) Except as provided in subsection (3) of this section or in sections 7-137-101 (1)(b) and 7-137-102 (4) for the reinstatement, as provided in part 10 of article 90 of this title, of a corporate entity suspended, declared defunct, or administratively dissolved before July 1, 1998, any dissolution commenced under the provision before its repeal may be completed in accordance with the provision as if it had not been repealed.

(3) If a penalty or punishment imposed for violation of any provision of the "Colorado Nonprofit Corporation Act", articles 20 to 29 of this title, is reduced by articles 121 to 137 of this title, the penalty or punishment, if not already imposed, shall be imposed in accordance with said articles.

Source: L. 97: Entire article added, p. 754, § 3, effective July 1, 1998. **L. 2003:** (2) amended, p. 2355, § 343, effective July 1, 2004.