TITLE 7

CORPORATIONS AND ASSOCIATIONS

CORPORATIONS

Colorado Corporation Code

Art. 1. Definitions and Application (Repealed).

Art. 2. Incorporation - Articles - Amendments (Repealed).

Art. 3. Corporate Powers and Limitations (Repealed).

Art. 4. Shareholders and Shares of Stock (Repealed).

Art. 5. Directors - Officers - Records (Repealed).

Art. 6. Stated Capital - Amount and Reduction (Repealed).

Art. 7. Merger or Consolidation (Repealed).

Art. 8. Dissolution - Voluntary and Involuntary (Repealed).

Art. 9. Foreign Corporations (Repealed).

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Nonprofit Corporations

Art. 20. Definitions and Application (Repealed).

Art. 21. Incorporation - Articles - Amendments (Repealed).

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Art. 107. Shareholders, 7-107-101 to 7-107-402.

Art. 108. Directors and Officers, 7-108-101 to 7-108-501.

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Art. 114. Dissolution, 7-114-101 to 7-114-401.

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Art. 116. Records, Information, and Reports, 7-116-101 to 7-116-107.

Art. 117. Transition Provisions, 7-117-100.3 to 7-117-105.

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Art. 127. Members' Meetings and Voting, 7-127-101 to 7-127-301.

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Art. 129. Indemnification, 7-129-101 to 7-129-110.

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Art. 136. Records, Information, and Reports, 7-136-101 to 7-136-107.

Art. 137. Transition Provisions, 7-137-100.3 to 7-137-301.

CORPORATIONS

Colorado Corporation Code

Editor's note: (1) Articles 1 to 10 were numbered as articles 1 to 10 of chapter 31, C.R.S. 1963. For amendments to these articles prior to their repeal in 1993, effective July 1, 1994, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. A comparative table showing the relocation of subject matter to articles 101 to 117 as a result of the recodification of the Colorado Corporation Code in 1993 is found in the comparative tables located in the back of the index.

(2) Current provisions concerning the "Colorado Business Corporation Act" are located in articles 101 to 117 of this title.

ARTICLE 1

Definitions and Application

7-1-101 to 7-1-108. (Repealed)

Editor's note: Section 7-1-108 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 2

Incorporation - Articles - Amendments

7-2-101 to 7-2-119. (Repealed)

Editor's note: Section 7-2-119 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 3

Corporate Powers and Limitations

7-3-101 to 7-3-119. (Repealed)

Editor's note: Section 7-3-119 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 4

Shareholders and Shares of Stock

7-4-101 to 7-4-126. (Repealed)

Editor's note: Section 7-4-126 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 5

Directors - Officers - Records

7-5-101 to 7-5-120. (Repealed)

Editor's note: Section 7-5-120 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 6

Stated Capital - Amount and Reduction

7-6-101 to 7-6-107. (Repealed)

Editor's note: Section 7-6-107 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 7

Merger or Consolidation

7-7-101 to 7-7-109. (Repealed)

Editor's note: Section 7-7-109 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 8

Dissolution - Voluntary and Involuntary

7-8-101 to 7-8-126. (Repealed)

Editor's note: Section 7-8-126 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 9

Foreign Corporations

7-9-101 to 7-9-120. (Repealed)

Editor's note: Section 7-9-120 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

ARTICLE 10

Reports, Fees, Licenses, Penalties

7-10-101 to 7-10-114. (Repealed)

Editor's note: Section 7-10-114 provided for the repeal of this article, effective July 1, 1994. (See L. 93, p. 866.)

Nonprofit Corporations

Editor's note: (1) Articles 20 to 29 were numbered as article 24 of chapter 31, C.R.S. 1963. For amendments to these articles prior to their repeal in 1997, effective July 1, 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Current provisions concerning nonprofit corporations are located in articles 121 to 137 of this title.

ARTICLE 20

Definitions and Application

7-20-101 to 7-20-109. (Repealed)

Editor's note: Section 7-20-109 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 21

Incorporation - Articles - Amendments

7-21-101 to 7-21-116. (Repealed)

Editor's note: Section 7-21-116 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 22

Corporate Powers and Limitations

7-22-101 to 7-22-110. (Repealed)

Editor's note: Section 7-22-110 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 23

Members

7-23-101 to 7-23-111. (Repealed)

Editor's note: Section 7-23-111 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 24

Directors - Officers - Records

7-24-101 to 7-24-113. (Repealed)

Editor's note: Section 7-24-113 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 25

Merger or Consolidation

7-25-101 to 7-25-108. (Repealed)

Editor's note: Section 7-25-108 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 26

Dissolution - Voluntary and Involuntary

7-26-101 to 7-26-123. (Repealed)

Editor's note: Section 7-26-123 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 27

Foreign Nonprofit Corporations

7-27-101 to 7-27-118. (Repealed)

Editor's note: Section 7-27-118 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 28

Reports - Fees

7-28-101 to 7-28-107. (Repealed)

Editor's note: Section 7-28-107 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 29

Secretary of State - Powers and Duties

7-29-101 to 7-29-109. (Repealed)

Editor's note: Section 7-29-109 provided for the repeal of this article, effective July 1, 1998. (See L. 97, p. 645.)

ARTICLE 30

Uniform Unincorporated Nonprofit Association Act

7-30-101. Definitions.
7-30-101.1. Suspended, defunct, and dissolved nonprofit corporations.
7-30-101.2. Charitable nonprofit corporations - private foundations.
7-30-102. Supplementary general principles of law and equity.
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7-30-109. Disposition of personal property of inactive nonprofit association.
7-30-110. Appointment of agent to receive service of process.
7-30-111. Claim not abated by change of members or officers.
7-30-112. Venue.
7-30-113. Summons and complaint - service on whom.
7-30-114. Uniformity of application and construction.
7-30-115. Short title.
7-30-116. Severability clause.
7-30-117. Effective date.
7-30-118. Transition concerning real and personal property.
7-30-119. Saving clause.

UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

PREFATORY NOTE

This Act reforms the common law concerning unincorporated, nonprofit associations in three basic areas — authority to acquire, hold, and transfer property,

especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

At common law an unincorporated association, whether nonprofit or for-profit, was not a separate legal entity. It was an aggregate of individuals. In many ways it had the characteristics of a business partnership.

This approach obviously created problems. A gift of real property to an unincorporated association failed because no legal entity existed to receive it. For example, a gift of Blackacre to Somerset Social Club (an unincorporated, nonprofit association) would fail because in law there is no legal entity to receive title. Some courts in time became uncomfortable with this result. Some construed such a gift as a grant to the officers of the association to hold the real estate in trust and manage it for the benefit of the members of the association. Later, some legislatures provided various solutions, including treating the association for these purposes as an entity.

Proceedings by or against an unincorporated association presented similar problems. If it were not a legal entity, each of the members needed to be joined as party plaintiffs or defendants. Class action offered another approach. Again courts and legislatures, especially the latter, provided solutions. "Sue and be sued" statutes found their way on the law books of most states.

Unincorporated associations, not being legal entities, could not be liable in tort, contract, or otherwise for conduct taken in their names. On the other hand, their members could be. Courts borrowed from the law of partnership the concept that the members of the association, like partners, were co-principals. As co-principals they were individually liable. Again courts and legislatures, responding to concerns of their constituents about this result, modified these rules. Courts found that, in large membership associations, some members did not have the kind of control or participation in the decision process that made it reasonable and fair to view them as co-principals. Legislatures also took steps. Perhaps most striking are the statutes adopted in many states in the last decade excusing officers, directors, members, and volunteers of nonprofit organizations from liability for simple negligence. There is great variety in the details; a few statutes condition the immunity on the association carrying appropriate insurance or qualifying under Internal Revenue Code Section 501(c).

Related to liability is the question of enforcement of a judgment obtained against an unincorporated association, its members, and its property. If fewer than all members are liable in contract or tort, the property that members own jointly or in common may not be seized in execution of a judgment without severing the interest of those who are liable from those who are not. Again, courts using "joint debtor," "common property," and "common name" statutes fashioned more workable solutions. Some legislatures have also addressed the problem directly. For these purposes, unincorporated

associations have been treated as legal entities — like a corporation.

What is striking about the legislative treatment of these and other legal issues concerning unincorporated, nonprofit associations is that no state appears to have addressed them in a comprehensive, integrated, and internally consistent manner.

This Act deals with a limited number of the major issues relating to unincorporated, nonprofit associations in an integrated and consistent manner.

The American Bar Association first issued its Model Nonprofit Corporation Act in 1964; it was most recently revised in 1987. The act deals comprehensively with nonprofit corporations, including troublesome questions of governance and membership. This Act, on the other hand, does not treat these and other questions. Enactment of this Act would leave these matters to a jurisdiction's common law or its statutes on the subject. It should be noted, too, that many states have statutes on special kinds of unincorporated, nonprofit associations, such as churches, mutual benefit societies, social clubs, and veteran's organizations. Which of these acts should be repealed and which retained in whole or part may require careful consideration.

This Act applies to all unincorporated, nonprofit associations. Nonprofit organizations are often classified as public benefit, mutual benefit, or religious. For purposes of this Act, it is unnecessary to treat differently these three categories of unincorporated, nonprofit associations. Unlike some state laws, it is not confined to the nonprofit organizations recognized as nonprofit under Section 501(c) (3), (4), and (6) of the Internal Revenue Code. There is no principled basis for excluding any nonprofit association. Therefore, the Act covers unincorporated philanthropic, educational, scientific, and literary clubs, unions, trade associations, political organizations, cooperatives, churches, hospitals, condominium associations, neighborhood associations, and all other unincorporated, nonprofit associations. Their members may be individuals, corporations, other legal entities, or a mix.

The Act is designed to cover all of these associations to the extent possible. To the extent a jurisdiction decides to retain statutes dealing with specific kinds of nonprofit associations, this Act will supplement existing legislation. As is pointed out in the Comments, a state electing to adopt this Act will need to examine carefully its statutes to determine which its wants to repeal, which to amend, and which to retain.

The basic approach of the Act is that an unincorporated, nonprofit association is a legal entity for the purposes that the Act addresses. It does not make these associations legal entities for all purposes. It is left to the courts of an adopting state to determine whether to use this Act by analogy to conclude that an association is a legal entity for some other purpose.

It should be noted, too, that many of the provisions are intended to be supplemented by a jurisdiction's existing law. For example, Section 5 (numbered as section 7-30-105 in C.R.S.) which provides for the filing of a statement of association authority, does not

provide details concerning the filing process. It leaves to other law such details as whether the filing officer returns a copy marked "filed" and stamps the hour and date thereof, and the amount of the filing fee.

Two sections are bracketed as optional — Section 12 (numbered as section 7-30-112 in C.R.S.) on venue and Section 13 (numbered as section 7-30-113 in C.R.S.) on service of process. A jurisdiction may decide that its present rules are consistent with the entity view of an association and provide the appropriate rule. Therefore, it would not adopt Sections 12 and 13 (numbered as sections 7-30-112 and 7-30-113 in C.R.S.). Both sections deal with only a part of the questions of venue and service of process. This means that if they are adopted they are only a part of the jurisdiction's law on the subject. And perhaps they should be placed in the court rules or statutes on those subjects instead of in the state's code with the other sections of this Act.

A nonprofit organization wanting a comprehensive governance structure might consider incorporating under a nonprofit corporation statute, particularly one that follows the format of the ABA Model Nonprofit Corporation Act. These statutes provide, among other things, comprehensive governance provisions. As this Act contains none, adoption of a substantial charter and bylaws would be required to obtain similar internal rules and structure.

There has been concern that this Act may deter nonprofit organizations from incorporating and that failure to incorporate would deprive the public of protections incorporation would provide. Clearly, incorporation does provide governmental involvement that this Act does not.

Most jurisdictions regulate solicitation by charitable organizations. Many of these are comprehensive. See, for example, Ill. Ann. Stat. ch. 23, Sections 100-5121 (Smith-Hurd 1992); Minn. Stat. Ann. Sections 309.50-309.61 (West 1992); Uniform Management of Institutional Funds Act.

These statutes frequently require, among other things, filing of a comprehensive statement with the attorney general before soliciting funds, including a copy of contracts with any professional fundraisers, and registration of professional fundraisers. A range of civil and criminal sanctions are provided. These statutes apply to all persons soliciting for charitable purposes, incorporated or not. In short, this Act's nonprofit associations are covered.

It should be noted, too, that a nonprofit corporation or unincorporated, nonprofit association is not the only choice. The Uniform Law Foundation, like many Illinois foundations, is organized as a charitable trust. Ill. Ann. Stat. ch. 14, Sections 51-69, (Smith-Hurd 1992); Uniform Supervision of Trustees for Charitable Purposes Act. Finally, it should be repeated that this Act is needed for the informal nonprofit organizations that do not have legal advice and so may not consider whether to incorporate.

7-30-101. Definitions.

In this article:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association or who is considered to be a member by such person and the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization consisting of two or more members joined by mutual consent for a common, lawful, nonprofit purpose. However, joint tenancy or tenancy in common does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose. "Nonprofit association" includes an acequia ditch association, whether or not the acequia ditch association is formed as an acequia ditch association as contemplated by section 7-42-101.5 (3) or is a ditch association operating as an acequia ditch association as contemplated by section 7-42-101.5 (3).

(3) and (4) Repealed.

Source: L. 94: Entire article added, p. 1271, § 1, effective May 22. **L. 2003:** (3)(b) and (4)(b) added by revision, pp. 2356, 2357, §§ 347, 348. **L. 2013:** (2) amended, (HB 13-1168), ch. 87, p. 280, § 2, effective August 7.

Editor's note: Subsections (3)(b) and (4)(b) provided for the repeal of subsections (3) and (4) respectively, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

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

OFFICIAL COMMENT

1. With respect to relations external to a nonprofit association, whether a person is a member of the organization determines principally a member's responsibility to third parties. Internally, whether a person is a member might determine specified rights and responsibilities, including access to facilities, voting, and obligation to pay dues. This Act is concerned only with determining whether a person is a member for purposes of external relations, such as liability to third parties on a contract of the nonprofit association. Therefore, "member" is defined in terms appropriate to these purposes. "Member" includes a person who has sufficient right to participate in the affairs of a nonprofit association so that under common law the person would be

considered a co-principal and so liable for contract and tort obligations of the nonprofit association.

The definition may reach somewhat beyond decisions of some courts. Either participation in the selection of the leadership or in the development of policy is enough. Both are not required. This broad definition of member ensures that the insulation from liability is provided in all cases in which the common law might have imposed liability on a person, simply because the person was a member.

2. A fundraising device commonly used by many nonprofit associations is the membership drive. In most cases the contributors are not members for purposes of this Act. They are not authorized to "participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy." Simply because an association calls a person a member does not make the person a member under this Act.

Section 6 (numbered as section 7-30-106 in C.R.S.) nevertheless protects "a person considered to be a member by a nonprofit association" even though the person is not within the definition of member in paragraph (subsection) (1).

3. The role of a member in the affairs of an association is described as "may participate in the selection" instead of "may select or elect" the governing board and officers and "may participate ... in the development of policy" instead of "may determine" policy. This accommodates the Act to a great variation in practices and organizational structures. For example, some nonprofit associations permit the president or chair to name some members of the governing board, such as by naming the chairs of principal committees who are designated ex officio members of the governing board. Similarly, the role in determination of policy is described in general terms. "Persons authorized to manage the affairs of the association" is used in the definition instead of president, executive director, officer, member of governing board, and the like. Given the wide variety of organizational structures of nonprofit association to which this Act applies and the informality of some of them the more generic term is more appropriate.

4. "Person" instead of individual is used to make it clear that associations covered by this Act may have individuals, corporations, and other legal entities as members. Unincorporated, nonprofit trade associations, for example, commonly have corporations as members. Some national and regional associations of local government officials and agencies have governmental units or agencies as members.

5. Paragraph (Subsection) (2) defines "nonprofit association." The model American Bar Association acts deal with both for-profit and nonprofit corporations. Unincorporated, for-profit organizations are largely covered by the uniform partnership acts. The differences between for-profit and nonprofit, unincorporated organizations are so significant that it would be impractical to cover both in a single act. Therefore, this Act deals only with nonprofit organizations.

6. The term "nonprofit association" is used instead of "association" for several reasons. The risk that this Act when placed in a state's code would be construed to apply to both nonprofit and for-profit associations should thus be avoided. Acts dealing with one kind of association when placed in a code have sometimes lost their identification and been inadvertently applied to the other kind where the term "association" alone was used. For example, the New York Joint-Stock Association Act of 1894 used the term "association," which it defined to include only for-profit organizations. "Association" was held in 1938 to include an unincorporated political party and the act applied to it. *Democratic Organization of Richmond County v. Democratic Organization of Richmond County*, 1 N.Y.S.2d 349 (1938). Subsequent decisions applied the act to other unincorporated, nonprofit organizations. The use of "nonprofit association" instead of merely "association" should also avoid the risk of this Act being improperly used to develop a common law rule by analogy from this Act to apply in a case involving a for-profit association. Roscoe Pound, *Common Law and Legislation*, 21 Harv. L. Rev. 383 (1908); Robert F. Williams, *Statutes as Sources of Law Beyond their Terms in Common Law Cases*, 50 Geo. Wash. L. Rev. 554 (1982).

Legal issues concerning unincorporated, for-profit associations that are not partnerships and so not controlled by a partnership act would be governed by a state's other statutory or common law. Resort to one of the two partnership acts for the purposes of developing a common law rule by analogy would be appropriate. Resort for this purpose to this Act in the case of an unincorporated, for-profit association would not be appropriate.

7. Two or more persons is the common statutory requirement to constitute an unincorporated, nonprofit association. New Jersey, on the other hand, requires that there be seven or more members to be an association under its laws. This Act suggests the smaller number — two. Consideration was given to specifying "one" instead of "two." For example, the developer of a condominium may have created a condominium association as an unincorporated nonprofit association. Before any units are sold the developer as owner of all units has all of the memberships in the association. Should it be treated as a nonprofit association under this Act from the beginning? It should not. Can one person be "joined by mutual consent for a common purpose?" To ask the question would seem to be to answer it. If the concern is to give the developer the entity protections provided by this Act, it is very likely that it already has some protection because it is a business corporation. Nevertheless, the number is placed in brackets, in part, to raise the question whether the number should be one or two or even a larger number.

The members must be joined together for a common purpose. Several states provide that they be "joined together for a **stated** common purpose" (emphasis added). Because of the informality of many ad hoc associations, it is prudent not to impose the requirement that the common purpose be "stated." Very probably, it is the small,

informal, ad hoc associations and those third parties affected by them that most need this Act.

8. "Nonprofit" is not defined. A common definition — it is an association whose net gains do not inure to the benefit of its members and which makes no distribution to its members, except on dissolution — does not work for all nonprofit associations. Consumer cooperatives, for example, make distributions to their members; but they are not for-profit organizations. Those consumer cooperatives not organized under specific state or federal laws need the benefits of this Act.

It is instructive to note that the drafting committee for the ABA Model Nonprofit Corporation Act finally determined that it could not develop a satisfactory definition of nonprofit.

9. The final sentence of paragraph (subsection) (2) is adapted from Section 201(d)(1) of Revised Uniform Partnership Act (RUPA). This stresses that more than common ownership and use is required. For example, that three families own a lake cottage and share its use does not make the three families a nonprofit association. Paragraph (Subsection) (2) precludes arrangements that are merely common ownership from being a nonprofit association under this Act.

10. The definition of "person" in paragraph (subsection) (3) is a standard NCCUSL definition.

11. The definition of "state" in paragraph (subsection) (4) is a standard NCCUSL definition.

7-30-101.1. Suspended, defunct, and dissolved nonprofit corporations.

Any nonprofit corporation other than a nonprofit corporation that is governed by the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, that was suspended, declared defunct, administratively dissolved, or dissolved by operation of law, and the business or affairs of which are continued for nonprofit purposes, with or without knowledge of the suspension, declaration, or dissolution, and the business and affairs of which are not wound up, shall be deemed an unincorporated organization that qualifies as a nonprofit association for purposes of sections 7-30-101.2 and 7-30-106, unless such nonprofit corporation is reinstated as provided in part 10 of article 90 of this title.

Source: L. 97: Entire section added, p. 645, § 2, effective July 1, 1998. **L. 2006:** Entire section amended, p. 848, § 1, effective July 1.

7-30-101.2. Charitable nonprofit corporations - private foundations.

(1) As used in this section, "charitable purposes" means one or more charitable purposes enumerated in section 501(c)(3) of the federal "Internal Revenue Code of 1986", as amended, hereinafter referred to as "the internal revenue code" and formed exclusively for one or more charitable purposes.

(2) In the case of a deemed unincorporated organization, its articles of incorporation shall be presumed to be its principal governing document for the purposes of this section.

(3) Except as otherwise provided in its constitution, articles of association, or other principal governing document, the purposes of a charitable nonprofit association and the disposition of its assets upon liquidation shall be limited to charitable purposes.

(4) Except as otherwise expressly provided in its constitution, articles of association, or a principal governing document, or otherwise determined by a court of competent jurisdiction, a charitable nonprofit association that is also a private foundation within the meaning of 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 association 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 section added, p. 645, § 2, effective July 1, 1998. **L. 98:** (4)(d) amended, p. 611, § 1, effective July 1. **L. 2003:** (1) amended, p. 2202, § 1, effective July 1, 2004.

7-30-102. Supplementary general principles of law and equity.

Principles of law and equity supplement this article unless displaced by a particular provision of it.

Source: L. 94: Entire article added, p. 1272, § 1, effective May 22.

OFFICIAL COMMENT

1. This section is adapted from Uniform Commercial Code Section 1-103. The reference in Section 1-103 to "the law merchant" and its examples of supplementary rules, such as those of principal and agent and estoppel, were deleted as irrelevant or incomplete and unnecessary. This change in language does not manifest any change in substance.

2. This Act contains no rules concerning governance. However, recourse to rules of governance must be had to apply some of the Act's rules. For example, whether a nonprofit association is liable under a contract made for it by an individual depends on whether the individual had the necessary authority to act as agent. Was the individual given the authority by someone empowered by the nonprofit association to give the authority? To decide a case like this a court must resort to the rules of the nonprofit association or, if there are none applicable or none at all, to the common law or other statutory law of the jurisdiction.

3. Efforts were made to develop default internal rules of governance — applicable if an association had none or none that were applicable. This effort demonstrated the complexity and difficulty of fashioning rules that would reasonably fit a wide variety of nonprofit associations — large and small, public benefit, mutual benefit, and religious, and of short and indefinite duration. It was thought best to leave this question to other law of the jurisdiction.

7-30-103. Territorial application.

Real and personal property in this state may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

Source: L. 94: Entire article added, p. 1272, § 1, effective May 22.

OFFICIAL COMMENT

This section is consistent with Restatement (Second) of Conflict of Laws Section 223 (1971). Section 3 (numbered as section 7-30-103 in C.R.S.) makes a conveyance or devise of land located in a state that has adopted this Act effective even though it would not be effective under the law of the state in which the nonprofit association has its principal office or other significant relationship. No relationship of

the nonprofit association other than that the property is situated in the state is required.

7-30-104. Real and personal property - nonprofit association as legatee, devisee, or beneficiary.

(1) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(2) A nonprofit association may be a legatee, devisee, or beneficiary of a trust or contract.

Source: L. 94: Entire article added, p. 1272, § 1, effective May 22.

OFFICIAL COMMENT

1. Subsection (a) (numbered as subsection (1) in C.R.S.) is based on Section 3-102(8), Uniform Common Interest Act. It reverses the common law rule. Inasmuch as an unincorporated, nonprofit association was not a legal entity at common law, it could not acquire, hold, or convey real or personal property. Harold J. Ford, *Unincorporated Non-Profit Associations* 1-45 (Oxford Univ. Press 1959), 15 A.L.R. 2d 1451 (1951); Warburton, *The Holding of Property by Unincorporated Associations*, Conveyancer 318 (September-October 1985).

2. This strict common law rule has been modified in various ways in most jurisdictions by courts and statutes. For example, courts have held that a gift by will or inter vivos transfer of real property to a nonprofit association is not effective to vest title in the nonprofit association but is effective to vest title in the officers of the association to hold as trustees for the members of the association. *Matter of Anderson's Estate*, 571 P. 2d 880 (Okla. App. 1977).

A New York statute specifies that a grant by will of real or personal property to an unincorporated association is effective if within three years after probate of the will the association incorporates. McKinney's N.Y. Estates, Powers, & Trust Law, Section 3-1.3 (1981).

California gives any "unincorporated society or association and every lodge or branch of any such association, and any labor organization" full right to acquire, hold, or transfer any "real estate and other property as may be necessary for the business purposes and objects of the society," and acquire and hold any property not so necessary for 10 years. California Corporations Code, Title 3, Unincorporated Associations, Section 20001 (West 1991).

As is the case with many of the problems created by the view that an unincorporated association is not an entity the statutory

solutions are often partial — limited to special circumstances and associations. Subsection (a) (numbered as subsection (1) in C.R.S.) solves this problem for all nonprofit associations, for all kinds of transactions, and for both real and personal property.

3. Even if a nonprofit association's governing documents provide that it "may not acquire real property," subsection (a) (numbered as subsection (1) in C.R.S.) makes effective a transfer of Blackacre to the association. A different result would obviously disrupt real estate titles. The remedy for this violation of internal rules lies not in preventing title from passing but, as with other organizations, in an action by members against their association and its appropriate officers to undo the transaction.

4. Subsection (b) (numbered as subsection (2) in C.R.S.) is a necessary corollary of subsection (a) (numbered as subsection (1) in C.R.S.) and, thus, it may be unnecessary. However, several states expressly provide that an unincorporated, nonprofit association may be a legatee, devisee, or beneficiary. See, for example, Md. Estates & Trusts Code Ann. Section 4-301 (1991). Therefore, it is desirable to continue this as an express rule. Subsection (b) (numbered as subsection (2) in C.R.S.) applies to both trusts and contracts. Not all state statutes apply expressly to both.

7-30-105. Statement of authority as to real property.

(1) A nonprofit association is an entity for purposes of, and may execute and record a statement of authority pursuant to, section 38-30-172, C.R.S.

(2) In addition to the matters required or permitted to be contained therein pursuant to section 38-30-172, C.R.S., a statement of authority executed and recorded on behalf of a nonprofit association shall state any limitation that may exist upon the authority of the person named in the statement of authority, or holding the position described in the statement of authority, to execute instruments encumbering, conveying, or otherwise affecting title to the real property on behalf of the nonprofit association.

Source: L. 94: Entire article added, p. 1272, § 1, effective May 22. **L. 2003:** Entire section R&RE, p. 2202, § 2, effective July 1, 2004.

Editor's note: Colorado amended subsection (1) (numbered as subsection (a) in the uniform act) to require the execution and recording of the statement of authority, and, in subsection (2) (numbered as subsection (b) in the uniform act), required that the statement be recorded in the county in which the property is situated. Further, Colorado amended § 7-30-105 to specify that

property may be encumbered in addition to being transferred, whereas the uniform act refers only to transferring. The official comment should be read with these changes in mind.

OFFICIAL COMMENT

1. This section is based on Revised Uniform Partnership Act (RUPA) Section 303. California Corporations Code, Title 3, Unincorporated Associations, Section 20002 (West 1991), is similar.

2. A statement of authority need not be filed to conclude an acquisition of or to hold real property. It is concerned only with the sale, lease, encumbrance, and other transfer of an estate or interest in real property. For this, it should, but need not, be filed. The filing provides important documentation.

3. Inasmuch as the statement relates to the authority of a person to act for the association in transferring real property, subsection (b) (numbered as subsection (2) in C.R.S.) requires that the statement be filed or recorded in the office where a transfer of the real property would be filed or recorded. This is usually the county in which the real estate is situated. This is where a title search concerning the real estate would be conducted. RUPA Section 303 provides for central filing, such as with the secretary of state, but its statement of partnership authority concerns authority of partners generally, not just with respect to real estate.

4. "Filed" and "recorded" are bracketed to direct an enacting state to choose. In most jurisdictions "recorded" will be the appropriate choice.

5. Subsection (c)(2) (numbered as subsection (3)(b) in C.R.S.) may present a problem for small, ad hoc, nonprofit associations. They may have no fixed office address. They may meet in the homes of their leaders. However, if they distribute literature or file petitions they are likely to have a mailing address.

6. Subsection (c)(3) (numbered as subsection (3)(c) in C.R.S.) permits the statement to identify as the person who can act for the association one who holds a particular office, such as president. This designation relieves the association from the need to make additional filings on each change of officers. Under local title standards and practices the transferee and filing or recording office are likely to require a certificate of incumbency if the statement designates the holder of an office.

7. Subsection (c)(4) (numbered as subsection (3)(d) in C.R.S.) requires the statement to document the authority of the person granted power to deal with the nonprofit association's real property and of the person authorized to execute the statement of authority.

8. Subsection (d) (numbered as subsection (4) in C.R.S.) is designed to reduce the risk of fraud and to reflect law and practice applicable to other organizations. It requires someone other than the person authorized to deal with the real property to execute the

statement of authority on behalf of the nonprofit association.

9. Subsection (f) (numbered as subsection (6) in C.R.S.) makes a statement inoperative five years after its most recent recording or filing. This prevents a statement whose recording or filing is unknown by the association's current leadership from being effective. Reliance on a filing or recording this old is, in effect, not in good faith.

10. Subsection (g) (numbered as subsection (7) in C.R.S.) is based on RUPA Section 303(h). Its obvious purpose is to protect good faith purchasers for value without notice who rely on the statement, including those who acquire a security interest in the real property. There remains, of course, the risk that the statement itself was unauthorized.

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-30-106. Liability in contract and tort.

(1) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(2) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(3) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(4) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.

(5) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

Source: L. 94: Entire article added, p. 1273, § 1, effective May 22.

OFFICIAL COMMENT

1. At common law a nonprofit association was not a legal entity separate from its members. Borrowing from the law of partnership, the common law viewed a nonprofit association as an aggregate of its members. The members are co-principals. Subsection (a) (numbered as subsection (1) in C.R.S.) changes that. It makes a nonprofit association a legal entity separate from its members for purposes of contract and tort.

2. This Act does not deal with liability of a member or other person acting for a nonprofit association for their own conduct. With respect to contract and tort Section 6 (numbered as section 7-30-106 in C.R.S.) leaves that to the other law of the jurisdiction enacting this Act.

3. Subsections (b) through (e) (numbered as subsections (2) through (5) in C.R.S.) are applications to common cases of the basic principle in subsection (a) (numbered as subsection (1) in C.R.S.). Because a nonprofit association is made a separate legal entity, its members are not co-principals. Consequently they are not liable on contracts or for torts for which the association is liable. Subsection (b) (numbered as subsection (2) in C.R.S.) specifies that result with respect to contracts.

4. Subsection (b) (numbered as subsection (2) in C.R.S.) applies the principle in subsection (a) (numbered as subsection (1) in C.R.S.) to relieve members and others from vicarious liability for the contracts of a nonprofit association.

5. Subsections (a) and (b) (numbered as subsections (1) and (2) in C.R.S.) eliminate a risk that existed under common law. An agent makes an implied warranty of authority to the other contracting party. If the purported principal does not exist, the agent obviously breaches the warranty. Because an unincorporated, nonprofit association was not a legal entity; one purporting to act for it breached this implied warranty. *Smith & Edwards v. Golden Spike Little League*, 577 P. 2d 132, 134 (Utah 1978). Subsection (b) (numbered as subsection (2) in C.R.S.) treats a nonprofit association as a legal entity; therefore, an agent who acts for it within her authority does not breach the warranty.

6. "Merely" because a person is a member does not make the person liable on an association's contract. This formulation means that there are special circumstances that may result in liability. For example, a member may expressly become a party to a contract with the nonprofit association. Subsection (b) (numbered as subsection (2) in C.R.S.) relieves members only of their vicarious liability. Liability for one's own conduct is left to the other law of the jurisdiction.

An agent with authority from a nonprofit association who negotiates a contract

without disclosing the agent's representative status is liable on the contract. Under agency law an agent acting within the agent's scope of authority for an undisclosed or partially disclosed principal is personally liable on the contract along with the principal, unless the other contracting party agrees not to hold the agent liable. *Restatement (Second) Of Agency* 320-322; Reuschlein and Gregory, *Agency & Partnership* 161-163 (West 2d ed. 1990).

Courts have pierced the corporate veil of nonprofit corporations. Comment, *Piercing the Nonprofit Corporate Veil*, 66 Marq. L. Rev. 134 (1984). Section 6 (numbered as section 7-30-106 in C.R.S.) makes a nonprofit association a legal entity for these purposes. Therefore, as a matter of its other law a jurisdiction enacting this Act may appropriately apply this doctrine to a nonprofit association. In *Macaluso v. Jenkins*, 95 Ill. App. 3d 461, 420 N.E.2d 251 (1981), the president of a nonprofit corporation was found to have so commingled its funds and assets with his own and those of a business corporation he controlled and have treated them as his own for his benefit that the corporate veil must be pierced to promote justice. He was found liable for a debt contracted in the name of the nonprofit corporation. See also Harry G. Henn & John R. Alexander, *Law of Corporations*, pp. 344-352 (West 3d ed. 1983); Alfred F. Conard, *Corporations in Perspective*, pp. 424-433 (Foundation Press, 1976).

7. An example of a partial statutory solution of members' liability for contracts of a nonprofit association is California Corporations Code, Title 3, Nonprofit Associations, Section 21100 (West 1991). It relieves members from liability for "debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, designing, planning, architectural supervision, erection, contraction, repair, or furnishing of buildings or other structures, to be used for purposes of the association." As noted earlier, partial and uncoordinated statutory solutions of common law problems are typical.

8. Subsection (c) (numbered as subsection (3) in C.R.S.) applies the principle in subsection (a) (numbered as subsection (1) in C.R.S.) to relieve members and others from liability for torts for which the nonprofit association is liable. Inasmuch as Section 6 (numbered as section 7-30-106 in C.R.S.) provides that a member is not a co-principal, the member cannot be considered to be an employer of the employee who committed the tort. Again, only relief from vicarious liability is provided.

Liability of a member or other person who acts for the nonprofit association is governed by other law of the jurisdiction. That an employer is liable for a tort committed by its employee does not excuse the employee.

9. The immunity from vicarious liability provided by subsections (b) and (c) (numbered as subsections (2) and (3) in C.R.S.) does not depend on the remedy sought. Whether it is for damages for breach of contract or tort, unjust enrichment, or the like the immunity is provided.

10. Since the mid 1980's all states have enacted laws providing officers, board members, and other volunteers some protection from liability for their own negligence. The statutes vary greatly as to who is covered, for what conduct protection is given, and the conditions imposed for the freedom from liability. Some apply only to nonprofit corporations. *State Liability Laws for Charitable Organizations and Volunteers* (Nonprofit Risk Management & Insurance Institute, 1990); *Developments, Nonprofit Corporations*, 105 Harv. L. Rev. 1578, 1685-1696 (1992).

The 1987 Texas act, for example, relieves directors, officers, and other volunteers from liability for simple negligence that causes death, damage, or injury if the volunteer acted in the scope of her duties for a charitable organization exempt under Internal Revenue Code Section 501(c)(3) or (4). The act also limits the amounts that may be recovered from an employee or the organization if the organization carries requisite liability insurance. The constitutionality of the provision relieving volunteers from liability has been questioned under Article I, Section 13 of the Texas Constitution — the Open Courts provision. Note, *The Constitutionality of the Charitable Immunity and Liability Act 1987*, 40 Baylor L. Rev. 657 (1988). Some statutes premise all relief upon the organization having specified liability insurance.

Section 6 (numbered as section 7-30-106 in C.R.S.) does not affect these statutes. As noted earlier Section 6 deals only with vicarious liability. These statutes concern liability for one's own conduct.

11. Although not a concern of Section 6 (numbered as section 7-30-106 in C.R.S.), perhaps it should be noted that nonprofit organizations have been held liable for tortious acts and omissions not only of employees but also of members. In *Guyton v. Howard*, 525 So.2d 948 (Fl. App. 1988) a nonprofit organization was held liable for the negligence of members who acted for the organization in conducting an initiation that resulted in injury.

12. Subsection (d) (numbered as subsection (4) in C.R.S.) applies the principle in subsection (a) (numbered as subsection (1) in C.R.S.) to reverse the common law rule that the negligence of an employee of an association is imputed to its members. A member as co-principal was vicariously responsible for an employee's conduct within the scope of the employee's duties. Section 6 (numbered as section 7-30-106 in C.R.S.), however, makes the nonprofit association a legal entity. Thus, a member is not a co-principal and the employee's negligence is not imputed to a member.

Because the employee's negligence is not imputed, the member's suit against the nonprofit association for negligence by the employee is not subject to the defense of contributory negligence.

Some courts treated large nonprofit associations as entities for some purposes and so did not impute the negligence of an employee to a member. Therefore, a member could recover from the association. *Marshall v. International Longshoreman's and Warehouseman's Union*, 57 Cal.2d 781, 371 P.2d 987 (1962); Judson A. Crane, *Liability*

of an Unincorporated Association for Tortious Injury to a Member, 16 Vand. L. Rev. 319, 323 (1963).

13. Subsection (e) (numbered as subsection (5) in C.R.S.) applies the principle in subsection (a) (numbered as subsection (1) in C.R.S.) to reverse the common law rule that a member may not sue the member's unincorporated, nonprofit association. A member as co-principal is logically a defendant as well as a plaintiff in such an action. The logic is that one may not sue oneself.

Subsection (a) (numbered as subsection (1) in C.R.S.) makes an unincorporated nonprofit association a legal entity. Therefore, a member is separate from the nonprofit association. There is thus no logical obstacle to either suing the other. A nonprofit association may, for example, sue a member for delinquent dues. See, for example, Section 6.13 ABA Nonprofit Corporation Act (1987).

14. The Texas Supreme Court recently overruled the common law rule and held that a member may sue the unincorporated, nonprofit association of which the person is a member. *Cox v. Thee Evergreen Church*, 836 S.W.2d 167 (Tex. 1992). The court also overturned the Texas common law rule that the negligence of an employee is imputed to a member. The court referred to a statute authorizing a nonprofit association to sue and be sued and other Texas statutes giving entity status for limited purposes to unincorporated, nonprofit associations. It did not, however, rely on them in overturning the historic common law rule. It simply found the old rule not suitable for present times. The court also followed recent developments in other courts.

15. Section 6 (numbered as section 7-30-106 in C.R.S.) relieves from vicarious liability not only members but also certain others. Persons who are "authorized to participate in the management of the affairs of the nonprofit association" are protected. Persons within this group — largely directors and officers, however denominated — are likely also to be members as defined in Section 1(1) (numbered as section 7-30-101 (1) in C.R.S.), and protected as such. If they are not members (i.e. not co-principals) they should not be found liable at common law. Section 6 (numbered as section 7-30-106 in C.R.S.) extends protection to this group out of abundant caution. It is possible that a court might misapply the common law rationale for liability to hold a non-member manager vicariously liable. Section 6 (numbered as section 7-30-106 in C.R.S.) prevents that somewhat remote possibility.

Section 6 (numbered as section 7-30-106 in C.R.S.) also extends protection to a person who is not within the definition of "member" in Section 1(1) (numbered as section 7-30-101 (1) in C.R.S.) but is "considered to be a member by the nonprofit association." A person within this clause is one who does not have the relationship to the nonprofit association that would permit a finding under the common law that the person is a co-principal. Also the person is not a director, officer, or manager within the preceding phrase. That a person not within the two preceding phrases but within the third phrase might be found vicariously liable seems quite remote. Nevertheless,

Section 6 (numbered as section 7-30-106 in C.R.S.) accords this person protection.

As noted earlier, Section 6 (numbered as section 7-30-106 in C.R.S.) concerns vicarious liability only. Liability for one's own conduct is covered by other law of the enacting jurisdiction.

ANNOTATION

Candidate is not liable for contracts of his campaign committee, a nonprofit unincorporated association, merely because he was the candidate, was a member of the campaign committee, had management responsibilities, or negotiated the employment contracts on behalf of the campaign committee; therefore the candidate is not responsible to pay the committee's former employees. Mohr v. Kelley, 8 P.3d 543 (Colo. App. 2000).

7-30-107. Capacity to assert and defend - standing.

(1) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(2) A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member.

Source: L. 94: Entire article added, p. 1274, § 1, effective May 22.

OFFICIAL COMMENT

1. Subsection (a) (numbered as subsection (1) in C.R.S.) broadly recognizes the right of a nonprofit association to participate as an entity in judicial, administrative, and governmental proceedings, and in arbitration and mediation on behalf of it and its members. It may sue and be sued. Many states have enacted statutes granting unincorporated associations these rights. Many have rejected the argument that these acts made an unincorporated, nonprofit association a separate legal entity for other purposes.

2. Ohio Rev. Code Ann. Section 1745.01 (Baldwin 1991) provides that an unincorporated association may "sue or be sued as an entity under the name by which it is commonly known and called." This formulation has an element that subsection

(a) (numbered as subsection (1) in C.R.S.) does not have — a description of the association name to be used. Maryland requires that the unincorporated association have a "group name." Md. Estates & Trust Code Ann. Section 6-406(a) - (1991). As some of the informal nonprofit associations may not have fixed on a name but need the benefit of the rule, subsection (a) (numbered as subsection (1) in C.R.S.) does not require that it have a name.

3. Subsection (b) (numbered as subsection (2) in C.R.S.) describes an association's standing to represent the interests of its members in a proceeding. It is the federal standing rule. *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L.Ed.2d 383 (1977). A nonprofit association must meet the three requirements only if it seeks to represent the interests of its members. If the suit concerns only the nonprofit association's interests, subsection (b) (numbered as subsection (2) in C.R.S.) does not apply.

4. If participation of individual members is required, the nonprofit association does not have standing. If the injury for which a claim is made or the remedy sought is different for different members, their participation through testimony and presenting other evidence is required. The typical case in which a nonprofit association has standing is where it seeks only a declaration, injunction, or some form of prospective relief for injury to its members. *Warth v. Seldin*, 422 U.S. 490, 515, 95 S. Ct. 2197, 45 L.Ed.2d 343 (1975).

5. Subsection (b) (numbered as subsection (2) in C.R.S.) does not require the nonprofit association to show that it suffered harm or has some interest to protect to have standing to represent the interests of its members. *Warth v. Seldin*, 422 U.S. 490, 511 95 S. Ct. 2197, 45 L.Ed.2d 343 (1975). Some states require an association to have an interest to protect which is separate from that of its members. One court found that the probable loss of members if it did not take action on their behalf was a sufficient interest to protect to give it standing to represent its members. This approach certainly diminishes greatly the burden of satisfying the requirement. States have further modified the old standing rule. Recently many states have adopted the three-pronged federal rule, which is the rule in subsection (b) (numbered as subsection (1) in C.R.S.).

This section does not re-state rules of joinder because they will be governed by the jurisdiction's other law.

7-30-108. Effect of judgment or order.

A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered to be a member by the nonprofit association.

Source: L. 94: Entire article added, p. 1274, § 1, effective May 22.

OFFICIAL COMMENT

1. This section is consistent with Restatement (Second) of Judgments, Section 61(2), which provides: "If under applicable law an unincorporated association is treated as a jural entity distinct from its members, a judgment for or against the association has the same effects with respect to the association and its members as a judgment for or against a corporation ... ."

2. Section 8 (numbered as section 7-30-108 in C.R.S.) applies not only to judgments but also to orders, such as an award rendered in arbitration or an injunction.

3. Section 8 (numbered as section 7-30-108 in C.R.S.) reverses the common law rule. Under the common law's aggregate view of an unincorporated association, members, as co-principals, were individually liable for obligations of the association.

4. Some states changed the common law rule by statute. Ohio, for example, provides that the property of an unincorporated association is subject to judgment, execution, and other process and that a money judgment against the association may be "enforced only against the association as an entity" and not "against a member." Ohio Rev. Code Ann., Section 1745.02 (Baldwin 1991).

An obvious corollary of this section is that a judgment against a nonprofit association may not be satisfied against a member unless there is also a judgment against the member.

7-30-109. Disposition of personal property of inactive nonprofit association.

(1) If a nonprofit association has been inactive for three years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property:

(a) If a document of the nonprofit association states a person to whom transfer is to be made under those circumstances, to that person; or

(b) If no person is so stated, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes or to a government, governmental subdivision, agency, or instrumentality.

Source: L. 94: Entire article added, p. 1274, § 1, effective May 22. **L. 2003:** Entire section amended, p. 2203, § 3, effective July 1, 2004.

OFFICIAL COMMENT

1. Section 9 (numbered as section 7-30-109 in C.R.S.) is not a dissolution rule. An inactive nonprofit association may not be one that has dissolved. It may have just stopped functioning and have taken no formal steps to dissolve. It might possibly be revived.

Section 9 (numbered as section 7-30-109 in C.R.S.) gives a person in possession or control of personal property of a nonprofit association an opportunity to be relieved of responsibility for it. Compliance with the section provides a safe harbor.

2. "Inactive" is not defined. A nonprofit association that has accomplished its purpose, such as seeking approval in a school bond election, is very likely inactive. A nonprofit association that has stopped pursuing its purposes, collecting dues, holding elections of officers and board members, and conducting meetings, and has no employees would seem to be inactive.

"Inactive" does not describe a nonprofit association whose sole purpose is to act should a specific problem arise. That there has been no activity because the problem has not arisen does not make the standby organization "inactive."

A three year period of inactivity is suggested. It is unlikely that a nonprofit association that has been inactive for that period will begin functioning again. Thus, it is prudent to transfer its assets to someone likely to make appropriate use of them.

3. Section 9 (numbered as section 7-30-109 in C.R.S.) applies only to personal property — tangible and intangible. Unclaimed property acts also apply to both kinds of personal property. All states have some form of unclaimed property act. Therefore, the relationship of these acts to this Act must be examined.

The Uniform Unclaimed Property Act (1981) applies to certain intangible and tangible personal property. If the property has been unclaimed by the owner for five or more years it is presumed abandoned. Intangible property, such as checking and savings accounts and uncollected dividends, is the main concern of these Acts. The obligor, such as a bank or other financial institution and corporation, is directed to report and turn over the property to the state administrator.

The only tangible personal property to which the Uniform Unclaimed Property Act (1981) applies is that in "a safe deposit box or any other safekeeping repository." Many states have additional statutes that apply to property abandoned in airport, bus, and railroad lockers and the like. Tangible personal property of an inactive nonprofit association in the control or possession of a member or other person is not likely to be in these places. Therefore, overlap of this Act with the other state acts with respect to tangible personal property is likely to be very limited.

Property of an inactive nonprofit association is likely to be in the possession or control of a former member, board member, officer, or employee. Especially with respect to intangible property, their relation to the property is unlike that of those regulated by the unclaimed property acts. They are custodians or fiduciaries and not obligors. Those upon whom duties are

imposed by the unclaimed property acts are obligors on such intangible property as bank accounts, money orders, life insurance policies, and utility deposits. The person acting under Section 9 (numbered as section 7-30-109 in C.R.S.) is very unlikely to be in the position of an obligor on such intangible property. In summary, there appears to be limited overlap.

Other special statutes may apply, such as laws governing unexpended campaign funds. Texas, for example, permits a person to retain political contributions for six years after the person is no longer an office-holder or candidate. It gives the person six choices of transferees, including a "recognized tax exempt charitable organization formed for educational, religious or scientific purposes." Tex. Code Ann. Elections Section 251.012(d) and (e) (Vernon's 1986). Minnesota provides that if an unincorporated religious society "ceases to exist or to maintain its organization" title to its real and personal property vests in the "next higher governing or supervisory" body of the same denomination. Minn. Stat. Ann. Section 315.37 (West 1992).

4. Section 9 (numbered as section 7-30-109 in C.R.S.) does not address what should be done with real property of an inactive nonprofit association. This seems justified. A nonprofit association owning real property of significant value is unlikely to become inactive. In the rare case that it does, the assistance of a court may be obtained in making appropriate disposition of the real property, primarily to ensure good title.

5. To obtain a Section 501(c)(3) tax classification as a nonprofit organization an association must specify a distribution of assets on dissolution that satisfies the Internal Revenue Code. To avoid the interpretation that Section 9 (numbered as section 7-30-109 in C.R.S.) might be construed to override an approved distribution provision in an association's governing document the primacy of that distribution provision is expressly recognized in paragraph (1) (numbered as subsection (1)(a) in C.R.S.).

6. If there is no bylaw or other controlling document the person may transfer the personal property to another nonprofit organization or a government or governmental entity. The nonprofit organization need not have the same nonprofit purpose as the inactive one. It is enough that the transferee's purpose is "broadly similar." This requirement should not be construed narrowly. Otherwise, the risk of potential litigation over the transferor's choice will frustrate the section's purpose to provide a safe harbor.

There is no limitation with respect to the choice of a government or governmental entity.

7. Inasmuch as the transfer is made without consideration and the association almost certainly rendered insolvent, creditors of a nonprofit association would be protected by the Uniform Fraudulent Transfer Act Sections 4(a) and 5 and similar statutes. Whether they would also be protected if the transfer is made to the administrator of an unclaimed property statute depends on the terms of a jurisdiction's act. Uniform Unclaimed Property Act (1981) Sections 20 and 24

contemplate that a creditor may proceed against property in the hands of the administrator if the creditor claims an interest in the property, such as a security interest or judgment lien. However, a general creditor without some claim against the property would not be protected. It is unlikely that an inactive nonprofit association would have both unpaid creditors and a significant amount of property. Therefore, the two issues discussed above are unlikely to arise.

8. The person in possession or control is not required to give notice of the proposed transfer to anyone. An examination of to whom notice might reasonably be given reveals the difficulty with such a requirement. Almost by definition an inactive nonprofit association has no current members.

7-30-110. Appointment of agent to receive service of process.

(1) A nonprofit association may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement appointing an agent authorized to receive service of process. If a nonprofit association has such an agent, part 7 of article 90 of this title shall apply as if the agent were a registered agent required to be appointed pursuant to said part.

(2) A statement appointing an agent authorized to receive service of process shall state:

(a) The true name of the nonprofit association;

(b) The principal office address of the principal office of the nonprofit association;

(c) The registered agent name and registered agent address of the agent; and

(d) A statement that the agent has consented to being so appointed.

(3) (Deleted by amendment, L. 2003, p. 2203, § 4, effective July 1, 2004.)

(4) to (6) (Deleted by amendment, L. 2002, p. 1810, § 3, effective July 1, 2002; p. 1674, § 1, effective October 1, 2002.)

Source: L. 94: Entire article added, p. 1274, § 1, effective May 22. **L. 2002:** (1) and (3) to (6) amended, p. 1810, § 3, effective July 1; (1) and (3) to (6) amended, p. 1674, § 1, effective October 1. **L. 2003:** (1), (2), and (3) amended, p. 2203, § 4, effective July 1, 2004. **L. 2004:** (1) and (2)(b) amended, p. 1399, § 1, effective July 1.

OFFICIAL COMMENT

1. This section authorizes but does not require a nonprofit association to file a statement authorizing an agent to receive service of process. It is, of course, not the equivalent of filing articles of incorporation. However, some nonprofit associations may find it prudent to file. Filing may assure that the nonprofit association's leadership gets prompt notice of any lawsuit filed against it. Also, depending upon the jurisdiction's other laws, filing gives some public notice of the nonprofit association's existence and address.

2. Central filing with a state official is provided. This is where parties will seek information of this kind and where this is commonly publicly filed.

3. The format of this section is very much like Section 5 (numbered as section 7-30-105 in C.R.S.), which concerns a statement of authority with respect to property. Because one requires local and other central filing they are not combined.

7-30-111. Claim not abated by change of members or officers.

A claim for relief against a nonprofit association does not abate merely because of a change in its members, persons authorized to manage the affairs of the nonprofit association, or persons considered by the nonprofit association to be members.

Source: L. 94: Entire article added, p. 1275, § 1, effective May 22.

OFFICIAL COMMENT

This provision reverses the common law rule of partnerships, which courts often extended to unincorporated, nonprofit associations. Uniform Partnership Act Sections 29 and 31(4). This Act's entity approach requires this change of the old common law rule. Similar provisions are found in many state statutes. See, for example, Ohio Rev. Code Ann., Corporations, Section 1745.04 (Baldwin 1991); Md. Ann. Code art. 6-406(a)(2); and 12 Vt. Stat. Ann. Section 815 (Equity Pub. 1973).

7-30-112. Venue.

For purposes of venue, a nonprofit association is a resident of a county or city and county in which it has an office.

Source: L. 94: Entire article added, p. 1275, § 1, effective May 22.

OFFICIAL COMMENT

1. Venue, unlike service of process, is treated by statute. See for example Mont. Code Ann. Section 25-2-118(1) (1991); 28 USCA 1391. A criterion used by all states for fixing venue is the county of residence of the defendant. Most states specify as many as eight additional grounds for venue, including the county in which the real estate that is the subject of the suit is situated and the county in which the act causing, in whole or in part, the personal injury or other tort occurred. None of these additional criteria present a special problem with respect to an unincorporated, nonprofit association.

2. If an aggregate view of a nonprofit association were taken, the association is resident in any county in which a member resides. See Wright, Miller, & Cooper, 15 *Federal Procedure & Practice* 3812 (1986). Conforming to the entity view of an association, Section 12 (numbered as section 7-30-112 in C.R.S.) rejects the common law view.

This section is bracketed because some states have already satisfactorily solved this problem.

States have by statute modified the common law rule. Illinois, for example, provides that "a voluntary unincorporated association sued in its own name is a resident of any county in which it has an office or if on due inquiry no office can be found, in which any officer resides." Ill. Code Civ. Prac. Section 2-102(c).

3. Section 12 (numbered as section 7-30-112 in C.R.S.) makes a nonprofit association a resident of any county (or city) in which it has an office. If it has an office in five counties, for example, it may be sued in any of the five counties.

4. "City," in brackets, is for use by those states, such as Virginia, in which there is territory that is not in a county but in a city only.

7-30-113. Summons and complaint - service on whom.

In an action or proceeding against a nonprofit association, a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, a managing or general agent, or a person authorized to participate in the management of its affairs. If none of them can be served, service may be made on a member who may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

Source: L. 94: Entire article added, p. 1275, § 1, effective May 22.

Editor's note: Colorado amended § 7-30-113 (numbered as Section 13 in the uniform act) by adding a qualification in the last sentence that service may be made on a member "who may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association".

OFFICIAL COMMENT

1. In most states the law with respect to service of process is in court rules. Where that is the case, this section, if adopted, should be placed in these rules.

2. Some states have expressly addressed service of process on a nonprofit association. Those states may wish to continue their rules and so should not adopt this section. For this reason this section is bracketed.

Section 13 (numbered as section 7-30-113 in C.R.S.) adapts Rule 4 of the Federal Rules of Civil Procedure to this setting. However, it leaves to other applicable law details concerning service, such as who may make service and the kind of the mailing. It specifies only to or on whom the service of process must be addressed.

By rule or statute all jurisdictions have extensive law on service of process. The real question for nonprofit associations is which set of these rules should apply. This Act treats a nonprofit unincorporated association as a legal entity. Thus, the rules applicable to another legal entity, the corporation, seem most appropriate.

7-30-114. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 94: Entire article added, p. 1275, § 1, effective May 22.

7-30-115. Short title.

This article may be cited as the "Uniform Unincorporated Nonprofit Association Act".

Source: L. 94: Entire article added, p. 1275, § 1, effective May 22.

7-30-116. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Source: L. 94: Entire article added, p. 1275, § 1, effective May 22.

7-30-117. Effective date.

This article shall take effect July 1, 1994.

Source: L. 94: Entire article added, p. 1276, § 1, effective May 22.

OFFICIAL COMMENT

This Act provides an unincorporated, nonprofit association and its members with a legal structure that conforms to the expectations of many of them. Therefore, the need by the nonprofit association for additional time to revise procedures and forms to conform to a significant change in the law is not necessary. However, this Act materially affects third parties, particularly creditors of nonprofit associations. Anecdotal evidence suggests that many creditors place little reliance on their rights against members in extending credit. If they have any reservations about the creditworthiness of a nonprofit association they obtain guarantees from creditworthy members or insist on cash. To the extent that this is true, no change in credit policies is needed and so no extra planning time is needed.

Unless a jurisdiction's usual effective date rule provides little time for affected parties to learn of a new law, it is unnecessary to extend this Act's effective date.

7-30-118. Transition concerning real and personal property.

If, before July 1, 1994, an estate or interest in real or personal property was purportedly transferred to a nonprofit association, on July 1, 1994, the estate or interest vests in the nonprofit association, unless the parties had treated the transfer as ineffective. No such purported transfer

of real property shall impart notice pursuant to section 38-35-109, C.R.S., until the date after July 1, 1994, a deed or other proper instrument conveying such estate or interest in real property is recorded in the office of the clerk and recorder of the county or city and county in which such real property is located.

Source: L. 94: Entire article added, p. 1276, § 1, effective May 22.

Editor's note: Colorado amended § 7-30-118 (numbered as Section 19 in the uniform act) by adding a provision that specifies that the transfer of real property will not impart notice until the date a deed or other proper instrument is recorded after July 1, 1994, whether such transfer was effective prior to July 1, 1994, and by removing the language found in subsection (b) in the uniform act. The official comment should be read with these changes in mind.

OFFICIAL COMMENT

1. Section 19 (numbered as section 7-30-118 in C.R.S.) brings to fruition the parties' expectations that previous law frustrated. Inasmuch as the common law did not consider an unincorporated, nonprofit association to be a legal entity, it could not acquire property. A gift of real or personal property thus failed. Reference in subsection (a) (numbered as section 7-30-118 in C.R.S.) to the transfer as "purportedly" made identifies the document of transfer as one not effective under the law. Subsection (a) (numbered as section 7-30-118 in C.R.S.) gives effect to the gift. However, if parties were informed about the common law they may have treated the gift as ineffective. In that case, the final clause of subsection (a) (numbered as section 7-30-118 in C.R.S.) provides that the gift does not become effective when this Act takes effect.

2. Section 19 (numbered as section 7-30-118 in C.R.S.) should not be read as a retroactive rule. It applies to the facts existing when this Act takes effect. At that time subsection (a) (numbered as section 7-30-118 in C.R.S.) applies to a purported transfer of property that under the law of the jurisdiction could not be given effect at the time it was made. Subsection (a) (numbered as section 7-30-118 in C.R.S.) belatedly makes it effective — effective when this Act takes effect and not when made. The practical result of this difference in when the purported transfer is effective is that the transfer is subject to interests in the property that came into being in the interim. The nonprofit association's interest is subject, for example, to a tax or judgment lien that became effective in the interim. An intervening transfer by the initial transferor may simply be evidence that the "parties had treated the transfer as ineffective." If so, subsection (a) (numbered as section 7-30-118 in C.R.S.) by its terms does not vest ownership in the nonprofit association.

3. Some courts gave effect to gift of property to an unincorporated, nonprofit association by determining that the gift lodged title in someone, often officers of the association, to hold the property in trust for the benefit of the association and its members. Subsection (b) (language removed in C.R.S.) addresses this situation. When the Act takes effect it authorizes the fiduciary to transfer the property to the association. If the fiduciary is unwilling or reluctant, the association may require the fiduciary to transfer the property to the association. In either case, the association will get a deed transferring the property to it which, in the case of real property, the association may record.

4. Jurisdictions may face one of three different legislative situations with respect to Section 19 (numbered as section 7-30-118 in C.R.S.). First, a jurisdiction may not have changed the common law. In that case, Section 19 (numbered as section 7-30-118 in C.R.S.) fits its situation well. Subsections (a) (numbered as section 7-30-118 in C.R.S.) and (b) (language removed in C.R.S.) address the two approaches taken by the courts under the common law. Secondly, a jurisdiction may have changed the common law so as to make effective transfers of real and personal property to some but not all nonprofit associations. In this case Section 19 (numbered as section 7-30-118 in C.R.S.) should be made applicable to those nonprofit associations that did not have the benefit of the special acts. Thirdly, some jurisdictions may have extended to all nonprofit associations the privilege of acquiring in their names real and personal property. In this case, the jurisdiction does not need Section 19 (numbered as section 7-30-118 in C.R.S.) and so should not adopt it.

5. Jurisdictions that have a statute like New York's concerning grants of property by will have a problem that needs special attention. The New York statute provides that a grant by will of real or personal property to an unincorporated association is effective only if the association incorporates within three years after probate of the will. McKinney's N.Y. Estates, Powers & Trust Law Section 3-1.3 (1991). The grants by will that need attention are those that have not become effective by incorporation of the association and have not become ineffective by the running of the three year period. These grants seem entitled to the benefits of Section 19 (numbered as section 7-30-118 in C.R.S.). If so, some modification of Section 19 (numbered as section 7-30-118 in C.R.S.) may be required.

7-30-119. Saving clause.

Except to the extent set forth in section 7-30-118, this article does not affect any right accrued before July 1, 1994, or any action or proceeding then pending.

Source: L. 94: Entire article added, p. 1276, § 1, effective May 22.

Editor's note: Colorado amended § 7-30-119 (numbered as Section 20 in the uniform act) by adding an exception to the savings clause to accommodate the provision added to § 7-30-118. The official comment should be read with this change in mind.

OFFICIAL COMMENT

1. Section 20 (numbered as section 7-30-119 in C.R.S.) is adapted from RUPA Section 1006(c). It continues the prior law after the effective date of this Act with respect to a (i) "right accrued" and (ii) pending "action or proceeding." But for this section the new law of this Act would displace the old in some circumstances. The power of a new act to displace the old statute with respect to conduct occurring before the new act's enactment is substantial. Millard H. Ruud, *The Savings Clause — Some Problems in Construction and Drafting*, 33 Tex. L. Rev. 285, 286-293 (1955). A court generally applies the law that exists at the time it acts.

2. Almost all states have general savings statutes, usually as a part of their statutory construction acts. These are often very broad. See, for example, Model Statutory Construction Act, Section 53. As this Act is remedial, the more limited savings provisions in Section 20 (numbered as section 7-30-119 in C.R.S.) are more appropriate than the broad savings provisions of the usual general savings clause. Section 20 (numbered as section 7-30-119 in C.R.S.) and not a jurisdiction's general savings clause applies to the Act.

3. "Right Accrued." It is not always clear whether an alleged right has "accrued." Some courts have interpreted the phrase to mean that a "matured cause of action or legal authority to demand redress" exists. **Estate of Hoover v. Iowa Dept. of Social Services**, 299 Iowa 702, 251 N.W. 2d 529 (1977). In **Nielsen v. State of Wisconsin**, 258 Wis. 1110, 141 N.W. 2d 194 (1966), a landowner brought suit after the repeal of an act granting a landowner the right to recover from the state for damages to her land caused by the state's failure to install necessary culverts and the like to prevent flooding. Before the act's repeal the landowner's land had been damaged by flooding caused by the state's failures. The court held that the statutory saving of "rights of action accrued" saved her cause of action. In both of these cases, conduct that gave rise to a cause of action had occurred before the act was repealed. It is said that it is not enough that there is an inchoate right. Apparently, there is no "accrued right" under a contract, for example, until there is a breach.

4. "Action or Proceeding" Pending. The principal question is what is an "action or proceeding" for this purpose. "Action" refers to a judicial proceeding. "Proceeding" alone, especially when used with "action," is broader and so includes administrative and other governmental proceedings. It has been given the broader meaning. For example, in

State ex rel. Carmean v. Board of Education of Hardin County, 170 Ohio 2d 415, 165 N.E. 2d 918 (1960) a petition to transfer certain land from one school district to another filed before a change in the law was a "pending proceeding" to be decided under the old law. Similarly, a request for permission to petition for an election to consolidate school districts was held to be a "proceeding commenced" so that the substance and procedure of the old law, which was materially different from the new, was preserved. **Grant v. Norris**, 249 Iowa 236, 85 N.W. 2d 261 (1957).

5. RUPA provides that the Act does not "impair obligations of contract existing." This is not carried forward. This phrase is intended to save only obligations protected by the contracts clauses of state and federal constitutions. However, as it might be construed more broadly and the constitution would protect without the phrase, the phrase is not present in Section 20 (numbered as section 7-30-119 in C.R.S.).

Special Purpose Corporations

ARTICLE 40

Corporations Not For Profit

7-40-101. Who may organize - certificate - fees.

7-40-102. Powers.

7-40-103. Contents of certificate or bylaws.

7-40-104. Additional powers - indemnification - liability.

7-40-105. Amendments - where filed - fees.

7-40-106. Associations which can be formed.

7-40-107. Dividend only on dissolution.

7-40-108. Procedure for merger. (Repealed)

7-40-109. Procedure for consolidation. (Repealed)

7-40-110. Approval of merger or consolidation. (Repealed)

7-40-111. Certificate of merger or consolidation. (Repealed)

7-40-112. Effect of merger or consolidation. (Repealed)

7-40-113. Merger and consolidation with religious, educational, and benevolent societies. (Repealed)

7-40-101. Who may organize - certificate - fees.

(1) (a) Any three or more persons, who may or may not be residents of the state of Colorado, may associate themselves together to establish a corporation not for profit for any lawful business or to promote any legitimate object or purpose and may make, sign, and acknowledge and file in the office of the secretary of state of the state of Colorado and record in the office of the recorder of each county in which said corporation owns real estate in the state of Colorado a certificate in writing, setting forth the name of such corporation, the business, objects, or purposes for which it is formed, and the names of the first directors, trustees, or managers. The department of revenue shall collect a fee of five dollars for filing said certificate.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (1), the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(2) The provisions of this article shall not apply to any nonprofit corporation formed after December 31, 1967, nor shall they apply to any corporation not for profit formed prior to January 1, 1968, which is subject to the provisions of articles 121 to 137 of this title.

Source: G.L. § 224. **G.S.** § 367. **R.S. 08:** § 1013. **C.L.** § 2379. **L. 31:** p. 248, § 22. **CSA:** C. 41, § 172. **L. 51:** p. 282, § 1. **CRS 53:** § 31-20-1. **C.R.S. 1963:** § 31-19-1. **L. 67:** p. 658, § 10. **L. 68:** p. 2, § 2. **L. 97:** (2) amended, p. 756, § 7, effective July 1, 1998. **L. 98:** (1) amended, p. 1320, § 14, effective June 1.

ANNOTATION

Law reviews. For article, "When Corporate Stock Becomes Real Estate", see 21 Dicta 53 (1944). For a brief comment on the 1951 amendment to this section, see 28 Dicta 174 (1951). For article, "Highlights of the 1955 Legislative Session — Corporations", see Rocky Mt. L. Rev. 60 (1955). For article, "Non-Profit and Charitable Corporations in Colorado", see 36 U. Colo. L. Rev. 9 (1963). For article, "Generation and Transmission Loan Policy Under the Rural Electrification Act", see 43 Den. L. J. 269 (1966).

Duty of secretary of state to file certificate. It is only upon the tender of a certificate properly setting forth what this section specifically requires that the secretary of state is under a duty to file it. Saunders v. People ex rel. Tyler, 99 Colo. 468, 63 P.2d 1231 (1936).

An association organized under this section may compel issuance of a permit by writ of mandamus to establish and maintain an old folks' home for aged people in good health and an orphanage for children of the Negro race. City Council v. United Negroes Protective Ass'n, 76 Colo. 86, 230 P. 598 (1924).

The treatment of nonmembers comes within the general scope of the purposes of a nonprofit association, by implication, there is no express restriction against it. Union Gold Mining Co. v. Rocky Mt. Nat'l Bank, 2 Colo. 248 (1873); Denver & R.G.R.R. Employees' Relief Ass'n v. Rishmiller, 64 Colo. 306, 171 P. 501 (1918).

Consequently, a hospital established by a nonprofit corporation may receive nonmember patients. Where the ultimate object of an association organized under this section was to treat and care for injured members and there was nothing in the certificate, constitution, or bylaws which provided that the hospital established should be for the exclusive use of the members of the association, the receiving of nonmembers as patients was not carrying on or transacting a separate and distinct business from that for which the association was formed. Denver & R.G.R.R. Employees' Relief Ass'n v. Rishmiller, 64 Colo. 306, 171 P. 501 (1918).

7-40-102. Powers.

A corporation not for profit shall be a body corporate in the name stated in its certificate and may sue and be sued; make and enforce contracts in relation to its business, powers, and objects; have a seal; acquire, hold, encumber, and dispose of property, real, personal, or mixed; adopt and alter bylaws; amend its certificate of incorporation; consolidate or merge with any other corporation; have different classes of members with or without voting rights; and exercise every right and privilege necessary, incident, or appertaining to its business, objects, and purposes. Associations and societies which are intended to benefit the widows, orphans, heirs, and devisees of deceased members thereof, where the members thereof receive no money as profit or otherwise, shall not be deemed insurance companies.

Source: G.L. § 226. **G.S.** § 369. **R.S. 08:** § 1015. **C.L.** § 2381. **CSA:** C. 41, § 174. **L. 51:** p. 282, § 2. **CRS 53:** § 31-20-2. **C.R.S. 1963:** § 31-19-2.

ANNOTATION

Law reviews. For article, "Restrictions on Charitable Gifts in Colorado", see 23 Rocky Mt. L. Rev. 434 (1951). For a brief comment on the 1951 amendment to this section, see 28 Dicta 174 (1951).

This section is specifically for the benefit of corporations, associations and societies, not for pecuniary profit, founded under this section; and where the association is not a corporation, association, or society so founded, it does not come within the purview of this section and can claim no benefit or exemption from it. Head Camp, Pac. Jurisdiction, Woodmen of the World v. Sloss, 49 Colo. 177, 112 P. 49 (1910).

Hence the provisions of this section relating to nonprofit corporations not being deemed insurance companies have no application to a corporation not organized under this section or one insuring those not of the classes named herein. Head Camp, Pac. Jurisdiction, Woodmen of the World v. Sloss, 49 Colo. 177, 112 P. 49 (1910).

Corporate powers are to be determined from statute. The powers which can be exercised by a corporation organized under a special statute are to be determined from the provisions of the legislative act and not from the company's charter, for it is a mere creature of the act to which it owes its existence and it derives all of its powers therefrom. Int'l Serv. Union Co. v. People ex rel. Wettengel, 101 Colo. 1, 70 P.2d 431 (1937).

Prohibiting life insurance companies organized on the mutual assessment plan from doing business in the state does not effect this section. Int'l Serv. Union Co. v. People ex rel. Wettengel 101 Colo. 1, 70 P.2d 431 (1937).

7-40-103. Contents of certificate or bylaws.

(1) The certificate of incorporation or bylaws of the corporation shall provide:

(a) The number and term of office of trustees, directors, or managers of the corporation and the manner of their selection or election;

(b) The officers of the corporation and their term of office and the manner of their designation or selection;

(c) The kinds and classes of members and the rights and privileges of each; and

(d) The authority under which conveyance or encumbrance of all or any part of the corporate property may be made, and the persons who are authorized to execute the instruments of conveyance or encumbrance; and, if not contained in the certificate of incorporation or any amendment thereof, a certified copy of this authority shall be recorded in each county in which the corporation owns real estate.

Source: G.L. § 227. **G.S.** § 370. **R.S. 08:** § 1016. **C.L.** § 2382. **CSA:** C. 41, § 175. **L. 51:** p. 283, § 3. **CRS 53:** § 31-20-3. **C.R.S. 1963:** § 31-19-3. **L. 2003:** (1)(d) amended, p. 2203, § 5, effective July 1, 2004.

ANNOTATION

Law reviews. For a brief comment on the 1951 amendment to this section, see 28 Dicta 174 (1951).

Nonprofit corporation may sell assets and dissolve by majority vote. Since statutes requiring vote of two-thirds of outstanding authorized voting shares to sell corporation's assets and to adopt resolution of dissolution do not apply to nonprofit corporation, determination of these issues by simple majority vote is valid if in accordance with bylaws of nonprofit corporation. Morris Alpert & Sons v. Kahler, 31 Colo. App. 345, 502 P.2d 98 (1972).

7-40-104. Additional powers - indemnification - liability.

(1) The certificate of incorporation or the bylaws of the corporation may provide the authority for the amendment of the certificate of incorporation or the bylaws, for the merging or consolidation of the corporation with another corporation, and for the exercising of any corporate function, power, right, duty, or privilege.

(2) (a) The certificate of incorporation or the bylaws of the corporation may set forth a provision limiting or eliminating the personal liability of directors to the same extent and in the same manner as is provided for cooperative associations in section 7-55-107 (1)(h).

(b) Any such corporation shall have the same powers, rights, and obligations and shall be subject to the same limitations as those that apply to domestic corporations, as set forth in article 109 of this title 7. Corporation directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of domestic corporations, as set forth in article 109 of this title 7. Corporation directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort, as set forth in section 7-108-403, for directors and officers, respectively, of domestic corporations. Any reference in said sections to shareholders shall be construed to refer to voting members or voting stockholders, if any, for the purpose of this section.

Source: L. 51: p. 283, § 4. **CSA:** C. 41, § 175(1). **CRS 53:** § 31-20-4. **C.R.S. 1963:** § 31-19-4. **L. 88:** Entire section amended, p. 405, § 3, effective May 17. **L. 93:** (2)(b) amended, p. 855, § 7, effective July 1, 1994. **L. 2003:** (2)(b) amended, p. 2204, § 6, effective July 1, 2004. **L. 2019:** (2)(b) amended, (SB 19-086), ch. 166, p. 1964, § 62, effective July 1, 2020.

ANNOTATION

Law reviews. For a brief comment on the act which inserted this section, see 28 Dicta 174 (1951).

Nonprofit corporation may sell assets and dissolve by majority vote. Since statutes requiring vote of two-thirds of outstanding authorized voting shares to sell corporation's assets and to adopt resolution of dissolution do not apply to nonprofit corporation, determination of these issues by simple majority vote is valid, if in accordance with bylaws of nonprofit corporation. Morris Alpert & Sons v. Kahler, 31 Colo. App. 345, 502 P.2d 98 (1972).

7-40-105. Amendments - where filed - fees.

(1) (a) All amendments to the certificate of incorporation shall be filed in the office of the secretary of state of Colorado and recorded in the office of the recorder of each county in which said corporation owns real estate in the state of Colorado. The department of revenue shall collect a fee of five dollars for the filing of each amendment.

(b) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (1), the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(2) If a true copy of the certificate of incorporation of the corporation or any amendment to the certificate is presented to the secretary of state with a request that the same be certified, the secretary of state shall certify the same for a fee that shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., which certificate or amendment shall contain, in addition to the usual statement, a statement that the same is a true copy of the original certificate or amendment, as the case may be, on file in the records of the secretary of state and a statement as to the date of filing of the original certificate or amendment.

Source: L. 51: p. 283, § 4. **CSA:** C. 41, § 175(2). **CRS 53:** § 31-20-5. **C.R.S. 1963:** § 31-19-5. **L. 83:** (2) amended, p. 869, § 19, effective July 1. **L. 98:** (1) amended, p. 1321, § 15, effective June 1. **L. 2003:** (2) amended, p. 2204, § 7, effective July 1, 2004. **L. 2004:** (2) amended, p. 1399, § 2, effective July 1.

ANNOTATION

Law reviews. For a brief comment on the act which inserted this section, see 28 Dicta 174 (1951).

7-40-106. Associations which can be formed.

Religious, educational, benevolent, charitable, and other nonprofit associations may incorporate under the provisions of this article or any other applicable law authorizing such incorporation.

Source: L. 51: p. 284, § 4. **CSA:** C. 41, § 175(3). **CRS 53:** § 31-20-6. **C.R.S. 1963:** § 31-19-6.

ANNOTATION

Law reviews. For a brief comment on the act which inserted this section, see 28 Dicta 174 (1951).

7-40-107. Dividend only on dissolution.

No dividend or distribution of the property of any such corporation, association, or society shall be made until all debts are fully paid and then only upon its final dissolution and surrender of organization and name, nor shall any distribution be made except by a vote of a majority of the members. When a distribution of any of their property is contemplated, the directors, trustees, or managers shall file a statement, under oath, in the office of the recorder of deeds in the county in which the business office is located that all debts of the corporation, association, or society are paid, and, in case a distribution is made before filing this statement under oath or if the statement is willfully false, said directors, trustees, or managers shall be jointly and severally liable for the debts of such corporation, association, or society. When a final dissolution of any such corporation, association, or society, formed by virtue of law, has been agreed upon, the directors, trustees, or managers shall file, in the office of the secretary of state, a certificate thereof under seal of the corporation, association, or society, and upon filing this certificate the organization shall cease to exist.

Source: G.L. § 228. **G.S.** § 371. **R.S. 08:** § 1017. **C.L.** § 2383. **CSA:** C. 41, § 176. **CRS 53:** § 31-20-7. **C.R.S. 1963:** § 31-19-7. **L. 2003:** Entire section amended, p. 2204, § 8, effective July 1, 2004.

ANNOTATION

An insurance company is in violation of this section when it issues certificates to its members entitling them to cash payments from a reserve or profit fund. Int'l Serv. Union Co. v. People ex rel. Wettengel, 101 Colo. 1, 70 P.2d 431 (1937).

A complaint alleging that a terminated member of a nonprofit corporation had demanded an accounting and the right to inspect the books of the corporation to determine the member's fair share of the assets upon dissolution, which rights had been denied, is sufficient as against a motion to dismiss for failure to state a claim; inasmuch as a member of a nonprofit corporation has the right to inspect the books and records of the corporation, and a member of a nonprofit corporation is entitled to be informed concerning the business activities conducted by the corporation. Bill Reno, Inc. v. Rocky Mt. Ford Dealers' Adv. Ass'n, 151 Colo. 406, 378 P.2d 206 (1963).

7-40-108. Procedure for merger. (Repealed)

Source: L. 59: p. 322, § 1. **CRS 53:** § 31-20-14. **C.R.S. 1963:** § 31-19-8. **L. 2003:** IP(2) amended, p. 2204, § 9, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1400, § 3, effective July 1.

7-40-109. Procedure for consolidation. (Repealed)

Source: L. 59: p. 322, § 1. **CRS 53:** § 31-20-15. **C.R.S. 1963:** § 31-19-9. **L. 2003:** IP(2) amended, p. 2205, § 10, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1400, § 4, effective July 1.

7-40-110. Approval of merger or consolidation. (Repealed)

Source: L. 59: p. 323, § 1. **CRS 53:** § 31-20-16. **C.R.S. 1963:** § 31-19-10. **L. 2003:** (1)(b) and (1)(c) amended, p. 2205, § 11, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1400, § 5, effective July 1.

7-40-111. Certificate of merger or consolidation. (Repealed)

Source: L. 59: p. 323, § 1. **CRS 53:** § 31-20-17. **C.R.S. 1963:** § 31-19-11. **L. 83:** (2) and (3) amended, p. 869, § 20, effective July 1. **L. 2002:** IP(1) and (2) to (4) amended, p. 1810, § 4, effective July 1; IP(1) and (2) to (4) amended, p. 1675, § 2, effective October 1. **L. 2003:** IP(1) amended, p. 2205, § 12, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1401, § 6, effective July 1.

7-40-112. Effect of merger or consolidation. (Repealed)

Source: L. 59: p. 324, § 1. **CRS 53:** § 31-20-18. **C.R.S. 1963:** § 31-19-12. **L. 2002:** (1) amended, p. 1811, § 5, effective July 1; (1) amended, p. 1675, § 3, effective October 1. **L. 2004:** Entire section repealed, p. 1401, § 7, effective July 1.

7-40-113. Merger and consolidation with religious, educational, and benevolent societies. (Repealed)

Source: L. 59: p. 324, § 1. **CRS 53:** § 31-20-19. **C.R.S. 1963:** § 31-19-13. **L. 2003:** Entire section amended, p. 2205, § 13, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1402, § 8, effective July 1.

ARTICLE 41

Telegraph Companies

7-41-101 to 7-41-104. (Repealed)

Source: L. 95: Entire article repealed, p. 192, § 3, effective April 13.

Editor's note: This article was numbered as article 13 of chapter 31, C.R.S. 1963. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current information relating to telegraph messages, see § 18-9-306.

ARTICLE 42

Ditch and Reservoir Companies

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7-42-101. Additional statements in certificates - mutual ditch corporation shares.

(1) When three or more persons associate under the provisions of law to form a corporation for the purpose of constructing a ditch, reservoir, pipeline, or any part thereof to convey water from any natural or artificial stream, channel, or source whatever to any mines, mills, or lands or

for storing the same, they shall in their articles of incorporation, in addition to the matters otherwise required, state: The stream, channel, or source from which the water is to be taken; the point or place at or near which the water is to be taken; the location, as near as may be, of any reservoir intended to be constructed; the line, as near as may be, of any ditch or pipeline intended to be constructed; and the use to which the water is intended to be applied.

(2) A corporation formed under the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, shall have all of the rights and powers granted by this article to the extent not inconsistent with said act, if such nonprofit corporation otherwise complies with the terms and provisions of this article.

(3) In the case of a municipal corporation, county, special district, or entity, as that term is defined in section 7-90-102, that is a member or stockholder of a corporation described in subsection (1) or (2) of this section, an individual officer, partner, member, manager, agent, or employee of the municipal corporation, county, special district, or entity as designated by the municipal corporation, county, special district, or entity is eligible for election to serve as a director of the corporation irrespective of the fact that such individual is not a member or stockholder of the corporation.

(4) (a) Subject to any decree for the water rights held in the name of a mutual ditch corporation and to a mutual ditch corporation's articles of incorporation or bylaws, a mutual ditch corporation delivering direct flow water rights may provide water to only water-requesting stockholders, including stockholders that own shares for which a change in use has been adjudicated or approved. Consistent with each stockholder's request and the available water supply, a mutual ditch corporation may provide water at rates of flow greater or less than each stockholder's pro rata ownership of shares in the corporation. When total stockholder demand exceeds available water supply, a mutual ditch corporation shall provide, to the extent possible, a pro rata amount of water to all stockholders that are requesting water, either simultaneously or, if necessary, by rotating among stockholders in sections or by other equitable methods as determined by the corporation.

(b) Subject to subsection (4)(c)(IV) of this section, if a water court decree authorizing the change in use of the water rights represented by mutual ditch corporation shares contains volumetric limits on the amount of water deliverable to the changed shares, water diverted and delivered by the mutual ditch corporation only counts against the changed stockholder's volumetric limits if the stockholder, or its lessee or designee, takes delivery in accordance with the change in use decree.

(c) A court shall not construe this subsection (4):

(I) (A) To supersede or abrogate the conditions of any final water court decree entered before September 7, 2021; or

(B) To apply to any water court application for which a trial was held before September 7, 2021, or to an appeal of any water court decision or decree resulting from such a trial;

(II) To impede or prevent a stockholder from changing the type of, place of, time of use of, or point of diversion of the water rights represented by the shares in a mutual ditch corporation;

(III) To require or prohibit a reduction in the flow rate available to a stockholder or mutual ditch corporation when the type of, place of, time of use of, or point of diversion of the water rights represented by the shares is lawfully changed;

(IV) (A) To amend or modify the standards in section 37-92-305 for water court approval of a change in use; or

(B) To amend or modify the court's ability to order conditions necessary to prevent an enlargement upon the historical use of water rights for which a change is sought or to prevent a diminution of return flow historically resulting from the use of the changed shares to the detriment of other appropriators; or

(V) To impair the ability of a stockholder to enter into a program identified in section 37-92-305 (3)(c) or to enter into an acquisition transaction provided for in either section 37-92-102 (3) or 37-83-105.

Source: G.L. § 274. **G.S.** § 308. **L. 1891:** p. 97, § 1. **R.S. 08:** § 988. **C.L.** § 2353. **CSA:** C. 41, § 141. **CRS 53:** § 31-14-1. **C.R.S. 1963:** § 31-14-1. **L. 67:** p. 656, § 5. **L. 92:** Entire section amended, p. 248, § 1, effective March 24. **L. 97:** (2) amended, p. 756, § 8, effective July 1, 1998. **L. 2003:** (1) and (2) amended, p. 2205, § 14, effective July 1, 2004. **L. 2009:** (3) amended, (HB 09-1248), ch. 252, p. 1136, § 23, effective May 14. **L. 2021:** (4) added, (HB 21-1046), ch. 161, p. 915, § 1, effective September 7.

ANNOTATION

Law reviews. For article, "When Corporate Stock Becomes Real Estate", see 21 Dicta 53 (1944). For article, "Irrigation Corporations", see 32 Rocky Mt. L. Rev. 527 (1960). For comment, "Maximum Utilization Collides With Prior Appropriation in A-B Cattle Co. v. United States (196 Colo. 539, 589 P.2d 57 (1978))", see 57 Den. L. J. 103 (1979). For article, "Water Rights — How to Avoid Getting in Over Your Head", see 11 Colo. Law 2143 (1982).

Purpose. Mutual ditch companies were formed expressly for the purpose of furnishing water to shareholders, not for profit or hire. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Purposes of mutual ditch companies discussed. Fort Lyon Canal Co. v. Catlin Canal Co., 642 P.2d 501 (Colo. 1982).

Convenience of members. Mutual ditch companies were organized solely for the convenience of their members in the management of the irrigation and reservoir systems. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Mutual ditches and carrier ditches distinguished. Nelson v. Lake Canal Co., 644 P.2d 55 (Colo. App. 1981).

Powers of carrier ditches. Carrier ditches carry water for sale to consumers who have contracted with the company. Nelson v. Lake Canal Co., 644 P.2d 55 (Colo. App. 1981).

A carrier ditch owns the legal title to a decreed appropriation of water from a natural stream. Nelson v. Lake Canal Co., 644 P.2d 55 (Colo. App. 1981).

Ditch corporations are quasi-public carriers, a means to an end to be resorted to for the purpose of conveying water from the natural streams to places where it may be applied to beneficial uses. Farmers' Indep. Ditch Co. v. Agric. Ditch Co., 22 Colo. 513, 45 P. 444 (1896).

Mutual ditch companies in Colorado have been recognized as quasi-public carriers. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

And a corporation owning and operating a ditch becomes a trustee for its stockholders and is bound to protect their interests. Farmers' Indep. Co. v. Agric. Ditch Co., 22 Colo. 513, 45 P. 444 (1896).

Not under corporation statutes. Mutual ditch companies are not organized under the general Colorado corporations statutes, but under special legislation for ditch and reservoir companies. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Because treatment differs. The unique character of mutual ditch corporations mandates different treatment which is not fully in accord with the principles applicable to corporations in general. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Distinguishing rights of corporation and shareholders. The right of the mutual ditch corporation to hold title to the water rights and other property, and to manage the affairs of the corporation, should be distinguished from the right of the shareholders to use the water on their lands. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

A mutual ditch company does not own water rights in a traditional sense; however, a mutual ditch company owns contractual water delivery rights. E. Ridge of Fort Collins, LLC v. Larimer & Weld Irrig. Co., 109 P.3d 969 (Colo. 2005).

A mutual ditch corporation does not hold the actual "water rights" in trust. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

On the contrary, actual ownership of the water rights is in the shareholder. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

As well as interest in property and other works. The shares of stock owned by shareholders in a mutual ditch corporation represent a definite and specific water right, as well as a corresponding interest in the ditch, canal, reservoir, and other works by which the water right is utilized. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Individual shareholders of a mutual ditch company are indispensable parties in an action to condemn the shareholders' decreed water priorities. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Despite responsibility of corporation in maintaining actions. A mutual ditch corporation is responsible for maintaining actions in the corporate name to secure or protect the consumers' water rights or other property and to represent the shareholders in civil actions. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Duty of court to join shareholders. Pursuant to C.R.C.P. 19 and the court's power under C.A.R. 21, the district court should join as parties to a condemnation action those shareholders in a mutual ditch corporation whose water rights would be affected by the condemnation action of the defendant as of the date of the initiation of the condemnation action and all parties in interest. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

7-42-101.5. Acequia ditch corporation - definition - powers.

(1) For purposes of this section, "acequia" means a ditch that:

(a) Originated prior to Colorado's statehood;

(b) Has historically treated water diverted by the acequia as a community resource and has therefore attempted to allocate water in the acequia based upon equity in addition to priority;

(c) Relies essentially on gravity-fed surface water diversions;

(d) Repealed.

(e) Has historically been operated pursuant to a one landowner-one vote system; and

(f) Has historically relied on labor supplied by the owners of irrigated land served by the acequia.

(2) Subject to any contrary provision of subsection (3) of this section, the procedural and substantive requirements of this article other than this section that apply to the creation, powers, duties, and governance of a ditch corporation subject to this article shall be deemed to apply to the creation, powers, duties, and governance of an acequia ditch corporation.

(3) An acequia ditch corporation may be organized pursuant to this article, a ditch corporation organized pursuant to this article may convert to an acequia ditch corporation, an

unincorporated acequia ditch association may be formed, and an unincorporated ditch association may operate as an unincorporated acequia ditch association, if the ditch meets the definition of an acequia ditch and, as applicable:

(a) Repealed.

(b) Surface water rights provide all of the water rights used for irrigation in the ditch, and such water rights have had substantially uninterrupted use since before Colorado's statehood;

(c) The irrigated land served by the ditch is located wholly in one or more of the counties of Costilla, Conejos, Huerfano, and Las Animas; and

(d) Either:

(I) As required pursuant to section 7-42-101, the stockholders of the ditch file articles of incorporation, or an amendment to the articles of incorporation, that state the stockholders' intention to create or convert to an acequia ditch corporation; or

(II) The members of an unincorporated ditch association have agreed to operate in accordance with this section.

(4) An acequia ditch corporation, if its articles of incorporation so state, or an unincorporated acequia ditch association, may specify in its bylaws that:

(a) Its elections may be held pursuant to a one landowner-one vote system;

(b) Owners of land irrigated by the ditch can be required to contribute labor to the maintenance and repair of the acequia or, in the alternative, to pay an assessment in lieu of such labor;

(c) Water in the ditch may be allocated on a basis other than pro rata ownership of the corporation; and

(d) The corporation or association has a right of first refusal regarding the sale, lease, or exchange of any surface water right that has historically been used to irrigate land by the acequia.

Source: L. 2009: Entire section added, (HB 09-1233), ch. 168, p. 739, § 2, effective April 22. **L. 2013:** (1)(d) and (3)(a) repealed and IP(3), (3)(d), IP(4), and (4)(d) amended, (HB 13-1168), ch. 87, p. 279, § 1, effective August 7.

Cross references: For the legislative declaration contained in the 2009 act adding this section, see section 1 of chapter 168, Session Laws of Colorado 2009.

7-42-102. Work after organization.

(1) Any corporation formed under the provisions of law for the purpose of constructing any ditch, flume, bridge, ferry, or telegraph line, within ninety days from the effective date of its articles of incorporation, shall commence work on such ditch, flume, bridge, ferry, or telegraph line, as shall be named in the articles, and shall complete the work with due diligence. The time of the completion of any such ditch, bridge, ferry, or telegraph line shall not be extended beyond a period of two years from the time work was commenced.

(2) Any corporation failing to commence work within ninety days after the effective date of the articles of incorporation, or failing to complete the same within two years after the time of commencement, shall forfeit all right to the water so claimed, and the same shall be subject to be claimed by any other company. The time for the completion of any flume constructed under the provisions of law shall not be extended beyond a period of four years.

(3) This section shall not apply to any ditch or flume for mining or other purposes constructed through and upon any grounds owned by the corporation. Any company formed to construct a ditch for domestic, agricultural, irrigating, milling, and manufacturing purposes or any of them shall have three years from the time of commencing work thereon within which to complete the same but no longer.

Source: G.L. § 296. **G.S.** § 314. **R.S. 08:** § 989. **C.L.** § 2354. **CSA:** C. 41, § 142. **CRS 53:** § 31-14-2. **C.R.S. 1963:** § 31-14-2. **L. 2008:** (1) and (2) amended, p. 22, § 11, effective August 5.

ANNOTATION

Limitation for lack of due diligence. Whether a court limits a priority decree because of this section or whether upon general principles it holds that due diligence in the prosecution of the work was not observed is quite immaterial. Water Supply & Storage Co. v. Tenney, 24 Colo. 344, 51 P. 505 (1897).

Decree limiting priorities by court of proper jurisdiction may not be collaterally attacked. Under this section, a decree limiting the priorities of a ditch to the completion of the work pronounced by a court having jurisdiction of the subject matter, of the person, and to enter the particular judgment, which is not appealed from, cannot collaterally be attacked and set aside, even though an erroneous conclusion was reached. Water Supply & Storage Co. v. Tenney, 24 Colo. 344, 51 P. 505 (1897).

Applied in Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

7-42-103. Right-of-way.

Any ditch, reservoir, or pipeline corporation formed under the provisions of law shall have the right-of-way over the line named in the articles of incorporation, and shall also have the right to run water from the stream, channel, or water source, whether natural or artificial, named in the articles through its ditch or pipeline, and store the same in any reservoir of the company when not needed for immediate use. The line proposed shall not interfere with any other ditch, pipeline, or reservoir having prior rights, except the right to cross by pipe or flume; nor shall the water of any stream, channel, or other water course, whether natural or artificial, be diverted from its original channel or source to the detriment of any person or persons having priority of right thereto, but this shall not be construed to prevent the appropriation and use of any water not utilized and applied to beneficial uses.

Source: G.L. § 275. **G.S.** § 309. **L. 1891:** p. 98, § 2. **R.S. 08:** § 990. **C.L.** § 2355. **CSA:** C. 41, § 143. **CRS 53:** § 31-14-3. **C.R.S. 1963:** § 31-14-3. **L. 2008:** Entire section amended, p. 22, § 12, effective August 5.

ANNOTATION

The priority of right mentioned in this section is acquired by priority of appropriation, and appropriations of water shall be subordinate to the use thereof by prior appropriators. Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1882).

And "detriment" at the time of diversion can only exist where the water diverted has been previously appropriated or used; if there has been no previous appropriation or use thereof, there can be no present injury or "detriment". Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1882).

For the "use" and "detriment" mentioned in this section are a use existing at the time of the diversion and a detriment resulting from that use. Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1882).

And so future "use" and "detriment" are of no consequence. The general assembly did not intend to prohibit the diversion of water to the "detriment" of parties who might at some future period conclude to settle upon the stream, nor were they legislating with a view to preserving in such stream sufficient water for the "use" of individuals who might never come and, consequently, never have use for it. Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1882).

Appropriation not dependent upon locus of application. In the absence of legislation to the contrary, the right to water acquired by priority of appropriation is not in any way dependent upon the locus of its application to the beneficial use designed. Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1882).

Hence, water may be diverted from one watershed to another. Inasmuch as the doctrine of priority of right by priority of appropriation for agriculture is evoked by the imperative necessity for artificial irrigation of the soil, it would be an ungenerous and inequitable rule that would deprive one of its benefits simply because he has, by large expenditure of time and money, carried the water from one stream over an intervening watershed and cultivated land in the valley of another. Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1882).

Section permits reservoir companies to store water already appropriated by others. That the purpose of this section is to permit reservoir corporations to store water of which it has not made an appropriation — water already appropriated by others, but not then needed for immediate use — is made clear by the concluding words of the section: "but this shall not be construed to prevent the appropriation and use of any water not theretofore utilized and applied to beneficial uses". People ex rel. Park Reservoir Co. v. Hinderlider, 98 Colo. 505, 57 P.2d 894 (1936) (concurring opinion).

7-42-104. Assessment on stock.

(1) If any corporation owning any ditch or canal for conveying or reservoir for storing water for irrigation purposes deems it necessary to raise funds to keep its ditch, canal, or reservoir in good repair or to pay any indebtedness theretofore contracted or the interest thereon, the corporation shall have power to make an assessment on the capital stock thereof, to be levied pro rata on the shares of stock payable in money, labor, or both, for the purpose of keeping the property of the corporation in good repair and for the payment of any indebtedness or interest thereon.

(2) But no such assessment shall be made unless the question of making the assessment is first submitted to the stockholders of the corporation at an annual meeting or at a special meeting called for that purpose, if a quorum is present, and the majority of stock represented at such meeting, either by the owner in person or by proxy, entitled to vote thereon shall vote in favor of making such assessment; and if said stockholders fail to hold any such meeting or fail to make or authorize any assessment within ninety days after the close of the company's fiscal year, the directors shall have power to make any such assessment at any regular or special meeting called therefor for that year.

(3) Such corporation may provide for the sale and forfeiture of shares of stock for such assessment as provided in subsection (4) of this section and may have the benefit of said subsection (4) for the recovery of such assessments by forfeiture or sale of the stock in default, and such corporation shall have a perpetual lien upon such shares of stock and the water rights represented by the same for any and all such assessments until the same are fully paid. Such corporation may also provide that no water shall be delivered until all assessments are paid.

(4) The shares of stock shall be deemed personal property and transferable as such in the manner provided by the bylaws, and subscriptions thereof shall be made payable to the corporation and shall be payable in such installments and at such times as shall be determined by the directors or trustees. An action may be maintained in the name of the corporation to recover any installment which shall remain due and unpaid for the period of twenty days after personal demand therefor or, if personal demand is not made, within thirty days after a written or printed demand has been deposited in the post office properly addressed to the post office address of the delinquent stockholder. The directors or trustees may prescribe by bylaws for a forfeiture or sale of stock on failure to pay the installments or assessments that from time to time may become due, but no forfeiture of stock or of the amount paid thereon shall be declared as against any estate or against any stockholder before demand has been made for the amount due thereon either in person or by written or printed notice duly mailed to the last-known address of such stockholder at least thirty days prior to the time the forfeiture is to take effect; but the proceeds of any sale, over and above the amount due on said shares, shall be paid to the delinquent stockholder.

Source: G.L. § 276. **G.S.** § 310. **R.S. 08:** § 991. **L. 17:** p. 149, § 1. **C.L.** § 2356. **L. 27:** p. 263, § 1. **CSA:** C. 41, § 144. **CRS 53:** § 31-14-4. **C.R.S. 1963:** § 31-14-4. **L. 65:** p. 443, § 1. **L. 79:** (2) R&RE, p. 333, § 1, effective June 15.

ANNOTATION

Mutual ditches and carrier ditches distinguished. Nelson v. Lake Canal Co., 644 P.2d 55 (Colo. App. 1981).

Treatment differs from corporation. The unique character of mutual ditch corporations mandates different treatment which is not fully in accord with the principles applicable to corporations in general. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

The relationship between the mutual ditch corporation and its shareholders arises out of contract, implied in a subscription for stock and construed by the provisions of a charter or articles of incorporation. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Rights of corporation and shareholders distinguished. The right of the mutual ditch corporation to hold title to the water rights and other property, and to manage the affairs of the corporation, should be distinguished from the right of the shareholders to use the water on their lands. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

As well as interests. Furthermore, the interests of the shareholders, insofar as the actual appropriation of the water is concerned, are not identical to the mutual ditch corporation. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

A mutual ditch company does not own water rights in a traditional sense; however, a mutual ditch company owns contractual water delivery rights. E. Ridge of Fort Collins, LLC v. Larimer & Weld Irrig. Co., 109 P.3d 969 (Colo. 2005).

A mutual ditch corporation does not hold the actual "water rights" in trust. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

On the contrary, actual ownership of the water rights is in the shareholder. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

As well as interest in property and other works. The shares of stock owned by shareholders in a mutual ditch corporation represent a definite and specific water right, as well as a corresponding interest in the ditch, canal, reservoir, and other works by which the water right is utilized. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

The shares of stock in a mutual ditch corporation represent the consumer's interest in the reservoir, canal, and water rights. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Shareholders in a mutual ditch corporation have the right to change the place of the use of water if other users are not injured thereby. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

But limitations on stockholder's right to change diversion point permitted. A mutual ditch company bylaw imposing reasonable limitations, additional to those contained in section 37-92-305, upon the right of a stockholder to obtain a change in the point of diversion, can be enforced. Fort Lyon Canal Co. v. Catlin Canal Co., 642 P.2d 501 (Colo. 1982).

Individual shareholders of a mutual ditch company are indispensable parties in an action to condemn the shareholders' decreed water priorities. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Duty of court to join shareholders. Pursuant to C.R.C.P. 19 and the court's power under C.A.R. 21, the district court should join as parties to a condemnation action those shareholders in a mutual ditch corporation whose water rights would be affected by the condemnation action of the defendant as of the date of the initiation of the condemnation action and all parties in interest. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Presumptions favor the acts of ditch company officials in assessing stock under this section for the purpose of keeping a ditch in repair, hence it will be assumed by the courts, in the absence of contrary allegations, that the officials have done their duty. Robinson v. Booth-Orchard Grove Ditch Co., 94 Colo. 515, 31 P.2d 487 (1934).

Stockholder estopped to deny corporate existence and authority to levy assessments. A stockholder of a ditch company who votes in favor of extending its corporate life and for levying assessments on the shareholders is estopped thereafter to deny the corporate existence and its authority to levy assessments. Callahan v.

Chilcott Ditch Co., 37 Colo. 331, 86 P. 123 (1906).

For a stockholder by implication enters into a contract with the company to pay all assessments upon his stock, which may be levied pursuant to this section and the bylaws of the company, of which bylaws the stockholder will be presumed to have had notice. Callahan v. Chilcott Ditch Co., 37 Colo. 331, 86 P. 123 (1906).

And stockholder is liable for additional assessment levied at adjourned meeting without notice. Where a stockholder paid an assessment levied at a stockholders' meeting, he ratified such meeting and thereby became liable for an additional assessment levied at an adjourned session of that meeting, although he received no notice of such adjourned session, as no notice of such adjournment is necessary. Callahan v. Chilcott Ditch Co., 37 Colo. 331, 86 P.2d 123 (1906).

"Pro rata", as used in this section, means according to a measure which fixes proportions according to a certain rate, percentage, or proportion. Robinson v. Booth-Orchard Grove Ditch Co., 94 Colo. 515, 31 P.2d 487 (1934).

Pro rata basis. The benefit derived from the ownership of stock in a mutual ditch corporation is the right to the exclusive use of the water it represents, the water being divided pro rata according to the number of shares of stock held by each shareholder. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Pro rata assessments must be apportioned between classes of stock. Where ditch stock is divided into different classes, each entitled to a different use varying in benefits from maintenance, a pro rata mandate as to assessments on the different classes requires only that the cost of maintenance shall be equitably apportioned between the classes and that the assessment on each share in a given class by the same. Robinson v. Booth-Orchard Grove Ditch Co., 94 Colo. 515, 31 P.2d 487 (1934).

Subsection (3) allows stoppage of water flow for nonpayment of the cost of upkeep and maintenance of a ditch in the case of formally incorporated ditch companies. Carson v. Williams, 173 Colo. 546, 481 P.2d 725 (1971).

Assessment for restoration of levy was a repair cost authorized under statute and shareholder who refused to pay assessment was not entitled to return of his shares, nor entitled to damages or attorney fees. Watson v. Vouga Reservoir Ass'n, 969 P.2d 815 (Colo. App. 1998).

7-42-105. Right to purchase own stock.

(1) It is lawful for any corporation owning any ditch or canal for conveying or reservoir for storing water for irrigation purposes for its stockholders to purchase and acquire any of its outstanding capital stock, but no purchase of or payment for its own shares shall be made at a time when the purchase or payment would make it insolvent.

(2) Any sale, exchange, lease, or other disposition of any part or all of the business, assets, property, or franchise of any such corporation to any conservancy district, irrigation district, or to the United States or any agency of the United States shall be deemed to be in the usual course of the corporation's business.

Source: L. 21: p. 212, § 1. **C.L.** § 2357. **CSA:** C. 41, § 145. **CRS 53:** § 31-14-5. **C.R.S. 1963:** § 31-14-5. **L. 67:** p. 312, § 1.

ANNOTATION

Corporation may validly purchase own shares in settling assessment dispute. Where, in settlement of an assessment dispute, a corporation accepts cash and the surrender of a stockholder's shares, such a transaction, properly carried out, is a valid purchase by the corporation of its own shares. Guadalupe Main Ditch Co. v. Mannassa Land & Irrigation Co., 104 Colo. 380, 91 P.2d 497 (1939).

7-42-106. Assessments to pay purchase price.

When any such stock has been purchased or contract entered into for the purchase of the same, the corporation shall have the power to use its funds and to levy and collect assessments on the remaining outstanding capital stock in the manner provided by law for the payment of any other indebtedness, for the purpose of paying the purchase price of the stock so purchased.

Source: L. 21: p. 212, § 2. **C.L.** § 2358. **CSA:** C. 41, § 146. **CRS 53:** § 31-14-6. **C.R.S. 1963:** § 31-14-6.

ANNOTATION

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949).

7-42-107. Shall furnish water to whom - rate.

Any corporation constructing a ditch under the provisions of law shall furnish water to the class of persons using the water in the way named in the articles of incorporation, in the way the water is designated to be used, whether to miners, millmen, farmers, or for domestic use,

whenever it has water in its ditch unsold, and it shall at all times give the preference to use of the water in said ditch to the class named in the articles. The rates at which water shall be furnished are to be fixed by the board of county commissioners as soon as the ditch is completed and prepared to furnish water.

Source: G.L. § 277. **G.S.** § 311. **R.S. 08:** § 992. **C.L.** § 2359. **CSA:** C. 41, § 147. **CRS 53:** § 31-14-7. **C.R.S. 1963:** § 31-14-7. **L. 2008:** Entire section amended, p. 22, § 13, effective August 5.

Cross references: For the duty of county commissioners to fix rates for water, see Colo. Const., art. XVI, § 8; for the right to continue purchasing water, see § 37-85-102 et seq.

ANNOTATION

I. General Consideration.

II. Duty to Furnish Water.

III. County Commissioners Fix Rates.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949).

Purpose. Mutual ditch companies were formed expressly for the purpose of furnishing water to shareholders, not for profit or hire. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Mutual ditches and carrier ditches distinguished. Nelson v. Lake Canal Co., 644 P.2d 55 (Colo. App. 1981).

Carrier ditches carry water for sale to consumers who have contracted with the company. Nelson v. Lake Canal Co., 644 P.2d 55 (Colo. App. 1981).

Carrier ditch owns title to decreed appropriation of water. A carrier ditch owns the legal title to a decreed appropriation of water from a natural stream. Nelson v. Lake Canal Co., 644 P.2d 55 (Colo. App. 1981).

A duality of effort exists between the mutual ditch corporation and its shareholders, unlike a trust. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

II. DUTY TO FURNISH WATER.

Distinguishing rights of corporation and shareholders. The right of the mutual ditch corporation to hold title to the water rights and other property, and to manage the affairs of the corporation, should be distinguished from the right of the shareholders to use the water on their lands. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Appropriation of water to an actual beneficial use, and not mere ownership of stock, entitles a shareholder to his water rights. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Pro rata water rights. The benefit derived from the ownership of stock in a mutual ditch corporation is the right to the exclusive use of the water it represents, the water being divided pro rata according to the number of shares of stock held by each shareholder. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Shareholders in a mutual ditch corporation have the right to change the place of the use of water if other users are not injured thereby. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Ditch companies, having unsold water in their canals, shall furnish the same to the class of persons using it, in the manner named by the articles of incorporation upon payment of the established rate. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

And consumer is entitled to mandamus where refused. Upon tender of the rate fixed and compliance with reasonable regulations established, if the carrier has water undisposed of, the consumer is entitled to its use, and so mandamus lies where his demand is refused. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

This section does not impliedly recognize any preferential right of a contract consumer over the rights of owners of the company with respect to reallocation of water previously used by other contract consumers. City of Westminster v. City of Broomfield, 769 P.2d 490 (Colo. 1989).

Liability and obligation. The mutual ditch corporation is not only obligated to furnish a proper proportion of water to each of its shareholders, but it is liable in damages for the failure to do so. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975); Nelson v. Lake Canal Co., 644 P.2d 55 (Colo. App. 1981).

Proceedings under this section to compel delivery of water must necessarily be somewhat summary in their nature, for to be effective the relief must be immediate; and to this end trial courts should be liberal in matters of pleading and practice lest, for example, the crops of a farmer burn while counsel contend over legal technicalities. Townsend v. Fulton Irrigating Ditch Co., 17 Colo. 142, 29 P. 453 (1891).

Corporation is not the only proper representative of shareholders' interests. Inasmuch as the right to "use water" vests solely in the shareholders, and the mutual ditch corporation neither administers nor participates in this actual use, the corporation cannot be deemed the trustee and only proper representative of the shareholders' interests in this matter. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Individual shareholders of a mutual ditch company are indispensable parties in an action to condemn the shareholders' decreed water priorities. Jacobucci v.

District Court, 189 Colo. 380, 541 P.2d 667 (1975).

A carrier is entitled to compensation for carriage, but it cannot charge for the right to use water from its canal, nor can it exact in advance a part or all of its transportation charge for the remaining years of its corporate life as a condition precedent to use for the current irrigating season. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

Moreover, a carrier does not have the rate-making power, and if the carrier assumes and exercises such power, its acts would be subject to a review and change by the county commissioners upon a proper showing. Montezuma Water & Land Co. v. McCracken, 62 Colo. 394, 163 P. 286 (1917); Northern Colo. Irrigation Co. v. Bd. of Comm'rs, 95 Colo. 555, 38 P.2d 889 (1934).

There mere failure of the owner of a water right to go to the irrigation company each season and pay the stipulated price for carrying his water does not entitle any other person to enter into a contract with the company for carrying such water and to thereby become the owner of the water right. Cooper v. Shannon, 36 Colo. 98, 85 P. 175 (1906).

However, this section does not apply to a proceeding between individuals in which no ditch company is a party, as where the question to be determined is whether a sheriff's deed includes a water right. Cooper v. Shannon, 36 Colo. 98, 85 P. 175 (1906).

III. COUNTY COMMISSIONERS FIX RATES.

Commissioners prescribe rates. This section provides that the county commissioners, when an irrigating ditch is completed and prepared to furnish water, are to prescribe the rates at which water shall be furnished. Northern Colo. Irrigation Co. v. Bd. of Comm'rs, 95 Colo. 555, 38 P.2d 889 (1934).

But if a carrier has a rate of its own with which the consumer is satisfied, he is not required to apply to the commissioners to fix a maximum rate. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

The rates fixed by the board of county commissioners are subject to judicial control. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887); Montezuma Water & Land Co. v. McCracken, 62 Colo. 394, 163 P. 286 (1917).

And where a rate of charge fixed by the board has been judicially declared unreasonable and confiscatory, the board will not be permitted to evade the effect of such judgment by declaring and establishing the same rate of charge upon the same evidence. Montezuma Water & Land Co. v. McCracken, 62 Colo. 394, 163 P. 286 (1917).

However, a new reasonable maximum rate may be set. Where a rate prescribed by the board has been adjudged unreasonable and its enforcement enjoined, it is no violation of an injunction for the board to immediately prescribe a reasonable

maximum rate. Montezuma Water & Land Co. v. McCracken, 62 Colo. 394, 163 P. 286 (1917).

7-42-108. Shall keep ditch in repair.

Every ditch corporation formed under the provisions of law shall be required to keep its ditch in good condition so that the water shall not be allowed to escape from the same to the injury of any mining claim, road, ditch, or other property. If it is necessary to convey any ditch over, across, or above any lode or mining claim or to keep the water so conveyed therefrom, the corporation, if necessary to keep the water of the ditch out or from any claim, shall flume the ditch so far as necessary to protect the claim or property from the water of said ditch.

Source: G.L. § 278. **G.S.** § 312. **R.S. 08:** § 993. **C.L.** § 2360. **CSA:** C. 41, § 148. **CRS 53:** § 31-14-8. **C.R.S. 1963:** § 31-14-8. **L. 2003:** Entire section amended, p. 2206, § 15, effective July 1, 2004.

Cross references: For the duty to maintain ditch in good repair, see § 37-84-119; for the duty to keep embankments in repair, see §§ 37-84-101 and 37-84-107.

ANNOTATION

I. Duty to Keep Ditches in Good Condition.

II. Liability for Injury from Seepage.

I. DUTY TO KEEP DITCHES IN GOOD CONDITION.

This section imposes upon ditch companies the duty of keeping their ditches in "good condition". North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 P. 97 (1915).

The mutual ditch corporation must protect and preserve the interests of the shareholders by keeping the ditches, canals, reservoir, and other works in good repair, the expense of which is paid from the special assessment. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

And this duty to prevent injury to adjacent property is emphasized by the requirement that flumes be used where necessary to protect property from injury by escaping water. North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 P. 97 (1915).

Duty to maintain ditch applies to improvements such as trash racks that are incorporated into a ditch. E. Meadows Co., LLC v. Greeley Irrig. Co., 66 P.3d 214 (Colo. App. 2003).

The care required of a ditch owner in the construction and management of his ditch to avoid injuries to others is ordinary care such as a man of ordinary prudence and intelligence would employ under like circumstances to protect his property. City of Boulder v. Fowler, 11 Colo. 396, 18 P. 337 (1888).

It was within the discretion of the court to rule that expert testimony was not required to establish the standard of care applicable to defendant. Oliver v. Amity Mut. Irrigation Co., 994 P.2d 495 (Colo. App. 1999).

What is meant by "good condition" is specified in the clause "so that the water shall not be allowed to escape, etc.", to the injury of the property of others. North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 P. 97 (1915).

And if water does escape to the injury of property, that fact itself is evidence that the ditch is not in the "good condition" which the statute requires. North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 P. 97 (1915).

II. LIABILITY FOR INJURY FROM SEEPAGE.

This section does not make the owner of a ditch absolutely liable for damages, only for negligence. Platte & Denver Ditch Co. v. Anderson, 8 Colo. 131, 6 P. 515 (1884); City of Boulder v. Fowler, 11 Colo. 396, 18 P. 337 (1888); Denver City Irrigation & Water Co. v. Middaugh, 12 Colo. 434, 21 P. 565 (1889); Greeley Irrigation Co. v. House, 14 Colo. 549, 24 P. 329 (1890); Grand Valley Irrigation Co. v. Pitzner, 14 Colo. App. 123, 59 P. 420 (1899); Garnet Ditch & Reservoir Co. v. Sampson, 48 Colo. 285, 110 P. 79 (1910); North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 P. 97 (1915); Bridgeford v. Colo. Fuel & Iron Co., 63 Colo. 372, 167 P. 963 (1917).

And where there is a failure on the part of ditch owners to comply with this section as to maintenance or use of an irrigating ditch whereby injury results, there can be no question but an injured party is entitled to recover. Greeley Irrigating Co. v. House, 14 Colo. 549, 24 P. 329 (1890).

The measure of damages to lands by seepage is the difference between its value immediately before and immediately after the injury, with the cost of restoration a proper consideration in determining value after injury. North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 P. 97 (1915).

Cause of action for seepage damage is within the six-year statute of limitations, with the statute running from the first appearance of seepage. Middlekamp v. Bessemer Irrigation Co., 46 Colo. 102, 103 P. 280 (1909).

Section 15 of article II, Colo. Const., does not apply to this section for this provision of the constitution is limited to proceedings under the eminent domain statute; it has not the effect to charge the owner of an irrigating ditch with the damages occasioned by seepage therefrom to the lands of another where negligence is shown. North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 P. 97 (1915).

7-42-109. Penalty for damage.

Any person who willfully or maliciously damages or interferes with any road, ditch, flume, bridge, ferry, railroad, or telegraph line or any of the fixtures, tools, implements, appurtenances, or property of any corporation that is formed under the provisions of law commits a class 2 misdemeanor. Any such fine shall be paid into the county treasury, and the offender shall also pay all damages that any such corporation sustains, together with costs of suit.

Source: G.L. § 297. **G.S.** § 315. **R.S. 08:** § 994. **C.L.** § 2361. **CSA:** C. 41, § 149. **CRS 53:** § 31-14-9. **C.R.S. 1963:** § 31-14-9. **L. 2003:** Entire section amended, p. 2206, § 16, effective July 1, 2004. **L. 2021:** Entire section amended, (SB 21-271), ch. 462, p. 3136, § 70, effective March 1, 2022.

Cross references: For the penalty for damaging a ditch or flume, see § 37-89-101.

7-42-110. Consolidation of ditch companies - repeal. (Repealed)

Source: L. 1876: p. 68, § 1. **G.L.** omitted. **G.S.** § 313. **R.S. 08:** § 995. **C.L.** § 2362. **CSA:** C. 41, § 150. **CRS 53:** § 31-14-10. **C.R.S. 1963:** § 31-14-10. **L. 2002:** Entire section amended, p. 1811, § 6, effective July 1; entire section amended, p. 1675, § 4, effective October 1. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-42-111. Extension of term.

When the term of years for which any corporation has been incorporated as a ditch company for the purpose of carrying water for irrigation purposes or as a reservoir company for the storage of water for irrigation purposes has expired or is about to expire by lawful limitation, and such corporation has not been administered upon as an expired corporation or gone into liquidation and settlement and division of its affairs, it may have its term of incorporation extended and continued the same as if originally incorporated, as provided in section 7-42-112.

Source: L. 1891: p. 96, § 1. **R.S. 08:** § 996. **C.L.** § 2363. **CSA:** C. 41, § 151. **CRS 53:** § 31-14-11. **C.R.S. 1963:** § 31-14-11.

7-42-112. Procedure to extend term.

(1) Whenever the corporate life of any such ditch or reservoir company has expired or is about to expire, the stockholders may vote upon the question of extending the life of such company for another twenty years, or for any other term provided by statute, by first giving notice of such intention by publication for two successive weeks in the newspaper printed nearest the place where the principal operations of said company are carried on. Such notice shall be signed by stockholders owning at least ten percent of the entire capital stock of said company, and shall state the place where and the time when the question of renewal shall be submitted to the votes of the stockholders of said company at the meeting held in pursuance of such notice, if a majority of the stock of the corporation is represented.

(2) The votes shall be taken by ballot, and each stockholder shall be entitled to as many votes as the stockholder owns shares of stock in the company or holds proxies therefor. If a majority of the votes cast is in favor of a renewal of the corporation, the president and secretary of the company, under the corporate seal of the company, shall certify the fact, and shall make as many certificates as may be necessary. The company shall record one certificate in the office of the recorder of deeds in each county in which the company does business and shall deliver to the secretary of state for filing pursuant to part 3 of article 90 of this title a statement of extension of term that states that the term of the company has been extended, the principal office address of the company, and the registered agent name and registered agent address of the company. The corporate life of the company shall be renewed upon such recording and filing of the declaration, and all stockholders shall have the same rights in the renewed corporation as they had in the company as originally formed.

Source: L. 1891: p. 96, § 2. **R.S. 08:** § 997. **C.L.** § 2364. **L. 31:** p. 247, § 21. **CSA:** C. 41, § 152. **CRS 53:** § 31-14-12. **C.R.S. 1963:** § 31-14-12. **L. 83:** (2) amended, p. 870, § 21, effective July 1. **L. 2002:** (2) amended, p. 1811, § 7, effective July 1; (2) amended, p. 1676, § 5, effective October 1. **L. 2003:** (2) amended, p. 2206, § 17, effective July 1, 2004. **L. 2004:** (2) amended, p. 1402, § 9, effective July 1. **L. 2009:** (2) amended, (HB 09-1248), ch. 252, p. 1128, § 1, effective December 1.

ANNOTATION

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949).

Participation of a stockholder in stockholder's meeting at which it is voted to extend the life of the company estops him to deny the existence of the corporation under its certificate extending its corporate life and also its authority to levy assessments. Hymphreys v. Mooney, 5 Colo. 282 (1880); Plummer v. Struby-Estabrooke Mercantile Co., 23 Colo. 190, 47 P. 294 (1896); Grande Londe Lumber Co. v. Cotton, 12 Colo. App. 375, 55 P. 610 (1898); Thompson v. Commercial Union Assurance Co., 20 Colo. App. 331, 78 P. 1073 (1904); Callahan v. Chilcott Ditch Co., 37 Colo. 331, 86 P. 123 (1906).

7-42-113. Duplicate certificate issued - when.

Any owner of capital stock, as shown by the records of a corporation formed under the law of this state, entitling the stockholder to the services of a ditch or to the use of water subject to the payment of assessments, the legal representative or assignee of any such stockholder, or any lienholder named in the books of the corporation as a lienholder on the lost certificate, whose stock certificate has been lost, mislaid, or destroyed, may have a duplicate certificate issued in accordance with sections 7-42-114 to 7-42-117.

Source: L. 51: p. 278, § 1. **CSA:** C. 41, § 152(1). **CRS 53:** § 31-14-13. **C.R.S. 1963:** § 31-14-13. **L. 2003:** Entire section amended, p. 2207, § 18, effective July 1, 2004. **L. 2012:** Entire section amended, (HB 12-1010), ch. 12, p. 30, § 1, effective August 8.

7-42-114. Statement of loss.

If a certificate of capital stock has been lost, mislaid, or destroyed, and the stockholder, legal representative, or assignee has paid all assessments levied by the corporation against the stock, the stockholder, the stockholder's legal representative or assignee, and any lienholder named in the books of the corporation as a lienholder on the lost certificate may file with the secretary of the corporation a statement under oath that the certificate of stock has been lost, mislaid, or destroyed and that the certificate is the property of the person making the statement and has not been transferred or hypothecated by the stockholder, and demand the issuance of a duplicate certificate in accordance with this section and sections 7-42-115 to 7-42-117.

Source: L. 51: p. 278, § 2. **CSA:** C. 41, § 152(2). **CRS 53:** § 31-14-14. **C.R.S. 1963:** § 31-14-14. **L. 2004:** Entire section amended, p. 1402, § 10, effective July 1. **L. 2012:** Entire section amended, (HB 12-1010), ch. 12, p. 30, § 2, effective August 8.

7-42-115. Publication of notice of demand.

Upon receipt of a demand pursuant to section 7-42-114, the corporation shall publish, at the expense of the person making the demand, at least once a week for five successive weeks, the fifth publication being on the twenty-eighth day after the first publication, in a newspaper of general circulation in the county in which the principal office of the corporation is located or, if there is no newspaper in such county, then in such a newspaper of an adjoining county, a notice that such a demand has been filed with the corporation in accordance with sections 7-42-114 to 7-42-117, stating the demand in full and stating that the corporation will issue, on or after a date therein stated, following the last publication of the notice by at least thirty days, a duplicate certificate to the registered owner, the registered owner's legal representative or assignee, or any lienholder named in the books of the corporation as a lienholder on the lost certificate unless a contrary claim is filed with the corporation prior to the date stated in the notice.

Source: L. 51: p. 278, § 3. **CSA:** C. 41, § 152(3). **CRS 53:** § 31-14-15. **C.R.S. 1963:** § 31-14-15. **L. 2003:** Entire section amended, p. 2207, § 19, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1403, § 11, effective July 1. **L. 2012:** Entire section amended, (HB 12-1010), ch. 12, p. 31, § 3, effective August 8.

7-42-116. Duplicate conclusive against original.

If no claim of interest or ownership other than that made by the person filing a notice pursuant to section 7-42-114 or such person's legal representative or assignee is on file in the records of the secretary of the corporation prior to the date stated in the notice, the corporation shall issue, on or after said date, a duplicate certificate to the person, the person's legal representative or assignee, or any lienholder named in the books of the corporation as a lienholder on the lost certificate. All rights under the original certificate shall immediately cease and no person shall at any time thereafter assert any claim or demand against the corporation or any other person on account of the original certificate.

Source: L. 51: p. 279, § 4. **CSA:** C. 41, § 152(4). **CRS 53:** § 31-14-16. **C.R.S. 1963:** § 31-14-16. **L. 2002:** Entire section amended, p. 1812, § 8, effective July 1; entire section amended, p. 1676, § 6, effective October 1. **L. 2003:** Entire section amended, p. 2207, § 20, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1403, § 12, effective July 1. **L. 2012:** Entire section amended, (HB 12-1010), ch. 12, p. 31, § 4, effective August 8.

7-42-117. Proof of right to certificate.

The corporation may require any legal representative or assignee of a stockholder of record to prove the stockholder's legal right to such certificate as a legal representative or assignee of the stockholder of record. The corporation may require any lienholder named in the books of the corporation as a lienholder on the lost certificate to prove the lienholder's legal right to such certificate.

Source: L. 51: p. 279, § 5. **CSA:** C. 41, § 152(5). **CRS 53:** § 31-14-17. **C.R.S. 1963:** § 31-14-17. **L. 2004:** Entire section amended, p. 1403, § 13, effective July 1. **L. 2012:** Entire section amended, (HB 12-1010), ch. 12, p. 31, § 5, effective August 8.

7-42-118. Liability of stockholders, directors, and officers.

Stockholders, directors, and officers of corporations formed under the provisions of this article shall enjoy the same measure of immunity from liability for corporate acts or omissions as stockholders, directors, and officers of corporations formed under the "Colorado Business Corporation Act", articles 101 to 117 of this title, or as members, directors, and officers of nonprofit corporations formed under the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title.

Source: L. 86: Entire section added, p. 1092, § 2, effective May 16. **L. 93:** Entire section amended, p. 855, § 8, effective July 1, 1994. **L. 97:** Entire section amended, p. 756, § 9, effective July 1, 1998.

ARTICLE 43

Flume and Pipeline Companies

7-43-101. Certificate for flume companies. (Repealed)

7-43-102. Certificate for pipeline companies.

7-43-103. Nonprofit corporations - powers.

7-43-101. Certificate for flume companies. (Repealed)

Source: G.L. § 279. **G.S.** § 316. **R.S. 08:** § 998. **C.L.** § 2365. **CSA:** C. 41, § 153. **CRS 53:** § 31-15-1. **C.R.S. 1963:** § 31-15-1. **L. 69:** p. 218, § 1. **L. 96:** Entire section repealed, p. 554, § 2, effective April 24.

7-43-102. Certificate for pipeline companies.

Whenever any three or more persons associate under the provisions of law to form a corporation for the purpose of constructing a pipeline for the conveyance of gas, water, or oil, they, in the articles of incorporation, in addition to the matters otherwise required, shall state the places from and to which it is intended to construct the proposed line. Any pipeline corporation formed under the provisions of law shall have the right-of-way over the line named in the articles and shall also have the right to convey gas, water, or oil by said line, as stated in the articles, through lands of the state of Colorado and lands of any persons, and to erect pump stations, storage tanks, and other buildings necessary for such business. If a corporation is unable to agree with the persons owning any of the lands for the purchase of any real estate required for the purpose of any such corporation or company, or the transaction of the business of the same, or for right-of-way, or any other lawful purpose connected with or necessary to the operation of said company, the corporation may acquire such title in the manner provided by law.

Source: L. 1891: p. 94, § 1. **R.S. 08:** § 999. **C.L.** § 2366. **CSA:** C. 41, § 154. **CRS 53:** § 31-15-2. **C.R.S. 1963:** § 31-15-2. **L. 69:** p. 218, § 2. **L. 2003:** Entire section amended, p. 2207, § 21, effective July 1, 2004. **L. 2008:** Entire section amended, p. 22, § 14, effective August 5.

Cross references: For the power of pipeline companies to exercise the power of eminent domain, see § 38-2-101; for pipeline company rights-of-way, see § 38-4-102.

ANNOTATION

This section does not define a pipeline company. Sinclair Transp. Co. v. Sandberg, 228 P.3d 198 (Colo. App. 2009), rev'd on other grounds sub nom. Larson v. Sinclair Transp. Co., 2012 CO 36, 284 P.3d 42.

The plain language of this section indicates the legislature intended to describe a process by which any domestic pipeline corporation shall be formed under Colorado law. Sinclair Transp. Co. v. Sandberg, 228 P.3d 198 (Colo. App. 2009), rev'd on other grounds sub nom. Larson v. Sinclair Transp. Co., 2012 CO 36, 284 P.3d 42.

Because Colorado cannot dictate or regulate how a foreign entity is formed, Wyoming corporation that has been authorized to do business in the state and

that is in good standing is not subject to the pipeline formation requirements in this section. Sinclair Transp. Co. v. Sandberg, 228 P.3d 198 (Colo. App. 2009), rev'd on other grounds sub nom. Larson v. Sinclair Transp. Co., 2012 CO 36, 284 P.3d 42.

7-43-103. Nonprofit corporations - powers.

A nonprofit corporation subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, shall have all of the rights and powers granted by this article to the extent not inconsistent with said act, if such nonprofit corporation otherwise complies with the terms and provisions of this article.

Source: L. 67: p. 657, § 6. **C.R.S. 1963:** § 31-15-3. **L. 97:** Entire section amended, p. 756, § 10, effective July 1, 1998.

ARTICLE 44

Water Users' Associations

7-44-101. Tax exemptions - fees.
7-44-102. Stock subscription record.
7-44-103. Organization - assessments.
7-44-104. Directors may file petition in district court.
7-44-105. Application to prior associations.
7-44-106. Water users' association petition in district court - when.
7-44-107. Associations may extend corporate life.

7-44-101. Tax exemptions - fees.

Any water users' association that is organized in conformity with the requirements of the United States under the reclamation act of June 17, 1902, and that, under its articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any income tax and from the payment of any annual franchise tax but shall be required to pay, as preliminary to its incorporation, a fee that shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., for the filing and recording of its articles of incorporation.

Source: L. 05: p. 360, § 1. **R.S. 08:** § 1000. **C.L.** § 2367. **CSA:** C. 41, § 155. **CRS 53:** § 31-16-1. **C.R.S. 1963:** § 31-16-1. **L. 81:** Entire section amended, p. 430, § 4, effective July 1. **L. 2008:** Entire section amended, p. 23, § 15, effective August 5.

Cross references: For the "National Irrigation Act of 1902", also known as the "Reclamation Act" or the "Newlands Reclamation Act", see 43 U.S.C. § 371 et seq.

ANNOTATION

Law reviews. For article, "When Corporate Stock Becomes Real Estate", see 21 Dicta 53 (1944). For article, "Irrigation Confirmation Proceedings", see 21 Dicta 140 (1944). For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 321 (1949).

7-44-102. Stock subscription record.

Any water users' association organized in conformity with the requirements of the United States under the reclamation act of June 17, 1902, with the consent of the board of county commissioners, may furnish the clerk and recorder of any county in Colorado a book containing printed copies of its articles of incorporation and forms of subscription for stock; and the county clerk and recorder to whom such book is furnished shall use the same for recording the stock subscriptions in such association, and the charges for the recording thereof shall be made on the basis of the number of words actually written therein.

Source: L. 05: p. 361, § 2. **R.S. 08:** § 1001. **C.L.** § 2368. **CSA:** C. 41, § 156. **CRS 53:** § 31-16-2. **C.R.S. 1963:** § 31-16-2.

Cross references: For the "National Irrigation Act of 1902", also known as the "Reclamation Act" or the "Newlands Reclamation Act", see 43 U.S.C. § 371 et seq.

7-44-103. Organization - assessments.

A corporation known as a water users' association may be formed under the "Colorado Business Corporation Act", articles 101 to 117 of this title, or formed under or elect to be governed by the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, for the purpose of dealing, contracting, or cooperating with the United States under the

provisions of the act of congress of June 17, 1902, and acts amendatory thereof or supplementary thereto for the securing of a water supply or irrigation works, or both. It has, in addition to the powers conferred by law upon ditch, canal, or irrigation companies, the power to make assessments other than on a pro rata basis for the purpose of raising funds to accomplish the purposes for which formed, or to pay its debts or obligations, or to secure reduction in the principal debt due the United States of America for reclamation project construction cost, or delinquent assessments, or charges already due and payable, when the articles of incorporation so permit, or when required under existing or future contracts between the United States and the association or between the association and its stockholders, or under any laws or regulations of the United States.

Source: L. 29: p. 291, § 1. **CSA:** C. 41, § 157. **CRS 53:** § 31-16-3. **C.R.S. 1963:** § 31-16-3. **L. 67:** p. 657, § 7. **L. 97:** Entire section amended, p. 757, § 11, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2208, § 22, effective July 1, 2004.

Cross references: For the "National Irrigation Act of 1902", also known as the "Reclamation Act" or the "Newlands Reclamation Act", see 43 U.S.C. § 371 et seq.

7-44-104. Directors may file petition in district court.

(1) The board of directors of any water users' association formed under section 7-44-103 at any time may file a petition in the district court of the county in which the office of such water users' association is situated praying a judicial examination and determination of the question of the validity of the organization of the association, or of any power conferred by the articles of incorporation, or of any amendment to the articles of incorporation, or of any assessment levied, or of any act, proceeding, or contract of the association. Such petition shall state the facts wherein the validity of such organization, power conferred by the articles of incorporation, amendment to the articles of incorporation, assessment, act, proceeding, or contract is founded and shall be verified by a member of the board. Thereupon a notice in the nature of a summons shall issue under the hand and seal of the clerk of said court, directed to all stockholders, creditors, or other persons interested in said water users' association, naming it, which designation shall be deemed sufficient to give the court jurisdiction of all matters and parties involved and interested. Service shall be obtained by publication of such notice as in the case of publication of summons in an action to quiet title to real property.

(2) Any stockholder, creditor, or other interested person may answer such petition within the time allowed therefor. All persons filing answers shall be entered as defendants in the cause and their several defenses consolidated for hearing or trial. Upon hearing, the court shall examine all

things affecting the validity of the matter in controversy, shall make a finding with reference thereto, and shall enter judgment and decree as the case warrants. In reaching its conclusions in such causes, the court shall follow a liberal interpretation of the law and shall disregard informalities or omissions not affecting the substantial rights of the parties, unless it is affirmatively shown that such informalities or omissions led to a different result than would have been otherwise obtained. The Colorado rules of civil procedure shall govern matters of pleading and practice as nearly as may be. Costs may be assessed or apportioned among contesting parties in the discretion of the trial court. Review of judgments of the district court shall be as provided by law and the Colorado appellate rules.

Source: L. 29: p. 292, § 2. **CSA:** C. 41, § 158. **CRS 53:** § 31-16-4. **C.R.S. 1963:** § 31-16-4. **L. 2003:** (1) amended, p. 2208, § 23, effective July 1, 2004.

7-44-105. Application to prior associations.

Sections 7-44-103 and 7-44-104 also apply to any water users' association formed under the law of this state prior to February 18, 1929.

Source: L. 29: p. 293, § 3. **CSA:** C. 41, § 159. **CRS 53:** § 31-16-5. **C.R.S. 1963:** § 31-16-5. **L. 2003:** Entire section amended, p. 2208, § 24, effective July 1, 2004.

7-44-106. Water users' association petition in district court - when.

(1) Where any water users' association formed under the law of this state has entered into or proposes to enter into a contract with the United States for the payment by the association of the construction and other charges of a federal reclamation project constructed or under construction within this state, and where the funds for the payment of such charges are to be obtained by the association from assessments levied upon the stock of such association and constituting liens upon the lands of such stockholders, the association, in any case where the said contract or proposed contract would modify or affect any individual contracts between the United States and such stockholders or between the association and such stockholders, may file in the district court of the county in which the office of such water users' association is situated, a petition entitled "..... water users' association against the stockholders of said association and the owners and mortgagees of land within the ..... federal reclamation project". No other or more specific description of the defendants shall be required.

(2) In the petition it may be stated that the association has entered into or proposes to enter into a contract with the United States, to be set out in full in said petition, with a prayer that the

court find the contract to be valid, and a modification of any individual contracts between the United States and the stockholders of said association or between the association and its stockholders, insofar as any individual contracts are at variance with such association contract. Thereupon a notice in the nature of a summons shall issue under the hand and seal of the clerk of the court stating in brief outline the contents of said petition and showing where a full copy of the contract or proposed contract may be examined, such notice to be directed to the said defendants under the same general designations, which shall be deemed sufficient to give the court jurisdiction of all matters involved and parties interested.

(3) Service shall be obtained by publication of this notice as in the case of publication of summons in an action to quiet title to real property and by the posting of the notice and complete copy of the contract or proposed contract in the office of the association and at three other public places within the boundaries of such federal reclamation project. Any stockholder in the plaintiff association or owner or mortgagee of land within a federal reclamation project affected by the contract proposed to be made by the association may answer said petition within twenty days or such further time as may be allowed therefor by the court. The failure of any person affected by the said contract to answer shall be construed, so far as that person is concerned, as an acknowledgment of the validity of the said association contract and as a consent to the modification of the said individual contracts with the association or with the United States, to the extent that such modification is required to cause the said individual contracts to conform to the terms of the contract or proposed contract between the plaintiff and the United States. All persons filing answers shall be entered as defendants in said cause and their defenses consolidated for hearing or trial.

(4) At the hearing the court shall examine all matters in controversy and shall enter judgment and decree as the case warrants, showing how and to what extent, if any, the individual contracts of the defendants or under which they claim are modified by the association's contract or proposed contract with the United States. In reaching its conclusions in such causes, the court shall follow a liberal interpretation of the law and shall disregard informalities or omissions not affecting the substantial rights of the parties, unless it is affirmatively shown that these informalities or omissions led to a different result than would have been obtained otherwise. The Colorado rules of civil procedure shall govern matters of pleading and practice as nearly as may be. Costs may be assessed or apportioned among contesting parties in the discretion of the trial court. Review of the judgment of the district court shall be as provided by law and the Colorado appellate rules.

Source: L. 31: p. 265, § 1. **CSA:** C. 46, § 160. **CRS 53:** § 31-16-6. **C.R.S. 1963:** § 31-16-6. **L. 2003:** (1) amended, p. 2208, § 25, effective July 1, 2004.

7-44-107. Associations may extend corporate life.

Any water users' association formed under the law of this state may amend its articles of incorporation so as to extend the life of the association to any date not later than one hundred years from the date of the approval, February 13, 1931.

Source: L. 31: p. 268, § 2. **CSA:** C. 41, § 161. **CRS 53:** § 31-16-7. **C.R.S. 1963:** § 31-16-7. **L. 2003:** Entire section amended, p. 2209, § 26, effective July 1, 2004.

ARTICLE 45

Toll Road Companies

7-45-101. Formation of toll road or toll highway company - description of corridor.
7-45-102. Definitions.
7-45-103. Deadline to commence work - maintenance of effort requirement.
7-45-104. Acquisition of right-of-way.
7-45-105. Planning standards and project review.
7-45-106. Environmental standards and review.
7-45-107. Construction safety standards.
7-45-108. Notice requirements for proposed toll roads and toll highways - removal from titles and voiding of previously filed and recorded documents.
7-45-109. Use of land by toll road or toll highway company - right to repurchase unneeded condemned property.
7-45-110. Sale of interest in or assets of a toll road or toll highway company.
7-45-111. Public-private initiatives.

7-45-101. Formation of toll road or toll highway company - description of corridor.

(1) A toll road or toll highway company shall be formed under Colorado law. On and after June 2, 2008, a toll road or toll highway company may not specify and map a transportation corridor in its filed formation document, and any corridor included in a filed formation document filed before June 2, 2008, shall not be deemed to give the filing toll road or toll highway company any property right or exclusive development right of any kind within the corridor other

than as specified in section 7-45-103. If a toll road or toll highway company complies with the provisions of this article, it shall have the power to erect toll gates and set and collect tolls.

(2) The secretary of state shall maintain a list of all toll road and toll highway companies and shall make the list and the filed formation documents for all toll road and toll highway companies available to the public. To allow the secretary of state to efficiently compile and maintain an accessible list, a toll road or toll highway company shall include the designation "PTR" in its official name as specified in its filed formation document.

(3) and (4) (Deleted by amendment, L. 2008, p. 1707, § 1, effective June 2, 2008.)

Source: L. 2006: Entire article R&RE, p. 1760, § 1, effective June 6. **L. 2008:** (1), (3), and (4) amended, p. 1707, § 1, effective June 2.

ANNOTATION

Law reviews. For article, "Forms Committee Presents Additional Standard Pleading Samples for Use in Foreclosures Through Public Trustee", see 29 Dicta 1 (1952).

Annotator's note. Since § 7-45-101 is similar to § 7-45-101 as it existed prior to the 2006 repeal and reenactment of this article and to laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The general assembly may delegate the power of collecting tolls in return for a supposed public good with such restrictions as it may see fit to impose, and the grantee takes subject to all such limitations. Virginia Canon Toll Rd. Co. v. People ex rel. Vivian, 22 Colo. 429, 45 P. 398 (1896).

And by virtue of this section the grant to exact tolls is conferred in express terms only upon corporations organized to construct and which do construct toll roads. Virginia Canon Toll Rd. Co. v. People ex rel. Vivian, 22 Colo. 429, 45 P. 398 (1896).

Right to locate road. The effect of this section, and the section giving right of condemnation for construction of roads, is to give a road company the right to locate its road on the general course designated in its articles of incorporation, and when so located, to construct, maintain, and operate the road on the line of location, subject to the conditions of condemnation, compensation, and other requirements of the provision. Riddell v. Animas Canon Toll Rd. Co., 5 Colo. 230 (1880).

But toll road cannot be located on any existing road. Under this section it is clear that a toll road company may not locate its road, or any part thereof, upon any toll road previously existing or upon any public highway heretofore and as the time of the organization of such company used and traveled as such, except as it might be

necessary to cross such road or highway. Lyons & E. P. Toll Rd. Co. v. People ex rel. Sprague, 29 Colo. 434, 68 P. 275 (1902).

And such location results in forfeiture of franchise. Where a toll road company located a considerable part of its road upon and along a previously existing toll road which at the time had been abandoned by the former toll road company for a period of more than 14 months and which had been repaired and traveled by persons living in the vicinity, the location was in violation of this section and the company thereby forfeited its franchise and right to collect tolls. Lyons & E. P. Toll Rd. Co. v. People ex rel. Sprague, 29 Colo. 434, 68 P. 275 (1902).

Moreover, as long as the power to locate a road remains unexerted, the lands upon which the exercise of the right may ultimately cast the easement are uncertain, and no given tract or parcel of land can be designated as charged with the easement. Riddell v. Animas Canon Toll Rd. Co., 5 Colo. 230 (1880).

Only one toll gate each 10 miles. Under this section the board of county commissioners is powerless to authorize the erection of and taking of toll at more than "one gate to each ten miles". Central Rd. Co. v. People, 5, Colo. 39 (1879).

Hence, wherever there are 2 gates or more, the distance between them must be not less than 10 miles. Central Rd. Co. v. People, 5 Colo. 39 (1879).

A toll road company may alienate all its tangible property and also the franchise to collect tolls, but whatever limitations or burdens existed against it will still exist against its grantee. Virginia Canon Toll Rd. Co. v. People ex rel. Vivian, 22 Colo. 429, 45 P. 398 (1896).

But not the power to continue the franchise after it expires. A toll road company cannot by conveyance made during its corporate life impart to another corporation or to a natural person the power to continue the exercise of a franchise to collect tolls after the franchise itself has expired by operation of law. Virginia Canon Toll Rd. Co. v. People ex rel. Vivian, 22 Colo. 429, 45 P. 398 (1896).

For a toll road company cannot collect toll after the expiration of the term of its corporate existence. Virginia Canon Toll Rd. Co. v. People ex rel. Vivian, 22 Colo. 429, 45 P. 398 (1896).

And when the right to collect tolls ceases with the expiration of the term of a corporation constructing a road, the public may use the highway without charge. Virginia Canon Toll Rd. Co. v. People ex rel. Vivian, 22 Colo. 429, 45 P. 398 (1896).

7-45-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Associated rail corridor" means a corridor for a proposed rail line and any related rail facilities necessary for the operation of a rail line that are to be located in the right-of-way of a toll road or toll highway.

(2) "Associated service area" means a gas station, restaurant, or other travel-related service that serves motorists using a toll road or toll highway.

(3) "Associated utility corridor" means a utility line or system and any related infrastructure used to convey gas, electricity, water, sewage, telecommunications signals, data, or other media located or to be located in the right-of-way of a toll road or toll highway.

(4) "Commenting state agencies" means the department of transportation, the department of public health and environment, the department of natural resources, the department of agriculture, and the department of local affairs.

(5) "Commercial, residential, and industrial development" means the development of offices, shops, stores, hotels, restaurants, bars, warehouses, factories, houses, apartments, condominiums, and other buildings and structures used for the sale and rental of goods or services, for the manufacture, fabrication, assembly, or storage of products, or for sleeping or dwelling.

(6) "Company" means a domestic corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, limited partnership association, nonprofit association, nonprofit corporation, cooperative, or other organization or association that is created under a statute or common law of this state and that is recognized under the law of this state as a separate legal entity.

(7) "Filed formation document" means articles of incorporation, articles of organization, a certificate of limited partnership, articles of association, a statement of registration, or any other document of similar import filed by an entity with the secretary of state under which the entity is formed or obtains its legal status in this state.

(7.3) "New toll road or toll highway company" means a toll road or toll highway company that, as of June 2, 2008, has not specified and mapped a three-mile corridor in its filed formation document as was required by section 7-45-101 (1) before June 2, 2008.

(7.5) "Preexisting toll road or toll highway company" means a toll road or toll highway company that, as of June 2, 2008, had specified and mapped a three-mile corridor in its filed formation document as was required by section 7-45-101 (1) before June 2, 2008.

(8) "Toll road" or "toll highway" means a series of improvements, including but not limited to paving, grading, landscaping, curbs, gutters, culverts, sidewalks, bikeways, lighting, bridges, overpasses, underpasses, frontage roads, access roads, interchanges, drainage facilities, mass transit lanes, park and ride facilities, toll collection facilities, administrative or maintenance facilities, and emergency response and law enforcement services. Nothing in this article shall be construed to affect any common carrier, as defined in section 40-1-102 (3), C.R.S., including, but

not limited to, any railroad. Any utility line, system, or infrastructure shall be subject to a reasonable fee and reasonable relocation provisions.

(9) "Toll road or toll highway company" means a company that proposes to construct a toll road or toll highway in this state under the provisions of this article.

(10) "Toll road or toll highway project" or "project" means a proposed toll road or toll highway together with any associated rail corridor, associated service area, or associated utility corridor.

Source: L. 2006: Entire article R&RE, p. 1761, § 1, effective June 6. **L. 2008:** (7.3) and (7.5) added, p. 1708, § 2, effective June 2.

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

7-45-103. Deadline to commence work - maintenance of effort requirement.

A preexisting toll road or toll highway company shall commence work, including but not limited to planning, design, environmental mitigation, and other preconstruction work, on the toll road or toll highway proposed in its filed formation document no later than three years after the filing of the document or within one year after receiving all necessary approvals for construction. If any necessary approval is the subject of administrative or judicial review, then the one-year period shall be automatically extended until one year after all administrative or judicial review has been concluded. The preexisting toll road or toll highway company and any successor toll road or toll highway company shall continue the work from day to day until at least five hundred thousand dollars have been expended on the toll road or toll highway. If the preexisting toll road or toll highway company fails to perform the required work, it shall forfeit all rights to develop and construct the proposed toll road or toll highway. If the preexisting toll road or toll highway company performs the required work, it shall have the exclusive right to seek approval to develop a toll road or toll highway within the three-mile corridor specified in its filed formation document as required by section 7-45-101 (1) before June 2, 2008, and, only if such approval is granted, the exclusive right to develop a toll road or toll highway within the corridor.

Source: L. 2006: Entire article R&RE, p. 1762, § 1, effective June 6. **L. 2008:** Entire section amended, p. 1708, § 3, effective June 2.

7-45-104. Acquisition of right-of-way.

(1) Notwithstanding the provisions of section 38-2-101, C.R.S., on and after June 6, 2006, a preexisting toll road or toll highway company shall not have the power to exercise the right of eminent domain to acquire any part of the right-of-way of the three-mile corridor of a proposed toll road or toll highway specified in the filed formation document of the company as required by section 7-45-101 (1) and a new toll road or toll highway company shall not have the power to exercise the right of eminent domain to acquire any part of the right-of-way of a toll road or toll highway it proposes to construct. Nothing herein shall prohibit a preexisting or new toll road or toll highway company from entering into a public-private initiative with the department of transportation in accordance with the provisions of part 12 of article 1 of title 43, C.R.S., and as authorized in section 7-45-111 for the purpose of enabling the construction of a toll road or toll highway, but in such a case the power of eminent domain shall not be exercised by the toll road or toll highway company and may be exercised by the department only for purposes of acquiring property and rights-of-way necessary for the completion of a toll road or toll highway open to the public that is incorporated into the comprehensive statewide transportation plan prepared pursuant to section 43-1-1103 (5), C.R.S. The department may not use the power of eminent domain provided in this section to acquire a cemetery, as defined in section 10-15-102 (2), C.R.S., or property owned by or primarily used by a religious organization. In exercising the power of eminent domain, the department shall comply with all laws and administrative rules that govern the department's use of eminent domain for state highway projects, and the rights-of-way acquired shall form a corridor no larger than that approved by all affected metropolitan planning organizations, regional planning commissions, and the transportation commission pursuant to sections 7-45-105 and 7-45-106. In accordance with section 43-1-1204 (3)(b), C.R.S., the department may not sell or otherwise transfer ownership of property or rights-of-way acquired through the exercise of the power of eminent domain as authorized by this section to a toll road or toll highway company.

(2) As used in this section, "religious organization" means any organization, church, body of communicants, or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship, and religious observances or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place.

Source: L. 2006: Entire article R&RE, p. 1763, § 1, effective June 6. **L. 2008:** (1) amended, p. 1709, § 4, effective June 2.

Editor's note: This section was enacted by Senate Bill 06-078 prior to the repeal and reenactment of this article by House Bill 06-1003. For the text of this section in effect from March 31, 2006, to June 6, 2006, see section 1 of chapter 74, Session Laws of Colorado 2006.

7-45-105. Planning standards and project review.

(1) A preexisting or new toll road or toll highway company shall not commence the construction of a toll road or toll highway or of any other element of a toll road or toll highway project until the toll road or toll highway or other element has been reviewed by every metropolitan planning organization or regional planning commission that is located in whole or in part within the three-mile corridor designated by the preexisting toll road or toll highway company as required by section 7-45-101 (1) before June 2, 2008, or that is located in whole or in part within the proposed route of the toll road or toll highway proposed by the new toll road or toll highway company and has been included in the regional transportation plan in effect for the region pursuant to section 43-1-1103, C.R.S., and in the comprehensive statewide transportation plan required pursuant to section 43-1-1103 (5), C.R.S. In designated nonattainment areas for any pollutant pursuant to the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq., as amended, a metropolitan planning organization or regional planning commission shall not include a toll road or toll highway project in the regional transportation plan unless the organization or commission has performed an emissions analysis that demonstrates that regional emissions and local project emissions will continue to conform to the state implementation plan if the project is added to the regional transportation plan. The toll road or toll highway company shall pay the reasonable actual costs for the emissions analysis. Each organization or commission may condition its addition of a toll road or toll highway project into the regional transportation plan upon acceptable environmental mitigation activities and commitments to offset incremental costs of public services that will be necessary as a result of development of the project within the planning region.

(2) At least thirty days before a metropolitan planning organization or regional planning commission may amend its regional transportation plan pursuant to subsection (1) of this section, a toll road or toll highway company shall provide the organization or commission information on the toll road or toll highway project being considered for addition to the plan that includes the final environmental documentation required by section 7-45-106 (1)(b)(IV), the operating plan for the project, the technology to be utilized, an assessment of project feasibility, and an assessment of the long-term viability of the project.

(3) (a) At the discretion of a metropolitan planning organization or regional planning commission, a regional plan may initially be amended to include only environmental and preconstruction activities, excluding right-of-way acquisition, relating to a toll road or toll highway project and may later be amended to include actual construction and right-of-way acquisition of the project following agreement by the metropolitan planning organization or regional planning commission that acceptable environmental mitigation activities and commitments to offset incremental costs of public services are included in the project plans.

(b) Upon request of a local government located in whole or in part within the three-mile corridor of a proposed toll road or toll highway or toll road or toll highway project specified and mapped by a preexisting toll road or toll highway company in its filed formation document as required by section 7-45-101 (1) before June 2, 2008, or located in whole or in part within the proposed route of a toll road or toll highway proposed by a new toll road or toll highway company, a preexisting or new toll road or toll highway company shall consult with representatives from the local government and shall consider available mitigation of demonstrable negative impacts on the local government or its citizens that would result from the construction, operation, or financing of the toll road or toll highway or project.

Source: L. 2006: Entire article R&RE, p. 1763, § 1, effective June 6. **L. 2008:** (1) and (3)(b) amended, p. 1709, § 5, effective June 2.

7-45-106. Environmental standards and review.

(1) (a) Before constructing and operating a toll road or toll highway or any other element of a toll road or toll highway project, a toll road or toll highway company shall prepare, at its own expense, environmental documentation that complies with the environmental stewardship guide approved by the transportation commission in May 2005. The documentation shall describe the environmental, social, and economic effects of the proposed toll road, toll highway, or project, identify feasible measures to avoid or otherwise mitigate the adverse effects of the project, and estimate the financial costs to implement mitigation measures that are included in the project or have been previously recommended in writing by the commenting state agencies or an affected metropolitan planning organization or regional transportation commission and comply with federal and state air and water quality standards, approvals, and permits.

(b) (I) A toll road or toll highway company shall not begin work on environmental documentation required by paragraph (a) of this subsection (1) until it has obtained preliminary approval from the executive director of the department of transportation that the scope of the planned environmental documentation is consistent with the environmental stewardship guide issued by the department in May 2005 and all other requirements of paragraph (a) of this subsection (1).

(II) A toll road or toll highway company shall provide a copy of any draft environmental documentation it prepares as required by paragraph (a) of this subsection (1) to the commenting state agencies, affected metropolitan planning organizations and regional planning commissions, and affected local governments. The toll road or toll highway company shall also make the draft environmental documentation electronically or otherwise available to the public. The commenting state agencies may, within sixty days, provide the toll road or toll highway company and affected metropolitan planning organizations and regional planning commissions with their

analyses of the adequacy of the environmental documentation and shall make the analyses available to the public.

(III) Each of the commenting agencies may charge a fee to a toll road or toll highway company to cover the reasonable expenses that it incurred in fulfilling the requirements of subparagraphs (I) and (II), as applicable, of this paragraph (b).

(IV) A toll road or toll highway company shall prepare final environmental documentation that addresses comments received from the commenting state agencies, metropolitan planning organizations, regional planning commissions, and other interested parties. The final environmental documentation shall be made available to the department of transportation and the public at least thirty days prior to publication of any notice of hearing scheduled by the commission pursuant to subsection (2) of this section.

(2) The transportation commission created in section 43-1-106, C.R.S., shall not revise the comprehensive statewide transportation plan prepared pursuant to section 43-1-1103 (5), C.R.S., to include a toll road, toll highway, or toll road or toll highway project subject to the requirements of this section unless the commission, after holding a public hearing, determines that:

(a) The requirements of section 7-45-105 and subsection (1) of this section have been met;

(b) The toll road, toll highway, or project is:

(I) Necessary to meet the transportation needs of the state;

(II) Consistent with section 43-1-1103 (5), C.R.S., and the policies of the transportation commission;

(III) Consistent with 23 U.S.C. sec. 135; and

(IV) In the public interest;

(c) The toll road, toll highway, or project sponsor has established a reserve fund, performance bond, or other appropriate mechanism to ensure full payment of the costs of compliance with federal and state air and water quality standards, other federal and state environmental requirements, and mitigation measures included in the toll road, toll highway, or project or required by the transportation commission, a metropolitan planning organization, or a regional planning commission; and

(d) The toll road, toll highway, or project sponsor has entered into enforceable agreements with the department of transportation, or agreements with affected local governments that are acceptable to the transportation commission, to ensure that mitigation measures included in the project or required by the transportation commission, a metropolitan planning organization, or a regional planning commission will be implemented.

(3) The transportation commission may condition its addition of a toll road or toll highway or a toll road or toll highway project into the comprehensive statewide transportation plan upon additional mitigation measures if the commission determines that the mitigation measures are in the best overall public interest taking into consideration:

(a) The need for fast, safe, and efficient transportation;

(b) Public services;

(c) The costs of eliminating or minimizing the adverse effects for which the mitigation measures are proposed;

(d) Environmental, social, and economic values; and

(e) The financial feasibility of the toll road, toll highway, or project.

Source: L. 2006: Entire article R&RE, p. 1764, § 1, effective June 6.

7-45-107. Construction safety standards.

When constructing and maintaining a toll road or toll highway or any other element of a toll road or toll highway project, a toll road or toll highway company shall comply with all department of transportation safety standards for state transportation projects.

Source: L. 2006: Entire article R&RE, p. 1767, § 1, effective June 6.

7-45-108. Notice requirements for proposed toll roads and toll highways - removal from titles and voiding of previously filed and recorded documents.

(1) (a) Within ninety days of June 2, 2008:

(I) The county clerk and recorder of each county in which a preexisting toll road or toll highway company filed a disclaimer of interest and map pursuant to paragraph (b) of this subsection (1), as said paragraph (b) existed before June 2, 2008, shall transfer the map, but not the disclaimer of interest, to the board of county commissioners of the county; and

(II) A preexisting toll road or toll highway company shall provide a copy of the map, but not the disclaimer of interest, that the company filed pursuant to paragraph (b) of this subsection (1), as said paragraph (b) existed before June 2, 2008, to the governing body of each municipality that is included within the three-mile corridor specified and mapped in the company's filed formation document.

(b) (I) Any properly authorized written notice, disclaimer of interest, or map filed or recorded by a preexisting toll road or toll highway company as required by subsection (1) of this section, as said subsection (1) existed before June 2, 2008, is hereby declared void and of no effect. The voiding of a written notice, disclaimer of interest, or map pursuant to this paragraph (b) conclusively establishes that the written notice, disclaimer of interest, or map does not affect the title to any property or have any other legal effect, and a title insurance company or title insurance agent shall exclude a void written notice, disclaimer of interest, or map from any documents it prepares on or after June 2, 2008.

(II) No cause of action at law or in equity shall be maintained based upon:

(A) The act of preparing, filing, or recording a written notice, disclaimer of interest, or map filed or recorded by a preexisting toll road or toll highway company pursuant to subsection (1) of this section, as said subsection (1) existed before June 2, 2008, that was subsequently voided pursuant to subparagraph (I) of this paragraph (b);

(B) The voiding of such a written notice, disclaimer of interest, or map; or

(C) The inclusion or exclusion of such a written notice, disclaimer of interest, or map from any document prepared by a title insurance company or title insurance agent.

(2) Within ninety days of the inclusion of a toll road or toll highway or any other element of a toll road or toll highway project proposed by a preexisting or new toll road or toll highway company in the comprehensive statewide transportation plan as required by section 7-45-105 (1), the toll road or toll highway company shall send written notice to each person who owns real property within the proposed route of the proposed toll road, toll highway, or project of the intent of the toll road or toll highway company to construct the proposed toll road, toll highway, or element of the project. The toll road or toll highway company shall send the notice by certified mail and shall describe the proposed toll road, toll highway, or project, including its location, termini, improvements, and operation.

Source: L. 2006: Entire article R&RE, p. 1767, § 1, effective June 6. **L. 2008:** Entire section R&RE, p. 1710, § 6, effective June 2.

7-45-109. Use of land by toll road or toll highway company - right to repurchase unneeded condemned property.

Any interest in real property that is obtained by a preexisting toll road or toll highway company, other than a leasehold interest in property or rights-of-way acquired and owned by the department of transportation as authorized in section 7-45-104, within the three-mile corridor specified and mapped in its filed formation document as was required by section 7-45-101 (1)

before June 2, 2008, and any interest in real property that is obtained by a new toll road or toll highway company, other than a leasehold interest in property or rights-of-way acquired and owned by the department of transportation as authorized in section 7-45-104, within the proposed route of the toll road or toll highway proposed by the new toll road or toll highway company on or after June 2, 2008, and that is not used for a toll road or toll highway project shall not be used for commercial, residential, or industrial development; except that this limitation on use shall apply only during the period in which the toll road or toll highway company is developing or operating a toll road or toll highway within the corridor or proposed route. If the development or operation of a toll road or toll highway ceases after the department has exercised the power of eminent domain to acquire property deemed at the time of acquisition to be necessary for the completion of the toll road or toll highway as authorized in section 7-45-104, a person from whom the department acquired property through the exercise of eminent domain has an exclusive option to repurchase the property acquired at the price paid for the property as just compensation by the department. The person may exercise the option within eighteen months following the cessation of the development or operation of the toll road or toll highway.

Source: L. 2006: Entire article R&RE, p. 1767, § 1, effective June 6. **L. 2008:** Entire section amended, p. 1711, § 7, effective June 2.

7-45-110. Sale of interest in or assets of a toll road or toll highway company.

(1) If any interest in a preexisting or new toll road or toll highway company is sold or transferred, the toll road or toll highway company shall continue to comply with the limitations set forth in section 7-45-109.

(2) If a preexisting or new toll road or toll highway company sells or transfers any interest in its real property within the three-mile corridor specified in the filed formation document of the preexisting toll road or toll highway company or within the proposed route of the toll road or toll highway proposed by the new toll road or toll highway company that is not used for the toll road or toll highway, then the purchaser shall comply with the limitations set forth in section 7-45-109.

(3) If a toll road, toll highway, or toll road or toll highway project is included in the comprehensive statewide transportation plan required pursuant to section 43-1-1103 (5), C.R.S., before the toll road or toll highway company completes a subsequent sale or transfer of assets or rights generating more than twenty percent of the current revenue from the toll road, toll highway, or project, the purchaser must demonstrate to the transportation commission, and the commission must determine, that following the sale or transfer the resources needed to comply with federal and state water quality standards and other federal and state environmental requirements and to implement mitigation measures that were included in the toll road or toll

highway project description or required by a metropolitan planning organization, a regional planning commission, or the transportation commission will still be available for those purposes.

Source: L. 2006: Entire article R&RE, p. 1768, § 1, effective June 6. **L. 2008:** (1) and (2) amended, p. 1712, § 8, effective June 2.

7-45-111. Public-private initiatives.

Nothing contained in this article shall prohibit a toll road or toll highway company from entering into a public-private initiative with the department of transportation in accordance with the provisions of part 12 of article 1 of title 43, C.R.S., for the purpose of enabling the construction of a toll road, toll highway, or project. Any such project shall comply with the requirements of this article.

Source: L. 2006: Entire article R&RE, p. 1768, § 1, effective June 6.

ARTICLE 46

Bridge and Ferry Companies

7-46-101 to 7-46-103. (Repealed)

Source: L. 95: Entire article repealed, p. 193, § 4, effective April 13.

Editor's note: This article was numbered as article 18 of chapter 31, C.R.S. 1963. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 47

Cemetery Companies

7-47-101. Who may organize - powers. 7-47-102. May acquire land.

7-47-103. Land surveyed and platted.
7-47-104. Disposition of proceeds of sales of lots.
7-47-104.5. Reports.
7-47-105. Rights of lot owners.
7-47-106. Property exempt from taxes - attachment.
7-47-107. Property not exempt - when.
7-47-108. Not applicable - when.
7-47-109. Abandoned graves - right to reclaim.

7-47-101. Who may organize - powers.

(1) Three or more persons may associate themselves together under the provisions of law, for the purpose of procuring and establishing a cemetery or place of sepulture, and they shall, upon association and compliance with the provisions of law, be a body politic and corporate; may sue and be sued; may have a common seal that may be altered at pleasure; may purchase, hold, and convey real and personal estate; may choose a president and other officers; may enact bylaws for regulating the affairs of the corporation, not inconsistent with the law of this state, and compel the observance thereof by suitable penalties; and may do all acts necessary for the well ordering of the affairs of such corporation.

(1.5) (a) A board of directors for a nonprofit cemetery corporation shall include at least one director who owns a lot, grave space, niche, or crypt. If such an owner cannot be found to serve as a director, the board of directors shall maintain a vacancy until the director position can be filled with such an owner. A nonprofit cemetery corporation may wait until the first vacancy on the board of directors occurs after January 1, 2013, before appointing a director who owns a lot, grave space, niche, or crypt.

(b) This subsection (1.5) applies only to cemeteries as defined in section 6-24-101 (2).

(2) A nonprofit corporation subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, shall have all of the rights and powers granted by this article to the extent not inconsistent with said act, if such nonprofit corporation otherwise complies with the terms and provisions of this article.

Source: G.L. § 236. **G.S.** § 379. **R.S. 08:** § 1047. **C.L.** § 2430. **CSA:** C. 41, § 227. **CRS 53:** § 31-26-1. **C.R.S. 1963:** § 31-22-1. **L. 67:** p. 659, § 13. **L. 97:** (2) amended, p. 757, § 14, effective July 1, 1998. **L. 2003:** (1) amended, p. 2209, § 28, effective July 1, 2004. **L. 2012:** (1.5) added, (HB 12-1068), ch. 229, p. 1008, § 1, effective August 8. **L. 2017:** (1.5)(b) amended, (HB 17-1244), ch. 239, p. 983, § 2, effective August 9.

ANNOTATION

Rules and regulations of a cemetery association are not open to the objection that they are arbitrary and discriminatory because they are applicable to all who acquire burial sites in the association's grounds in the same manner and under like circumstances. Gasser v. Crown Hill Cem. Ass'n, 103 Colo. 175, 84 P.2d 67 (1938).

7-47-102. May acquire land.

Any corporation formed under the law of this state to establish and maintain a cemetery or burial place for the dead may acquire suitable and sufficient land therefor in the manner provided by articles 1 to 7 of title 38, C.R.S.

Source: L. 1887: p. 70, § 1. **R.S. 08:** § 1048. **C.L.** § 2431. **CSA:** C. 41, § 228. **CRS 53:** § 31-26-2. **C.R.S. 1963:** § 31-22-2. **L. 2003:** Entire section amended, p. 2209, § 29, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952).

7-47-103. Land surveyed and platted.

Such corporation shall cause its land, or such portion thereof as may, from time to time, become necessary for that purpose, to be surveyed into lots, avenues, and walks, and to be platted. The plat of ground as surveyed shall be acknowledged by some officer of the corporation and filed in the office of the recorder of the county in which the land is situated. Each lot shall be regularly numbered by the surveyor, and such number shall be marked on the plat.

Source: L. 1887: p. 70, § 2. **R.S. 08:** § 1049. **C.L.** § 2432. **CSA:** C. 41, § 229. **CRS 53:** § 31-26-3. **C.R.S. 1963:** § 31-22-3.

7-47-104. Disposition of proceeds of sales of lots.

The net proceeds arising from the sale of lots by such corporation and all other income and revenue thereof, after paying for cemetery ground, shall be exclusively applied, appropriated, and used in improving, preserving, and embellishing the cemetery and its appurtenances, and to paying the necessary expenses of the corporation, and shall not be appropriated for any purpose of profit to the corporation or its members.

Source: L. 1887: p. 70, § 3. **R.S. 08:** § 1050. **C.L.** § 2433. **CSA:** C. 41, § 230. **CRS 53:** § 31-26-4. **C.R.S. 1963:** § 31-22-4.

7-47-104.5. Reports.

(1) Each nonprofit cemetery corporation shall keep in its principal office and, upon reasonable request, shall make available for inspection and study to the owner of any grave space, niche, or crypt, or to a duly authorized representative of the owner, the following:

(a) An annual written report setting forth the number of interments and entombments maintained by the nonprofit cemetery corporation, the number of interments and entombments for the preceding year, and any other facts necessary to show the actual financial condition of the nonprofit cemetery corporation;

(b) A complete and current copy of any bylaws or articles of incorporation adopted by the board of directors;

(c) A copy of the minutes of each meeting of the board of directors for the last three years;

(d) A copy of each periodic report filed during the last three years with the Colorado secretary of state in accordance with section 7-90-501;

(e) A copy of internal revenue service form 990 reports, or any successor form or report, for the last three years; and

(f) A copy of the corporation's current balance sheet, income statement, and cash-flow statement.

(2) To comply with this section, the report must be attested to by the accountant, auditor, or other person preparing the report and verified by a vote of the board of directors.

(3) Upon written request for a specific list of documents, the nonprofit cemetery shall provide to any owner of a lot, grave space, niche, or crypt electronic or physical copies of any reports required by this section. The nonprofit cemetery shall fulfill the request within seven days after receipt of the request and payment of a copying charge, if paper copies are required or

requested, not to exceed twenty-five cents per physical copied page. The nonprofit cemetery shall not charge for electronic copies.

Source: L. 2012: Entire section added, (HB 12-1068), ch. 229, p. 1008, § 2, effective August 8.

7-47-105. Rights of lot owners.

(1) If the grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the lots and are members of the corporation.

(2) An owner of a lot, grave space, niche, or crypt may attend any meeting of the board of directors. The board of directors shall provide reasonable notice of any board meeting to owners of a lot, grave space, niche, or crypt, who may not participate in meetings of the board of directors without permission of the chairperson.

Source: L. 1887: p. 70, § 4. **R.S. 08:** § 1051. **C.L.** § 2434. **CSA:** C. 41, § 231. **CRS 53:** § 31-26-5. **C.R.S. 1963:** § 31-22-5. **L. 2012:** Entire section amended, (HB 12-1068), ch. 229, p. 1009, § 3, effective August 8.

7-47-106. Property exempt from taxes - attachment.

All the property of such corporation used or owned for the purposes of this article shall be exempt from taxation, assessment, lien, attachment, and levy and sale upon execution, except for the purchase price of the property.

Source: L. 1887: p. 71, § 5. **R.S. 08:** § 1052. **C.L.** § 2435. **CSA:** C. 41, § 232. **CRS 53:** § 31-26-6. **L. 59:** p. 532, § 7. **C.R.S. 1963:** § 31-22-6.

Cross references: For funeral establishments located in cemeteries, see § 12-135-201.

ANNOTATION

Cemeteries not used or held for profit are exempt from taxation under this section. Grisard v. Roselawn Cem. Ass'n, 92 Colo. 289, 19 P.2d 766 (1933).

As well as assessment, lien, or attachment. Concerned with the projection of § 5 of art. X, Colo. Const., exempting certain properties from taxation, the Colorado general assembly, as early as 1887, provided that cemetery property not only be exempt from taxation, but from assessment, lien, or attachment. Beth Medrosh Hagodol v. City of Aurora, 126 Colo. 267, 248 P.2d 732 (1952).

Including local assessments. The law-making body possessing plenary legislative power over the subject of assessments may if it chooses, and as it has done, exempt cemeteries from local assessments. Other states by statutes have exempted cemeteries by a provision that they shall not be subject to "any tax or debt whatever". City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

And where cemetery property is erroneously assessed by a local government, an injunction is proper to grant relief. Grisard v. Roselawn Cem. Ass'n, 92 Colo. 289, 19 P.2d 766 (1933).

Use of property as a cemetery, not use and ownership, is the test of the right of exemption under this statute. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

7-47-107. Property not exempt - when.

The property of any corporation or association formed under the law of this state to establish and maintain a cemetery for the purposes of profit shall not be exempt from taxation, liens, or levy and sale until actually sold or disposed of for cemetery purposes; and when any block, lot, or parcel of land has been disposed of for cemetery purposes or burial sites for the dead, the same, with streets, walks, and avenues leading thereto, shall be exempt as provided by section 7-47-106.

Source: L. 1891: p. 58, § 1. **R.S. 08:** § 1053. **C.L.** § 2436. **CSA:** C. 41, § 233. **CRS 53:** § 31-26-7. **C.R.S. 1963:** § 31-22-7. **L. 2003:** Entire section amended, p. 2210, § 30, effective July 1, 2004.

7-47-108. Not applicable - when.

The provisions of section 7-47-104 shall not apply to any association or corporation formed under the law of this state to maintain a cemetery for profit.

Source: L. 1891: p. 58, § 1. **R.S. 08:** § 1054. **C.L.** § 2437. **CSA:** C. 41, § 234. **CRS 53:** § 31-26-8. **C.R.S. 1963:** § 31-22-8. **L. 2003:** Entire section amended, p. 2210, § 31, effective July 1, 2004.

7-47-109. Abandoned graves - right to reclaim.

(1) If there is a lot, grave space, niche, or crypt in a cemetery in which no remains have been interred, no burial memorial has been placed, and no other improvement has been made for a continuous period of no less than seventy-five years, the corporation that established or maintains the cemetery, referred to in this section as the "corporation", may initiate the process of reclaiming title to the lot, grave space, niche, or crypt in accordance with this section.

(2) A corporation seeking to reclaim a lot, grave space, niche, or crypt shall:

(a) Send written notice of the corporation's intent to reclaim title to the lot, grave space, niche, or crypt to the owner's last-known address by first-class mail; and

(b) Publish a notice of the corporation's intent to reclaim title to the lot, grave space, niche, or crypt in a newspaper of general circulation in the area in which the cemetery is located once per week for four weeks.

(3) The notice required by subsection (2) of this section shall clearly indicate that the corporation intends to terminate the owner's rights and title to the lot, grave space, niche, or crypt and include a recitation of the owner's right to notify the corporation of the owner's intent to retain ownership of the lot, grave space, niche, or crypt.

(4) If the corporation does not receive from the owner of the lot, grave space, niche, or crypt a letter of intent to retain ownership of the lot, grave space, niche, or crypt within sixty days after the last publication of the notice required by paragraph (b) of subsection (2) of this section, all rights and title to the lot, grave space, niche, or crypt shall transfer to the corporation. The corporation may then sell, transfer, or otherwise dispose of the lot, grave space, niche, or crypt without risk of liability to the prior owner of the lot, grave space, niche, or crypt.

(5) A corporation that reclaims title to a lot, grave space, niche, or crypt in accordance with this section shall retain in its records for no less than one year a copy of the notice sent pursuant to paragraph (a) of subsection (2) of this section and a copy of the notice published pursuant to paragraph (b) of subsection (2) of this section.

(6) If a person submits to a corporation a legitimate claim to a lot, grave space, niche, or crypt that the corporation has reclaimed pursuant to this section, the corporation shall transfer to the person at no charge a lot, grave space, niche, or crypt that, to the extent possible, is equivalent to the reclaimed lot, grave space, niche, or crypt.

(7) Notwithstanding any provision of law to the contrary, on and after August 7, 2006, a corporation shall not convey title to the real property surveyed as a lot in a cemetery for use as a burial space. A corporation may grant interment rights to a lot, grave space, niche, or crypt in a cemetery.

Source: L. 2006: Entire section added, p. 441, § 1, effective August 7.

ARTICLE 48

Business Development Corporations

7-48-101. Short title.
7-48-102. Definitions.
7-48-103. Incorporation - applicability of "Colorado Business Corporation Act".
7-48-104. Domestic entity name.
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7-48-101. Short title.

This article shall be known and may be cited as the "Colorado Business Development Corporation Act".

Source: L. 65: p. 447, § 1. **C.R.S. 1963:** § 31-23-1.

7-48-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Board of directors" means the board of directors of a corporation created under this article.

(2) "Corporation" means a Colorado business development corporation created under the provisions of this article.

(3) "Financial institution" means any bank, trust company, savings and loan association, public or private pension or retirement fund, insurance company or related corporation, partnership, foundation, or other institution engaged in lending or investing funds.

(4) "Loan limit" for any member means the maximum amount permitted to be outstanding at one time on loans made by such member to a corporation as determined under the provisions of this article.

(5) "Member" means any financial institution which undertakes to lend money to a corporation created under this article, upon its call and in accordance with the provisions of this article.

Source: L. 65: p. 447, § 1. **C.R.S. 1963:** § 31-23-2. **L. 2013:** (3) amended, (SB 13-154), ch. 282, p. 1469, § 23, effective July 1.

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

7-48-103. Incorporation - applicability of "Colorado Business Corporation Act".

A business development corporation may be incorporated in this state pursuant to the provisions of article 102 of this title, and all the provisions of the "Colorado Business Corporation Act", articles 101 to 117 of this title, not in conflict with or inconsistent with the provisions of this article shall apply to such corporation except as otherwise provided in this article. The purpose clause of the articles of incorporation shall recite that the purposes for which the corporation is formed are to stimulate and promote the business prosperity and economic welfare of this state and its citizens; to encourage and assist, through financial aid, advice, technical assistance, and other appropriate means, the location of new businesses and industries and the rehabilitation, improvement, and expansion of existing businesses and industries throughout the state; and, in furtherance of these purposes, to cooperate with the division of commerce and development of this state and with other organizations, public and private.

Source: L. 65: p. 448, § 1. **C.R.S. 1963:** § 31-23-3. **L. 93:** Entire section amended, p. 856, § 10, effective July 1, 1994.

7-48-104. Domestic entity name.

In addition to complying with part 6 of article 90 of this title, providing for entity names, each corporation created under this article shall have as part of its domestic entity name the words "Business Development".

Source: L. 65: p. 448, § 1. **C.R.S. 1963:** § 31-23-4. **L. 2003:** Entire section amended, p. 2210, § 32, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1403, § 14, effective July 1.

7-48-105. Approval of governor.

The articles of incorporation shall not be filed by the secretary of state unless approved by the governor in writing. This approval shall not be given by the governor until the governor first has sought the advice of the division of commerce and development.

Source: L. 65: p. 448, § 1. **C.R.S. 1963:** § 31-23-5. **L. 2004:** Entire section amended, p. 1404, § 15, effective July 1.

7-48-106. Restrictions on powers.

(1) The powers of a corporation shall be subject to the following restrictions:

(a) It shall not approve any application for a loan until the applicant shall have shown that the applicant has applied to a financial institution that could lawfully lend the amount of money sought and that the financial institution has refused in writing to make the requested loan.

(b) It shall not incur any secondary liability for the debts of others but may assume primary liability therefor.

(c) It shall not give security for any loan made to it unless all loans to it are secured ratably in proportion to unpaid balances due.

Source: L. 65: p. 449, § 1. **C.R.S. 1963:** § 31-23-6. **L. 2004:** (1)(a) amended, p. 1404, § 16, effective July 1.

7-48-107. Acquisition or disposition of securities and capital stock.

Notwithstanding any other provision of law, any person, corporation, public utility, financial institution, or labor union may acquire, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, notes, debentures, securities, or other evidences of indebtedness or the shares of capital stock of a corporation created under this article; but the amount of capital stock which may be acquired by any member of such corporation shall not exceed ten percent of the loan limit of that member.

Source: L. 65: p. 449, § 1. **C.R.S. 1963:** § 31-23-7.

7-48-108. Membership - loans from members.

(1) Any financial institution is authorized to become a member of a corporation by making application to the board of directors on such form and in such manner as the board of directors may require, and membership shall become effective upon acceptance of the application by said board. Membership shall be for the duration of the corporation; but upon written notice given to the corporation two years in advance, a member may withdraw from membership at the expiration date of the notice and shall not thereafter be obligated to make any loans to the corporation.

(2) Every member shall make loans to the corporation as and when called upon by it to do so, upon such terms and conditions as approved from time to time by the board of directors, subject to the following conditions:

(a) All loans shall be evidenced by negotiable instruments of the corporation and shall bear interest at a rate of not less than one-half of one percent in excess of the rate of interest determined by the board of directors to be the prime rate on unsecured commercial loans as of the date of the loan.

(b) All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the provisions of this section.

(c) No loan to a development corporation shall be made if immediately thereafter the total amount of the obligations of the said corporation would exceed ten times the amount then paid in on its outstanding capital stock.

(d) (I) The total amount outstanding at any one time on loans to a development corporation made by any member must not exceed the lesser of twenty percent of the total amount then outstanding on loans to such development corporation by all members thereof, two hundred fifty thousand dollars, or the following limit to be determined as of the time a member becomes a member on the basis of figures contained in the most recent year-end statement prior to its application for membership:

(A) Three percent of the capital and permanent surplus of banks and trust companies;

(B) Three percent of the total reserve and surplus accounts of a savings and loan association;

(C) One percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies;

(D) One percent of the unassigned surplus of mutual insurance companies, except fire insurance companies;

(E) One-tenth of one percent of the assets of fire insurance companies; and

(F) Comparable limits for other financial institutions as established by the board of directors of the development corporation.

(II) All loan limits shall be recomputed as of the first day of January of each even-numbered year, but no member's loan limit shall be increased as the result of such recomputation without the consent of the member.

(e) Each call for loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The "adjusted loan limit" of a member shall be the amount of such member's loan limit reduced by the balance of outstanding loans made by the member to the corporation and the investment of such member in capital stock of the corporation at the time of the call.

(f) A member of a corporation created under this article shall not be a member of more than one such corporation.

Source: L. 65: p. 449, § 1. **C.R.S. 1963:** § 31-23-8. **L. 2013:** IP(2) and (2)(d) amended, (SB 13-154), ch. 282, p. 1469, § 24, effective July 1.

7-48-109. Capital stock - stockholders and members.

(1) Each share of stock of a corporation shall have a par value of one hundred dollars and shall be issued for cash. No preferred stock shall be issued. At least one hundred thousand dollars

shall be paid into the treasury for capital stock before the corporation shall be authorized to transact any business other than that which relates to its organization.

(2) Each stockholder shall be entitled to one vote, in person or by proxy, for each share of capital stock held, and each member shall be entitled to one vote, in person or by proxy, for each one thousand dollars of the authorized loan limit of such member as determined under section 7-48-108 (2).

(3) The rights given by the "Colorado Business Corporation Act", articles 101 to 117 of this title, to stockholders to attend meetings and to receive notice thereof and exercise voting rights shall apply to members as well as to stockholders of a corporation created under this article. The voting rights of the members shall be the same as if they were a separate class of stockholders, and stockholders and members shall in all cases vote separately by classes. A quorum at a meeting shall require the presence in person or by proxy of a majority of the holders of the voting rights of each class.

Source: L. 65: p. 451, § 1. **C.R.S. 1963:** § 31-23-9. **L. 2003:** (3) amended, p. 2210, § 33, effective July 1, 2004.

7-48-110. Directors.

The business and affairs of a corporation shall be conducted by a board of directors. The number of directors shall be a multiple of three. Two-thirds of the directors shall be elected by the members and one-third shall be elected by the stockholders. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

Source: L. 65: p. 451, § 1. **C.R.S. 1963:** § 31-23-10.

7-48-111. Amendments to articles of incorporation.

No amendment to the articles of incorporation shall be made which increases the obligation of a member to make loans to the corporation or which makes any change in the principal amount, interest rate, maturity date, or security or credit position of any outstanding loan made by a member to the corporation or which affects the right of a member to withdraw from membership or the voting rights of such member, without the consent of each member who would be affected by such amendment.

Source: L. 65: p. 451, § 1. **C.R.S. 1963:** § 31-23-11.

7-48-112. Earned surplus.

Each year the corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus is equal in value to one-half of the amount paid in on the capital stock then outstanding. If the amount of surplus so established becomes impaired, it shall be built up again to the required amount in the manner provided for its original accumulation.

Source: L. 65: p. 452, § 1. **C.R.S. 1963:** § 31-23-12.

7-48-113. Members to have rights of stockholders.

The rights given to stockholders under the provisions of sections 7-102-106, 7-103-104, 7-110-203, and 7-114-102 shall apply to members as well as to stockholders of a corporation created under this article.

Source: L. 65: p. 452, § 1. **C.R.S. 1963:** § 31-23-13. **L. 93:** Entire section amended, p. 856, § 11, effective July 1, 1994. **L. 2004:** Entire section amended, p. 1404, § 17, effective July 1.

7-48-114. Deposit of funds.

No corporation formed under the provisions of this article shall at any time be authorized to receive money on deposit. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

Source: L. 65: p. 452, § 1. **C.R.S. 1963:** § 31-23-14. **L. 2003:** Entire section amended, p. 2210, § 34, effective July 1, 2004.

7-48-115. Books and records.

A corporation shall keep, in addition to the books and records required by sections 7-116-101 and 7-116-102, a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to such books and records as are given to stockholders by sections 7-116-101 to 7-116-106.

Source: L. 65: p. 452, § 1. **C.R.S. 1963:** § 31-23-15. **L. 93:** Entire section amended, p. 856, § 12, effective July 1, 1994.

7-48-116. Credit of state not pledged.

Under no circumstances is the credit of the state pledged in this article.

Source: L. 65: p. 452, § 1. **C.R.S. 1963:** § 31-23-16.

ARTICLE 49

Older Housing

7-49-101. Legislative declaration.
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7-49-117. Deposit of funds.

7-49-118. Books and records.

7-49-101. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) There exists in both the urban and rural areas of the state a substantial quantity of older houses which, while still structurally sound and safe, are in danger of deteriorating due to the lack of available private investment capital which would help ensure their purchase or rehabilitation;

(b) The purchase, repair, and restoration of such houses by interested persons will tend to stabilize the physical and social environment of the area in which such houses are located, preserve the economic base of the community of which they are a part, and help prevent the spread of blighted houses;

(c) A need exists for assistance to individuals and families in securing financing to purchase or rehabilitate such housing; that such purpose can best be met by coordination and cooperation among private lenders and insurers with state and local governments; that such assistance can be provided by stimulating the flow of private investment capital into the financing of such houses by providing a program of mortgage lending and insurance specifically designed to provide loans or insurance to individuals or families who would otherwise qualify for mortgage loans in areas of newer housing; and that local governments can further stimulate the upgrading of endangered older houses by minimizing the problems associated with over-restrictive and narrowly-defined and administered building codes and inspection procedures.

(2) It is further declared that a general law cannot be made applicable to the corporation authorized by this article because of the atypical and special nature of the corporation's powers, duties, privileges, rights, and liabilities.

Source: L. 75: Entire article added, p. 264, § 1, effective June 29.

7-49-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Corporation" means the Colorado older housing preservation corporation authorized to be created in this article.

(2) "Eligible housing structure" or "eligible housing" means a structure occupied by the owner and used primarily for residential purposes, consisting of eight or less units, thirty years of

age or older, and on land located in a recorded subdivision plat in which fifty percent or more of the residential housing structures are thirty years of age or older.

(3) "Financial institution", "member institution", or "institution" means any bank, trust company, savings and loan association, credit union, public or private pension or retirement fund, insurance company or corporation related thereto, partnership, foundation, or any other financial institution authorized to invest in or make mortgage loans or to provide insurance for mortgage loans.

(4) "Insured lender" or "lender" means any financial institution which makes a loan which is insured under this article.

(5) "Mortgage" means a written instrument evidencing or creating a lien against real property for the purpose of providing security for the repayment of a debt. For the purposes of this article, the term includes a deed of trust.

Source: L. 75: Entire article added, p. 265, § 1, effective June 29. **L. 2013:** (3) amended, (SB 13-154), ch. 282, p. 1470, § 25, effective July 1.

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

7-49-103. Corporation authorized.

A corporation, for the purposes enumerated in this article, may be incorporated upon approval of the governor and the state treasurer. The provisions of the "Colorado Business Corporation Act", articles 101 to 117 of this title, not in conflict with or inconsistent with the provisions of this article shall apply to such corporation. The purpose clause of the articles of incorporation shall recite that the purposes for which the corporation is formed are to stimulate the flow of private investment capital for the purchase and rehabilitation of eligible housing; to encourage and assist through financial aid, advice, technical assistance, and other appropriate means the improvement of existing housing throughout the state; and, in furtherance of these purposes, to cooperate with the division of housing of the department of local affairs and the Colorado housing and finance authority and with other organizations, public and private.

Source: L. 75: Entire article added, p. 265, § 1, effective June 29. **L. 87:** Entire section amended, p. 1196, § 15, effective May 20. **L. 93:** Entire section amended, p. 856, § 13, effective July 1, 1994.

7-49-104. Corporate name.

The corporation shall be called the Colorado older housing preservation corporation.

Source: L. 75: Entire article added, p. 265, § 1, effective June 29.

7-49-105. Approval of governor and state treasurer.

The articles of incorporation shall not be delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title, unless the governor and the state treasurer have approved in writing the method for selection of public members of the board of directors and the creation of the corporation.

Source: L. 75: Entire article added, p. 266, § 1, effective June 29. **L. 2002:** Entire section amended, p. 1812, § 9, effective July 1; entire section amended, p. 1676, § 7, effective October 1.

7-49-106. Election of board of directors.

(1) The business and affairs of the corporation shall be conducted by a board of directors comprised of:

(a) Four members elected by a vote of the eight participating financial institutions who have made or committed the largest contributions to the loan and insurance funds provided for in sections 7-49-108 and 7-49-109; and

(b) Two members elected by the remaining participating financial institutions; and

(c) Three members, elected under procedures established in the articles of incorporation at the time of incorporation and approved by the governor and state treasurer, representing the general public; and

(d) The executive director of the department of local affairs or the executive director's designee, the chairperson of the banking board, the commissioner of insurance, the executive director of the Colorado housing and finance authority, and the state treasurer, who shall serve as ex officio voting members of the board of directors.

(2) Except for the ex officio members, the terms of office for each member shall be four years; except that, at the time of incorporation, a majority of the members of the initial board shall be elected for four-year terms and the remainder for two-year terms. Any vacancy shall be filled in the same manner as the original election but shall be for the unexpired term.

Source: L. 75: Entire article added, p. 266, § 1, effective June 29. **L. 87:** (1)(d) amended, p. 1196, § 16, effective May 20. **L. 88:** (1)(d) amended, p. 417, § 8, effective April 11. **L. 2004:** (1)(d) amended, p. 1404, § 18, effective July 1.

7-49-107. Restrictions on powers.

(1) The powers of the corporation shall be subject to the following restrictions:

(a) It shall not approve any application for a loan until the applicant has shown that the applicant has applied to two or more financial institutions that could lawfully lend the amount of money sought and that the financial institutions have refused in writing to make the requested loan or would only make such loan under conditions substantially different from the prevailing rates and conditions available to persons borrowing for the purchase or remodeling of newer homes;

(b) It shall not give security for any loan made unless all loans are secured ratably in proportion to unpaid balances due.

(2) Nothing in this article shall be construed to empower the board of directors to adopt rules or regulations that are inconsistent with federal law governing financial institutions or any federal rules or regulations promulgated pursuant to such federal law.

Source: L. 75: Entire article added, p. 266, § 1, effective June 29. **L. 2003:** (2) amended, p. 2210, § 35, effective July 1, 2004. **L. 2004:** (1)(a) amended, p. 1404, § 19, effective July 1.

7-49-108. Membership - loans from members.

(1) Any financial institution is authorized to become a member of the corporation by making application to the board of directors on such form and in such manner as the board of directors may by rule require, and membership shall become effective upon approval of the application by said board. Membership shall be for the duration of the corporation; but, upon written notice given to the corporation two years in advance, a member may withdraw from membership at the expiration of the notice and shall not thereafter be obligated to make any loans as a member of the corporation.

(2) Every member shall agree to make, pledge, or commit loans to the corporation or to other borrowers as provided in this section when called upon by it to do so, upon such terms and conditions as shall be approved by rule from time to time by the board of directors.

(3) (a) Pursuant to procedures established by rule at the time of incorporation, or as from time to time modified by the board of directors with the approval of a majority of the member institutions, the corporation shall have the right to ask every member to make, pledge, or commit loans up to two-tenths of one percent of its assets (or more if a greater amount is subsequently authorized) for rehabilitation, refinancing, or acquisition loans made under this article. A member's obligation to make, pledge, or commit loans in excess of two-tenths of one percent of its assets arises only with the consent of the individual member.

(b) Such request may be made by the corporation to a member institution asking that the member fulfill its obligations by making an insured loan to finance rehabilitation work, refinancing, or acquisition.

(c) If a member institution has made loans insured under this article, outstanding principal amounts of which equal or exceed two-tenths of one percent of such lending institution's assets or the amount of funds pledged, the institution may assign a loan application qualified under this article to another member institution which has not made loans insured under this article equal to the amount of funds pledged or committed to the corporation or two-tenths of one percent of its assets, and the member institution to which the assignment has been made will, if such member institution approves, make the insured loan.

(d) In the alternative, a member institution which has exceeded its two-tenths of one percent quota may place a loan application qualified under this article with the corporation which shall have the authority to assign such qualified loan application to any member institution which has not exceeded its commitments, and such institution shall make such loan if it approves thereof. The member institution to which such assignment is made need not be located in the municipality in which the housing facility mortgaged or to be mortgaged pursuant to such assigned loan is located.

(e) Each loan shall be subject to reasonable administrative discretion and approval by the lender, under rules established by the corporation, as to the structural soundness of the housing structure and the economic soundness of the proposed loan.

(f) If loans are made directly to the corporation by a member institution for use by the corporation pursuant to procedures established at the time of incorporation, the corporation may transfer amounts to each member institution for the purpose of making loans as provided in this article. Each such loan shall be subject to reasonable administrative discretion by the lender as to the structural soundness of the housing structure and the economic soundness of the proposed loan.

Source: L. 75: Entire article added, p. 266, § 1, effective June 29.

7-49-109. Loan insurance fund established.

(1) The articles of incorporation shall include provisions for the establishment of a loan insurance fund as follows:

(a) At the time of incorporation, and prior to initiating any loans under section 7-49-108, the corporation may call upon each member institution to contribute to the loan insurance fund. The contribution of each institution shall not exceed two-one hundredths of one percent of its assets, unless a greater amount is contributed voluntarily by a member institution or unless a greater amount is stated at the time of incorporation. The corporation may call for contributions to the loan insurance fund only as needed to meet its insurance obligations on loans insured under this article that are in default and for the purpose of maintaining a fund of cash in the loan insurance fund of five hundred thousand dollars. Calls for contributions shall be made upon each of the member institutions in an amount that bears, at the date of the call, the same proportion to the loan insurance fund as such institution's assets bear to the total assets owned by the institutions.

(b) The loan insurance fund may be maintained by mortgage insurance fees not to exceed one-half of one percent above the rate charged for the mortgage or rehabilitation loan.

(2) In the alternative, mortgage insurance may also be provided under the provisions of section 10-4-106, C.R.S.

Source: L. 75: Entire article added, p. 267, § 1, effective June 29. **L. 2003:** (1)(a) amended, p. 2211, § 36, effective July 1, 2004.

7-49-110. Mortgage loans eligible for insurance.

(1) Fund insurance may be made available under the following conditions:

(a) Fund insurance is applicable to loans originated by mortgagees approved by the corporation.

(b) Mortgage loans must be a first lien against subject property.

(c) Mortgage loans involving leaseholds must have a remaining lease term of not less than the mortgage term plus ten years.

(d) Mortgage loans on one- to eight-family properties are eligible only if owner-occupied.

(e) All mortgage loans shall bear interest at the rate agreed upon by the mortgagor and the corporation if the loan is made directly from funds held by the corporation and transferred to a participating lender, or by the mortgagor and the lending institution if the loan is made by the institution on call from the corporation.

(f) No mortgage loan shall be insured for a term in excess of forty years.

(g) The mortgage loan must contain amortization provisions satisfactory to the corporation for the complete amortization of the loan in monthly installments. Generally, the sum of principal and interest payments shall be substantially the same from month to month; however, special amortization programs involving increasing or decreasing monthly payments may be considered for insurance by the corporation.

(h) Mortgage loans submitted for insurance consideration to the corporation must conform to the exhibits, documentation, and eligibility criteria as required under the loan insurance program for which approval is being requested. The corporation may establish, from time to time, the maximum interest rate and term of the loan which it will permit as to any loan it will insure.

Source: L. 75: Entire article added, p. 268, § 1, effective June 29.

7-49-111. Percentage of insurance.

(1) The corporation may insure:

(a) Up to one hundred percent of the unpaid principal amount of loans for the purpose of purchasing, rehabilitating, or repairing eligible housing;

(b) Up to thirty percent of the original principal amount of refinancing loans, if the funds in excess of those required to discharge existing mortgages are used for rehabilitation of all dwelling units in structures refinanced and for no other purpose; and

(c) Up to thirty percent of the original principal amount of acquisition loans, if the insured loan together with other resources of the borrower is sufficient to acquire the property and to complete rehabilitation in accordance with the standards of this article. When the borrower of such an insured loan has repaid to the lender thirty percent of the original principal balance, the loan shall cease to be insured, and thereafter the borrower shall no longer be required to make mortgage insurance payments to the corporation.

Source: L. 75: Entire article added, p. 268, § 1, effective June 29.

7-49-112. Processing loans for insurance.

(1) Insurance on a loan qualifying for mortgage insurance under this article shall be in effect as of the date on which the lender has made a report to the corporation which shall document:

(a) The estimated cost of the rehabilitation work to be done;

(b) In the case of a refinancing loan or acquisition loan, that such loan shall not exceed one hundred percent of the fair market value of the property to be refinanced or acquired after rehabilitation work has been completed;

(c) That the estimated useful life of the housing accommodation, after rehabilitation, in the case of a rehabilitation loan, is greater than the term of the insurable mortgage;

(d) That the housing facility after purchase or rehabilitation will not contain any substantial violation of housing, building, or sanitary codes which would make the housing so unsafe that it presents a danger to the occupants or the public health or safety.

Source: L. 75: Entire article added, p. 269, § 1, effective June 29.

7-49-113. Eligible properties.

(1) Property which is the subject of mortgage insurance or a mortgage or rehabilitation loan must:

(a) Meet the provisions of section 7-49-102 (2);

(b) Be located in this state;

(c) Be primarily residential in nature and use.

(2) If the housing facility includes three or more units, the corporation or lending institution may require appraisal as an investment and include an income and operating statement. Approval may also be subject to satisfactory leases.

Source: L. 75: Entire article added, p. 269, § 1, effective June 29.

7-49-114. Working capital fund.

(1) The corporation shall, at the time of incorporation, establish a general fund, referred to in this article as the "working capital fund", and shall pay into such working capital fund any other moneys which may be available to the corporation for its general purposes from any source.

(2) All moneys held in the working capital fund, including, without limitation, any cash funds transferred directly to the corporation and any income or interest earned by or increment to such fund, shall be used by the corporation for its general purposes, and, to the extent authorized

by it, any such moneys in excess of the amount required to make and keep the corporation self-supporting and to repay loans from member institutions shall be made available for the purposes of loans or for the loan insurance fund.

Source: L. 75: Entire article added, p. 269, § 1, effective June 29.

7-49-115. Division of housing - assistance.

(1) The division of housing of the department of local affairs is hereby authorized to assist individuals and the corporation as to:

(a) The nature, extent, and manner of repairs, remodeling, or rehabilitation financed under this article and the nature, extent, and manner of repairs required to ensure that the dwelling structure will not be structurally unsound and unsafe after such work is completed;

(b) The manner, method, or mode by which the mortgage recipient could undertake all or any portion of the work; and

(c) The progress of the work, including technical assistance regarding the quality of such work.

(2) The corporation may establish rules and regulations providing a schedule of the amount or percentage of the cost or any technical assistance provided by a lender or which may be done under contract to the division of housing of the department of local affairs or by a private firm. Said amount may be included in the loan; except that the total amount to be charged shall not exceed one-half of one percent of the total amount of a loan to finance repair or rehabilitation work only or one-half of one percent of the cost of the repair or rehabilitation work to be undertaken in conjunction with the refinancing of an existing mortgage or the financing of the acquisition of a housing facility.

Source: L. 75: Entire article added, p. 270, § 1, effective June 29. **L. 2004:** (1)(b) amended, p. 1405, § 20, effective July 1.

7-49-116. Nonliability of state for mortgage insurance commitments.

This state shall not be liable for mortgage insurance commitments of the fund beyond the reserves and fee revenues of the fund. The mortgage insurance commitments issued on the fund shall contain a statement to that effect.

Source: L. 75: Entire article added, p. 270, § 1, effective June 29.

7-49-117. Deposit of funds.

The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

Source: L. 75: Entire article added, p. 270, § 1, effective June 29.

7-49-118. Books and records.

In addition to the books and records required by sections 7-116-101 to 7-116-105, the corporation shall keep a record showing the names and addresses of all members of the corporation and the current status of loans made by each to the corporation. Members shall have the same rights with respect to such books and records as are given to stockholders by sections 7-116-101 to 7-116-106.

Source: L. 75: Entire article added, p. 270, § 1, effective June 29. **L. 93:** Entire section amended, p. 857, § 14, effective July 1, 1994.

ARTICLE 49.5

Foreign-trade Zones

7-49.5-101. Short title.
7-49.5-102. Legislative declaration.
7-49.5-103. Definitions.
7-49.5-104. Foreign-trade zone - authority to establish, operate, and maintain.
7-49.5-105. Foreign-trade zone - site.
7-49.5-106. Taxation of merchandise.
7-49.5-107. Severability.

7-49.5-101. Short title.

This article shall be known and may be cited as the "Colorado Foreign-trade Zones Act".

Source: L. 80: Entire article added, p. 447, § 1, effective March 26.

7-49.5-102. Legislative declaration.

The general assembly hereby finds and declares that it is in the best interests of the state of Colorado to maintain this state's economic and commercial viability in the world of national and international commerce by providing incentives to encourage growth in existing industries and to attract new industry. To that end, foreign-trade zones are established, operated, and maintained pursuant to a grant of privilege from the foreign-trade zones board upon proper application in accordance with the "Foreign-trade Zones Act of 1934", 19 U.S.C. sec. 81. This article is enacted to allow designated corporations, including the city and county of Denver, to make application for such grant of the privilege to establish such a foreign-trade zone in Colorado.

Source: L. 80: Entire article added, p. 447, § 1, effective March 26.

7-49.5-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Act" means the congressional act commonly known as the "Foreign-trade Zones Act of 1934", 19 U.S.C. sec. 81.

(2) "Corporation" means a public corporation or a private corporation.

(3) "Foreign merchandise" means merchandise of any class that would be subject to United States customs law if and when entered into United States customs territory.

(4) "Foreign-trade zone" means a foreign-trade zone established under a grant of privilege from the foreign-trade zones board, as defined in the act, and includes foreign-trade subzones as designated by the United States department of commerce.

(5) "Private corporation" means any corporation (other than a public corporation) formed for the purpose of establishing, operating, and maintaining a foreign-trade zone in the state of Colorado under this article, in accordance with the act.

(6) "Public corporation" means the state of Colorado, any political subdivision, municipality, or city and county thereof, any public agency of the state of Colorado, any political subdivision,

municipality, or city and county thereof, or any corporate municipal instrumentality of the state of Colorado or of the state of Colorado and one or more other states.

Source: L. 80: Entire article added, p. 447, § 1, effective March 26. **L. 2003:** (3) and (5) amended, p. 2211, § 37, effective July 1, 2004.

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

7-49.5-104. Foreign-trade zone - authority to establish, operate, and maintain.

Any corporation may apply for a grant of the privilege to establish, operate, and maintain a foreign-trade zone. If such grant of privilege is made, such corporation may accept the grant and do all things necessary and proper in furtherance of the establishment, operation, and maintenance of the foreign-trade zone. Any action taken under this section shall be in accordance with the act and any rules and regulations as may be promulgated thereunder.

Source: L. 80: Entire article added, p. 448, § 1, effective March 26.

7-49.5-105. Foreign-trade zone - site.

Any corporation making an application for a grant of the privilege to establish, operate, and maintain a foreign-trade zone may select and describe the site of such foreign-trade zone in accordance with the act and rules and regulations promulgated thereunder.

Source: L. 80: Entire article added, p. 448, § 1, effective March 26.

7-49.5-106. Taxation of merchandise.

Freeport merchandise and stocks of merchandise as defined in section 39-1-102 (15), C.R.S., brought as foreign merchandise into a foreign-trade zone, established pursuant to a grant of privilege under this article, are exempt from taxation by the state of Colorado or any political subdivision thereof to the extent that such taxation is inhibited by provisions of the United States constitution or law enacted thereunder pertaining to goods in international commerce.

Source: L. 80: Entire article added, p. 448, § 1, March 26. **L. 83:** Entire section amended, p. 1487, § 2, effective June 1. **L. 2003:** Entire section amended, p. 2211, § 38, effective July 1, 2004.

Editor's note: Section 39-1-102 (15), which defined "stocks of merchandise", was repealed by section 11 of chapter 425, Session Laws of Colorado 1983.

Cross references: For exemption from property tax of inventories of merchandise and materials and supplies that are held for consumption by a business or are held primarily for sale, see § 39-3-119.

7-49.5-107. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: L. 80: Entire article added, p. 448, § 1, effective March 26.

Religious and Benevolent Organizations

ARTICLE 50

Religious, Educational, and Benevolent Societies

7-50-101. How organized.
7-50-102. Affidavit of chairperson.
7-50-103. Bylaws.
7-50-104. Trustees of educational institution.
7-50-105. Educational institution may confer degrees.
7-50-106. Property vests in corporation.
7-50-107. May take, hold, and convey property.
7-50-108. New corporation formed - when.
7-50-109. Incorporation of Christian governing organizations.
7-50-110. Quorum of directors.
7-50-111. Amendment of articles.

7-50-112. Amendment filed before effective.

7-50-113. Articles of amendment evidence of amendment.

7-50-114. Dissolution.

7-50-101. How organized.

(1) Any church, congregation, or society for religious, educational, or benevolent purposes may also become incorporated under this article by electing, appointing, or selecting, at a meeting held for the purpose, two or more of its members as directors, trustees, wardens, vestrymen, or other officers whose powers and duties are similar to those of trustees or directors of a corporation organized for profit, referred to in this article as the "governing board". Said organization may adopt a domestic entity name that complies with part 6 of article 90 of this title and a seal, and, upon the filing of an affidavit with the secretary of state substantially as provided in section 7-50-102, shall become a body politic and corporate by the domestic entity name adopted.

(2) The provisions of this article shall not apply to any religious, educational, or benevolent society formed after December 31, 1967, nor to any religious, educational, or benevolent society or corporation formed prior to January 1, 1968, which has elected to accept the provisions of articles 121 to 137 of this title.

Source: G.L. § 229. **G.S.** § 372. **R.S. 08:** § 1018. **C.L.** § 2384. **CSA:** C. 41, § 177. **CRS 53:** § 31-21-1. **L. 55:** p. 240, § 1. **C.R.S. 1963:** § 31-20-1. **L. 67:** p. 658, § 11. **L. 68:** p. 2, § 3. **L. 97:** (2) amended, p. 758, § 15, effective July 1, 1998. **L. 2000:** (1) amended, p. 948, § 1, effective July 1. **L. 2003:** (1) amended, p. 2211, § 39, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "Summary of Denver Bar-Sponsored Bills Passed by General Assembly", see 28 Dicta 173 (1951). For article, "Nonprofit and Charitable Corporations in Colorado", see 36 U. Colo. L. Rev. 9 (1963).

Societies availing themselves of this section become civil corporations, as distinguished from ecclesiastical corporations in the sense of the English Law and, as such, are subject to the principles of the common law and the practice and procedure applicable to corporations under the general incorporation laws, so far as the same are pertinent. Horst v. Traudt, 43 Colo. 445, 96 P. 259 (1908).

And a society originally organized under this section must be held to be a

charitable organization. In re Estate of Forrester, 86 Colo. 221, 279 P. 721 (1929).

But the question of a charity's capacity as an existing corporation is a matter for the state. Tomay v. Crist, 75 Colo. 437, 226 P. 156 (1924).

Trustees, wardens, vestrymen, or other officers are the managing officers and trustees of a religious corporation in the same sense that the directors and officers of a bank or a railroad company are officers and trustees of such corporation, and thus they are invested, in regard to the temporal affairs of the church or society, with the powers conferred by the statute and with the ordinary discretionary powers of similar corporate officers. Horst v. Traudt, 43 Colo. 445, 96 P. 259 (1908).

And the members are similar to stockholders. In incorporated religious societies the members thereof occupy the same relation to the incorporated body, insofar as its temporal affairs are concerned, as the shareholders or stockholders of a corporation organized for profit under the general incorporation laws occupy to it. Horst v. Traudt, 43 Colo. 445, 96 P. 259 (1908).

Thus, to entitle a member of an incorporated religious society to relief in the courts, it must appear that he has exhausted all the means within the corporation itself and to obtain redress a showing must be made in the complaint that such efforts were unavailing. Horst v. Traudt, 43 Colo. 445, 96 P. 259 (1908).

7-50-102. Affidavit of chairperson.

(1) The chairperson or secretary of such meeting, within a reasonable time after the meeting, shall file in the office of the secretary of state an affidavit substantially in the following form:

STATE OF COLORADO)

) ss.

County of .....)

I do solemnly swear (or affirm) that at a meeting of the members of the (here insert the name used by the church, congregation, or society before the incorporation) held at ....., in the county of ....., and State of Colorado, on the ..... day of ....., A.D. 20...., the following persons (here insert the names) were elected, appointed, or selected as members of the governing board (under whatever title the organization designates said members, whose powers and duties are similar to those of trustees or directors of a corporation organized for profit), adopted as its corporate name (here insert the name), and at said meeting this affiant acted as chairperson (or secretary, as the fact may be).

.....

(Name of affiant)

Subscribed and sworn to before me this ..... day of ....., A.D. 20....

(2) A fee that shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., shall be charged for filing the affidavit of incorporation. When a true copy of such affidavit is presented to the secretary of state, the secretary of state shall certify it for a fee that shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., as a true copy of the original affidavit on file in the records of the secretary of state, showing the date the original affidavit was filed.

(3) A certified copy of such affidavit shall be recorded in the office of the clerk and recorder of the county in which the corporation was organized and also in every county in which the corporation owns real estate. The affidavit of incorporation may also contain other provisions for the management and conduct of the affairs of the corporation, creating, defining, limiting, and regulating the powers of the corporation, the governing board, officers, and members thereof.

Source: G.L. § 230. **L. 1879:** p. 32, § 1. **G.S.** § 373. **R.S. 08:** § 1019. **C.L.** § 2385. **L. 31:** p. 249, § 24. **CSA:** C. 41, § 178. **CRS 53:** § 31-21-2. **L. 55:** p. 240, § 2. **C.R.S. 1963:** § 31-20-2. **L. 83:** (2) amended, p. 870, § 22, effective July 1. **L. 2003:** (2) and (3) amended, p. 2212, § 40, effective July 1, 2004. **L. 2004:** (1) and (2) amended, p. 1405, § 21, effective July 1.

ANNOTATION

The affidavit prescribed by this section does not require mention of the purpose of the organization. Thus it is wholly different from that of a corporation formed for business purposes, in which the purpose must be stated. Tomay v. Crist, 75 Colo. 437, 226 P. 156 (1924).

Where the affidavit required by this section shows that affiant was acting as secretary, his signature without further designation is sufficient. Tomay v. Crist, 75 Colo. 437, 226 P. 156 (1924).

7-50-103. Bylaws.

The directors, trustees, wardens, or vestrymen of any such corporation shall adopt necessary bylaws to provide for the election of directors, trustees, wardens, or vestrymen and other officers and for the proper government in all respects of the congregation, church, or society, unless such corporation, in its articles of incorporation, reserves to itself the right to make and adopt such prudential bylaws as it deems necessary to provide for the election of directors, trustees,

wardens, or vestrymen and other officers and for the proper government in all respects of such congregation, church, or society.

Source: G.L. § 231. **L. 1881:** p. 66, § 1. **G.S.** § 374. **R.S. 08:** § 1020. **C.L.** § 2386. **CSA:** C. 41, § 179. **CRS 53:** § 31-21-3. **C.R.S. 1963:** § 31-20-3.

Cross references: For bylaws of joint stock companies incorporated for religious, educational, and benevolent purposes, see § 7-51-103.

7-50-104. Trustees of educational institution.

Any corporation existing for educational purposes under the law of this state that maintains one or more institutions of higher education of the grade of a university or college shall be governed and controlled by its board of trustees, wardens, or directors, as the case may be, who shall have power at any time, by a vote of two-thirds of the full board of trustees elected, to increase the board of directors, trustees, or wardens to any number that they see fit and shall also have the power to decrease the same to any number not less than three. The terms of office of such directors, wardens, or trustees may be determined by said board of trustees, wardens, or directors as shall be adopted by them by a bylaw in which two-thirds of the whole number shall concur before the same shall be binding upon the board of trustees, directors, or wardens, as the case may be.

Source: L. 1893: p. 92, § 1. **R.S. 08:** § 1021. **C.L.** § 2387. **CSA:** C. 41, § 180. **CRS 53:** § 31-21-4. **C.R.S. 1963:** § 31-20-4. **L. 2003:** Entire section amended, p. 2212, § 41, effective July 1, 2004.

7-50-105. Educational institution may confer degrees.

Any corporation existing for educational purposes under the law of this state that maintains one or more institutions of higher education of the grade of a university or college shall have authority, by its directors, board of trustees, or such person or persons as may be designated by its constitution or bylaws, to confer degrees and grant diplomas and other marks of distinction as are usually conferred and granted by other universities and colleges of like grade.

Source: L. 1889: p. 121, § 1. **R.S. 08:** § 1022. **C.L.** § 2388. **CSA:** C. 41, § 181. **CRS 53:** § 31-21-5. **C.R.S. 1963:** § 31-20-5. **L. 2003:** Entire section amended, p. 2212, § 42, effective July 1, 2004.

7-50-106. Property vests in corporation.

Upon the due and lawful incorporation of any congregation, parish, church, or society, such corporation shall be entitled to all the real and personal property held by any person or trustees in trust for the use of the members thereof and immediately upon incorporation shall be entitled to a deed of conveyance to be executed by the person holding such property in trust, in order to vest the title thereto in the corporation. Such deed of conveyance shall state the object and purposes of the trust to be carried out according to the purpose and intent of its creation, which deed shall be recorded after the manner of conveyances in general, so that the title and trust declared may duly appear of record. Any self-supporting congregation, parish, church, or society may vest its real estate and personal property in such general incorporations as are provided for in section 7-50-109; except that, if the authorities of any church, sect, or religious body have caused a corporation to be formed for general missions and other purposes, as provided in this article, and it is in accordance with the usages and customs of the church, sect, or religious body to vest the property of mission stations in such corporation, then all such property that may have been held by any person or trustees for the use of the mission stations shall be vested in said general corporation; and whenever any mission station, from change of population or other cause, is suspended or abandoned, the general corporation, in its discretion, may sell or otherwise dispose of all such mission property, the proceeds of such sale or disposal to be used for the benefit of said church, sect, or religious body in the state of Colorado.

Source: G.L. § 232. **L. 1881:** p. 65, § 1. **G.S.** § 375. **R.S. 08:** § 1023. **C.L.** § 2389. **CSA:** C. 41, § 182. **CRS 53:** § 31-21-6. **C.R.S. 1963:** § 31-20-6. **L. 2003:** Entire section amended, p. 2212, § 43, effective July 1, 2004.

ANNOTATION

"Formal title" approach to resolving church property disputes. In resolving church property disputes, the appellate court applies the neutral principles approach, specifically the "formal title" approach. On this basis, the court can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Dickey v. Snodgrass, 673 P.2d 51 (Colo. App. 1983).

7-50-107. May take, hold, and convey property.

Domestic and foreign religious, educational, charitable, and literary corporations or associations operating within the state may take by gift, devise, or purchase, and hold and convey real and personal property. All gifts, devises, and grants made prior to March 14, 1877, to such corporations or associations are hereby ratified.

Source: G.L. § 235. **G.S.** § 378. **R.S. 08:** § 1024. **C.L.** § 2390. **CSA:** C. 41, § 183. **CRS 53:** § 31-21-7. **C.R.S. 1963:** § 31-20-7.

ANNOTATION

Law reviews. For article, "Restrictions on Charitable Gifts in Colorado", see 23 Rocky Mt. L. Rev. 434 (1951).

"Formal title" approach to resolving church property disputes. In resolving church property disputes, the appellate court applies the neutral principles approach, specifically the "formal title" approach. On this basis, the court can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Dickey v. Snodgrass, 673 P.2d 51 (Colo. App. 1983).

A library association is educational and therefore within the terms of this section; consequently, it may take property under a will. Tomay v. Crist, 75 Colo. 437, 226 P. 156 (1924).

Foreign corporation may act as trustee of charitable trust. A foreign corporation, if it possesses by the law of its creation the requisite power so to do, may act as trustee of a charitable trust where the subject matter thereof is personalty and may take lands as such trustee where not prohibited by the law of the state wherein the land is located. This section contains no such prohibition; rather, this section on its face is one of authorization to foreign as well as domestic corporations operating within the state. Galiger v. Armstrong, 114 Colo. 397, 165 P.2d 1019 (1946).

Charitable organization may execute charitable trust. A charitable organization, being authorized to take, receive, and hold gifts for charitable purposes, is also capable of executing a charitable trust. Clayton v. Hallett, 30 Colo. 231, 70 P. 429 (1902); In re Estate of Forrester, 86 Colo. 221, 279 P. 721 (1929).

7-50-108. New corporation formed - when.

Any congregation, church, or society incorporated prior to March 14, 1877, under the provisions of any law for the incorporation of religious, educational, or benevolent societies may become incorporated under the provisions of articles 30 to 52 and 121 to 137 or articles 101 to

117 of this title, relative to religious, educational, and benevolent societies in the same manner as if it had not previously been incorporated, in which case the new corporation shall be entitled to and invested with all the real and personal estate of the old corporation, in like manner and to the same extent as the old corporation, subject to all the debts, contracts, and liabilities. The word "trustees", as used in articles 30 to 52 and 121 to 137 or articles 101 to 117 of this title relative to religious bodies, shall be construed to include wardens, vestrymen, or such other officers as perform the duties of trustees.

Source: G.L. § 233. **G.S.** § 376. **R.S. 08:** § 1025. **C.L.** § 2391. **CSA:** C. 41, § 188. **CRS 53:** § 31-21-8. **C.R.S. 1963:** § 31-20-8. **L. 93:** Entire section amended, p. 857, § 15, effective July 1, 1994. **L. 97:** Entire section amended, p. 758, § 16, effective July 1, 1998.

Cross references: For joint stock companies for religious, educational, and benevolent purposes, see § 7-51-112.

7-50-109. Incorporation of Christian governing organizations.

If any body of Christians has an organization according to its order or mode of government, whether known as synod, presbytery, conference, episcopate, or other name, with ecclesiastical or spiritual jurisdiction over its members throughout this state, and its authorities desire to engage in works of education, benevolence, charity, and missions, which works shall be of like extensive operation and benefit and not of limited or local service, and they shall deem an incorporation convenient for the more successful administration of said works, its said authorities, with such persons as they may associate with them, may cause such incorporation to be formed in the manner and with the powers provided for the incorporation of a church, congregation, or society.

Source: G.L. § 234. **G.S.** § 377. **R.S. 08:** § 1026. **C.L.** § 2392. **CSA:** C. 41, § 189. **CRS 53:** § 31-21-9. **C.R.S. 1963:** § 31-20-9.

Cross references: For the incorporation of joint stock companies for religious, educational, and benevolent purposes, see § 7-51-113.

7-50-110. Quorum of directors.

The bylaws of any such charitable corporation organized under the law of this state may declare the number of trustees or managers necessary to constitute a quorum at any meeting of the board.

Source: L. 1883: p. 115, § 4. **G.S.** § 383. **R.S. 08:** § 1030. **C.L.** § 2396. **CSA:** C. 41, § 193. **CRS 53:** § 31-21-10. **C.R.S. 1963:** § 31-20-10. **L. 2003:** Entire section amended, p. 2213, § 44, effective July 1, 2004.

7-50-111. Amendment of articles.

Any corporation organized under this article may amend its affidavit of incorporation at any regular or special meeting of its governing board by a two-thirds vote of the board members present.

Source: L. 07: p. 312, § 1. **R.S. 08:** § 1031. **C.L.** § 2397. **CSA:** C. 41, § 194. **CRS 53:** § 31-21-11. **L. 55:** p. 241, § 3. **C.R.S. 1963:** § 31-20-11.

7-50-112. Amendment filed before effective.

(1) When the affidavit of incorporation is amended, a copy of the amendment shall be delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title, and upon such filing, the amendment shall become effective.

(2) (Deleted by amendment, L. 2002, p. 1812, § 10, effective July 1, 2002; p. 1676, § 8, effective October 1, 2002.)

(3) A certified copy of the amendment shall be recorded in the office of the clerk and recorder of the county in which the organization was organized and also in each county in which the corporation owns real estate.

Source: L. 07: p. 312, § 2. **R.S. 08:** § 1032. **C.L.** § 2398. **L. 31:** p. 251, § 25. **CSA:** C. 41, § 195. **CRS 53:** § 31-21-12. **L. 55:** p. 242, § 4. **C.R.S. 1963:** § 31-20-12. **L. 83:** (2) amended, p. 870, § 23, effective July 1. **L. 2002:** Entire section amended, p. 1812, § 10, effective July 1; entire section amended, p. 1676, § 8, effective October 1. **L. 2003:** (3) amended, p. 2213, § 45, effective July 1, 2004.

7-50-113. Articles of amendment evidence of amendment.

The articles of amendment, or copy thereof, duly certified by the secretary of state or by the recorder, shall be received as evidence of the change, alteration, or amendment of the articles of incorporation of the corporation.

Source: L. 07: p. 313, § 3. **R.S. 08:** § 1033. **C.L.** § 2399. **CSA:** C. 41, § 196. **CRS 53:** § 31-21-13. **C.R.S. 1963:** § 31-20-13. **L. 2002:** Entire section amended, p. 1812, § 11, effective July 1; entire section amended, p. 1677, § 9, effective October 1. **L. 2008:** Entire section amended, p. 23, § 16, effective August 5.

7-50-114. Dissolution.

When a majority of the members of any corporation organized pursuant to this article vote to dissolve the corporation, the corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, an affidavit of dissolution. Such affidavit shall state that all the debts of the corporation are fully paid or provided for. When such affidavit has been filed, the corporation shall be forever dissolved. The president shall obtain from the secretary of state a certified copy of the affidavit showing the filing date and shall record a copy thereof in the office of the clerk and recorder of the county in which the corporation was organized and also in every county in which the corporation owns real estate.

Source: L. 55: p. 242, § 5. **CRS 53:** § 31-21-14. **C.R.S. 1963:** § 31-20-14. **L. 83:** Entire section amended, p. 870, § 24, effective July 1. **L. 2002:** Entire section amended, p. 1812, § 12, effective July 1; entire section amended, p. 1677, § 10, effective October 1. **L. 2003:** Entire section amended, p. 2213, § 46, effective July 1, 2004.

ARTICLE 51

Joint Stock Religious or Benevolent Associations

7-51-101. How organized.
7-51-102. Affidavit of chairperson - where filed - effect.
7-51-103. Bylaws.
7-51-104. Property vests in corporation.
7-51-105. Powers of corporation.
7-51-106. Shares of stock.
7-51-107. Board of directors.

7-51-108. Election of directors.
7-51-109. Liability of stockholders.
7-51-110. Certificate of full paid stock.
7-51-111. Purchase of property.
7-51-112. Any church may incorporate.
7-51-113. Incorporation of religious organization.

7-51-101. How organized.

(1) Any joint stock company or association organized in this state for religious, educational, or benevolent purposes may be incorporated under this article by electing or appointing, according to its usages or customs at any meeting held for that purpose, two or more of its members as directors, trustees, wardens, or vestrymen, or other officers whose powers and duties are similar to those of trustees, who shall be agreeable to the usages and customs and rules and regulation of the congregation, church, or society, and may adopt a corporate name, and upon the filing of the affidavit as provided in section 7-51-102, it shall be a body politic and corporate by the name so adopted.

(2) The provisions of this article shall not apply to any joint stock religious, educational, or benevolent association formed after December 31, 1967, nor to any joint stock religious, educational, or benevolent association formed prior to January 1, 1968, which is subject to the provisions of articles 121 to 137 of this title.

Source: L. 1879: p. 33, § 1. **G.S.** § 384. **R.S. 08:** § 1034. **C.L.** § 2400. **CSA:** C. 41, § 197. **CRS 53:** § 31-22-1. **C.R.S. 1963:** § 31-21-1. **L. 67:** p. 658, § 12. **L. 68:** p. 2, § 4. **L. 97:** (2) amended, p. 758, § 17, effective July 1, 1998.

ANNOTATION

Law reviews. For article, "Nonprofit and Charitable Corporations in Colorado", see 36 U. Colo. L. Rev. 9 (1963).

7-51-102. Affidavit of chairperson - where filed - effect.

(1) The chairperson or secretary of the meeting, as soon as may be after such meeting, shall make and file, in the office of the recorder of deeds in the county in which the congregation, church, or society is organized, an affidavit, substantially in the following form:

STATE OF COLORADO)

) ss.

County of .....)

I do solemnly swear (or affirm, as the case may be) that at a meeting of the members of the (here insert the name of the society as known before the incorporation), held at ....., in the county of ....., and State of Colorado, on the ..... day of ....., A.D., 20...., for that purpose the following persons were elected (or appointed) trustees (or wardens, vestrymen or other officers of whatever name they choose to adopt), with powers and duties similar to trustees, according to the rules and usages of such society, church, or congregation, viz.: (here insert the names); that at such a meeting, such society, church, or congregation adopted as its corporate name (here insert the name); that the amount of the capital stock of such society, church, or congregation is ..... dollars, divided into ..... shares of ..... dollars each, and that at such meeting this affiant acted as chairperson (secretary, as the case may be).

.....

(Name of affiant)

Subscribed and sworn to before me this ..... day of....., A.D., 20....

(2) Such certificate, or a copy thereof duly certified by the recorder, shall be received as evidence of the due incorporation of such society, church, or congregation.

Source: L. 1879: p. 34, § 2. **G.S.** § 385. **R.S. 08:** § 1035. **C.L.** § 2401. **CSA:** C. 41, § 198. **CRS 53:** § 31-22-2. **C.R.S. 1963:** § 31-21-2. **L. 2004:** (1) amended, p. 1405, § 22, effective July 1.

7-51-103. Bylaws.

The directors, trustees, wardens, or vestrymen of any such corporation shall adopt necessary bylaws to provide for the election of directors, trustees, wardens, or vestrymen and other officers and for the proper government in all respects of the congregation, church, or society.

Source: L. 1879: p. 34, § 3. **G.S.** § 386. **R.S. 08:** § 1036. **C.L.** § 2402. **CSA:** C. 41, § 199. **CRS 53:** § 31-22-3. **C.R.S. 1963:** § 31-21-3.

Cross references: For bylaws of regular religious, educational, or benevolent societies, see § 7-50-103.

7-51-104. Property vests in corporation.

Upon the incorporation of any such congregation, church, or society, all real and personal property held by any person or trustee for the use of the members thereof shall immediately vest in such corporation and be subject to its control, and may be used, mortgaged, sold, and conveyed the same as if it had been conveyed to such corporation by deed.

Source: L. 1879: p. 35, § 4. **G.S.** § 387. **R.S. 08:** § 1037. **C.L.** § 2403. **CSA:** C. 41, § 200. **CRS 53:** § 31-22-4. **C.R.S. 1963:** § 31-21-4.

7-51-105. Powers of corporation.

(1) Corporations formed under this article:

(a) Shall be bodies corporate and politic in fact and in name, by the name stated in the affidavit, and by that name have succession for the period for which they are organized;

(b) May sue and be sued in any court in this state;

(c) May have a common seal which they may alter or renew at pleasure by filing an impression of the same in the office of the clerk and recorder of the county in which any such corporation may be formed under this article;

(d) May own, possess, and enjoy so much real and personal property as is necessary for the transaction of their business, whether acquired by purchase, grant, devise, gift, or otherwise;

(e) May from time to time sell and dispose of real and personal property or any part thereof when not required for the use of the corporation; and

(f) May borrow money and pledge their franchises and property, both real and personal, to secure the payment thereof and may exercise all the powers necessary and requisite to carry into effect the object for which they may be formed under this article.

Source: L. 1879: p. 35, § 5. **G.S.** § 388. **R.S. 08:** § 1038. **C.L.** § 2404. **CSA:** C. 41, § 201. **CRS 53:** § 31-22-5. **C.R.S. 1963:** § 31-21-5.

7-51-106. Shares of stock.

The shares of stock shall not be less than ten dollars nor more than one hundred dollars each and shall be deemed personal property and transferable as such in the manner provided by the bylaws. Subscriptions therefor shall be made payable in such installments and at such time as shall be determined by the directors, trustees, or other similar officers. The bylaws may provide for a forfeiture or sale of stock on failure to pay the installments or assessments that may from time to time become due; but no forfeiture of stock or of the amounts paid thereon shall be declared against any estate or stockholder before demand has been made for the amount due.

Source: L. 1879: p. 35, § 6. **G.S.** § 389. **R.S. 08:** § 1039. **C.L.** § 2405. **CSA:** C. 41, § 202. **CRS 53:** § 31-22-6. **C.R.S. 1963:** § 31-21-6.

ANNOTATION

The stock in ditch companies is personal property and subject to execution and sale the same as other personal property. Conway v. John, 14 Colo. 30, 23 P. 170 (1890); Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891); Struby-Estabrook Mercantile Co. v. Davis, 18 Colo. 93, 31 P. 495 (1892).

7-51-107. Board of directors.

The corporate powers of any such corporation shall be exercised by a board of directors, trustees, or other similar officers in the manner and for the time that may be prescribed in the constitution and bylaws of the corporation, but the same shall not be in conflict with any of the provisions of this article or the law of this state.

Source: L. 1879: p. 36, § 7. **G.S.** § 390. **R.S. 08:** § 1040. **C.L.** § 2406. **CSA:** C. 41, § 203. **CRS 53:** § 31-22-7. **C.R.S. 1963:** § 31-21-7. **L. 2003:** Entire section amended, p. 2213, § 47, effective July 1, 2004.

7-51-108. Election of directors.

If an election of directors, trustees, or other similar officers is not held on the day designated by the constitution or bylaws, the company shall not be dissolved for that reason, but it shall be proper to elect such directors, trustees, or other officers on any subsequent day as shall be prescribed by the constitution or bylaws.

Source: L. 1879: p. 36, § 8. **G.S.** § 391. **R.S. 08:** § 1041. **C.L.** § 2407. **CSA:** C. 41, § 204. **CRS 53:** § 31-22-8. **C.R.S. 1963:** § 31-21-8.

7-51-109. Liability of stockholders.

Each stockholder shall be liable for the debts of the corporation to the extent of the amount unpaid upon the stock held by the stockholder, to be collected in the manner provided in this section. If any action is brought to recover any indebtedness against the corporation, it shall be competent to proceed against any one or more of the stockholders at the same time, to the extent of the balance unpaid by such stockholders upon the stock owned by them respectively, as in cases of garnishment.

Source: L. 1879: p. 36, § 9. **G.S.** § 392. **R.S. 08:** § 1042. **C.L.** § 2408. **CSA:** C. 41, § 205. **CRS 53:** § 31-22-9. **C.R.S. 1963:** § 31-21-9. **L. 2004:** Entire section amended, p. 1406, § 23, effective July 1.

7-51-110. Certificate of full paid stock.

The president and a majority of the board of trustees, directors, or other similar officers, after the payment of the last installment of capital stock so fixed and limited by the company as required by this article, shall make a certificate stating the amount of the capital stock so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the board of trustees, directors, or other similar officers, and record the same in the office of the clerk and recorder of the county within which the corporation is formed; and from the date of the recording of such certificate, the stockholders of that company shall not be liable for any of the debts of such corporation.

Source: L. 1879: p. 36, § 10. **G.S.** § 393. **R.S. 08:** § 1043. **C.L.** § 2409. **CSA:** C. 41, § 206. **CRS 53:** § 31-22-10. **C.R.S. 1963:** § 31-21-10.

7-51-111. Purchase of property.

The directors, trustees, or other similar officers of any such corporation may purchase real and personal property necessary for their business and issue stock to the amount of the value thereof

in payment therefor; and the stock so issued shall be declared to be full-paid stock and not liable to any further calls or assessments thereon nor for any debt of the corporation.

Source: L. 1879: p. 37, § 11. **G.S.** § 394. **R.S. 08:** § 1044. **C.L.** § 2410. **CSA:** C. 41, § 207. **CRS 53:** § 31-22-11. **C.R.S. 1963:** § 31-21-11.

7-51-112. Any church may incorporate.

Any congregation, church, or society incorporated prior to February 20, 1879, under the provisions of any law for the incorporation of religious, educational, or benevolent societies may become incorporated under the provisions of this article in the same manner as if it had not been previously incorporated. The new corporation shall be entitled to and invested with all the real and personal property of the old corporation, subject to all its debts, contracts, and liabilities. The words "directors" and "trustees", as used in this article, shall be construed to include wardens, vestrymen, or such other officers as perform the duties of trustees or directors.

Source: L. 1879: p. 37, § 12. **G.S.** § 395. **R.S. 08:** § 1045. **C.L.** § 2411. **CSA:** C. 41, § 208. **CRS 53:** § 31-22-12. **C.R.S. 1963:** § 31-21-12.

Cross references: For religious, educational, and benevolent societies, see § 7-50-108.

7-51-113. Incorporation of religious organization.

If any body of Christians or other religious denomination has an organization according to its mode of government, whether known as synod, presbytery, conference, episcopate, or other name, with ecclesiastical or spiritual jurisdiction over its members throughout this state and its authorities desire to engage in works of education, benevolence, charity, and missions and deem an incorporation convenient for the more successful administration of such works, its said authorities, with such persons as they may associate with them, may cause such incorporation to be formed in the manner and with the powers provided in this article for the incorporation of a church, congregation, or society.

Source: L. 1879: p. 37, § 13. **G.S.** § 396. **R.S. 08:** § 1046. **C.L.** § 2412. **CSA:** C. 41, § 209. **CRS 53:** § 31-22-13. **C.R.S. 1963:** § 31-21-13.

Cross references: For religious, educational, and benevolent societies, see § 7-50-109.

ARTICLE 52

Officials of Churches and Religious Societies

7-52-101. Execution of articles of incorporation.

7-52-102. Filing articles - corporate existence.

7-52-103. Corporate powers.

7-52-104. Succession to property upon death, resignation, or removal of person incorporated as corporation sole.

7-52-105. Succession to property on death, resignation, or removal of person not incorporated as corporation sole.

7-52-106. Applicability of revised nonprofit corporation act.

7-52-101. Execution of articles of incorporation.

The archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman of any church or religious society who has been duly chosen, elected, or appointed in conformity with the constitutions, canons, rites, regulations, or discipline of said church or religious society and in whom shall be vested the legal title to the property of such church or religious society may deliver articles of incorporation to the secretary of state for filing pursuant to part 3 of article 90 of this title. The articles shall contain the name of the corporation, the purpose of the corporation, and the name and title of the person in whom is vested the legal title to the property.

Source: L. 67: p. 866, § 1. **C.R.S. 1963:** § 31-25-1. **L. 2003:** Entire section amended, p. 2214, § 48, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1406, § 24, effective July 1.

7-52-102. Filing articles - corporate existence.

Upon the filing of the articles of incorporation with the secretary of state, the person subscribing the articles and the person's successor in office by the name or title stated in the articles is a corporation sole, with perpetual succession.

Source: L. 67: p. 866, § 2. **C.R.S. 1963:** § 31-25-2. **L. 2003:** Entire section amended, p. 2214, § 49, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1406, § 25, effective July 1.

7-52-103. Corporate powers.

A corporation sole may hold and maintain real, personal, and mixed property; contract in the same manner and to the same extent as an individual; sue and be sued; acquire real and personal property by purchase, devise, bequest, gift, or otherwise and hold, own, use, lease, assign, convey, or otherwise dispose of the same in like manner and to the same extent as an individual; borrow money, issue notes or other negotiable paper, and secure the money borrowed by mortgage or by deed of trust on said real or personal property or any part thereof; borrow money without security; and perform all other acts in furtherance of the objects and purposes of the corporation not inconsistent with the statutes of this state.

Source: L. 67: p. 866, § 3. **C.R.S. 1963:** § 31-25-3. **L. 2004:** Entire section amended, p. 1407, § 26, effective July 1.

7-52-104. Succession to property upon death, resignation, or removal of person incorporated as corporation sole.

In the event of the death or resignation of the archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman who has been incorporated as a corporation sole under sections 7-52-101 and 7-52-102, or such person's removal from office by the person or body having the authority for such removal, the person's successor in office as the corporation sole shall be vested with the title of all property held by the successor's predecessor with the same power and authority over the property, subject to all the legal liabilities and obligations with reference to the property, upon the filing by the secretary of state, pursuant to part 3 of article 90 of this title, of a certificate of the successor's commission or certified copy of the successor's letter of election or appointment. In the interim between the appointment of a successor in office to the corporation sole, the person who is charged by the church or religious society pursuant to its constitution, canons, rites, regulations, or discipline to administer the church or religious society shall be vested with the title to any property held by the corporation sole with like powers and authority upon the filing by the secretary of state, pursuant to part 3 of article 90 of this title, of a certificate of the successor's commission or certified copy of the successor's letter of appointment as such administrator.

Source: L. 67: p. 867, § 4. **C.R.S. 1963:** § 31-25-4. **L. 2002:** Entire section amended, p. 1813, § 13, effective July 1; entire section amended, p. 1677, § 11, effective October 1. **L. 2004:** Entire section amended, p. 1407, § 27, effective July 1.

7-52-105. Succession to property on death, resignation, or removal of person not incorporated as corporation sole.

Upon the death, resignation, or removal of an archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman who at the time of death, resignation, or removal was holding the title to trust property for the use or benefit of a church or religious society but was not incorporated under this article as a corporation sole, the title to all such property held by such person shall not revert to the grantor nor pass to the heirs of the deceased person but shall be held in abeyance until the person's successor is appointed to fill the vacancy. Upon the appointment of the successor, the title of all the property held by the predecessor immediately vests in the person appointed to fill the vacancy.

Source: L. 67: p. 867, § 5. **C.R.S. 1963:** § 31-25-5. **L. 2004:** Entire section amended, p. 1407, § 28, effective July 1.

7-52-106. Applicability of revised nonprofit corporation act.

Except as this article is specifically in conflict therewith, the provisions of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, shall be applicable to this article.

Source: L. 67: p. 867, § 6. **C.R.S. 1963:** § 31-25-6. **L. 2003:** Entire section amended, p. 2214, § 50, effective July 1, 2004.

ASSOCIATIONS

ARTICLE 55

Cooperatives - General

7-55-101. Cooperative association defined.

7-55-101.5. Patronage capital for cooperative electric associations and

cooperative telephone associations defined.

7-55-102. Articles of incorporation - filing.

7-55-103. Bylaws.

7-55-104. Board of directors.

7-55-105. Election of officers.

7-55-106. Power of directors.

7-55-107. Powers.

7-55-107.5. Indemnification and personal liability of directors, officers, employees, and agents.

7-55-108. Application of powers.

7-55-109. Amendment of articles.

7-55-110. Vote of stockholders or members.

7-55-111. Use of the term "cooperative" - penalty for unlawful use - repeal. (Repealed)

7-55-112. Merger, conversion, or consolidation.

7-55-113. Adoption of provisions of this article.

7-55-114. Dissolution of association.

7-55-115. Exemption from securities laws.

7-55-116. Application of corporation laws.

7-55-117. Associations not in restraint of trade.

7-55-118. Associations of other jurisdictions.

7-55-119. Quorum.

7-55-120. Incorporation fees.

7-55-121. Periodic report.

7-55-101. Cooperative association defined.

(1) The terms "cooperative association" and "association" include any cooperative organization, association, company, or corporation formed under this article and may be further defined as follows:

(a) The distribution of its earnings is made wholly or in part on the basis of, or in proportion to, the amount of property bought from or sold to members, or to members and other patrons, or of labor performed or other service rendered by the association, but such association shall not deal in products, handle supplies, or provide services for nonmembers in an amount greater in value than as are handled by it for members.

(b) Dividends on stock or interest on equity capital shall be limited, as prescribed in the bylaws of the association.

(c) Voting rights shall be limited to members of the association.

(d) Such association and its business shall not be carried on for profit but for the mutual benefit of all the members. Any person, firm, or corporation of any other cooperative association may become a member of such association upon meeting uniform terms and conditions stated in its bylaws. The association shall issue a certificate of membership to all who become members, which shall not be assignable or transferable except upon consent of the board of directors. The association shall have the right by the bylaws to limit transfer or assignment of membership and the terms and conditions upon which transfer shall be allowed.

(e) Any association formed pursuant to this article may admit to membership any other association so formed or formed under the law of any other jurisdiction upon such terms and conditions as may be provided by the bylaws. Any association formed under the provisions of this article may acquire membership in any other association likewise formed under the provisions of this article when, in the judgment of the directors, such membership shall promote the interest and purpose for which such association is formed.

Source: L. 73: R&RE, p. 428, § 1. **C.R.S. 1963:** § 30-1-1. **L. 96:** IP(1) amended, p. 543, § 4, effective July 1. **L. 2003:** IP(1), (1)(a), (1)(d), and (1)(e) amended, p. 2214, § 51, effective July 1, 2004. **L. 2004:** IP(1) amended, p. 1408, § 29, effective July 1.

ANNOTATION

This section does not prohibit a cooperative association from owning a for-profit subsidiary. Bontrager v. La Plata Elec. Ass'n, 68 P.3d 555 (Colo. App. 2003).

7-55-101.5. Patronage capital for cooperative electric associations and cooperative telephone associations defined.

The term "patronage capital" includes any capital credit, patronage dividend, or patronage refund allocated by a cooperative electric association or cooperative telephone association to a member or patron thereof.

Source: L. 90: Entire section added, p. 413, § 1, effective March 9. **L. 94:** Entire section amended, p. 330, § 1, effective March 29.

ANNOTATION

This section describes the allocation of patronage capital to members based on their consumption of electric services and does not limit the board of directors' use of patronage capital. Bontrager v. La Plata Elec. Ass'n, 68 P.3d 555 (Colo. App. 2003).

7-55-102. Articles of incorporation - filing.

(1) Five persons or more, except as specified elsewhere in this article, a majority of whom are residents of Colorado, may be associated and incorporated pursuant to this article for the cooperative transaction of any lawful business, except banking. Persons desiring to avail themselves of the provisions of this article shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of incorporation stating:

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

(b) The purposes for which the association was formed;

(c) The principal office address of the association's principal office;

(c.5) The registered agent name and registered agent address of the association's initial registered agent;

(d) Repealed.

(e) The number and terms of directors, which number shall be not less than three;

(f) The authorized capital stock, the number of shares into which said stock is divided, and the par value of each;

(g) The number of memberships authorized, the capital subscription of each, and the method of determining property rights and interests of each member without capital stock;

(h) The true name and mailing address of each incorporator.

(1.5) The articles of incorporation may state a provision eliminating or limiting the personal liability of a director as provided in section 7-55-107 (1)(h).

Source: L. 73: R&RE, p. 429, § 1. **C.R.S. 1963:** § 30-1-2. **L. 87:** (1.5) added, p. 370, § 12, effective May 20. **L. 96:** IP(1) amended, p. 543, § 5, effective July 1. **L. 2000:** (1)(a) amended, p. 948, § 2, effective July 1. **L. 2003:** IP(1), (1)(a), (1)(c), and (1.5) amended and (1)(c.5) added, p. 2215, § 52, effective July 1, 2004. **L. 2004:** (1)(c) and (1)(d) amended, p. 1408, § 30, effective July 1. **L. 2008:** (1)(h) amended, p. 18, § 1, effective August 5. **L. 2009:** (1)(d) repealed, (HB 09-1248), ch. 252, p. 1128, § 2, effective December 1.

ANNOTATION

The phrase in subsection (1), granting a cooperative association the right to engage in "any lawful business, except banking", shall not be narrowly construed so as to put a restriction on an association from engaging in businesses other than banking. Bontrager v. La Plata Elec. Ass'n, 68 P.3d 555 (Colo. App. 2003).

7-55-103. Bylaws.

(1) Each association formed under this article shall, within thirty days after filing its articles of incorporation with the secretary of state, adopt bylaws for the government and management of its affairs that are not inconsistent with this article. Such bylaws may be amended or modified in such manner as the bylaws may provide. Such bylaws may include:

(a) The time, place, and manner of conducting its meetings;

(b) The number and term of directors and the time of their election;

(c) The mode and manner of removal of directors and the mode and manner of filling vacancies in the board caused by death, resignation, or removal;

(d) The power and authority of directors and number which shall constitute a quorum, which must be at least a majority;

(e) The compensation of directors and officers;

(f) The number of officers other than directors, if any, their term of office, the mode of removal, and the method of filling a vacancy;

(g) The mode and manner of conducting business;

(h) The mode and manner of conducting elections and provisions for voting by ballots forwarded by mail or otherwise;

(i) The qualifications for membership, manner of succession, and conditions for withdrawal or expulsion;

(j) The amount of membership fee, conditions of membership, procedures for acquiring capital, and the limitations of dividends on stock or interest on equity capital;

(k) The manner of collection or enforcement procedures and the forfeiture of property rights and interests for nonpayment or nonperformance;

(l) The method of determination of property rights and interests and time by which it shall be paid or delivered to such member or the member's representative upon withdrawal, expulsion, or death;

(m) Such other things as may be proper to carry out the purpose for which the association was formed.

Source: L. 73: R&RE, p. 429, § 1. **C.R.S. 1963:** § 30-1-3. **L. 96:** IP(1) amended, p. 543, § 6, effective July 1. **L. 2004:** (1)(l) amended, p. 1408, § 31, effective July 1.

7-55-104. Board of directors.

The board of directors of a cooperative association shall be stockholders or members of such association or the representatives duly authorized in writing of a legal entity which is a stockholder or member of said cooperative association; except that the articles of incorporation and bylaws may permit the election of any number of directors, less than a majority, who are not stockholders or members, to be elected as stated in the bylaws.

Source: L. 73: R&RE, p. 430, § 1. **C.R.S. 1963:** § 30-1-4.

7-55-105. Election of officers.

The officers of an association formed under this article shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws, and none of whom are required to be directors of such association unless the bylaws so provide. The bylaws may provide that any of such officers may not be directors of such an association. The bylaws may provide for the election by the board of directors, from among their number, of a chair of the board of directors and one or more vice-chairs. Such other officers and assistant officers and agents as are necessary may be elected or appointed by the board of directors or chosen in such manner as may be prescribed by the bylaws. The board may combine the offices of secretary and treasurer and designate the combined office as secretary-treasurer, or unite both functions and titles in one person. The treasurer may be a bank or any depository, and, as such, shall not be considered as an officer but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer; except that the funds shall be deposited only as authorized by the board of directors. All officers and agents of the association, as between themselves and the association, shall have such authority and perform such duties in the management of the

association as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

Source: L. 73: R&RE, p. 430, § 1. **C.R.S. 1963:** § 30-1-5. **L. 2003:** Entire section amended, p. 2215, § 53, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1408, § 32, effective July 1.

7-55-106. Power of directors.

A majority of the board of directors of a cooperative association has full power or authority to authorize the execution and delivery of mortgages or deeds of trust upon, or the pledging of or encumbering of any or all of the property, assets, licenses, franchises, and permits or other things of value of, such association or corporation, whether acquired or to be acquired and wherever situated, as well as any revenues and incomes therefrom, all upon such terms and conditions as such board of directors determines, to secure any indebtedness of such corporation.

Source: L. 73: R&RE, p. 430, § 1. **C.R.S. 1963:** § 30-1-6.

7-55-107. Powers.

(1) Every cooperative association has the power:

(a) To have succession by its domestic entity name;

(b) To sue and be sued and to complain and defend in courts of law and equity;

(c) To make and use a common seal, and alter the same at its pleasure;

(d) To hold such real and personal property as may be necessary for the legitimate business of the corporation;

(e) To regulate and limit the right of stockholders or members to transfer their stock or member equity;

(f) To appoint such subordinate officers and agents as the business of the corporation shall require and to allow them suitable compensation therefor;

(g) To adopt bylaws for the management of its affairs and to provide therein for the terms and limitations of stock ownership or membership and for the distribution of its earnings;

(h) If so provided in the articles of incorporation, to eliminate or limit the personal liability of a director to the association or to its members or stockholders for monetary damages for breach of fiduciary duty as a director; except that such provision shall not eliminate or limit the liability of a director for: Any breach of the director's duty of loyalty to the association or its members or stockholders; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the association or to its members or stockholders for monetary damages for any act or omission occurring prior to the date when such provision becomes effective.

(2) Every cooperative electric association or cooperative telephone association formed pursuant to this article and any cooperative electric association or cooperative telephone association that is subject to articles 121 to 137 of this title has the power to use patronage capital that has been declared by such association to be distributable or payable to a member or patron for expenditures associated with the provision of electric service or telephone service, as the case may be, as directed by the board of directors of the association after the association has given notice thereof. Such notice may consist of a negotiable instrument that has not been claimed within three years of issuance or publication.

Source: L. 73: R&RE, p. 431, § 1. **C.R.S. 1963:** § 30-1-7. **L. 87:** (1)(h) added, p. 370, § 13, effective May 20. **L. 90:** (2) added, p. 413, § 2, effective March 9. **L. 94:** (2) amended, p. 330, § 2, effective March 29. **L. 97:** (2) amended, p. 758, § 18, effective July 1, 1998. **L. 2000:** (1)(a) amended, p. 948, § 3, effective July 1. **L. 2003:** (2) amended, p. 2216, § 54, effective July 1, 2004.

7-55-107.5. Indemnification and personal liability of directors, officers, employees, and agents.

The association shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to domestic corporations as set forth in article 109 of this title 7. Association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of domestic corporations as set forth in article 109 of this title 7. Association directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section 7-108-403 for directors and officers, respectively, of domestic corporations. Any reference in said sections to shareholders shall be construed to refer to voting members or voting stockholders, if any, for the purpose of this section.

Source: L. 87: Entire section added, p. 371, § 14, effective May 20. **L. 93:** Entire section amended, p. 857, § 16, effective July 1, 1994. **L. 2003:** Entire section amended, p. 2216, § 55, effective July 1, 2004. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1964, § 63, effective July 1, 2020.

7-55-108. Application of powers.

The powers enumerated in section 7-55-107 shall vest in every cooperative association in this state except those formed under or subject to article 56 of this title, although such powers may not be stated in its charter or in its articles of incorporation.

Source: L. 73: R&RE, p. 431, § 1. **C.R.S. 1963:** § 30-1-8. **L. 96:** Entire section amended, p. 544, § 7, effective July 1. **L. 2003:** Entire section amended, p. 2216, § 56, effective July 1, 2004.

7-55-109. Amendment of articles.

The articles of incorporation of a cooperative association or corporation may be amended at any regular or special meeting of the stockholders or members of such association. The proposed amendment must be first approved by a two-thirds majority of the directors. The notice of such meeting shall state or have attached thereto the proposed amendment and shall be mailed to each member of record at least ten days prior to the meeting date; except that cooperative associations with less than one hundred members may post notice of such meeting in a conspicuous place at its normal place of business for at least thirty days prior to such meeting. The proposed amendment shall be approved by an affirmative vote of a majority of the stockholders or members present or voting by mail. A certificate stating such amendment and the adoption thereof shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.

Source: L. 73: R&RE, p. 431, § 1. **C.R.S. 1963:** § 30-1-9. **L. 83:** Entire section amended, p. 871, § 25, effective July 1. **L. 2003:** Entire section amended, p. 2216, § 57, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1409, § 33, effective July 1.

ANNOTATION

The statutory notice provision does not require a cooperative association to explain potential future applications of an amendment to the articles of incorporation. Bontrager v. La Plata Elec. Ass'n, 68 P.3d 555 (Colo. App. 2003).

7-55-110. Vote of stockholders or members.

Stockholders or members of a cooperative association may vote either in person or by mail as provided in the bylaws. Proxy or cumulative voting shall be prohibited except as permitted by the articles of incorporation and the bylaws of organizations incorporated prior to July 6, 1973.

Source: L. 73: R&RE, p. 431, § 1. **C.R.S. 1963:** § 30-1-10.

7-55-111. Use of the term "cooperative" - penalty for unlawful use - repeal. (Repealed)

Source: L. 73: R&RE, p. 431, § 1. **C.R.S. 1963:** § 30-1-11. **L. 80:** (1) amended, p. 706, § 4, effective July 1. **L. 96:** Entire section amended, p. 544, § 8, effective July 1. **L. 2000:** (1) and (4) amended, p. 948, § 4, effective July 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.)

7-55-112. Merger, conversion, or consolidation.

Two or more corporations formed under articles 30 to 55 or subject to articles 121 to 137 or articles 101 to 117 of this title, or a similar law of any jurisdiction, may be merged or consolidated as a cooperative association, or any cooperative association may convert into any form of entity permitted by section 7-90-201, upon such terms and for such purpose and by such domestic entity name as may be agreed upon, which domestic entity name shall comply with part 6 of article 90 of this title. Such agreement shall also state all the matters necessary to a statement of merger, statement of conversion, or articles of consolidation and shall be approved by a two-thirds majority of the members of the boards of directors and a two-thirds majority vote of the members or stockholders of each association, nonprofit corporation, or corporation present and voting in person or by mail ballot at any regular or special meeting at which prior notice, with mail ballot attached, had been mailed to each member or stockholder stating the plan of merger, conversion, or consolidation; except that cooperative associations with less than one hundred members may post notice of such plan of merger or consolidation in a conspicuous place at its normal place of business for at least thirty days prior to such meeting. A statement of merger complying with section 7-90-203.7, a statement of conversion complying with section 7-

90-201.7, or articles of consolidation shall be delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title, and a certificate of the secretary of state as to the fact of such filing shall be recorded in the office of each county in which each party to the merger, conversion, or consolidation is situated. From and after the filing of articles of consolidation, the former associations, nonprofit corporations, or corporations comprising the component parts shall cease to exist, and the consolidated cooperative association shall succeed to all rights, duties, and powers prescribed in the agreement of consolidated associations, nonprofit corporations, or corporations, not inconsistent with this article, and shall be subject to all liabilities and obligations of the former component associations, nonprofit corporations, or corporations and succeed to all property and interest thereof and may adopt bylaws and do all things permitted by this article. The effect of a conversion shall be as provided in section 7-90-202. The effect of a merger shall be as provided in section 7-90-204.

Source: L. 73: R&RE, p. 432, § 1. **C.R.S. 1963:** § 30-1-12. **L. 83:** Entire section amended, p. 871, § 26, effective July 1. **L. 93:** Entire section amended, p. 858, § 17, effective July 1, 1994. **L. 96:** Entire section amended, p. 544, § 9, effective July 1. **L. 97:** Entire section amended, p. 759, § 19, effective July 1, 1998. **L. 2000:** Entire section amended, p. 949, § 5, effective July 1. **L. 2002:** Entire section amended, p. 1813, § 14, effective July 1; entire section amended, p. 1678, § 12, effective October 1. **L. 2003:** Entire section amended, p. 2217, § 58, effective July 1, 2004. **L. 2007:** Entire section amended, p. 218, § 1, effective May 29.

7-55-113. Adoption of provisions of this article.

Every cooperative association, as defined in section 7-55-101 or formed or incorporated under any repealed Colorado statute pertaining to cooperative associations, except corporations or associations formed or incorporated under or subject to article 56 of this title, shall be conclusively presumed to have accepted and adopted the provisions of this article and shall be governed by the provisions of this article, unless such corporation or association or agricultural or livestock association has delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a copy of a resolution adopted by its board of directors, its members, or its stockholders stating that it has elected not to become subject to the provisions of this article. This section shall not apply to cooperative associations formed and incorporated under or subject to article 56 of this title.

Source: L. 73: R&RE, p. 432, § 1. **C.R.S. 1963:** § 30-1-13. **L. 75:** Entire section R&RE, p. 272, § 1, effective June 29. **L. 83:** Entire section amended, p. 872, § 27, effective July 1. **L. 96:** Entire section amended, p. 545, § 10, effective July 1. **L. 2002:** Entire section amended, p. 1814,

§ 15, effective July 1; entire section amended, p. 1678, § 13, effective October 1. **L. 2003:** Entire section amended, p. 2217, § 59, effective July 1, 2004.

7-55-114. Dissolution of association.

Any association formed under this article may be dissolved and its affairs terminated voluntarily by a two-thirds majority vote of the members present and voting in person or by mail ballot at a regular or special meeting, if the meeting notice, with a mail ballot attached, stated that dissolution would be discussed; except that cooperative associations with less than one hundred members may post notice of the discussion of such dissolution in a conspicuous place at their normal place of business for at least thirty days prior to such meeting. The board of directors by a two-thirds majority vote of its members shall first adopt a resolution recommending dissolution and submit it to the members, stating the reasons why the termination of the affairs of the association is deemed advisable, the time by which it should be accomplished, and shall also name three persons who are members of the association to act as trustees in liquidation who shall have full power to do all things necessary in liquidation and termination of the affairs of the association. Upon approval of the resolution to dissolve by the members, the association shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of dissolution. A certified copy of the articles of dissolution shall be filed with the county clerk in the county in which the principal business is transacted. All power of the directors shall cease and the persons appointed shall proceed to terminate the affairs of the association and realize upon its assets, pay its debts, and divide the remaining money among the members and holders of equity, as stated in the bylaws or, if not stated, in proportion to their property interests.

Source: L. 73: R&RE, p. 433, § 1. **C.R.S. 1963:** § 30-1-14. **L. 83:** Entire section amended, p. 872, § 28, effective July 1. **L. 96:** Entire section amended, p. 545, § 11, effective July 1. **L. 2002:** Entire section amended, p. 1814, § 16, effective July 1; entire section amended, p. 1679, § 14, effective October 1. **L. 2003:** Entire section amended, p. 2218, § 60, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1409, § 34, effective July 1.

7-55-115. Exemption from securities laws.

Any security, patronage refund, per unit retain certificate, or evidence of membership issued or sold by a cooperative association as an investment in its stock or capital to the members of a cooperative association formed under this article or a similar law of any other state and authorized to transact business or conduct activities in this state is exempt from securities laws as contained in article 51 of title 11, C.R.S. Such securities, patronage refunds, per unit retain

certificates, or evidence of membership may be sold lawfully by the issuer or its members or salaried employees without the necessity of being registered as a broker or dealer under the "Colorado Securities Act", article 51 of title 11, C.R.S.

Source: L. 73: R&RE, p. 433, § 1. **C.R.S. 1963:** § 30-1-15. **L. 75:** Entire section amended, p. 272, § 2, effective June 29. **L. 84:** Entire section amended, p. 1116, § 1, effective June 7. **L. 90:** Entire section amended, p. 740, § 2, effective July 1. **L. 96:** Entire section amended, p. 546, § 12, effective July 1. **L. 2003:** Entire section amended, p. 2218, § 61, effective July 1, 2004.

7-55-116. Application of corporation laws.

The provisions of articles 30 to 52, 101 to 117, and 121 to 137 of this title and all powers and rights thereunder shall apply to the associations organized under this article, except where such provisions are in conflict with or inconsistent with an express provision of this article.

Source: L. 73: R&RE, p. 433, § 1. **C.R.S. 1963:** § 30-1-16. **L. 93:** Entire section amended, p. 858, § 18, effective July 1, 1994. **L. 97:** Entire section amended, p. 759, § 20, effective July 1, 1998. **L. 2007:** Entire section amended, p. 219, § 2, effective May 29.

7-55-117. Associations not in restraint of trade.

No association formed under this article shall be deemed to be in restraint of trade or an illegal monopoly, or an attempt to lessen competition or to fix prices, nor shall the membership agreements or marketing contracts between the association and its members be illegal or in unlawful restraint of trade, or in any combination thereof to accomplish an improper or illegal purpose.

Source: L. 73: R&RE, p. 433, § 1. **C.R.S. 1963:** § 30-1-17. **L. 2003:** Entire section amended, p. 2219, § 62, effective July 1, 2004.

7-55-118. Associations of other jurisdictions.

Any cooperative corporation or association formed under generally similar law of another jurisdiction may carry on any proper activities, operations, and functions in this state upon compliance with part 8 of article 90 of this title, with all rights of cooperative associations formed pursuant to this article.

Source: L. 73: R&RE, p. 433, § 1. **C.R.S. 1963:** § 30-1-18. **L. 2003:** Entire section amended, p. 2219, § 63, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1410, § 35, effective July 1.

7-55-119. Quorum.

A quorum for the election of directors, amending of the articles of incorporation, and conducting normal business at all meetings of the stockholders or members shall be five percent of the stockholders or members or fifty members or stockholders present in person, whichever is less. Nothing shall prevent the articles of incorporation or the bylaws of such association from requiring a larger percent as a quorum.

Source: L. 73: R&RE, p. 433, § 1. **C.R.S. 1963:** § 30-1-19.

7-55-120. Incorporation fees.

The fee for the incorporation of cooperative corporations or associations shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., if formed with or without capital stock, payable to the secretary of state except as otherwise set forth in this article.

Source: L. 73: R&RE, p. 434, § 1. **C.R.S. 1963:** § 30-1-20. **L. 81:** Entire section amended, p. 430, § 5, July 1. **L. 2003:** Entire section amended, p. 2219, § 64, effective July 1, 2004.

7-55-121. Periodic report.

Part 5 of article 90 of this title, providing for periodic reports from reporting entities, applies to associations formed under or subject to this article.

Source: L. 73: R&RE, p. 434, § 1. **C.R.S. 1963:** § 30-1-21. **L. 83:** Entire section amended, p. 873, § 29, effective July 1. **L. 2003:** Entire section amended, p. 2219, § 65, effective July 1, 2004. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 1993, § 2, effective August 11.

ARTICLE 56

Cooperatives

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PART 1

GENERAL PROVISIONS

7-56-101. Short title.

This article shall be known and may be cited as the "Colorado Cooperative Act".

Source: L. 96: Entire article R&RE, p. 478, § 1, effective July 1.

Editor's note: This section is similar to former § 7-56-101 as it existed prior to 1996.

7-56-102. Legislative declaration.

(1) The general assembly finds and declares that:

(a) The cooperative form of doing business provides an efficient and effective method for persons to market their goods and services and to obtain services and supplies and it is in the best interests of the people of the state of Colorado to promote, foster, and encourage the utilization of cooperatives in appropriate instances;

(b) The cooperative marketing law of the state of Colorado has provided for the promotion, fostering, and encouragement of the intelligent and orderly marketing of agricultural products through cooperation; has eliminated speculation and waste; has made distribution of agricultural products between producer and consumer more efficient; has stabilized the marketing of agricultural products; and has provided for the organization and incorporation of cooperative marketing associations for the marketing of such products, all as contemplated at the time of the original adoption of the cooperative marketing law;

(c) It is in the best interests of the people of the state of Colorado to preserve the provisions of the cooperative marketing law as it has been in force and interpreted in the state and to continue the provisions thereof for agriculture, but also to expand the provisions of the law to provide greater direction and flexibility in its provisions and to enable all types of industries and enterprises to avail themselves of the benefits of the cooperative form of doing business in accordance with the provisions of this article;

(d) It is in the best interests of the people of the state of Colorado to allow those cooperatives that have been formed under or are subject to other articles of this title, such as article 55, to remain under said article or to elect to come under this article.

Source: L. 96: Entire article R&RE, p. 478, § 1, effective July 1. **L. 2003:** (1)(d) amended, p. 2219, § 66, effective July 1, 2004.

Editor's note: This section is similar to former § 7-56-102 as it existed prior to 1996.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The basic conception of a cooperative marketing association is that of a group of farmers who reside in the same vicinity acting together for their mutual benefit in the cultivating, harvesting, and marketing of their agricultural products, the association itself being merely a convenient instrumentality in the hands of the farmers for carrying on such activities. Indus. Comm'n v. United Fruit Growers Ass'n, 106 Colo. 223, 103 P.2d 15 (1940).

A cooperative marketing association is not required to pay contributions on the wages of individuals employed by it, under the provisions of title 8, since the labor involved in the activities of the association is "agricultural labor" and exempt from the operation of the federal unemployment tax act by § 8-70-103. Indus. Comm'n v. United Fruit Growers Ass'n, 106 Colo. 223, 103 P.2d 15 (1940).

But a different result might attain where farm crops are marketed by a commercial profit corporation or are not marketed in an unmanufactured state. Indus. Comm'n v. United Fruit Growers Ass'n, 106 Colo. 223, 103 P.2d 15 (1940).

Legislative declaration does not provide association members with an express right to purchase goods and services from an association store. Therefore, this section does not support a breach of contract claim. Arnold v. Anton Coop. Ass'n, 293 P.3d 99 (Colo. App. 2011).

7-56-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Agricultural cooperative" means a cooperative in which the members, including landlords and tenants, are all producers of agricultural products.

(2) "Agricultural products" means agronomic, horticultural, viticultural, aquacultural, forestry, dairy, livestock, poultry, bee, and any other farm or ranch products.

(3) "Articles" means the articles of incorporation of a cooperative and includes amended articles of incorporation, restated articles of incorporation, and other organizational documents of other entities.

(4) "Board" or "board of directors" means the board of directors or other governing body of a cooperative or other entity.

(5) "Bylaws" means the bylaws adopted by a cooperative and includes amended bylaws and restated bylaws.

(6) "Cooperative" means any entity formed under or subject to this article by election or otherwise, including a cooperative formed under comparable law of another jurisdiction doing business in this state, and having the following characteristics:

(a) The business of the cooperative is operated at cost by adjusting the prices charged for goods or services or by returning any net margins at the end of a fiscal year on a patronage basis to members and other persons qualified to share in the net margins pursuant to the articles or bylaws;

(b) Dividends on stock or interest on equity capital is limited, as prescribed in the articles pursuant to section 7-56-201 or bylaws pursuant to section 7-56-208 of the cooperative;

(c) Voting rights are limited to members of the cooperative as prescribed in the articles or bylaws of the cooperative;

(d) The cooperative's business is carried on for the mutual benefit of its members; and

(e) Members are not liable for any debt, obligation, or liability of the cooperative.

(7) (Deleted by amendment, L. 2003, p. 2219, § 67, effective July 1, 2004.)

(8) "Domestic", when referring to a cooperative or other entity, means an entity formed under the law of this state.

(9) "Equity capital" means all investments in the cooperative except loans or other types of indebtedness, whether made by direct investment, such as investment in stock or memberships, or by retention of amounts of net savings, net margins, or net profits allocated to members and other patrons of the cooperative, or charged to them as part of the transactions between them and the cooperative.

(10) "Foreign", when referring to a cooperative or other entity, means an entity formed under law other than the law of this state.

(11) "Member" means a person who has been received into the membership of a cooperative without common stock or a person who has acquired common stock in a cooperative formed with common stock and, in either case, is authorized to vote. This subsection (11) shall not preclude a cooperative from designating persons as both members and stockholders.

(12) "Net margins" means the receipts from operations less the expenses thereof.

(13) "Patron" means a person who may, but need not, be a member of a cooperative who utilizes the services of the cooperative through the purchase or sale of property or services to or from the cooperative.

(14) "Patronage" means the volume or dollar value of business transacted with the cooperative.

(15) "Patronage refund" means a portion of a cooperative's net margins paid or allocated to a patron based on the patron's patronage.

(16) "Per unit retain" means a deduction authorized by a patron to be made by the cooperative from proceeds of sale of a product or service by the patron to the cooperative or by the cooperative on behalf of the patron where the deduction is based on the value or quantity of the product or service sold to the cooperative or on behalf of the patron and is deducted as a contribution or investment by the patron in the capital of the cooperative.

(17) (Deleted by amendment, L. 2003, p. 2219, § 67, effective July 1, 2004.)

Source: L. 96: Entire article R&RE, p. 479, § 1, effective July 1. **L. 2003:** IP(6), (7), (8), (10), (11), and (17) amended, p. 2219, § 67, effective July 1, 2004. **L. 2004:** (10) amended, p. 1410, § 36, effective July 1.

Editor's note: This section is similar to former §§ 7-55-101 and 7-56-103 as they existed prior to 1996.

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

7-56-104. Filings by the secretary of state.

(1) 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 this article.

(2) Repealed.

(3) to (6) (Deleted by amendment, L. 2002, p. 1815, § 17, effective July 1, 2002; p. 1679, § 15, October 1, 2002.)

Source: L. 96: Entire article R&RE, p. 481, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1815, § 17, effective July 1; entire section amended, p. 1679, § 15, effective October 1. **L. 2003:** (1) amended, p. 2220, § 68, effective July 1, 2004. **L. 2004:** (2) repealed, p. 1410, § 37, effective July 1.

Editor's note: This section is similar to former §§ 7-56-104 and 7-56-132 as they existed prior to 1996.

7-56-105. Effective time and date of documents. (Repealed)

Source: L. 96: Entire article R&RE, p. 482, § 1, effective July 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-56-106. Periodic and other reports.

(1) Part 5 of article 90 of this title, providing for periodic reports from reporting entities, applies to cooperatives formed under or subject to this article.

(2) The commissioner of agriculture may, by regulation, require reports from any cooperative formed pursuant to this article that limits its membership to agricultural producers.

(3) Upon the dissolution of an agricultural cooperative formed under this article, the cooperative shall provide a copy of the articles of dissolution of the cooperative to the commissioner of agriculture.

Source: L. 96: Entire article R&RE, p. 483, § 1, effective July 1. **L. 2003:** Entire section amended, p. 2220, § 69, effective July 1, 2004. **L. 2004:** (1) and (3) amended, p. 1410, § 38, effective July 1. **L. 2010:** (1) amended, (HB 10-1403), ch. 404, p. 1993, § 3, effective August 11.

Editor's note: This section is similar to former § 7-56-122 as it existed prior to 1996.

7-56-107. Cooperative records.

(1) A cooperative shall keep as permanent records minutes of all meetings of its members and of the board, a record of all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of meetings of the members and of the board.

(2) A cooperative shall maintain appropriate accounting records.

(3) A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(4) A cooperative shall keep a copy of each of the following records at its principal office:

(a) Its articles of incorporation or other governing instrument;

(b) Its bylaws or other similar instrument;

(c) A record of the names and addresses of its members, in a form that permits preparation of a list of members that is alphabetical and that shows each member's address and the investment qualifying a member to vote held by each member;

(d) The minutes of members' meetings, and records of all actions taken by members without a meeting by unanimous written consent in lieu of a meeting, for the past three years;

(e) All written communications within the past three years to members as a group or to any class of members as a group;

(f) A list of the names and business addresses of its current board of directors and officers;

(g) A copy of its most recent periodic report delivered to the secretary of state pursuant to part 5 of article 90 of this title; and

(h) All financial statements prepared for periods ending during the last fiscal year.

(5) Except as otherwise limited by this article, the board of directors of a cooperative shall have discretion to determine what records are appropriate for the purposes of the cooperative, the length of time records are to be retained, and policies relating to the confidentiality, disclosure, inspection and copying of the records of the cooperative.

Source: L. 96: Entire article R&RE, p. 483, § 1, effective July 1. **L. 2000:** (4)(g) amended, p. 950, § 6, effective July 1. **L. 2003:** (4)(g) amended, p. 2220, § 70, effective July 1, 2004. **L. 2010:** (4)(g) amended, (HB 10-1403), ch. 404, p. 1994, § 4, effective August 11.

Editor's note: This section is similar to former § 7-56-122 as it existed prior to 1996.

PART 2

INCORPORATION

7-56-201. Articles of incorporation.

(1) A cooperative may be formed pursuant to this article for the transaction of any lawful business. One or more persons may act as the incorporator or incorporators of a cooperative by delivering articles for the cooperative 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.

(2) The articles shall state:

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

(b) The principal office address of the cooperative's principal office;

(c) The registered agent name and registered agent address of the cooperative's initial registered agent;

(d) Repealed.

(e) If formed without common voting stock, whether the property rights and interests of each member are equal or unequal and, if unequal, the general rule or rules applicable to all members by which the property rights and interests of each member are determined and fixed; provisions for the admission of new members who are entitled to share in the property of the cooperative with the old members in accordance with such general rules; and whether the cooperative is authorized to issue one or more classes of preferred stock or other equity interests and, if so authorized, a statement as to the number of shares of stock of each class or other equity interests and the nature and extent of the preferences, limitations, relative rights, and privileges granted to each;

(f) If formed with stock, the classes of shares and the number of shares of each class the cooperative is authorized to issue. The stock may be divided into preferred and common stock, voting and nonvoting stock, or into any other class of stock. If so divided, the articles must contain a statement as to the number of shares of stock in each class and the nature and extent of the preferences, limitations, relative rights, and privileges granted to each.

(g) The true name and mailing address of each incorporator.

(3) The articles may state:

(a) A provision eliminating or limiting the personal liability of a director as provided in this article;

(b) A provision permitting proportional voting rights based solely upon the patronage of a member with the cooperative, the amount of equity held by the member in the cooperative, or some combination of these methods, as provided in section 7-56-305 (3);

(c) The number and terms of the board of directors, which number shall be not less than three, together with the names and the street addresses of the initial directors. If the names of the initial directors are not stated in the articles, the initial board of directors shall be designated by the incorporator or incorporators following the delivery of the articles to the secretary of state for filing.

(d) The purpose or purposes for which the cooperative is incorporated which may state any lawful business;

(e) A par value for authorized shares of stock or classes of shares;

(f) Provisions defining, limiting, and regulating the powers of the cooperative, its board, and its members;

(g) Provisions limiting membership to producers of agricultural products;

(h) A limitation on the handling of products or services for its own members only, or for members and nonmembers, and whether nonmembers are entitled to share in allocations of net margins or are subject to per unit retains;

(i) Provisions for the removal for cause of any director by the members at any regular or special members' meeting;

(j) A provision eliminating or limiting the indemnification of directors, officers, employees, or agents of the cooperatives as otherwise provided in this article;

(k) Any provision that under this article is required or permitted to be stated in the bylaws;

(l) Any other provision not inconsistent with law.

(4) (Deleted by amendment, L. 2004, p. 1410, § 39, effective July 1, 2004.)

(5) When incorporated, no member or shareholder as such shall be liable directly or indirectly, including by way of indemnification, contribution, or otherwise, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of or chargeable to the cooperative.

(6) A member does not have any vested property right resulting from any provision in the articles that may exist from time to time or at any time, including any provision relating to

management, control, capital structure, dividend entitlement, purpose, or duration of the cooperative.

Source: L. 96: Entire article R&RE, p. 484, § 1, effective July 1. **L. 98:** (3)(c) amended, p. 611, § 2, effective July 1. **L. 2000:** (2)(a) amended, p. 950, § 7, effective July 1. **L. 2002:** (1) amended, p. 1816, § 18, effective July 1; (1) amended, p. 1680, § 16, effective October 1. **L. 2003:** (1), IP(2), (2)(a) to (2)(f), IP(3), (3)(c), and (3)(k) amended, p. 2221, § 71, effective July 1, 2004. **L. 2004:** (1), (2)(b), (2)(d), (2)(g), and (4) amended, p. 1410, § 39, effective July 1. **L. 2009:** (2)(d) repealed, (HB 09-1248), ch. 252, p. 1129, § 3, effective December 1.

Editor's note: This section is similar to former § 7-56-109 as it existed prior to 1996.

7-56-202. Amendment of articles.

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

(1.5) If a cooperative has not issued memberships or shares of stock, its board of directors or, if no directors have been designated or elected, its incorporators may adopt one or more amendments to the articles of incorporation.

(2) The articles of a cooperative may be amended at any regular or special meeting of the members of the cooperative. The proposed amendment must be first approved by a two-thirds majority of the directors. The notice of the meeting of members shall state or have attached to it the proposed amendment and shall be mailed to each member of record at least ten days prior to the meeting date. The proposed amendment shall be approved by an affirmative vote of a majority of the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1), unless a higher percentage of approval is required in the articles.

(3) Unless otherwise provided in the articles, the board may adopt, without shareholder action, one or more amendments to the articles to:

(a) Delete the statement of 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 or registered office, if a statement of change is on file in the records of the

secretary of state containing the registered agent name and registered agent address of the cooperative's registered agent;

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

(c) Except as otherwise provided in section 9 of article XV of the state constitution, change each issued and unissued share of a class into a greater number of whole shares if the cooperative has only shares of that class outstanding; or

(d) Change the cooperative's domestic entity name by substituting the word "cooperative", "association", "incorporated", "company", or "limited", or any abbreviation thereof for a similar word or abbreviation in the domestic entity name, or by adding, deleting, or changing a geographical designation.

(4) (Deleted by amendment, L. 2004, p. 1411, § 40, effective July 1, 2004.)

(5) A cooperative amending its articles 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 cooperative; and

(b) The text of each amendment adopted.

(c) to (f) (Deleted by amendment, L. 2004, p. 1411, § 40, effective July 1, 2004.)

(6) Any amendment to the articles may not be invalidated because of the manner of its adoption unless an action to do so is commenced within two years after the date of filing.

Source: L. 96: Entire article R&RE, p. 486, § 1, effective July 1. **L. 2000:** (3)(d) and (5)(a) amended, p. 950, § 8, effective July 1. **L. 2002:** (3)(b) and IP(5) amended, p. 1816, § 19, effective July 1; (3)(b) and IP(5) amended, p. 1681, § 17, effective October 1. **L. 2003:** (2), (3)(a), (3)(b), and IP(5) amended and (3)(b.5) added, p. 2222, § 72, effective July 1, 2004. **L. 2004:** (1.5) added and (3)(b), (3)(d), (4), and (5) amended, p. 1411, § 40, effective July 1.

Editor's note: This section is similar to former § 7-56-110 as it existed prior to 1996.

7-56-203. Restated articles.

(1) The board may restate the articles at any time with or without membership action.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members, it shall be adopted as provided in section 7-56-202.

(3) If the board submits a restatement for action by the members, the cooperative shall give notice, in accordance with section 7-56-202, to each member entitled to vote on the restatement at 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.

(4) A cooperative restating its articles 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 cooperative; and

(b) The text of the restated articles of incorporation.

(c) and (d) (Deleted by amendment, L. 2004, p. 1412, § 41, effective July 1, 2004.)

(e) (Deleted by amendment, L. 2002, p. 1817, § 20, effective July 1, 2002; p. 1681, § 18, effective October 1, 2002.)

Source: L. 96: Entire article R&RE, p. 487, § 1, effective July 1. **L. 2000:** (4)(a) amended, p. 950, § 9, effective July 1. **L. 2002:** IP(4) and (4)(e) amended, p. 1817, § 20, effective July 1; IP(4) and (4)(e) amended, p. 1681, § 18, effective October 1. **L. 2003:** IP(4) amended, p. 2222, § 73, effective July 1, 2004. **L. 2004:** (4) amended, p. 1412, § 41, effective July 1.

7-56-204. Cooperatives desiring to relinquish provisions of this article.

(1) Any cooperative formed under or that has elected to be subject to this article may relinquish being bound by the provisions of this article by amending its articles in the manner provided in section 7-56-202 (2); except that the amendment shall be approved by a two-thirds majority of all the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1) unless a greater vote is required by the articles or bylaws.

(2) The board shall present to the members for approval, as described in subsection (1) of this section, a plan to relinquish the provisions of this article, including:

(a) A statement as to what type of business entity the cooperative is to become after the plan has been adopted;

(b) A statement as to what will be the effect on equities of the cooperative after the plan has been adopted; and

(c) A statement as to the procedures and mechanisms for changing the cooperative to another type of entity.

(3) Amendments to the articles shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.

Source: L. 96: Entire article R&RE, p. 488, § 1, effective July 1. **L. 2002:** (3) amended, p. 1817, § 21, effective July 1; (3) amended, p. 1681, § 19, effective October 1.

7-56-205. Entities formed under other law but subject to this article.

Any domestic entity or foreign entity authorized to transact business or conduct activities in this state and engaged in any of the activities enumerated in this article but formed under any other law may be considered for all purposes as subject to this article by amending its constituent operating document as necessary to conform to this article and delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement that the entity has determined to accept the benefits of and to be bound by the provisions of this article and has amended its constituent operating document as necessary to conform to this article by amendments adopted in accordance with applicable law and its constituent operating document.

Source: L. 96: Entire article R&RE, p. 488, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1817, § 22, effective July 1; entire section amended, p. 1681, § 20, effective October 1. **L. 2003:** Entire section amended, p. 2222, § 74, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1412, § 42, effective July 1.

Editor's note: This section is similar to former § 7-56-133 as it existed prior to 1996.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section recognizes two classes of corporations: First, those originally organized under this article, and second, those that have adopted its provisions as provided in this section. Colo. Wheat Growers' Ass'n v. Thede, 80 Colo. 529, 253 P. 30 (1927).

Association cannot accept benefits of article without being bound. This section conjoins the words "that the corporation or association has determined to accept the benefits and be bound by the provisions of this article", and one cannot untwine these interlaced words and accord the benefits of this article to an association out of the fold, without disregarding this proviso, which cannot be done. Colo. Wheat Growers' Ass'n v. Thede, 80 Colo. 529, 253 P. 30 (1927).

Hence, a corporation is not entitled to make a marketing contract without first complying with this section as a matter of public policy. Colo. Wheat Growers' Ass'n v. Thede, 80 Colo. 529, 253 P. 30 (1927).

And such a contract is void where there has been no compliance. An instrument in the form of a standing marketing contract which is entered into after this article took effect, but with an association not organized under it, and which at the time the association enters into the agreement with its member it has not complied with or taken advantage of this section is void. Colo. Wheat Growers' Ass'n v. Thede, 80 Colo. 529, 253 P. 30 (1927).

Moreover, a provision such as this section cannot legalize retroactively previously invalid contracts. Oliver v. Wilder, 27 Colo. App. 337, 149 P. 275 (1915); Atkinson v. Colo. Wheat Growers' Ass'n, 77 Colo. 559, 238 P. 1117 (1925); Moore v. Chalmers-Galloway Live Stock Co., 90 Colo. 548, 10 P.2d 950 (1932).

7-56-206. Cooperative name. (Repealed)

Source: L. 96: Entire article R&RE, p. 489, § 1, effective July 1. **L. 97:** (1)(f) amended, p. 759, § 21, effective July 1, 1998. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-56-207. Use of the term "cooperative" - penalty for unlawful use. (Repealed)

Source: L. 96: Entire article R&RE, p. 490, § 1, effective July 1. **L. 2000:** IP(1) amended, p. 950, § 11, effective July 1. **L. 2003:** (1)(a) and (2) amended, p. 2223, § 75, effective July 1, 2004. **L. 2004:** (2) amended, p. 1412, § 43, effective July 1; (1)(a) amended, p. 1010, § 18, effective August 4. **L. 2008:** Entire section repealed, p. 18, § 2, effective August 5.

Editor's note: This section was similar to former §§ 7-55-111 and 7-56-124 as they existed prior to 1996.

7-56-208. Bylaws.

(1) The initial board of each cooperative formed under this article shall, within thirty days after the articles become effective, adopt bylaws for the government and management of its affairs that are not inconsistent with law or the articles of the cooperative. Such bylaws may be amended or modified in such manner as the bylaws may provide. If the bylaws do not provide a manner for their amendment, the bylaws may be amended at any time upon a majority vote of the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1) at a regular or special meeting, the notice of which meeting shall have stated that consideration would be given at the meeting to amending the bylaws and stating the proposed amendment or amendments.

(2) The bylaws of the cooperative shall prohibit the transfer of the voting common stock or membership in the cooperative to persons not eligible to be a member of the cooperative and, if the cooperative issues certificates of common stock or of membership, the restrictions must be printed upon every certificate of stock or certificate of membership subject to the restrictions. At the election of the cooperative, the restrictions may also be included in the articles.

(3) If not stated in the articles, the bylaws of the cooperative shall include:

(a) The qualifications for membership, manner of succession, and conditions for suspension, withdrawal, or expulsion;

(b) The amount of any membership fee or capital subscription required by the cooperative to become a member, conditions of membership, and procedures for acquiring and repayment of membership capital;

(c) Any limitations on dividends on stock or interest on equity capital;

(d) The time, place, and manner of conducting or determining membership meetings of the cooperative which shall be at least annually;

(e) The number, terms, and time of the election of directors, or the manner for determining the same;

(f) The number of directors that shall constitute a quorum for a meeting of the board, which must be at least a majority;

(g) The number, terms, and titles of officers, their authority and duties as well as the manner of election or appointment, the filling of vacancies, or removal of officers; and

(h) A requirement that the cooperative's business shall be conducted on a cooperative basis for the mutual benefit of the cooperative's members.

(4) In addition to the provisions set forth in subsection (3) of this section, the bylaws may include:

(a) The time, place, and manner of conducting its meetings;

(b) The mode and manner of removal of directors and the mode and manner of filling vacancies on the board caused by death, resignation, or removal;

(c) The compensation of directors and officers or the manner for determining compensation;

(d) The mode and manner of conducting business;

(e) The mode and manner of conducting elections and provisions for voting by ballots forwarded by mail or otherwise;

(f) The manner of assignment and transfer of interests in the cooperative;

(g) The manner of collection and enforcement for member nonpayment or nonperformance, including forfeiture of property rights and interests;

(h) The method of determination of property rights and interests in the cooperative and the value thereof;

(i) Methods and procedures for acquiring and returning equity capital to members and other patrons of the cooperative;

(j) Procedures pursuant to section 7-56-501 (1)(q) for the handling of unclaimed equity capital and other funds declared payable by the cooperative and unclaimed by the holder; and

(k) Such other things as may be proper to carry out the purpose for which the cooperative was formed or the governance of the cooperative.

Source: L. 96: Entire article R&RE, p. 490, § 1, effective July 1. **L. 2003:** (1) and IP(3) amended, p. 2223, § 76, effective July 1, 2004.

Editor's note: This section is similar to former § 7-56-111 as it existed prior to 1996.

7-56-209. Agricultural marketing cooperatives.

(1) It is hereby recognized that agriculture is characterized by individual production in contrast to the group or factory system that characterizes other forms of industrial production; that the ordinary form of corporate organization permits industrial groups to combine for the purpose of group production and the ensuing group marketing and that the public has an interest in permitting producers of agricultural products to bring to their industry the high degree of efficiency and merchandising skill evidenced in the manufacturing industries; that the public interest urgently needs to prevent the migration from rural to urban communities in order to

enhance production of agricultural products and to preserve the agricultural supply of the nation; that the public interest demands that producers of agricultural products be encouraged to attain a more efficient system of marketing their products and procurement of the necessary equipment and supplies through cooperatives.

(2) Upon written request to the commissioner of agriculture by any three persons, the commissioner or a duly authorized representative of the commissioner may supply a written summary of the most current survey prepared by the department of agriculture, if any exists, of the business conditions affecting the proposed purposes of the cooperative, particularly the commodities to be handled. When such a summary is supplied, the commissioner or a representative of the commissioner may separately set forth an opinion, stating the reasons therefor, regarding the viability of the proposed venture.

(3) In addition, the department of agriculture may, at the discretion of the commissioner or a representative of the commissioner, provide other assistance to persons who seek to organize an agricultural cooperative.

Source: L. 96: Entire article R&RE, p. 492, § 1, effective July 1.

Editor's note: This section is similar to former §§ 7-56-105 and 7-56-106 as they existed prior to 1996.

7-56-210. Renewable energy cooperatives.

(1) It is the policy of this state to encourage local ownership of renewable energy generation facilities to improve the financial stability of rural communities.

(2) Subject to the provisions of this article, a renewable energy cooperative may be organized for the purpose of promoting electric energy efficiency technologies to its members, generating electricity from renewable resources and technologies, and transmitting and selling the electricity at wholesale.

(3) For purposes of this section, "renewable resources or technologies" means biomass, geothermal energy, solar energy, small hydroelectricity, and wind energy. Hydrogen derived from biomass, geothermal energy, solar energy, small hydroelectricity, and wind energy is also considered to be renewable energy for the purposes of this article. "Renewable resources or technologies" does not include pumped storage facilities; hydroelectricity other than small hydroelectricity; coal, natural gas, oil, propane, or any other fossil fuel; or nuclear energy. "Renewable resources or technologies" also does not include hydrogen derived from pumped

storage facilities; hydroelectricity other than small hydroelectricity; coal, natural gas, oil, propane, or any other fossil fuel; or nuclear energy.

Source: L. 2004: Entire section added, p. 1121, § 1, effective May 27.

PART 3

MEMBERS AND OWNERSHIP

7-56-301. Members.

(1) Subject to the provisions of this section and under the terms and conditions prescribed in the articles or bylaws adopted by it, a cooperative may limit admission as members or issue common stock only to persons engaged in the particular business or utilizing the goods or services provided by or through the cooperative, including any entity formed under the law of this state or any other jurisdiction, or may admit as members or issue common stock to any person meeting uniform terms and conditions stated in its articles or bylaws.

(2) When any required membership fee or payment for stock as required in the articles, the bylaws, or a resolution of the board has been paid in full or a promissory note executed for the required membership fee or capital subscription, a cooperative may issue a certificate of membership or common stock evidencing the membership or ownership of the stock or may evidence the same on the books or other records of the cooperative as determined by the articles, the bylaws, or the board. Except for a cooperative formed with stock, promissory notes of members may not be accepted by the cooperative as full or partial payment for stock unless permitted by the bylaws and adequately secured. The cooperative shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

(3) No member shall have a right to vote until the required membership fee or payment for stock has been paid in full.

(4) A cooperative, in its articles or bylaws, may limit the amount of common stock that a member may own.

(5) No member shall be liable directly or indirectly, including by way of indemnification, contribution, or otherwise, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of or chargeable to the cooperative while it is incorporated for an amount exceeding the sum remaining unpaid on the member's membership fee or the member's subscription to the stock, including any unpaid balance on any promissory note given in payment thereof; except that this subsection (5) shall not affect the liability of a member who

is also a member of the board or an officer for such member's negligence, wrongful act, or misconduct in that capacity.

(6) A cooperative formed with or without capital stock under this article may issue or accept investments in nonvoting stock or equity that may have such rights and preferences, including being subject to per unit retains or allocations of net margins, as may be provided in the articles, the bylaws, or by the board. Such nonvoting stock or equity may be issued and sold by the cooperative to any person, including those persons not otherwise qualified to be members, and may be redeemable or retireable by the cooperative on such terms and conditions as are provided for in the articles, the bylaws, or a resolution of the board providing for the issuance of or the investment in the nonvoting stock or equity. The terms and conditions of redemption shall be printed on any certificate evidencing the stock or equity.

(7) A cooperative shall impose restrictions on the transfer of voting common stock or membership in the cooperative in its bylaws in accordance with section 7-56-208 (2), and may also impose such restrictions in its articles, and may impose restrictions on the transfer of other equity investments in the cooperative in its articles, bylaws, or by resolution of its board. Any such restriction shall be printed upon any certificate or other written evidence of the membership, voting common stock, or other equity investment if one is issued.

(8) Subject to the provisions of section 7-56-406 (2)(c), a cooperative may, at any time as stated in its articles, bylaws, or resolution of the board adopted at the time of issuance, acquire, recall, redeem, exchange, or reissue its common stock, memberships, preferred stock, preferred equity, memberships, or other equity capital. Consideration paid for stock, memberships, or other equity capital acquired, recalled, redeemed, exchanged, or reissued by the cooperative shall be the par value, stated value, price originally paid, or book value, whichever is less, as conclusively determined by the board, plus any accrued and unpaid dividends, if any, and, if the price originally paid for the stock, memberships, or other equity capital included an additional amount based upon the right of the holder to engage in business with the cooperative, the consideration shall include the additional amount. If stock, memberships, or other equity capital acquired, recalled, redeemed, or exchanged does not have a par value, then the par value shall not be considered in determining the consideration. The cooperative may set off against the consideration to be paid obligations to it of the holder of stock, membership, or other equity capital and shall have a continuing perfected security interest in the stock, membership, and other equity capital of a member, stockholder, or holder of other equity capital to secure payment of any indebtedness to the cooperative of the stockholder, member, or holder of other equity capital, whenever indebtedness is incurred. Notwithstanding any other provision of law, the security interest shall take priority over all other perfected security interests. No acquisition, recall, or redemption shall be made if the result of it would be to bring the value of the remaining assets of the cooperative below the aggregate of its indebtedness. The articles or bylaws may provide other limitations on the right of a cooperative to acquire, recall, redeem, exchange, or reissue its stock, memberships, or other equity capital.

(9) If a member of a cooperative is other than an individual, such member may be represented by any individual, associate, officer, manager, member, shareholder, or other equity holder thereof duly authorized in writing by the member's board or other governing body having the right to authorize the representation.

(10) If so prescribed in its articles or bylaws, a cooperative may group its members in districts, or other units, or by types of goods or services utilized, for administration or otherwise achieving the purposes of the cooperative.

(11) A cooperative, in its articles or bylaws, may limit the amount of common stock or other equity capital held by members or other persons.

(12) Repealed.

Source: L. 96: Entire article R&RE, p. 493, § 1, effective July 1. **L. 98:** (12) repealed, p. 612, § 3, effective July 1. **L. 2003:** (1), (2), (6), and (8) amended, p. 2224, § 77, effective July 1, 2004. **L. 2004:** (9) amended, p. 1413, § 44, effective July 1.

Editor's note: This section is similar to former §§ 7-56-108 and 7-56-116 as they existed prior to 1996.

ANNOTATION

The relation between a cooperative marketing association and its members is that existing between a trustee and his beneficiary or a principal and his agent. Mtn. States Beet Growers' Mkt. Ass'n v. Monroe, 84 Colo. 300, 269 P. 886 (1928).

7-56-302. Member meetings - how called - notice.

(1) In its bylaws, each cooperative shall provide for one or more regular member meetings annually. Either the board or such officers as are designated in the bylaws shall have the right to call a special meeting of the members at any time, and the president, or other officer designated in the bylaws, shall call a special meeting to be held within sixty days upon petition by ten percent of the total number of members stating the specific business to be brought before the meeting. The board or the person calling the special meeting shall determine the date, time, and place of the meeting.

(2) Written notice of all member meetings shall be mailed to each member at that member's last-known address or transmitted to each member in such other manner as may be provided in

the bylaws at least ten days prior to the meeting. Notice of any special meeting shall include a statement of the purpose for the meeting. At all regular meetings of members of the cooperative, any and all lawful business may be brought before the meeting regardless of whether stated in the notice of the meeting; except that amendments to the articles or the bylaws of the cooperative or other action required to be stated in the notice of the meeting by this article shall not be subject to action unless notice thereof is stated in the notice of the meeting. At all special meetings of the members of the cooperative, business brought before the meeting shall be limited to the purpose stated in the notice.

(3) Actions taken or agreed to be taken during a member meeting shall not be invalidated on account of any member's failure to receive notice of a meeting if reasonable effort has been made to give notice in accordance with this section.

(4) Lawful actions or other membership votes may be taken by the cooperative in lieu of or without a member meeting if all members entitled to act or vote with respect to the action agree to that action by unanimous written consent.

Source: L. 96: Entire article R&RE, p. 495, § 1, effective July 1. **L. 2003:** (2) amended, p. 2225, § 78, effective July 1, 2004.

Editor's note: This section is similar to former § 7-56-112 as it existed prior to 1996.

7-56-303. Members' list for meeting.

(1) After fixing a record date for a meeting of the membership, the cooperative shall prepare a list of the names and addresses of all its members who are entitled to be given notice of the meeting. The members' list shall be available for inspection by any member or member's agent or attorney, for a proper corporate purpose, 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. Section 7-56-307 is not applicable to this section.

(2) The cooperative shall make the members' list available at the meeting, and any member or member's agent or attorney is entitled to inspect the list at any time and for a proper corporate purpose during the meeting or any adjournment.

(3) If the cooperative refuses to allow a member or the member's agent or attorney to inspect the members' list before or at the meeting, as permitted by subsection (1) or (2) of this section, the member may apply to the district court for the county in this state in which the street address of the cooperative's principal office is located or, if the cooperative has no principal office in this

state, to the district court for the county in which the street address of its registered agent is located or, if the cooperative has no registered agent, to the district court for the city and county of Denver for an order permitting the member or the member's agent or attorney to inspect the members' list.

(4) The court may order inspection of the members' list pursuant to subsection (3) of this section, unless the cooperative 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 members' list. The court may also postpone or adjourn the meeting for which the list was prepared until the inspection ordered by the court is complete. In any such action:

(a) The court may order the losing party to pay the prevailing party's reasonable costs, including reasonable attorney fees;

(b) The court may order the losing party to pay the prevailing party for any damages the prevailing party shall have incurred by reason of the subject matter of the litigation;

(c) If inspection or copying is ordered pursuant to subsection (3) of this section, the court may order the cooperative to pay the member's inspection and copying expenses; and

(d) The court may grant either party any other remedy provided by law.

(5) If a court orders inspection of the members' list 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 members' list does not affect the validity of action taken at the meeting.

Source: L. 96: Entire article R&RE, p. 495, § 1, effective July 1. **L. 2003:** (3) amended, p. 2225, § 79, effective July 1, 2004.

Cross references: Section 7-56-307 (6) provides that the provisions of said section do not apply to this section.

7-56-304. Quorum.

(1) A quorum for conducting business at all meetings of the members shall be five percent of the total number of members or thirty members present in person at the meeting, whichever is less. Members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1) shall be counted toward the quorum with respect to that matter.

Nothing shall prevent the articles or the bylaws of a cooperative from requiring a greater number of members or percentage thereof as a quorum.

(2) An action by a cooperative is not valid in the absence of a quorum at the meeting at which the action was taken, unless the action taken is subsequently ratified by the required number of members.

Source: L. 96: Entire article R&RE, p. 497, § 1, effective July 1.

7-56-305. Member voting.

(1) (a) Members of a cooperative may vote either in person or, if provided in the articles or the bylaws of the cooperative or a resolution of the board with respect to a particular issue, by any of the following methods:

(I) Mail or electronic transmission if a means is provided to verify that a member so voting has received the exact wording of the matter upon which the vote is to be taken;

(II) Telecommunication; or

(III) Any other means by which all persons in the meeting may communicate with each other during the meeting.

(b) Whenever in this article reference is made to voting by membership, the vote may be taken in any manner established pursuant to this section unless specifically provided otherwise in this article or by the board with respect to a particular matter upon which the vote is to be taken.

(c) With respect to a matter where a vote has been cast by an authorized means other than the person being present and voting in person, the person casting the vote shall be counted as present and voting for purposes of those provisions in this article that refer to persons "present and voting".

(d) Proxy or cumulative voting shall be prohibited except as permitted by the articles or bylaws of organizations incorporated prior to July 6, 1973; except that, where a member is other than an individual, its vote may be cast by a representative authorized pursuant to this article.

(2) Except as otherwise provided in subsection (3) of this section, each member of a cooperative formed under this article shall be entitled to one vote only.

(3) Any cooperative formed under this article may provide in its articles for proportional voting rights allowing members more than one vote based upon the patronage of a member with the cooperative, the amount of patronage equity held in the cooperative, or any combination of these methods. However, no member may be entitled to more than one vote in any case where a

law of this state specifically requires otherwise. In no event shall any member have less than one vote and no member may have more than two and one-half percent of the total votes of members of the cooperative. If the number of members in the cooperative is such that, solely by virtue of the number of members, one member may have more than two and one-half percent based on proportional voting, then each member of the cooperative shall be entitled to one vote only.

(4) Unless otherwise provided in this article or in the cooperative's articles, when a cooperative has provided for proportional voting, it shall be deemed to have intended that the references in this article to a vote of a specified proportion of members or similar terminology as necessary for approval of a matter submitted to a membership vote shall mean a determination based on a proportion of the total votes entitled to be cast or actually cast by members as applicable in the particular reference.

Source: L. 96: Entire article R&RE, p. 497, § 1, effective July 1. **L. 2003:** (2) and (3) amended, p. 2225, § 80, effective July 1, 2004. **L. 2004:** (1)(d) amended, p. 1413, § 45, effective July 1.

7-56-306. Reserves, distributions, and patronage refunds.

(1) A cooperative shall periodically set aside a portion of net margins, per unit retains, or other funds that is reasonable as determined by the board or in accordance with the articles or bylaws, for reserves, distributions, patronage refunds, capital, or other lawful business purposes.

(2) Net margins, after deductions for reasonable reserves and for allowances for income tax, shall be calculated and allocated on a patronage basis at least once every twelve months to members or to members and other qualified persons on an equitable basis as determined by the board or in accordance with the articles or bylaws. This section shall not be construed as prohibiting the retention of net margins, excess per unit retains, or other funds allocated to members as a means of providing capital for the cooperative.

(3) If a cooperative has retained net margins or other funds allocated to members, the board shall have the right in accordance with the articles, bylaws, and policies established by the board to redeem or retire the net margins or other funds so retained. All decisions relating to the redemption or retirement of such funds shall be made solely by the board.

Source: L. 96: Entire article R&RE, p. 498, § 1, effective July 1.

7-56-307. Inspection of cooperative records by member.

(1) A member is entitled to inspect and copy, at the member's expense, during regular business hours at a reasonable location stated by the cooperative, any of the records described in section 7-56-107 (4) if the member meets the requirements of subsection (2) of this section and gives the cooperative written demand at least five business days before the date on which the member wishes to inspect and copy such records. Notwithstanding the provisions of this subsection (1) or any provisions of section 7-56-107 (4), no member shall have the right to inspect or copy any records of the cooperative relating to the amount of equity capital in the cooperative held by any person or any accounts receivable or other amounts due the cooperative from any person.

(2) To be entitled to inspect and copy permitted records, the member shall meet the following requirements:

(a) The member has been a member for at least one year immediately preceding the demand to inspect or copy or is a member holding at least five percent of all of the outstanding equity interests in the cooperative as of the date the demand is made;

(b) The demand is made in good faith and for a proper corporate business 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.

(3) The right of inspection granted by this section may not be abolished or limited by the articles, bylaws, or any actions of the board or the members.

(4) This section does not affect:

(a) The right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the cooperative; or

(b) The power of a court to compel the production of the cooperative's records for examination.

(5) Notwithstanding any other provision in this section, if the records of the cooperative to be inspected or copied are in active use or storage and, therefore, not available at the time otherwise provided for inspection or copying, the cooperative shall notify the member of this fact and shall set a date and hour within three business days of the date otherwise set in this section for the inspection or copying.

(6) This section shall not apply to section 7-56-303.

Source: L. 96: Entire article R&RE, p. 499, § 1, effective July 1. **L. 2003:** (1) amended, p. 2226, § 81, effective July 1, 2004.

7-56-308. 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 7-56-307 includes, if reasonable, the right to receive copies made by photographic, xerographic copying, or other means.

(3) The cooperative 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.

Source: L. 96: Entire article R&RE, p. 500, § 1, effective July 1.

7-56-309. Court-ordered inspection.

(1) If a cooperative refuses to allow a member, or the member's agent or attorney, who complies with section 7-56-307 to inspect or copy any records that the member is entitled to inspect or copy by said section within a prescribed time limit or, if none, within a reasonable time, the district court for the county in this state in which the street address of the cooperative's principal office is located or, if the cooperative 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 cooperative 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 cooperative's expense.

(2) If a court orders inspection or copying of the records demanded, unless the cooperative 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 may order the losing party to pay the prevailing party's reasonable costs, including reasonable attorney fees;

(b) The court may order the losing party to pay the prevailing party for any damages the prevailing party shall have incurred by reason of the subject matter of the litigation;

(c) If inspection or copying is ordered pursuant to subsection (1) of this section, the court may order the cooperative to pay the member's inspection and copying expenses notwithstanding the provisions of section 7-56-307 (1); and

(d) The court may grant either party any other remedy provided by law.

(3) 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. 96: Entire article R&RE, p. 500, § 1, effective July 1. **L. 2003:** (1) amended, p. 2226, § 82, effective July 1, 2004.

PART 4

OFFICERS AND ELECTIONS

7-56-401. Directors - elections - remuneration - vacancy.

(1) The affairs of a cooperative formed under or subject to this article shall be managed by a board of not less than three directors as provided in the articles or bylaws elected by and from the members of the cooperative or designated representatives of members who are not individuals. If authorized by the articles or the bylaws, up to twenty percent of the board may consist of directors who are neither members nor representatives of members. Directors who are not members of the cooperative or representatives of members may be elected by a vote of two-thirds of the cooperative members present and voting. Nominations for the position of director shall be conducted in a manner provided in the bylaws or in a resolution of the board or of the members.

(2) The articles or bylaws may provide that the territory in which the cooperative has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In that case the articles or bylaws shall state the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the cooperative. The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to such districts and that the result of all such primary elections shall be ratified at the next regular meeting of the cooperative or be considered final as to the cooperative.

(3) A cooperative may provide a reasonable remuneration for the time actually spent by its officers and directors in its service. No director, during the term of the director's office, shall be a

party to a contract for profit with the cooperative differing in any way from the business relations accorded members of the cooperative.

(4) The articles or bylaws may limit directors from occupying any position in the cooperative on a regular salary or substantially full-time pay. The articles or bylaws may provide for an executive committee and may allot to the committee all the functions and powers of the board, subject to the general direction and control of the board.

(5) When a vacancy on the board occurs other than by expiration of term, the remaining members of the board, even though not a quorum, by a majority vote, shall fill the unexpired term, unless the articles or bylaws provide for an election of directors by district, in which event, unless the articles or bylaws provide for a different procedure, the board shall immediately call a special meeting of the members in the district to fill the vacancy.

Source: L. 96: Entire article R&RE, p. 501, § 1, effective July 1. **L. 2003:** (1) and (2) amended, p. 2226, § 83, effective July 1, 2004. **L. 2004:** (1) amended, p. 1413, § 46, effective July 1.

Editor's note: This section is similar to former § 7-56-113 as it existed prior to 1996.

7-56-402. Officers - titles - election - duties and authority - removal.

(1) (a) The bylaws shall provide for one or more officers and the titles of those officers. The offices may include a board chair, one or more vice-chairs, a president, one or more vice-presidents, a secretary, a treasurer, and assistant officers or other officers. The officers shall be elected by the board or in any other manner prescribed in the bylaws. At least one officer shall be an individual at least eighteen years of age. At least one officer shall be a member of the board. One individual may simultaneously hold more than one office, but may not concurrently hold the offices of president and secretary.

(b) The bylaws or board of each cooperative shall designate one or more officers responsible for preparing and maintaining the minutes of board and membership meetings and all records required to be kept by section 7-56-107 and for authenticating records.

(2) All officers and agents of the cooperative, as between themselves and the cooperative, shall have such authority and perform such duties in the management of the cooperative as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with federal, state, and local law, the articles, and the bylaws.

(3) Unless otherwise provided in the articles or bylaws, the board may remove any officer at any time with or without cause.

Source: L. 96: Entire article R&RE, p. 502, § 1, effective July 1. **L. 2004:** (1)(a) amended, p. 1413, § 47, effective July 1.

Editor's note: This section is similar to former § 7-56-114 as it existed prior to 1996.

7-56-403. Procedures for meetings of the board of directors.

(1) The board shall meet at least annually. The board may establish a time and place for regular board meetings and then may hold regular board meetings at such times without notice.

(2) Special meetings of the board shall require at least two days' notice of the date, time, and place. Unless otherwise provided by the articles or bylaws, purposes of a special meeting do not have to be stated in the notice of any special meeting.

(3) A director's attendance at a special meeting constitutes waiver of the notice requirement for that meeting unless the director objects to the lack of or method of notice and does not thereafter participate in the meeting or if notice of the purpose of the meeting was required but not given and the director objects to the transaction of business for that purpose and does not thereafter participate in the meeting with respect to that purpose.

(4) A director is considered to have assented to an action of the board unless:

(a) The director votes against it or abstains and causes the abstention to be recorded in the minutes of the meeting;

(b) The director objects at the beginning of the meeting and does not vote for it later;

(c) The director causes the director's dissent to be recorded in the minutes;

(d) The director does not attend the meeting at which the vote is taken; or

(e) The director gives notice of the director's objection in writing to the secretary within twenty-four hours after the meeting.

(5) Unless otherwise provided by the articles or bylaws:

(a) The board may permit any or all directors to participate in a regular or special meeting through the use of any means of communication by which all directors participating are able to communicate simultaneously with each other during the meeting;

(b) Actions of the board may be taken without a meeting if the action is agreed to by all members of the board and is evidenced by one or more written consents together signed by all directors and filed with the corporate records reflecting the action taken;

(c) Purposes of a special meeting do not have to be stated in the notice of any special meeting, but at least two days' notice of the date, time, and place shall be given.

Source: L. 96: Entire article R&RE, p. 502, § 1, effective July 1. **L. 2004:** (4)(c) and (4)(e) amended, p. 1413, § 48, effective July 1.

7-56-404. Removal of director by the membership or the board.

(1) At a meeting called expressly for that purpose, as well as any other proper purpose, a director may be removed by the members in the manner provided in this section upon an affirmative vote of a majority of the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1) or, if removal of a director is by the board, then by a majority of the members of the board not subject to removal.

(2) The board may remove a director who does not meet the qualifications for board membership stated in the articles and bylaws of the cooperative.

(3) The members may remove one or more directors only for cause unless the articles or bylaws allow directors to be removed without cause.

(4) Removal of directors by the vote of the members shall be initiated by written petition signed by at least ten percent of the members stating the alleged causes or reasons for removing the director. No petition shall seek removal of more than one director.

(5) Within ninety days after receipt of a petition meeting the requirements of subsection (4) of this section, the board shall schedule the removal vote at a regular or special meeting of the membership upon determination by the board, if necessary, that cause has been stated. Any determination of cause shall be made by a majority of the directors not subject to removal petitions. If more than a majority of the board is subject to removal petitions, then the matter shall be promptly referred to an attorney who has been duly licensed to practice law in Colorado for at least five years and who has not previously represented the cooperative. The attorney's determination of whether cause has been stated shall be final for the purpose of whether to schedule a vote on removal.

(6) Any director subject to a removal petition under any provision of this section shall be promptly informed in writing by the board and shall have the opportunity, in person and by counsel, to be heard and present evidence at the meeting called for the vote. The persons seeking removal shall have the same opportunity.

Source: L. 96: Entire article R&RE, p. 503, § 1, effective July 1. **L. 2003:** (2) amended, p. 2227, § 84, effective July 1, 2004.

Editor's note: This section is similar to former § 7-56-117 as it existed prior to 1996.

7-56-405. Removal of director by judicial proceeding.

(1) A director may be removed by the district court for the county in this state in which the street address of the cooperative's principal office is located or, if the cooperative 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 cooperative has no registered agent, by the district court for the city and county of Denver, in a proceeding commenced either by the cooperative or by at least ten percent of the members, if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the cooperative, and that removal is in the best interests of the cooperative.

(2) If the members commence a proceeding under subsection (1) of this section, they shall make the cooperative a party defendant.

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

Source: L. 96: Entire article R&RE, p. 504, § 1, effective July 1. **L. 2003:** (1) amended, p. 2227, § 85, effective July 1, 2004. **L. 2004:** (1) amended, p. 1414, § 49, effective July 1.

7-56-406. Indemnification and personal liability of directors, officers, employees, and agents.

(1) Unless limited in the cooperative's articles, the cooperative shall have the same powers, rights, and obligations and shall be subject to the same limitations with respect to indemnification and personal liability of directors, officers, employees, and agents as apply to domestic corporations as set forth in article 109 of this title. Cooperative directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents of domestic corporations as set forth in article 109 of this title. For purposes of this section, any reference to shareholders having the right to vote in article 109 of this title shall be construed to refer to members of the cooperative having the right to vote.

(2) (a) The articles may eliminate or limit the liability of a director of the cooperative to the cooperative or its members for monetary damages for any breach of the duty of care arising after the date the provision in the articles became effective, including the effective date of any provision adopted under a prior statute, except any acts or omissions in bad faith or that involve intentional misconduct or a knowing violation of law; any transaction from which the director derived an improper personal benefit; any unlawful liquidating distributions of assets to members, unlawful loans to directors, or unlawful guarantees of loans to directors; unlawful dividends; unlawful stock or other equity repurchases; or any other unlawful distribution that was voted for or assented to if the director did not act in conformance with the standard of care as set forth in section 7-108-401.

(b) No provision pursuant to paragraph (a) of this subsection (2) shall eliminate or limit the liability of a director or officer to the cooperative or its members for monetary damages for any act or omission occurring prior to the date when such provision becomes effective.

(c) A distribution of stock or other equity repurchase is unlawful if it renders the cooperative unable to pay its debts as they become due in the usual course of business or, unless the articles permit otherwise, causes the assets to be less than the liabilities plus the amount necessary to satisfy the interests of the holders of securities or other equity capital preferential to those receiving the distribution, if dissolved at the time of the distribution.

(d) No director or officer shall be personally liable for any tort committed by an employee unless the director or officer was personally involved.

(e) Unless otherwise provided in the articles or bylaws, each director shall discharge the duties as a director, including duties as a member of a committee, in accordance with the provisions of section 7-108-401. Unless otherwise provided in the articles or bylaws, each officer with discretionary authority shall discharge such officer's duties under that authority in accordance with the provisions of section 7-108-401. For purposes of this subsection (2), references to "corporation" and "shareholders" in section 7-108-401 shall be construed as referring to "cooperative" and "members" respectively.

Source: L. 96: Entire article R&RE, p. 504, § 1, effective July 1. **L. 98:** (2)(e) added, p. 612, § 4, effective July 1. **L. 2003:** (1) amended, p. 2227, § 86, effective July 1, 2004. **L. 2004:** (2)(e) amended, p. 1414, § 50, effective July 1.

Editor's note: This section is similar to former § 7-56-107.5 as it existed prior to 1996.

7-56-407. Persons to be bonded.

At the discretion of the board of a cooperative, any officer, employee, or agent handling funds or negotiable instruments or property of or for the cooperative may be bonded for the faithful performance of the person's duties and obligations.

Source: L. 96: Entire article R&RE, p. 505, § 1, effective July 1.

Editor's note: This section is similar to former § 7-56-115 as it existed prior to 1996.

7-56-408. Registered office and registered agent - repeal. (Repealed)

Source: L. 96: Entire article R&RE, p. 505, § 1, effective July 1. **L. 2002:** IP(2), (3)(a), and (4) amended, p. 1817, § 23, effective July 1; IP(2), (3)(a), and (4) amended, p. 1682, § 21, 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.)

7-56-409. Registered agent - service of process.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to cooperatives formed under or subject to this article.

Source: L. 2003: Entire section added, p. 2227, § 87, effective July 1, 2004.

PART 5

POWERS AND PURPOSES: APPLICATION OF OTHER LAWS

7-56-501. Powers.

(1) Every cooperative has the power, except as specifically limited by this article or by its own articles or bylaws:

(a) To have perpetual existence and succession by its domestic entity name unless limited by the articles;

(b) To sue and be sued and to complain and defend in courts of law and equity;

(c) To make and use a common seal, alter the same at its pleasure, 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;

(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, including any other cooperative, 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, which may be convertible into or include the option to purchase other securities of the cooperative; 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;

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

(j) To conduct its business, locate offices, and exercise the powers granted by this article within or outside this state;

(k) To elect directors and officers and appoint employees and agents of the cooperative, define their duties, fix their compensation, and lend them money and credit;

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

(m) To make payments or donations for the public welfare or for charitable, scientific, or educational purposes;

(n) To regulate and limit the right of members to transfer their memberships, stock, or other equity;

(o) To make and amend its articles and bylaws for the management of its affairs and to make provisions in its articles for the terms and limitations of stock ownership or membership and for the distribution of its earnings;

(p) To indemnify its directors, officers, employees, and agents to the extent provided or permitted in this article and to eliminate or limit the personal liability of a director, officers, employees, or agents of the cooperative, as provided in accordance with section 7-56-406; however, no such provision shall eliminate or limit the liability of a director or officer to the association or to its members for monetary damages for any act or omission occurring prior to the effective date of such provision;

(q) To establish in its bylaws procedures for the disposition of funds when declared payable by the cooperative and unclaimed by the holder three years after notification has been mailed to the holder's last-known address of record on the books of the cooperative, which disposition may consist of transferring the funds to the general operating account of the cooperative;

(r) To establish, secure, own, and develop patents, trademarks, and copyrights;

(s) To make advance payments and advances to members;

(t) To act as the agent or representative of any member for any lawful purpose or in any lawful transaction of the cooperative;

(u) To purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the stock or bonds of any person engaged in any lawful activity;

(v) To allocate earnings and pay patronage dividends;

(w) To use per unit retains;

(x) To prohibit or place limitations on amounts or rates of dividends payable on any class of capital stock or other equity investment in the cooperative;

(y) To engage in any activity in connection with the purchase, hiring, or use by its members or other patrons of goods, services, products, equipment, supplies, utilities, telecommunications, housing, or health care;

(z) To establish amounts for reasonable and necessary reserves for bad debts, obsolescence, grain, quality and grade, contingent losses, working capital, debt retirement, buildings and equipment, and ownership retirement and to provide that no member or other person entitled to share in the allocation of the cooperative's net margins or other funds shall have any rights except upon dissolution when the entire reserve funds of the cooperative shall be distributed in accordance with applicable federal, state, and local law and the articles and bylaws of the cooperative;

(aa) To manufacture, sell, or supply goods, machinery, equipment, supplies, or services to its members and to other patrons or persons;

(aa.5) To adopt a trade name;

(bb) To finance one or more of the activities in this section; and

(cc) To perform every other form or type of act that is necessary or proper for accomplishing any lawful purpose of the cooperative not prohibited to it by law or its articles and bylaws or that is conducive to or expedient for the interest or benefit of the cooperative.

(2) In addition to the powers granted in subsection (1) of this section, each agricultural cooperative incorporated under this article has the following powers:

(a) To engage in any activity in connection with the marketing, selling, preserving, raising, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, and utilization of any products, by-products, or services produced or delivered to the cooperative by its members or other patrons;

(b) To engage in any activity in connection with agricultural education and research and to represent its members' interests in legislative and administrative forums.

(3) In addition to the powers specifically given in this article, a cooperative has all powers, rights, and privileges granted by the law of this state to domestic corporations or domestic nonprofit corporations that are not inconsistent with the provisions of this article.

(4) The powers enumerated in this article shall vest in every cooperative in this state formed under this article, or that has elected to be subject to this article, although they may not be stated in its charter or in its articles.

Source: L. 96: Entire article R&RE, p. 507, § 1, effective July 1. **L. 98:** (1)(aa.5) added, p. 612, § 5, effective July 1. **L. 2000:** (1)(a) amended, p. 951, § 12, effective July 1. **L. 2003:** (3) and (4) amended, p. 2228, § 88, effective July 1, 2004.

Editor's note: This section is similar to former § 7-56-107 as it existed prior to 1996.

7-56-502. Marketing or purchasing contracts.

Cooperatives limiting membership to agricultural producers may make and execute marketing or purchasing contracts requiring the members to sell or purchase, for any period of time not over ten years, all or any specified part of their agricultural products or specified commodities, goods, services, or input supplies exclusively to or through the cooperative or any facilities

utilized or to be created by the cooperative. If such producers contract to sell to the cooperative, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the cooperative upon delivery or at any other specified time if expressly and definitely agreed to in the contract. The contract may provide, among other things, that the cooperative may sell or resell the products delivered by its members with or without taking title to the products and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including interest or dividends on stock which shall not exceed eight percent per annum, and reserves for proper purposes.

Source: L. 96: Entire article R&RE, p. 510, § 1, effective July 1.

Editor's note: This section is similar to former § 7-56-119 as it existed prior to 1996.

ANNOTATION

Annotator's note. Since § 7-56-502 is similar to § 7-56-119 as it existed prior to the 1996 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Standard cooperative marketing agreements made before they were authorized by this article have been held to be void as in contravention of public policy because in restraint of trade or competition. Burns v. Wray Farmers' Grain Co., 65 Colo. 425, 176 P. 487 (1918); Campbell v. People, 72 Colo. 213, 210 P. 841 (1922); Johnson v. People, 72 Colo. 218, 210 P. 843 (1922); Atkinson v. Colo. Wheat Growers' Ass'n, 77 Colo. 559, 238 P. 1117 (1925); Colo. Wheat Growers' Ass'n v. Thede, 80 Colo. 529, 253 P. 30 (1927); Mtn. States Beet Growers' Mkt. Ass'n v. Monroe, 84 Colo. 300, 269 P. 886 (1928).

But such contracts are valid where there is a concurrence of the following conditions: The agreement was made after this article was passed; it was authorized by this law and executed in compliance therewith; it was made by and between an association formed under this article and a member of such association. Rifle Potato Growers' Coop. Ass'n v. Smith, 78 Colo. 171, 240 P. 937 (1925); Colo. Wheat Growers' Ass'n v. Thede, 80 Colo. 529, 253 P. 30 (1927).

Rejection of a contract for the growing of a crop is held within the discretionary powers of the marketing association of which the growers are members, where such power is not arbitrarily exercised. Mtn. States Beet Growers' Mkt. Ass'n v. Monroe, 84 Colo. 300, 269 P. 886 (1928).

But rejection by a marketing association of a growing contract and its refusal to release a member from his

obligations under his membership contract was arbitrary and without just grounds or excused where the association, in its negotiations, had stated that the tendered contract was acceptable in all its terms and would be approved by the association on condition that another contract be entered into with it for the purchase of its members' crops for the three subsequent years, which the purchaser declined to do. Mtn. States Beet Growers' Mkt. Ass'n v. Monroe, 84 Colo. 300, 269 P. 886 (1928).

Marketing contract based on good consideration. A marketing contract between an association and producer by which the former agrees to buy, resell, and give the latter something out of the proceeds is based on a good consideration. Rifle Potato Growers' Coop. Ass'n v. Smith, 78 Colo. 171, 240 P. 937 (1925).

And a marketing contract was not breached by a marketing association because it turned sales over to brokers, the contract giving it power to sell to dealers, shippers, or otherwise. Rifle Potato Growers' Coop. Ass'n v. Smith, 78 Colo. 171, 240 P. 937 (1925).

An assignment of a claim in a marketing contract by a member is not against public policy or unconstitutional, for an assignment of a chose in action is neither against public policy nor unconstitutional; and although the cooperative contract itself might be against public policy and unconstitutional, that matter is of no concern, for whether other parts of a contract are open to these objections is irrelevant to the propriety of such an assignment. Austin v. Colo. Dairymen's Coop. Ass'n, 81 Colo. 546, 256 P. 640 (1927).

A tenant who leases with the knowledge that his landlord has entered into a contract with a cooperative association for the marketing of his products is charged with knowledge of the provisions of this article concerning such contracts. Wilson v. Monte Vista Potato Growers' Coop. Ass'n, 82 Colo. 428, 260 P. 1080 (1927).

For the provisions of this article constitute an essential part of a lease between the owner of land, who is a party to such a contract, and his tenant, who has knowledge of the contract, as much so as if its provisions were incorporated in the lease. Wilson v. Monte Vista Potato Growers' Coop. Ass'n, 82 Colo. 428, 260 P. 1080 (1927).

7-56-503. Remedies for breach of marketing or purchasing contract.

(1) The bylaws or the marketing or purchasing contracts of an agricultural cooperative may fix as liquidated damages specific sums to be paid by a member to the cooperative upon the breach by the member of any provision of the marketing or purchasing contract regarding the sale, purchase, receipt, or delivery or withholding of products or other goods and may further provide that the member will pay all costs, premiums for bonds, expenses, and fees if any action is brought upon the contract by the cooperative. All such provisions shall be valid and

enforceable in the courts of this state, and clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

(2) In the event of any breach or threatened breach of a marketing or purchasing contract by a member, the cooperative shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action and upon filing a sufficient bond and verified complaint showing the breach or threatened breach, the cooperative shall be entitled to a temporary restraining order and preliminary injunction against the member.

(3) In any action upon a marketing contract, it shall be conclusively presumed that a landowner, landlord, or lessor is able to control the delivery of products or other goods produced on such landowner's, landlord's, or lessor's land by tenants or others whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor on such land was created or changed after execution by the landowner, landlord, or lessor of such marketing contract. The remedies provided in this section for nondelivery or breach shall lie and be enforceable against such landowner, landlord, or lessor in any such action upon a marketing contract.

Source: L. 96: Entire article R&RE, p. 510, § 1, effective July 1.

Editor's note: This section is similar to former § 7-56-120 as it existed prior to 1996.

ANNOTATION

I. General Consideration.

II. Liquidated Damages.

III. Injunctions and Specific Performance.

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Cases on Contracts", see 33 Dicta 57 (1956).

Annotator's note. Since § 7-56-503 is similar to §7-56-120 as it existed prior to the 1996 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

II. LIQUIDATED DAMAGES.

This section provides that the bylaws or the marketing contract may fix as liquidated damages for the breach of marketing contracts specific sums to be paid by the members or stockholders to the association upon the breach of any of the provisions of the marketing contract regarding the sale, delivery, or withholding of products. Marvin v. Pueblo Dairymen's Coop., 131 Colo. 601, 284 P.2d 238 (1955).

And the term "liquidated damages" indicates the amount which the contracting parties agree is to be in satisfaction on account of the breach, with the amount thus agreed upon being enforceable. Marvin v. Pueblo Dairymen's Coop., Inc., 131 Colo. 601, 284 P.2d 238 (1955).

Thus, since the payment or collection of the amount of liquidated damages specified puts an end to all claims in connection therewith, the matter of the right to a restraining order or injunction would depend entirely upon the conditions of the marketing agreement. Marvin v. Pueblo Dairymen's Coop., 131 Colo. 601, 284 P.2d 238 (1955).

III. INJUNCTIONS AND SPECIFIC PERFORMANCE.

Contract not invalid for permitting injunction or specific performance. A marketing contract drawn under the provisions of this article is not invalid because it permits an injunction or specific performance for the enforcement of its terms. Rifle Potato Growers' Coop. Ass'n v. Smith, 78 Colo. 171, 240 P. 937 (1925).

If there is a conspiracy between a party to a marketing association contract and another to escape the obligations of the contract, then an injunction is properly granted against both of them. Monte Vista Potato Growers' Coop. Ass'n v. Bond, 80 Colo. 516, 252 P. 813 (1927).

7-56-504. Inducing breach of marketing or purchasing contract.

Any person who knowingly induces any member of an agricultural cooperative formed under this article, or under similar statutes of another jurisdiction with similar restrictions and rights and operating in this state, to break the member's marketing or purchasing contract or agreement with the cooperative shall be subject to all available civil remedies, including but not limited to injunctive relief.

Source: L. 96: Entire article R&RE, p. 511, § 1, effective July 1. **L. 2003:** Entire section amended, p. 2228, § 89, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1414, § 51, effective July 1.

Editor's note: This section is similar to former § 7-56-128 as it existed prior to 1996.

ANNOTATION

Annotator's note. Since § 7-56-504 is similar to § 7-56-128 as it existed prior to the 1996 repeal and reenactment of this article, relevant cases construing that

provision have been included in the annotations to this section.

The intent to protect cooperative marketing associations against unlawful interference is clear, and this section is intended to cover just such situations. Rinnander v. Denver Milk Producers, 114 Colo. 506, 116 P.2d 984 (1946).

For one who carries on a lawful business has a property right therein and is entitled to protection against unlawful interference with that right. Fort v. Coop. Farmers' Exch., 81 Colo. 431, 256 P. 319 (1927).

The provision as to liability in a civil suit in a penal sum is deemed a civil statute. Rinnander v. Denver Milk Producers, 114 Colo. 506, 166 P.2d 984 (1946).

And thus this provision is not to be strictly construed. Rinnander v. Denver Milk Producers, 114 Colo. 506, 166 P.2d 984 (1946).

Such interference is actionable civilly. The general assembly has power to make solicitation from, and interference with, members of a cooperative marketing association by another actionable civilly. Fort v. Coop. Farmers' Exch., 81 Colo. 431, 256 P. 319 (1927).

And may be restrained by court order. Knowingly to induce or to attempt to induce a member of a cooperative marketing association to break his marketing contract with the association is a misdemeanor, and being an unlawful interference such act may be restrained by order of court. Fort v. People ex rel. Coop. Farmers' Exch., 81 Colo. 420, 256 P. 325 (1927); Fort v. Coop. Farmers' Exch., 81 Colo. 431, 256 P. 319 (1927).

Where facts reveal that one "knowingly" induces an association member to breach his contract, the association is entitled to recover. Rinnander v. Denver Milk Producers, 114 Colo. 506, 166 P.2d 984 (1946).

Furthermore, one may not escape liability on ground he is not an association member. One may not knowingly and designedly join in an attempt to breach a marketing contract and escape liability on the grounds that he is not a member of the association and not a party to the contract. Monte Vista Potato Growers' Coop. Ass'n v. Bond, 80 Colo. 516, 252 P. 813 (1927).

7-56-505. Purchases of property or other interests.

If a cooperative with preferred stock or preferred equity purchases or otherwise acquires any interest in any property, stock, or interest in another entity, it may, with the consent of the person or persons from whom the property or interests are being acquired, discharge the obligations incurred in the purchase or other acquisition, wholly or in part, by exchanging for the acquired property, stock, or interest shares or amounts of its preferred stock or preferred equity in an amount that, at par or stated value, would equal the value of the property, stock, or interest so purchased, as determined by the board. A transfer to the cooperative of the property, stock, or

interest purchased or otherwise acquired shall be equivalent to payment in cash for the shares or amounts of preferred stock or preferred equity issued by the cooperative.

Source: L. 96: Entire article R&RE, p. 511, § 1, effective July 1.

7-56-506. Warehouse receipts - interest in warehouse entities.

If a cooperative formed under or that has elected to be subject to this article organizes, forms, operates, owns, controls, has an interest in, owns stock of, or is a member of any commodities warehouse, the warehouse may issue legal warehouse receipts to the cooperative against the commodities delivered by it or to any other person, and any legal warehouse receipt shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented by the receipt. If the warehouse is licensed or licensed and bonded under the law of this state, any other state, or the United States, its warehouse receipt delivered to the cooperative on commodities of the cooperative or its members or delivered by the cooperative or its members shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the cooperative.

Source: L. 96: Entire article R&RE, p. 511, § 1, effective July 1. **L. 2003:** Entire section amended, p. 2228, § 90, effective July 1, 2004.

Editor's note: This section is similar to former § 7-56-125 as it existed prior to 1996.

Cross references: For other duties and liabilities of warehouses, see article 7 of title 4 and part 2 of article 36 of title 35.

7-56-507. Application of other laws.

(1) If a matter is not addressed in this article, the "Colorado Business Corporation Act", articles 101 to 117 of this title, shall apply to the cooperatives formed under or subject to this article; except that a cooperative may elect to have the provisions of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, apply to it if such cooperative does so in its articles or by a resolution of its members that is delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title that states that the cooperative elects to have the provisions of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title,

apply to it. A cooperative may revoke such election by amending its articles or by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of change that states that the cooperative revokes its election to have the provisions of the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, apply to it and that the revocation of such election has been approved by resolution of its members.

(2) Any exemptions under any existing law applying to goods or agricultural products in the possession or under the control of an individual producer shall apply similarly and completely to such goods or products when delivered by its members to, and in the possession or under the control of, the cooperative.

Source: L. 96: Entire article R&RE, p. 511, § 1, effective July 1. **L. 97:** (1) amended, p. 760, § 22, effective July 1, 1998. **L. 2002:** (1) amended, p. 1818, § 24, effective July 1; (1) amended, p. 1682, § 22, effective October 1. **L. 2003:** Entire section amended, p. 2228, § 91, effective July 1, 2004.

Editor's note: This section is similar to former §§ 7-55-116 and 7-56-130 as they existed prior to 1996.

7-56-508. Cooperatives not in restraint of trade.

No cooperative formed under or subject to this article shall solely by its organization and existence be deemed to be a conspiracy or a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily, nor shall the marketing or purchasing contracts and agreements between any cooperative and its members or any agreements authorized in this article be considered illegal as such, in unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

Source: L. 96: Entire article R&RE, p. 512, § 1, effective July 1. **L. 2003:** Entire section amended, p. 2229, § 92, effective July 1, 2004.

Editor's note: This section is similar to former § 7-56-129 as it existed prior to 1996.

ANNOTATION

Annotator's note. Since § 7-56-508 is similar to § 7-56-129 as it existed prior to the 1996 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

This section exempts cooperative marketing associations from the penalties and restrictions of the state's anti-trust law. Rifle Potato Growers' Coop. Ass'n v. Smith, 78 Colo. 171, 240 P. 937 (1925); Beatrice Creamery Co. v. Cline, 9 F.2d 176 (D. Colo. 1925).

And the general assembly does have the power to exempt such combinations from prosecution and dissolution as unlawful trusts. Rifle Potato Growers' Coop. Ass'n v. Smith, 78 Colo. 171, 240 P. 937 (1925); Beatrice Creamery Co. v. Cline, 9 F.2d 176 (D. Colo. 1925).

7-56-509. Exemption from securities laws.

Any security, patronage refund, per unit retain certificate, capital credit, evidence of membership, preferred equity certificate, or other equity instrument issued, sold, or reported by a cooperative as an investment in its stock or capital to the patrons of a cooperative formed under or subject to this article or a similar law of any other jurisdiction and authorized to transact business or conduct activities in this state is exempt from the securities laws contained in the "Colorado Securities Act", article 51 of title 11, C.R.S. Such securities, patronage refunds, per unit retain certificates, capital credits, or evidences of membership, preferred equity certificates or other equity instruments may be issued, sold, or reported lawfully by the issuer or its directors, officers, members, or salaried employees without the necessity of the issuer or its directors, officers, members, or employees being registered as brokers or dealers under the "Colorado Securities Act", article 51 of title 11, C.R.S.

Source: L. 96: Entire article R&RE, p. 512, § 1, effective July 1. **L. 2003:** Entire section amended, p. 2229, § 93, effective July 1, 2004.

Editor's note: This section is similar to former § 7-55-115 as it existed in 1996.

7-56-510. Renewable energy cooperatives - powers.

(1) In addition to the powers granted in this article, renewable energy cooperatives may generate electricity from renewable resources or technologies and transmit and sell electricity at wholesale.

(2) No renewable energy cooperative shall sell electricity at retail or have a certificated territory in the state except as allowed for its own service or pursuant to public utility law or other legal authority.

Source: L. 2004: Entire section added, p. 1122, § 2, effective May 27.

PART 6

PROPERTY ENCUMBRANCES, BUSINESS COMBINATIONS, AND PROPERTY SALES

7-56-601. Encumbering property.

The board of a cooperative has full power and authority, without approval of its members, to mortgage, pledge, encumber, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the cooperative's property, whether or not in the usual and regular course of business, and to execute and deliver mortgages, deeds of trust, security agreements, or other instruments for such purposes.

Source: L. 96: Entire article R&RE, p. 512, § 1, effective July 1.

7-56-602. Merger, conversion, or consolidation or share or equity capital exchange.

(1) One or more cooperatives formed under or that have elected to be subject to this article may be merged, consolidated, or shares or equity capital exchanged with another domestic cooperative or another domestic entity, or may convert to any form of entity permitted by section 7-90-201, upon such terms, for such purpose, and by such domestic entity name as may be agreed upon, which domestic entity name shall comply with part 6 of article 90 of this title.

(2) (a) With respect to a cooperative that is a party to a plan of merger, conversion, consolidation, or share or equity capital exchange, unless a different vote is required by the articles or bylaws, the plan shall be approved by a two-thirds majority of all the members of the board of the cooperative and by a two-thirds majority of the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1). If a higher or lower percentage vote of members is required by the articles or bylaws for approval, not less than a majority of those present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1) nor more than a two-thirds majority of all voting members of the cooperative shall be required.

(b) A cooperative shall not permit proportional voting to apply to a vote of members on a plan of merger, conversion, consolidation, or share or equity capital exchange pursuant to this section.

(c) If voting by mail is permitted, the notice of the meeting shall be mailed to each member and have a mail ballot attached to it.

(d) A cooperative may establish different requirements for plans between or among two or more cooperatives and for plans where a noncooperative entity is a party to the plan.

(e) The vote required for approval of a plan by an entity that is a party to the plan and that is not a cooperative entity shall be governed by the law applicable to the noncooperative entity.

(3) If a party to the merger, conversion, consolidation, or share or equity capital exchange is the owner of real property in the state of Colorado and the merger, conversion, consolidation, or share or equity capital exchange would affect the title to the real property, a copy of a statement of merger, conversion, consolidation, or share or equity capital exchange, certified by the secretary of state, shall be filed for record in the office of the county clerk and recorder in the county or counties in which the real property is situated.

Source: L. 96: Entire article R&RE, p. 512, § 1, effective July 1. **L. 2002:** (3) amended, p. 1818, § 25, effective July 1; (3) amended, p. 1682, § 23, effective October 1. **L. 2003:** (1) and (2)(e) amended, p. 2229, § 94, effective July 1, 2004. **L. 2004:** (3) amended, p. 1414, § 52, effective July 1. **L. 2006:** (3) amended, p. 848, § 2, effective July 1. **L. 2007:** (1), (2)(a), (2)(b), and (3) amended, p. 219, § 3, effective May 29.

Editor's note: This section is similar to former §§ 7-55-112, 7-56-108, 7-56-121, and 7-56-126 as they existed prior to 1996.

7-56-603. Procedure for consolidation, share or equity capital exchange, conversion, and merger.

(1) A plan for consolidation or share or equity capital exchange must state the following:

(a) The entity name of each entity planning to consolidate or exchange shares or equity capital and the principal office address of its principal office;

(b) The entity name of the surviving entity, or of the acquiring entity, and the principal office address of its principal office;

(c) A statement that the consolidating entities are consolidated with the surviving entity, or that the acquiring entity is acquiring shares or equity capital of the other entities, and the section of this article pursuant to which the consolidation or exchange is effected;

(d) Any amendments to the articles of the surviving party to be effected by the consolidation or equity capital exchange; and

(e) With respect to agricultural and other cooperatives exempted from the operation of laws such as the federal and state securities or antitrust laws, any steps necessary to maintain such exemption if the cooperative wishes to maintain such status.

(2) The plan of consolidation or share or equity capital exchange may state any other provisions relating to the consolidation or share or equity capital exchange.

(2.3) A plan of conversion shall comply with section 7-90-201.3.

(2.7) A plan of merger shall comply with section 7-90-203.3.

(3) Nothing in this section shall be deemed to limit the power of a cooperative or other entity to acquire all or part of the shares or equity capital of another cooperative through a voluntary exchange or through an agreement with the members of such other cooperative.

Source: L. 96: Entire article R&RE, p. 513, § 1, effective July 1. **L. 2003:** IP(1), (1)(a) to (1)(d), and (2) amended, p. 2230, § 95, effective July 1, 2004. **L. 2004:** (1)(d) RC&RE, p. 1415, § 53, effective July 1. **L. 2007:** IP(1), (1)(a), (1)(c), (1)(d), and (2) amended and (2.3) and (2.7) added, p. 220, § 4, effective May 29. **L. 2019:** IP(1), (1)(c), and (1)(d) amended, (SB 19-086), ch. 166, p. 1964, § 64, effective July 1, 2020.

Editor's note: This section is similar to former §§ 7-55-112, 7-56-108, 7-56-121, and 7-56-126 as they existed prior to 1996.

7-56-604. Merger of parent and subsidiary.

(1) Notwithstanding the provisions of sections 7-56-602 and 7-56-603, by complying with the provisions of this section, any parent cooperative owning one hundred percent of the voting shares, memberships, or interests and having a right to vote of a subsidiary may either merge such subsidiary into itself or merge itself into such subsidiary.

(2) The boards of the parent cooperative and of the subsidiary shall adopt by resolution, and the members of both the parent cooperative and the subsidiary shall approve, a plan of merger that states the following:

(a) The entity names of the parent cooperative and subsidiary and the entity name of the surviving party;

(b) The terms and conditions of the proposed merger;

(c) The manner and basis of converting the shares of the parent cooperative and subsidiary into shares, obligations, or other securities of the surviving party or any other cooperative into money or other property in whole or part;

(d) Any amendments to the articles of the surviving party to be effected by the merger; and

(e) Any other provisions relating to the merger as are deemed necessary or desirable.

(3) The members of the parent cooperative shall not be required to vote on the merger unless the articles, bylaws, or the board requires otherwise; except that if, as a result of the merger, the voting shares, memberships, or other interests of members of the parent cooperative would be materially altered, then the members of the parent cooperative shall have the right to vote on the plan of merger. If the members of the parent cooperative have the right to vote on the plan of merger, the parent cooperative shall mail a copy or summary of the plan of merger to each member of the parent cooperative who has the right to vote on the plan and all parties to the merger. Notice and meeting requirements as provided for in this article shall apply.

(4) If the members of the parent cooperative have the right to vote on the plan of merger, unless the articles, bylaws, or the board requires a greater or lesser vote, the plan of merger, consolidation, or share or equity capital exchange shall be approved by a majority of the members of the parent cooperative present and voting on the plan in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1). Upon approval of a plan of merger pursuant to this section, a statement of merger shall be delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title, and a copy of the statement of merger, certified by the secretary of state, shall be filed for record in each of the counties, if any, in which such filing is required by section 7-56-602 (3).

(5) (Deleted by amendment, L. 98, p. 612, § 6, effective July 1, 1998.)

Source: L. 96: Entire article R&RE, p. 514, § 1, effective July 1. **L. 98:** IP(2), (3), (4), and (5) amended, p. 612, § 6, effective July 1. **L. 2002:** (4) amended, p. 1818, § 26, effective July 1; (4) amended, p. 1682, § 24, effective October 1. **L. 2003:** IP(2) and (2)(a) amended, p. 2230, § 96, effective July 1, 2004. **L. 2004:** (2)(a) amended, p. 1415, § 54, effective July 1. **L. 2006:** (4) amended, p. 849, § 3, effective July 1.

Editor's note: This section is similar to former §§ 7-55-112, 7-56-108, 7-56-121, and 7-56-126 as they existed prior to 1996.

7-56-604.5. Statement of merger or conversion.

(1) After a plan of merger is approved, the surviving entity 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 entity, the surviving entity shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment effecting the amendments.

(2) After a plan of conversion is approved, the converting entity 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. 2004: Entire section added, p. 1415, § 55, effective July 1. **L. 2007:** Entire section amended, p. 220, § 5, effective May 29.

7-56-605. Statement of consolidation or share or equity capital exchange.

(1) (Deleted by amendment, L. 2004, p. 1415, § 56, effective July 1, 2004.)

(2) After a plan of consolidation or share or equity capital exchange is approved by all necessary action of all parties, the acquiring entity shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title 7, a statement of consolidation or a statement of exchange stating:

(a) The entity name of each entity that is a party to the consolidation or the shares of which will be acquired and the principal office address of its principal office;

(b) The entity name of the consolidated or acquiring entity and the principal office address of its principal office; and

(c) The effective date of the consolidation or share or equity capital exchange.

(c.5) and (d) (Deleted by amendment, L. 2004, p. 1415, § 56, effective July 1, 2004.)

(3) The consolidation or share or equity capital exchange shall be effective as provided in section 7-90-304.

Source: L. 96: Entire article R&RE, p. 515, § 1, effective July 1. **L. 2002:** (1), IP(2), and (3) amended, p. 1818, § 27, effective July 1; (1), IP(2), and (3) amended, p. 1683, § 25, effective

October 1. **L. 2003:** IP(2), (2)(c), and (2)(d) amended and (2)(c.5) added, p. 2230, § 97, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1415, § 56, effective July 1. **L. 2019:** IP(2) amended, (SB 19-086), ch. 166, p. 1965, § 65, effective July 1, 2020.

Editor's note: This section is similar to former §§ 7-55-112, 7-56-108, 7-56-121, and 7-56-126 as they existed prior to 1996.

7-56-606. Effect of merger, conversion, consolidation, or share or equity capital exchange.

(1) The effect of a merger is determined by section 7-90-204.

(2) The effect of a conversion is determined by section 7-90-202.

(3) When a consolidation takes effect:

(a) Each nonsurviving party to the consolidation consolidates into the surviving party, and the separate existence of every party to the consolidation except the surviving party ceases;

(b) The title to all real estate and other property owned by each nonsurviving party is transferred to and vested in the surviving party without reversion or impairment. Such transfer to and vesting in the surviving party shall be deemed to occur by operation of law, and no consent or approval of any other person shall be required in connection with any such transfer or vesting unless such consent or approval is specifically required in the event of consolidation by law or by express provision in any contract, agreement, decree, order, or other instrument to which any of the parties so consolidated is a party or by which it is bound.

(c) The surviving party has all liabilities of each party to the consolidation;

(d) A proceeding pending against any party to the consolidation may be continued as if the consolidation did not occur or the surviving party may be substituted in the proceeding for the party whose existence ceased;

(e) The articles of the surviving party are amended to the extent provided in the plan of consolidation; and

(f) The shares of each such party to the consolidation that are to be converted into shares, obligations, or other securities of the surviving or any other party or into money or other property are converted, and the former holders of the shares or equity capital are entitled only to the rights provided in the statement of consolidation.

(4) When a share or equity capital exchange takes effect, the shares or equity capital of each acquired party are exchanged as provided in the plan, and the former holders of the shares or

equity capital are entitled only to the exchange rights provided in the articles of share or equity capital exchange.

Source: L. 96: Entire article R&RE, p. 515, § 1, effective July 1. **L. 2004:** (1) amended, p. 1416, § 57, effective July 1. **L. 2007:** Entire section amended, p. 220, § 6, effective May 29.

Editor's note: This section is similar to former §§ 7-55-112, 7-56-108, 7-56-121, and 7-56-126 as they existed prior to 1996.

7-56-606.5. Merger with foreign entity.

(1) One or more domestic cooperatives may merge with one or more foreign entities if:

(a) The merger is permitted by section 7-90-203 (2);

(b) The foreign entity complies with section 7-90-203.7 if it is the surviving entity of the merger; and

(c) Each domestic cooperative complies with the applicable provisions of sections 7-56-602 and 7-56-603 and, if it is the surviving cooperative of the merger, with section 7-56-604.5.

(2) Upon the merger taking effect, the surviving foreign entity of a merger shall comply with section 7-90-204.5.

Source: L. 2007: Entire section added, p. 222, § 7, effective May 29.

7-56-607. Consolidation or share or equity capital exchange with foreign business.

(1) One or more domestic cooperatives may consolidate or enter into a share or equity capital exchange with one or more foreign entities if:

(a) In a consolidation, the consolidation is permitted by the law of the jurisdiction under which each foreign entity is formed and each foreign entity complies with that law in effecting the consolidation;

(b) In a share or equity capital exchange, the cooperative whose shares or equity will be acquired is a domestic or foreign cooperative, and if a share or equity capital exchange is permitted by the law of the jurisdiction under the law of which the acquiring entity is formed;

(c) The foreign entity complies with the provisions of section 7-56-605 if it is the surviving or new entity in a consolidation or acquiring entity in a share or equity capital exchange; and

(d) The foreign entity is the surviving entity in the consolidation or the acquiring entity of the share or equity capital exchange and it complies with section 7-56-605.

(1.5) (Deleted by amendment, L. 2007, p. 222, § 8, effective May 29, 2007.)

(2) Upon the consolidation or share or equity capital exchange taking effect, the surviving foreign entity of a consolidation and the acquiring foreign entity of a share or equity capital exchange:

(a) Shall either:

(I) Appoint a registered agent if the foreign entity has no registered agent and maintain a registered agent pursuant to part 7 of article 90 of this title, whether or not the foreign entity is otherwise subject to that part, to accept service in any proceeding based on a cause of action arising with respect to any domestic entity that is merged into the foreign entity or the ownership interests of which are acquired in a share or equity capital exchange; or

(II) Be deemed to have authorized service of process on it in connection with any such proceeding by mailing in accordance with section 7-90-704 (2); and

(b) Shall comply with part 8 of article 90 of this title if it is to transact business or conduct activities in this state.

(3) (Deleted by amendment, L. 2004, p. 1417, § 58, effective July 1, 2004.)

(4) Subsection (2) of this section does not prescribe the only means, or necessarily the required means, of serving a surviving foreign entity in a consolidation or an acquiring foreign entity in a share or equity capital exchange.

(5) This section does not limit the power of a foreign entity to acquire all or part of the shares of one or more classes or series of a domestic cooperative through a voluntary exchange of shares or otherwise.

Source: L. 96: Entire article R&RE, p. 516, § 1, effective July 1. **L. 2002:** (2)(a)(II) amended, p. 1819, § 28, effective July 1; (2)(a)(II) amended, p. 1683, sect; 26, effective October 1. **L. 2003:** (1)(a), (1)(b), and (2) amended, p. 2231, § 98, effective July 1, 2004. **L. 2004:** (1)(c), (1)(d), IP(2), (2)(a)(II), (3), and (4) amended and (1.5) added, p. 1417, § 58, effective July 1. **L. 2006:** (1)(d) amended, p. 1488, § 4, effective June 1. **L. 2007:** (1), (1.5), and (2)(a)(I) amended, p. 222, § 8, effective May 29.

Editor's note: This section is similar to former §§ 7-55-112, 7-56-108, 7-56-121, and 7-56-126 as they existed prior to 1996.

7-56-608. Dissenters' rights - definitions.

(1) As used in this section:

(a) "Dissenter" means a member eligible to vote who exercises the right to dissent provided in this section at the time and in the manner required by this section.

(b) "Interest" means interest required to be paid pursuant to this section at the average rate currently paid by the cooperative subject to this section on its principal bank loans or, if none, at the legal rate specified in section 5-12-101, C.R.S.

(c) "Stated value" means the original cost paid by a person for capital stock or membership fees, as recorded in the records of the cooperative, in order to qualify for membership and the right to vote in the cooperative, and for other equity capital the amount stated in the records of the cooperative that is required to make a payment under this section.

(2) If the board of a cooperative subject to this article submits to the members of the cooperative for approval a plan of merger, conversion, consolidation, or share or equity capital exchange and if following the merger, conversion, consolidation, or share or equity capital exchange there will be members of any cooperative involved in the proposed transaction who would no longer be eligible for membership or other voting interest in the surviving or resulting entity, the ineligible members shall be entitled to repayment of their equity interests in the cooperative in accordance with this section.

(3) If the board of a cooperative subject to this article submits to the members of the cooperative for approval a plan to sell all or substantially all of the cooperative's assets and not dissolve following the sale, the members of the cooperative shall be entitled to repayment of their equity interests in the cooperative in accordance with this section.

(4) A cooperative that proposes to be a party to a merger, conversion, consolidation, share or equity capital exchange, or a sale of assets, as described in subsection (2) or (3) of this section, shall include in the notice of the membership meeting at which the vote of the members is taken thereon an explanation of the right to dissent and the requirement to give written notice of intent to demand payment by a member having the right to do so under this section.

(5) A member who may be entitled to repayment of the member's equity interests in the cooperative in accordance with this section shall give written notice of the member's intention to demand payment before the vote is taken at the membership meeting at which a vote on the proposed merger, conversion, consolidation, share or equity capital exchange, or sale of assets is to be taken. Upon giving notice, the member shall no longer be entitled to vote on the proposed

transaction. The written notice shall include the name of the member in which the stock or membership is held on the records of the cooperative and the member's address and social security or federal tax identification number. Failure to give written notice of intention to demand payment in the prescribed manner disqualifies the member from demanding payment under this section.

(6) If the merger, conversion, consolidation, share or equity capital exchange, or sale of assets described in subsection (2) or (3) of this section is approved by the members of the cooperative in the manner applicable to any other entity that is a party to the transaction, the surviving, resulting, or new entity, including a cooperative that is to sell all or substantially all of its assets, shall be required to make the payments provided in this section. The surviving, resulting, or new entity shall give written notice to all dissenters who have given notice to dissent pursuant to this section. The notice shall include the address at which the surviving, resulting, or new entity will receive payment demands, the requirement to submit stock or membership certificates or certification of the loss or destruction thereof, the period in which demands will be received which shall be not less than thirty days from the date of the notice, and where applicable, a statement of qualifications for membership or other voting interest in the surviving or new entity.

(7) Within the period stated in the notice described in subsection (6) of this section, a dissenter may deliver a written demand for payment to the surviving, resulting, or new entity, or in the case of a sale of assets subject to this section, to the cooperative selling its assets, stating the address to which payment is to be made and, where applicable, a statement as to the reasons why the dissenter no longer qualifies for membership or a voting interest in the surviving, resulting, or new entity.

(8) Within thirty days after receipt of a demand for payment, the surviving, resulting, or new entity or, in the case of a sale of assets subject to this section, the cooperative selling its assets shall pay to the dissenter:

(a) The stated value of the initial investment of the dissenter in stock or membership fees in the cooperative as recorded in the records of the cooperative made to qualify the dissenter to be a member of the cooperative; and

(b) The stated value of all other equity capital of the dissenter in the cooperative as recorded in the records of the surviving, resulting, or new entity, or in the case of a sale of assets subject to this section, of the cooperative selling its assets; except that, in the case of any merger, conversion, consolidation, or share or equity capital exchange, if the surviving, resulting, or new entity has, by written agreement or operation of law other than this section, become liable to repay the other equity capital of the dissenter, the repayment of other equity capital shall be made by the surviving, resulting, or new entity under the same conditions and time frame, but not more than fifteen years, that would have applied if the member or equity holder had withdrawn or been terminated from the cooperative that is not the surviving, resulting, or new entity immediately

prior to the effective date of the merger, conversion, consolidation, or share or equity capital exchange. If payment is not made on the date required by this subsection (8), the recipient shall be entitled to interest from the date the payment should have been made until the date payment is actually made.

(9) Notwithstanding any provisions of law to the contrary, holders of equity capital who are not members of the cooperative shall under no circumstances be entitled to dissenter's rights.

(10) Section 7-90-206 (2) applies to a conversion in which the cooperative is the converting entity.

Source: L. 96: Entire article R&RE, p. 517, § 1, effective July 1. **L. 2003:** (7) amended, p. 2232, § 99, effective July 1, 2004. **L. 2006:** (10) added, p. 849, § 4, effective July 1. **L. 2007:** (2), (4), (5), (6), (7), IP(8), and (8)(b) amended, p. 223, § 9, effective May 29.

Editor's note: This section is similar to former §§ 7-55-112, 7-56-108, 7-56-121, and 7-56-126 as they existed prior to 1996.

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

7-56-609. Sale or other disposition of property without member approval.

(1) A cooperative may, on the terms and conditions and for the consideration determined by the board:

(a) Sell, lease, exchange, or otherwise dispose of any of its property in the usual and regular course of business; except that a sale, lease, exchange, or other disposition of all, or substantially all, of its property shall never be considered to be in the usual and regular course of business;

(b) Transfer to itself any or all of the property of a domestic or foreign entity when all the voting rights of the transferor are owned, directly or indirectly, by the transferee cooperative.

(2) Unless otherwise provided in the articles or bylaws, approval by the members of a transaction described in subsection (1) of this section is not required.

Source: L. 96: Entire article R&RE, p. 520, § 1, effective July 1.

7-56-610. Sale or other disposition of property requiring member approval.

(1) A cooperative may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without its good will, only on the terms and conditions and for the consideration determined by the board and if the board proposes or submits and the members approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a cooperative, with or without its good will, in connection with its dissolution, 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 cooperative, with or without its good will, pursuant to a court order shall not be subject to the requirements of this section. If a resolution to dissolve the cooperative that is adopted by the members of a cooperative pursuant to section 7-56-702 contemplates the sale of all or substantially all of the cooperative's property in connection with the dissolution, the adoption of that resolution by the members shall also be an authorization to sell all or substantially all of the cooperative's property pursuant to this section.

(2) If a cooperative 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 its property with or without the good will of another entity that it controls, and if the shares or other interests held by the cooperative in such other entity constitute all, or substantially all, of the property of the cooperative, then the cooperative shall consent to such transaction only if its board proposes and its members 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, by a two-thirds majority vote of all its members, shall recommend the transaction or the consent to the members unless the board 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 submission of the transaction or the 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 may condition the effectiveness of the transaction or the consent on any basis.

(5) The cooperative shall give proper notice 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 cooperative; or

(II) In the case of action pursuant to subsection (2) of this section, the cooperative'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, shares or other interests of which are held by the cooperative and constitute all, or substantially all, of the property of the cooperative; 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) Member approval of a transaction or consent described in subsections (1) and (2) of this section shall require an affirmative vote of two-thirds majority of the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1); but the two-thirds voting requirement may be reduced to not less than a majority of the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1), or may be increased to up to two-thirds of all members entitled to vote, by a provision contained in the articles or bylaws of the cooperative. The cooperative may also provide in its articles or bylaws for different voting requirements with respect to a transaction between one or more cooperatives subject to this article or similar law of other states and between the cooperative and one or more entities formed under or subject to different law of this or other states. A cooperative may not permit proportional voting to apply to a vote of members with respect to the sale of all or substantially all of the property of the cooperative pursuant to this section.

(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, by a unanimous vote of the board or the vote of two-thirds of all the members.

(8) If the members do not approve of a transaction or consent as described in subsections (1) and (2) of this section, the board may prohibit the consideration and submittal of a similar proposal to the members for a period of two years following the members' vote.

Source: L. 96: Entire article R&RE, p. 520, § 1, effective July 1. **L. 2003:** (6) amended, p. 2232, § 100, effective July 1, 2004.

PART 7

DISSOLUTION

SUBPART 1

VOLUNTARY DISSOLUTION

7-56-701. Authorization of dissolution before issuance of memberships.

If a cooperative has not yet issued memberships, a majority of its directors or, if the initial directors designated in the articles have not met or if not designated in the articles have not been elected, a majority of its incorporators, may authorize the dissolution of the cooperative.

Source: L. 96: Entire article R&RE, p. 522, § 1, effective July 1.

Editor's note: This section is similar to former § 7-55-114 as it existed prior to 1996.

7-56-702. Authorization of dissolution after issuance of memberships.

(1) After memberships have been issued, dissolution of a cooperative may be authorized in the following manner:

(a) The board, by a two-thirds majority vote of all its members, shall first adopt a resolution recommending dissolution that conforms to the requirements of paragraph (c) of this subsection (1);

(b) The board shall submit the resolution adopted pursuant to paragraph (a) of this subsection (1) to the members;

(c) The resolution adopted pursuant to paragraph (a) of this subsection (1) shall state the reasons why the termination of the affairs of the cooperative is deemed advisable, the time by which it should be accomplished, whether or not the board may revoke dissolution, and the names of three persons and two alternates to act as trustees in liquidation who shall have all the powers of the board to do all things they deem necessary for the efficient distribution of claims to creditors, in liquidation and termination of the affairs of the cooperative, including the sale of all or substantially all of the cooperative's property as they deem necessary if the resolution also provides for a sale of the property. Such trustees and alternates need not be members of the cooperative. Any vacancies in the trusteeship shall be first filled by the designated alternates and then may be filled by such persons as may be designated by the remaining trustees.

(2) The board may condition the effectiveness of the dissolution on any basis.

(3) The cooperative shall give notice to each member of the regular or special meeting at which the resolution to dissolve will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposal to dissolve the cooperative. The notice shall contain or be accompanied by a copy of the proposal or a summary thereof, including a description of the proposed distribution of the cooperative's assets and, if voting by mail is permitted, with a mail ballot attached to it.

(4) The proposal to dissolve shall be approved by a two-thirds majority vote of the members present and voting in person or in any other manner authorized by the cooperative pursuant to section 7-56-305 (1) at a regular or special meeting called for such purpose. A cooperative shall not permit proportional voting to apply to a vote of members on a resolution to dissolve pursuant to this section.

Source: L. 96: Entire article R&RE, p. 522, § 1, effective July 1. **L. 98:** (1)(a) amended, p. 613, § 7, effective July 1. **L. 2007:** (3) amended, p. 224, § 10, effective May 29.

Editor's note: This section is similar to former § 7-55-114 as it existed prior to 1996.

7-56-703. Articles of dissolution.

(1) At any time after dissolution is authorized, the cooperative 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 cooperative;

(b) The principal office address of the cooperative's principal office; and

(c) That the cooperative is dissolved.

(d) to (f) (Deleted by amendment, L. 2004, p. 1418, § 59, effective July 1, 2004.)

(2) A cooperative is dissolved upon the effective date of its filed articles of dissolution.

(3) (Deleted by amendment, L. 2003, p. 2232, § 101, effective July 1, 2004.)

Source: L. 96: Entire article R&RE, p. 523, § 1, effective July 1. **L. 2002:** IP(1) amended, p. 1819, § 29, effective July 1; IP(1) amended, p. 1683, § 27, effective October 1. **L. 2003:** IP(1),

(1)(a), (1)(b), and (3) amended, p. 2232, § 101, effective July 1, 2004. **L. 2004:** (1) amended, p. 1418, § 59, effective July 1.

Editor's note: This section is similar to former § 7-55-114 as it existed prior to 1996.

7-56-704. Revocation of dissolution. (Repealed)

Source: L. 96: Entire article R&RE, p. 524, § 1, effective July 1. **L. 2002:** IP(3) and (4) amended, p. 1819, § 30, effective July 1; IP(3) and (4) amended, p. 1684, § 28, effective October 1. **L. 2003:** IP(3), (3)(a), and (4) amended and (5) added, p. 2232, § 102, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1418, § 60, effective July 1.

Editor's note: This section was similar to former § 7-55-114 as it existed prior to 1996.

7-56-705. Effect of dissolution.

(1) A dissolved cooperative continues its existence but may not carry on any business except as is appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its assets that will not be distributed in kind to its members or equity holders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining assets among its members or equity holders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Unless otherwise stated in the articles or bylaws, the assets shall be used to pay, in the following order:

(a) Liquidation expenses, including reasonable payment and reimbursement for the time and expenses of the trustees in liquidation and their consultants;

(b) All debts and liabilities according to their respective priorities;

(c) Amounts invested in the cooperative that have a specific preference in liquidation over other amounts invested in the cooperative;

(d) Without priority and on a pro rata basis, amounts invested in the cooperative, whether as membership fees, common stock, or otherwise, which are required by the cooperative to be invested in order for a person to be a member or to be subject to per unit retains or be entitled to participate in the allocation of net margins on terms and conditions established in the cooperative's bylaws or by the cooperative's board;

(e) Without priority and on a pro rata basis, retained patronage, per unit retains, other amounts withheld from or allocated to a patron of the cooperative, or any direct contributions to the capital of the cooperative not described in paragraph (d) of this subsection (2), all as shown on the books and records of the cooperative;

(f) Any remaining assets, including reserves, if any, shall be distributed among such members of the cooperative, as shown in the records of the cooperative, without priority and on a pro rata basis, as shall be practicable as determined by the trustees in liquidation. In making their determination, the trustees in liquidation may limit those persons entitled to share in the distribution to persons entitled to share in the allocation of the cooperative's net margins during a limited specified period of time.

(g) With respect to subsections (2)(e) and (2)(f) of this section, the amounts to be distributed shall be paid to the persons entitled to them as promptly as reasonably possible after the filing of the articles of dissolution by the secretary of state, but in no event shall the distributions be made later than seven years following the filing of the articles of dissolution by the secretary of state unless distribution is prevented by circumstances beyond the control of the trustees in liquidation.

(3) Dissolution of a cooperative does not:

(a) Transfer title to the cooperative's property;

(b) Prevent transfer of its memberships or securities, although the authorization to dissolve may provide for closing the cooperative's membership, stock, or other equity transfer records;

(c) Subject its directors or officers to standards of conduct different from those otherwise applicable to them prior to dissolution;

(d) Change quorum or voting requirements for its board 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;

(e) Prevent commencement of a proceeding by or against the cooperative in its cooperative name; or

(f) Abate or suspend a proceeding pending by or against the cooperative on the effective date of dissolution.

(4) A dissolved cooperative may dispose of claims against it pursuant to sections 7-90-911 and 7-90-912.

Source: L. 96: Entire article R&RE, p. 525, § 1, effective July 1. **L. 2006:** (4) added, p. 849, § 5, effective July 1.

Editor's note: This section is similar to former § 7-55-114 as it existed prior to 1996.

7-56-706. Disposition of known claims by notification. (Repealed)

Source: L. 96: Entire article R&RE, p. 526, § 1, effective July 1. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

Editor's note: This section was similar to former § 7-55-114 as it existed prior to 1996.

7-56-707. Disposition of claims by publication. (Repealed)

Source: L. 96: Entire article R&RE, p. 527, § 1, effective July 1. **L. 2003:** (2)(a) amended, p. 2233, § 103, effective July 1, 2004. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

Editor's note: This section was similar to former § 7-55-114 as it existed prior to 1996.

7-56-708. Enforcement of claims against dissolved cooperative. (Repealed)

Source: L. 96: Entire article R&RE, p. 528, § 1, effective July 1. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

Editor's note: This section was similar to former § 7-55-114 as it existed prior to 1996.

7-56-709. Service on dissolved cooperative - repeal. (Repealed)

Source: L. 96: Entire article R&RE, p. 528, § 1, effective July 1. **L. 2003:** (4) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: (1) This section was similar to former § 7-55-114 as it existed prior to 1996.

(2) Subsection (4) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

SUBPART 2

ADMINISTRATIVE DISSOLUTION

7-56-710. Grounds for administrative dissolution. (Repealed)

Source: L. 96: Entire article R&RE, p. 529, § 1, effective July 1. **L. 2000:** (1)(b) amended, p. 951, § 13, effective July 1. **L. 2003:** (1)(b), (1)(c), and (1)(d) amended, p. 2233, § 104, effective July 1, 2004. **L. 2004:** (1)(b) amended, p. 1419, § 61, effective July 1. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-56-711. Procedure for and effect of administrative dissolution. (Repealed)

Source: L. 96: Entire article R&RE, p. 529, § 1, effective July 1. **L. 2003:** (2) to (5) amended, p. 2233, § 105, effective July 1, 2004. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-56-712. Reinstatement following administrative dissolution. (Repealed)

Source: L. 96: Entire article R&RE, p. 530, § 1, effective July 1. **L. 2000:** (1)(c) amended, p. 951, § 14, effective July 1. **L. 2002:** IP(1), (2), and (3) amended, p. 1819, § 31, effective July 1; IP(1), (2), and (3) amended, p. 1684, § 29, effective October 1. **L. 2004:** Entire section repealed, p. 1419, § 62, effective July 1.

7-56-713. Appeal from denial of reinstatement. (Repealed)

Source: L. 96: Entire article R&RE, p. 531, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 1420, § 63, effective July 1.

SUBPART 3

JUDICIAL DISSOLUTION

7-56-714. Grounds for judicial dissolution.

(1) A cooperative may be dissolved in a proceeding brought in court by the attorney general if it is established that:

(a) The cooperative obtained its organization through fraud; or

(b) The cooperative has exceeded or abused the authority conferred upon it by law.

(2) A cooperative may be dissolved in a proceeding brought in court by not less than ten percent of the total number of members if it is established that:

(a) The directors are deadlocked in the management of the cooperative's affairs, the members are unable to break the deadlock, and irreparable injury to the cooperative is threatened or suffered, or the business and affairs of the cooperative can no longer be conducted to the advantage of the members generally;

(b) The directors or those in control of the cooperative have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent; or

(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.

(3) A cooperative may be dissolved in a proceeding brought in court by a creditor if it is established that:

(a) A creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the cooperative is insolvent; or

(b) The cooperative is insolvent and the cooperative has admitted in writing that a creditor's claim is due and owing.

(4) (a) If a cooperative has been dissolved by voluntary action taken under sections 7-56-701 to 7-56-705:

(I) The cooperative may bring a proceeding in court to wind up and liquidate its business and affairs under judicial supervision in accordance with section 7-56-716; or

(II) The attorney general, a member, or a creditor, as the case may be, may bring a proceeding in court to wind up and liquidate the business and affairs of the cooperative under judicial supervision in accordance with section 7-56-716, upon establishing the grounds set forth for such person, respectively, in subsections (1) to (3) of this section.

(b) As used in sections 7-56-715 to 7-56-717, a "proceeding to dissolve the cooperative" 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 business and affairs of a cooperative be wound up and liquidated under judicial supervision.

Source: L. 96: Entire article R&RE, p. 531, § 1, effective July 1. **L. 2003:** IP(4)(a) amended, p. 2234, § 106, effective July 1, 2004. **L. 2004:** (4)(b) amended, p. 1420, § 64, effective July 1. **L. 2005:** IP(4)(a) amended, p. 1218, § 27, effective October 1. **L. 2006:** IP(4)(a) amended, p. 849, § 6, effective July 1.

7-56-715. Procedure for judicial dissolution.

(1) (a) A proceeding to dissolve a cooperative brought by the attorney general must be brought:

(I) In the district court for the county in this state in which the street address of the cooperative's principal office is located;

(II) If the cooperative 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;

(III) If the cooperative has no registered agent, in the district court for the city and county of Denver; or

(IV) 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 7-56-714 must be brought:

(I) In the district court for the county in this state in which the street address of the cooperative's principal office is located;

(II) If the cooperative 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 cooperative has no registered agent, in the district court for the city and county of Denver.

(2) A court in a proceeding brought to dissolve a cooperative 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 cooperative's assets, wherever located, and carry on the business of the cooperative until a full hearing can be held.

Source: L. 96: Entire article R&RE, p. 532, § 1, effective July 1. **L. 2003:** (1) amended, p. 2234, § 107, effective July 1, 2004. **L. 2004:** (1) amended, p. 1421, § 65, effective July 1. **L. 2026:** (1) amended, (HB 26-1088), ch. 226, p. 1314, § 3, 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.

7-56-716. Receivership or custodianship.

(1) A court in a proceeding to dissolve a cooperative may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage the business and affairs, of the cooperative. 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 pursuant to this section. The court appointing a receiver or custodian has exclusive jurisdiction over the cooperative and all of its property, wherever located.

(2) The court may appoint an individual, a domestic entity, or a foreign entity or other entity 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 the court directs.

(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:

(a) The receiver may:

(I) Dispose of all or any part of the property of the cooperative, wherever located, at a public or private sale, if authorized by the court; and

(II) Sue and defend in the receiver's own name as receiver of the cooperative in all courts; or

(b) The custodian may exercise all of the powers of the cooperative, through or in place of its board or officers, to the extent necessary to manage the affairs of the cooperative in the best interests of its members and creditors.

(4) The court, during a receivership, may redesignate the receiver as custodian, and during a custodianship may redesignate the custodian as receiver if doing so is in the best interests of the cooperative and its members and creditors.

(5) 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 cooperative or proceeds from the sale of the assets.

Source: L. 96: Entire article R&RE, p. 533, § 1, effective July 1. **L. 2003:** (1) and (2) amended, p. 2235, § 108, effective July 1, 2004. **L. 2004:** (1) amended, p. 1421, § 66, effective July 1.

7-56-717. Decree of dissolution.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 7-56-714 exist, it may enter a decree dissolving the cooperative 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, who shall file it 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 cooperative's business and activities in accordance with section 7-56-705 or 7-56-716 and the giving of notice to the cooperative's registered agent, or to the secretary of state if it has no registered agent, and to claimants in accordance with sections 7-90-911 and 7-90-912.

(3) The assets of the dissolved cooperative, after payment of administrative expenses, shall be distributed in accordance with the provisions of section 7-56-705.

(4) The court's order or decision may be appealed as in other civil proceedings.

Source: L. 96: Entire article R&RE, p. 533, § 1, effective July 1. **L. 2002:** (1) amended, p. 1820, § 32, effective July 1; (1) amended, p. 1684, § 30, effective October 1. **L. 2003:** (1) and (2) amended, p. 2235, § 109, effective July 1, 2004. **L. 2006:** (2) amended, p. 849, § 7, effective July 1.

SUBPART 4

MISCELLANEOUS

7-56-718. Certain assignments of assets in dissolution.

In the winding up of the affairs of a cooperative when certain assets are not liquid and secured creditors having claim on these assets have been satisfied, the trustees in liquidation or other persons charged with winding up the cooperative's affairs are authorized to make assignment of such assets to the unsecured creditors in settlement of their claims. If assignment is refused in writing, and in the judgment of the trustees there is no liquidity or market value and the costs involved in delaying the winding up of the affairs of the cooperative exceed the potential benefits, the trustees are authorized to assign the assets or future proceeds to any local or statewide nonprofit organization that has as one of its principal purposes education or community service. The trustees shall under no circumstances be liable to any member or equity holder in the cooperative for any claim on any assets assigned by the trustees pursuant to the authority of this section.

Source: L. 96: Entire article R&RE, p. 534, § 1, effective July 1.

PART 8

FOREIGN COOPERATIVES

Editor's note: This article was repealed and reenacted in 1996, and this part 8 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 8 prior to 2004, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume and the editor's note following the article heading.

7-56-801. Authority to transact business or 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 cooperatives.

Source: L. 2003: Entire part R&RE, p. 2235, § 110, effective July 1, 2004.

7-56-802. Registered agent - service of process.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to foreign cooperatives.

Source: L. 2003: Entire part R&RE, p. 2236, § 110, effective July 1, 2004.

PART 9

TRANSITION PROVISIONS

7-56-901. Application to existing cooperatives.

(1) A domestic corporation, association, or cooperative formed under this article before July 1, 1996, shall be governed by the provisions of this article.

(2) A cooperative formed under article 57 of this title before July 1, 1996, until it elects to be governed by the provisions of this article pursuant to section 7-56-205, shall be deemed to have been formed under, and shall be governed by, the provisions of article 55 of this title as in effect immediately prior to July 1, 1996.

Source: L. 96: Entire article R&RE, p. 542, § 1, effective July 1. **L. 2003:** (2) amended, p. 2236, § 111, effective July 1, 2004.

ARTICLE 57

Agricultural and Livestock Associations

7-57-101 to 7-57-106. (Repealed)

Source: L. 96: Entire article repealed, p. 543, § 2, effective July 1.

Editor's note: (1) This article was numbered as article 4 of chapter 30, C.R.S. 1963. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 7-56-901 (2) of the "Colorado Cooperative Act" provides that cooperatives organized under this article prior to its repeal on July 1, 1996, shall be deemed to be organized under article 55 of this title until the cooperative elects to be governed by the "Colorado Cooperative Act", article 56 of this title.

ARTICLE 58

Uniform Limited Cooperative Association Act

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PART 1

GENERAL PROVISIONS

7-58-101. Short title.

This article shall be known and may be cited as the "Colorado Uniform Limited Cooperative Association Act".

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 761, § 1, effective April 2, 2012.

7-58-102. Definitions.

As used in this article, unless this article states a different definition:

(1) The terms defined in article 90 of this title have the meanings stated in that article unless this article states a different definition.

(2) "Articles of organization" or "articles" means the articles of organization of a limited cooperative association required by section 7-58-302 containing provisions required or permitted by sections 7-58-303 and 7-58-306. The term includes the articles of organization as amended or restated.

(3) "Board of directors" means the board of directors of a limited cooperative association.

(4) "Bylaws" means the bylaws of a limited cooperative association required by section 7-58-304 containing provisions required or permitted by sections 7-58-305 and 7-58-306. The term includes the bylaws as amended or restated.

(5) "Contribution", except as used in section 7-58-1008 (3), means a benefit that a person provides to a limited cooperative association to become or remain a member or in the person's capacity as a member.

(6) "Cooperative" means a limited cooperative association or an entity organized under any cooperative law of any jurisdiction.

(7) "Director" means a director of a limited cooperative association.

(8) "Distribution", except as used in section 7-58-1007 (5), means a transfer of money or other property from a limited cooperative association to a member because of the member's financial rights or to a transferee of a member's financial rights.

(9) "Financial rights" means the right to participate in allocations and distributions as provided in parts 10 and 12 of this article but does not include rights or obligations under a marketing contract governed by part 7 of this article.

(10) "Governance rights" means the right to participate in governance of a limited cooperative association.

(11) "Investor member" means a member that has made a contribution to a limited cooperative association and that:

(a) Is not required by the articles or bylaws to conduct patronage with the association in the member's capacity as an investor member in order to receive or retain the member's interest; or

(b) Is not permitted by the articles or bylaws to conduct patronage with the association in the member's capacity as an investor member in order to receive or retain the member's interest.

(12) "Limited cooperative association" or "association" means an association organized under this article.

(13) "Member" means a person that is admitted as a patron member or investor member, or both, in a limited cooperative association. The term does not include a person that has dissociated as a member.

(14) "Member's interest" means the interest of a patron member or investor member with the attributes stated in section 7-58-601.

(15) "Members meeting" means an annual members meeting or special meeting of members.

(16) "Organizer" means a person who is named in the articles as an organizer.

(17) "Patronage" means business transactions between a limited cooperative association and a person that entitle the person to receive financial rights based on the value or quantity of business done between the association and the person.

(18) "Patron member" means a member that has made a contribution to a limited cooperative association and that:

(a) Is required by the articles or bylaws to conduct patronage with the association in the member's capacity as a patron member in order to receive or retain the member's interest; or

(b) Is permitted by the articles or bylaws to conduct patronage with the association in the member's capacity as a patron member in order to receive or retain the member's interest.

(19) "Proper court" means the district court for the county in this state in which the street address of the limited cooperative association's principal office is located or, if the association 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 association has no registered agent, the district court for the city and county of Denver.

(20) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) "Required information" means the information a limited cooperative association is required to maintain under section 7-58-112.

(22) "Sign" means, with present intent, to authenticate or adopt a record by:

(a) Executing or adopting a tangible symbol; or

(b) Attaching to or logically associating with the record an electronic symbol, sound, or process.

(23) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(24) "Voting group" means any combination of one or more voting members in one or more districts or classes that, under this article or the articles or bylaws, are entitled to vote and can be counted together collectively on a matter at a members meeting.

(25) "Voting member" means a member that, under this article or the articles or bylaws, has a right to vote on matters subject to vote by members under this article or the articles or bylaws.

(26) "Voting power" means the total current power of members to vote on a particular matter for which a vote may or is to be taken.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 761, § 1, effective April 2, 2012.

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

7-58-103. Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of this article at any time, and all domestic and foreign limited cooperative associations subject to this article shall be governed by the amendment or repeal.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 764, § 1, effective April 2, 2012.

7-58-104. Nature of limited cooperative association.

(1) A limited cooperative association organized under this article is an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons, the patronage of which is carried on for the mutual benefit of the patron members and that permits combining:

(a) Ownership, financing, and receipt of benefits by the patron members for whose patronage the association is formed; and

(b) Separate investments in the association by investor members who invest in the limited cooperative association and may receive returns on their investments and a share of control.

(2) The fact that a limited cooperative association does not have more than one of the characteristics described in paragraph (a) of subsection (1) of this section or any of the

characteristics described in paragraph (b) of subsection (1) of this section does not alone prevent the association from being formed under and governed by this article, nor does it alone provide a basis for an action against the association or a member.

(3) The relations between a limited cooperative association and its members are consensual and contractual. Unless required, limited, or prohibited by this article or other applicable law, the articles and bylaws of an association may provide for any matter concerning the relations among the members of the association and between the members and the association, the activities of the association, and the conduct of its activities.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 764, § 1, effective April 2, 2012.

7-58-105. Purpose of limited cooperative association.

(1) A limited cooperative association is an entity distinct from its members.

(2) A limited cooperative association may be organized for any lawful purpose, whether or not for profit.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 764, § 1, effective April 2, 2012.

7-58-106. Powers.

(1) Unless otherwise provided in the articles, every limited cooperative association has perpetual duration and succession in its domestic entity name and has the powers to do all things necessary or convenient to carry out its business and affairs, including without limitation:

(a) To sue and be sued, complain, and defend in its entity name, and to maintain an action against a member for harm caused to the association by the member's violation of a duty to the association or of this article or the articles or bylaws;

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

(c) To amend its articles and 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, which may be convertible into or include the option to purchase other interests or securities of the association; 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;

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

(j) To conduct its business and activities, locate offices, and exercise the powers granted by this article within or without this state;

(k) To elect and appoint directors, officers, employees, and agents of the association, define their duties, fix their compensation, and lend them money and credit;

(l) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share options and rights plans, and 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, scientific, or educational purposes;

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

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

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

(q) To impose restrictions on the transfer of its membership interests or other interests in the association;

(r) To carry on its business and affairs;

(s) To indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in part 9 of this article;

(t) To limit the liability of its directors as provided in section 7-58-818; and

(u) To cease its activities and dissolve.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 764, § 1, effective April 2, 2012.

7-58-107. Governing law.

(1) The law of this state governs:

(a) The internal affairs of a limited cooperative association; and

(b) The liability of a member as member and a director as director for the debts, obligations, or other liabilities of a limited cooperative association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 766, § 1, effective April 2, 2012.

7-58-108. Supplemental principles of law.

Unless displaced by particular provisions of this article, the principles of law and equity supplement this article.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 766, § 1, effective April 2, 2012.

7-58-109. Requirements of other laws.

(1) This article does not alter or amend any law that governs the licensing and regulation of an individual or entity in carrying on a specific business or profession even if that law permits the business or profession to be conducted by a limited cooperative association, a foreign cooperative, or its members.

(2) A limited cooperative association shall not conduct an activity that, under the law of this state other than this article, may be conducted only by an entity that meets specific requirements for the internal affairs of that entity unless the articles or bylaws of the association conform to those requirements.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 766, § 1, effective April 2, 2012.

7-58-110. Relation to restraint of trade and antitrust law.

No limited cooperative association formed under or subject to this article shall, solely by its organization and existence, be deemed to be a conspiracy or a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily, nor shall the marketing or purchasing contracts and agreements authorized in this article be considered illegal as such, in unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 766, § 1, effective April 2, 2012.

7-58-111. Name.

(1) Use of the term "cooperative" or its abbreviation under this article or section 7-90-601 is not a violation of the provisions restricting the use of the term under section 7-90-601 (7)(a).

(2) A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under section 7-90-601 (7).

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 767, § 1, effective April 2, 2012.

7-58-112. Required information.

(1) Subject to subsection (2) of this section, a limited cooperative association shall maintain in a record available at its principal office:

(a) A list containing the name, last-known street address and, if different, mailing address, and term of office of each director and officer;

(b) The initial articles and all amendments to and restatements of the articles;

(c) The initial bylaws and all amendments to and restatements of the bylaws;

(d) All filed statements of merger and statements of conversion;

(e) All annual financial statements of the association for the three most recent fiscal years;

(f) The minutes of members meetings and records of all action taken by members without a meeting for the three most recent years;

(g) A list containing:

(I) The name, in alphabetical order, and last-known street address and, if different, mailing address of each patron member and each investor member; and

(II) If the association has districts or classes of members, information from which each member in a district or class may be identified;

(h) The federal income tax returns and any state and local income tax returns of the association for the three most recent years;

(i) Accounting records maintained by the association in the ordinary course of its operations for the three most recent years;

(j) The minutes of all directors meetings and records of all action taken by directors without a meeting for the three most recent years;

(k) The amount of money contributed and agreed to be contributed by each member;

(l) A description and statement of the agreed value of contributions other than money made and agreed to be made by each member;

(m) The times at which, or events on the happening of which, any additional contribution is to be made by each member;

(n) For each member, a description and statement of the member's interest or information from which the description and statement can be derived; and

(o) All communications concerning the association made in a record to all members, or to all members in a district or class, for the three most recent years.

(2) If a limited cooperative association has existed for less than the period for which records must be maintained under subsection (1) of this section, the period for which records must be kept is the period of the association's existence.

(3) The articles or bylaws may require that more information be maintained.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 767, § 1, effective April 2, 2012.

7-58-113. Business transactions of member with limited cooperative association.

Subject to sections 7-58-818 and 7-58-819 and except as otherwise provided in the articles or bylaws or a specific contract relating to a transaction, a member may lend money to and transact other business with a limited cooperative association in the same manner as a person that is not a member.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 768, § 1, effective April 2, 2012.

7-58-114. Dual capacity.

A person may have a patron member's interest and an investor member's interest. When such person acts as a patron member, the person is subject to this article and the articles and bylaws governing patron members. When such person acts as an investor member, the person is subject to this article and the articles and bylaws governing investor members.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 768, § 1, effective April 2, 2012.

PART 2

REGISTERED AGENTS, FILING, ANNUAL REPORTS, AND STATEMENT OF FOREIGN ENTITY AUTHORITY

7-58-201. Limited cooperative associations - registered agents - service of process - annual reports.

(1) Part 7 of article 90 of this title, providing for registered agents and service of process, applies to limited cooperative associations formed under this article.

(2) Part 5 of article 90 of this title, providing for periodic reports, applies to limited cooperative associations formed under this article.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 768, § 1, effective April 2, 2012.

7-58-202. Foreign entity authority.

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 limited cooperative associations formed under substantially similar laws of another jurisdiction.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 769, § 1, effective April 2, 2012.

PART 3

FORMATION AND INITIAL ARTICLES OF LIMITED COOPERATIVE ASSOCIATION - BYLAWS

7-58-301. Organizers.

A limited cooperative association must be organized by one or more organizers.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 769, § 1, effective April 2, 2012.

7-58-302. Formation of limited cooperative association.

(1) To form a limited cooperative association, one or more organizers of the association shall deliver or cause to be delivered articles to the secretary of state for filing.

(2) A limited cooperative association is formed after articles that substantially comply with section 7-58-303 (1) become effective under section 7-90-304.

(3) If articles filed by the secretary of state state a delayed effective date, a limited cooperative association is not formed if, before the articles take effect, a statement of correction is filed pursuant to section 7-90-304 (3) that revokes the articles.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 769, § 1, effective April 2, 2012.

7-58-303. Articles.

(1) The articles shall state:

(a) The domestic entity name of the limited cooperative association;

(b) The purposes for which the limited cooperative association is formed, which may be for any lawful purpose;

(c) The registered agent name and registered agent address of the association's initial registered agent;

(d) The street address and, if different, mailing address of the association's initial principal office; and

(e) The true name and street address and, if different, mailing address of each organizer.

(2) The articles may contain any other provisions in addition to those required by subsection (1) of this section, including any matters referred to in subsection (3) of this section, section 7-58-305 (1), or section 7-58-305 (3).

(3) The matters referred to in this subsection (3) may be varied only in the articles. The articles may:

(a) State a term of duration, less than perpetual, of the limited cooperative association under section 7-58-106 (1);

(b) Limit or eliminate the acceptance of new or additional members by the initial board of directors under section 7-58-304 (2);

(c) Vary the percentage of votes required for members to approve an amendment to the articles under section 7-58-405;

(d) Vary the limitations on the obligations and liability of members for association obligations under section 7-58-504;

(e) Require a notice of an annual members meeting to state a purpose of the meeting under section 7-58-508 (2);

(f) Provide for less than unanimous consent to action by members without a members meeting under section 7-58-516 (1)(a);

(g) Vary the matters the board of directors may consider in making a decision under section 7-58-820;

(h) Specify causes of dissolution under section 7-58-1202 (1);

(i) Delegate amendment of the bylaws to the board of directors pursuant to section 7-58-405 (6);

(j) Provide for member approval of asset dispositions under section 7-58-1501;

(k) Subject to section 7-58-820, provide for the elimination or limitation of liability of a director to the association or its members for money damages pursuant to section 7-58-818; and

(l) Provide for permitting or requiring indemnification under section 7-58-901 (1).

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 769, § 1, effective April 2, 2012.

7-58-304. Organization of limited cooperative association.

(1) After a limited cooperative association is formed:

(a) If initial directors are named in the articles, the initial directors shall hold an organizational meeting to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the association; or

(b) If initial directors are not named in the articles, the organizers shall designate the initial directors and call a meeting of the initial directors to adopt initial bylaws and carry on any other business necessary or proper to complete the organization of the association.

(2) Unless the articles otherwise provide, the initial directors may cause the limited cooperative association to accept members, including those necessary for the association to begin business.

(3) Initial directors need not be members.

(4) An initial director serves until a successor is elected and qualified at a members meeting or the director is removed, resigns, is adjudged incompetent, or dies.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 770, § 1, effective April 2, 2012.

7-58-305. Bylaws.

(1) Bylaws shall be in a record and, if not stated in the articles, shall include:

(a) A statement of the capital structure of the limited cooperative association, including:

(I) The classes or other types of members' interests and relative rights, preferences, and restrictions granted to or imposed upon each class or other type of member's interest; and

(II) The rights to share in profits or distributions of the association;

(b) A statement of the method for admission of members;

(c) A statement designating voting and other governance rights, including which members have voting power and any restriction on voting power;

(d) A statement that a member's interest is transferable, if it is to be transferable, and a statement of the conditions upon which it may be transferred;

(e) A statement concerning the manner in which profits and losses are allocated and distributions are made among patron members and, if investor members are authorized, the manner in which profits and losses are allocated and how distributions are made among investor members and between patron members and investor members;

(f) A statement concerning:

(I) Whether persons that are not members but conduct business with the association may be permitted to share in allocations of profits and losses and receive distributions; and

(II) The manner in which profits and losses are allocated and distributions are made with respect to those persons; and

(g) A statement of the number and terms of directors or the method by which the number and terms are determined.

(2) Subject to subsection (3) of this section and the articles, bylaws may contain any other provision for managing and regulating the affairs of the association.

(3) The matters referred to in this subsection (3) may be varied only in the bylaws, in the articles, or in the bylaws and the articles. The bylaws may:

(a) Require more information to be maintained under section 7-58-112 or provided to members under section 7-58-505 (11);

(b) Provide restrictions on transactions between a member and an association under section 7-58-113;

(c) Provide for the percentage and manner of voting on amendments to the articles and bylaws by district, class, or voting group under section 7-58-404 (1);

(d) Provide for the percentage vote required to amend the bylaws concerning the admission of new members under section 7-58-405 (5)(e);

(e) Provide for terms and conditions to become a member under section 7-58-502;

(f) Restrict the manner of conducting members meetings under sections 7-58-506 (3) and 7-58-507 (5);

(g) Designate the presiding officer of members meetings under sections 7-58-506 (5) and 7-58-507 (7);

(h) Require a statement of purposes in the annual meeting notice under section 7-58-508 (2);

(i) Increase quorum requirements for members meetings under section 7-58-510 and board of directors meetings under section 7-58-815;

(j) Allocate voting power among members, including patron members and investor members, and provide for the manner of member voting and action as permitted by sections 7-58-511 to 7-58-517;

(k) Authorize investor members and expand or restrict the transferability of members' interests to the extent provided in sections 7-58-602 to 7-58-604;

(l) Provide for enforcement of a marketing contract under section 7-58-704 (1);

(m) Provide for qualification, election, terms, removal, filling vacancies, and member approval for compensation of directors in accordance with sections 7-58-803 to 7-58-805, 7-58-807, 7-58-809, and 7-58-810;

(n) Restrict the manner of conducting board meetings and taking action without a meeting under sections 7-58-811 and 7-58-812;

(o) Provide for frequency, location, notice, and waivers of notice for board meetings under sections 7-58-813 and 7-58-814;

(p) Increase the percentage of votes necessary for board action under section 7-58-816 (2);

(q) Provide for the creation of committees of the board of directors and matters related to the committees in accordance with section 7-58-817;

(r) Provide for officers and their appointment, designation, and authority under section 7-58-822;

(s) Provide for forms and values of contributions under section 7-58-1002;

(t) Provide for remedies for failure to make a contribution under section 7-58-1003;

(u) Provide for the allocation of profits and losses of the association, distributions, and the redemption or repurchase of distributed property other than money in accordance with sections 7-58-1004 to 7-58-1007;

(v) Specify when a member's dissociation is wrongful and the liability incurred by the dissociating member for damage to the association under section 7-58-1101 (2) and (3);

(w) Provide the personal representative, or other legal representative of, a deceased member or a member adjudged incompetent with additional rights under section 7-58-1103;

(x) Increase the percentage of votes required for board of director approval of:

(I) A resolution to dissolve under section 7-58-1205;

(II) A proposed amendment to the articles or bylaws under section 7-58-402 (1)(a);

(III) A plan of conversion under section 7-58-1603 (1);

(IV) A plan of merger under section 7-58-1607 (1); and

(V) A proposed disposition of assets under section 7-58-1503 (1); and

(y) Vary the percentage of votes required for members' approval of:

(I) A resolution to dissolve under section 7-58-1205;

(II) An amendment to the bylaws under section 7-58-405;

(III) A plan of conversion under section 7-58-1603;

(IV) A plan of merger under section 7-58-1608; and

(V) A disposition of assets under section 7-58-1504.

(4) In addition to amendments permitted under part 4 of this article, the initial board of directors may amend the bylaws by a majority vote of the directors at any time before the admission of members.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 771, § 1, effective April 2, 2012.

7-58-306. Required provision for members' contributions.

The articles or the bylaws shall address members' contributions pursuant to section 7-58-1001.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 774, § 1, effective April 2, 2012.

PART 4

AMENDMENT OF ARTICLES AND BYLAWS OF LIMITED COOPERATIVE ASSOCIATIONS

7-58-401. Authority to amend articles and bylaws.

(1) A limited cooperative association may amend its articles and bylaws under this part 4 for any lawful purpose. In addition, the initial board of directors may amend the bylaws of an association under section 7-58-304.

(2) Unless the articles or bylaws otherwise provide, a member does not have a vested property right resulting from any provision in the articles or bylaws, including a provision relating to the management, control, capital structure, distribution, entitlement, purpose, or duration of the limited cooperative association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 774, § 1, effective April 2, 2012.

7-58-402. Notice and action on amendment of articles and bylaws.

(1) Except as provided in this subsection (1) and section 7-58-405 (6), the articles and bylaws of a limited cooperative association may be amended only at a members meeting. An amendment requiring membership approval may be proposed by either:

(a) A majority of the board of directors, or a greater percentage if required by the articles or bylaws; or

(b) One or more petitions signed by at least ten percent of the patron members or at least ten percent of the investor members.

(2) The board of directors shall call a members meeting to consider an amendment proposed pursuant to subsection (1) of this section. The meeting shall be held not later than ninety days

following the proposal of the amendment by the board or receipt of a petition or petitions satisfying the requirements of this section. The board shall mail or otherwise transmit or deliver in a record to each member:

(a) The proposed amendment, or a summary of the proposed amendment and a statement of the manner in which a copy of the amendment in a record may be reasonably obtained by a member;

(b) A recommendation that the members approve the amendment, or, if the board determines that because of conflict of interest or any other reason it should not make a favorable recommendation, the basis for that determination;

(c) A statement of any condition of the board's submission of the amendment to the members; and

(d) Notice of the meeting at which the proposed amendment will be considered, which shall be given in the same manner as notice for a special meeting of members.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 774, § 1, effective April 2, 2012.

7-58-403. Method of voting on amendment of articles and bylaws.

(1) A substantive change to a proposed amendment of the articles or bylaws may not be made at the members meeting at which a vote on the amendment occurs.

(2) A nonsubstantive change to a proposed amendment of the articles or bylaws may be made at the members meeting at which the vote on the amendment occurs and need not be separately voted upon by the board of directors.

(3) A vote to adopt a nonsubstantive change to a proposed amendment to the articles or bylaws shall be by the same percentage of votes required to pass a proposed amendment.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 775, § 1, effective April 2, 2012.

7-58-404. Voting by district, class, or voting group.

(1) This section applies if the articles or bylaws provide for voting by district or class, or if there is one or more identifiable voting groups that a proposed amendment to the articles or

bylaws would affect differently from other members with respect to matters identified in section 7-58-405 (1). Approval of the amendment requires the same percentage of votes of the members of that district, class, or voting group required in sections 7-58-405 and 7-58-514.

(2) If a proposed amendment to the articles or bylaws would affect members in two or more districts or classes entitled to vote separately under subsection (1) of this section in the same or a substantially similar way, the districts or classes affected shall vote as a single voting group unless the articles or bylaws otherwise provide for separate voting.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 775, § 1, effective April 2, 2012.

7-58-405. Approval of amendment.

(1) Subject to section 7-58-404 and subsections (3) and (4) of this section, an amendment to the articles must be approved by:

(a) At least a majority vote of the voting power of all members present at a members meeting called under section 7-58-402, unless the articles require a greater percentage; and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the articles require a greater percentage vote by patron members.

(2) Subject to section 7-58-404 and subsections (3), (4), (5), and (6) of this section, an amendment to the bylaws must be approved by:

(a) At least a majority vote of the voting power of all members present at a members meeting called under section 7-58-402, unless the articles or bylaws require a greater percentage; and

(b) If a limited cooperative association has investor members, a majority of the votes cast by patron members, unless the articles or bylaws require a larger affirmative vote by patron members.

(3) The articles may require that the percentage of votes required under paragraph (a) of subsection (1) of this section, or the articles or bylaws may require that the percentage of votes required under paragraph (a) of subsection (2) of this section, be:

(a) A different percentage that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of paragraphs (a) and (b) of this subsection (3).

(4) Consent in a record by a member shall be delivered to a limited cooperative association before delivery of an amendment to the articles or restated articles for filing pursuant to section 7-58-407, or before or at the same time as a members vote is taken on an amendment to the bylaws or adoption of restated bylaws submitted to members for a vote, if, as a result of the amendment or restatement:

(a) The member will have:

(I) Personal liability for an obligation of the association; or

(II) An obligation or liability for an additional contribution; or

(b) The relative rights of the member in the association will be adversely affected or diminished by the amendment.

(5) The vote required to amend bylaws must satisfy the requirements of subsection (1) of this section if the proposed amendment modifies:

(a) The equity capital structure of the limited cooperative association, including the rights of the association's members to share in profits or distributions, or the relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;

(b) The transferability of a member's interest;

(c) The manner or method of allocation of profits or losses among members;

(d) The quorum for a meeting and the rights of voting and governance; or

(e) Unless otherwise provided in the articles or bylaws, the terms for admission of new members.

(6) Except for the matters described in subsection (5) of this section, the articles may delegate amendment of all or a part of the bylaws to the board of directors without requiring member approval.

(7) If the articles delegate amendment of bylaws to the board of directors, the board shall provide a description of any amendment of the bylaws made by the board to the members in a record not later than thirty days after the amendment, but the description may be provided at the next annual members meeting if the meeting is held within the thirty-day period.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 775, § 1, effective April 2, 2012.

7-58-406. Restated articles.

(1) The board of directors may restate the articles at any time with or without action by the members. If the limited cooperative association does not have both members and directors, its organizers may restate the articles at any time.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval of the members, it must be approved in the same manner as an amendment to the articles under section 7-58-405 (1).

(3) If the board of directors submits a restatement for action by the members, the board shall call a meeting of members and mail or otherwise transmit or deliver in a record the information and give notice of the meeting in accordance with section 7-58-402 (2) to each member entitled to vote on the restatement. The copy of the restatement provided to members must identify any amendment or other change the restatement would make in the articles.

(4) A limited cooperative association restating its articles 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 association;

(b) The text of the restated articles; and

(c) If the restatement was adopted by the board of directors or organizers 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 supersede the original articles and all prior amendments to them.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 777, § 1, effective April 2, 2012.

7-58-407. Amendment of articles - filing.

(1) A limited cooperative association amending its articles 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 name of the association; and

(b) The text of each amendment adopted.

(2) Before the beginning of the initial meeting of the board of directors, an organizer who knows that information in the filed articles was inaccurate when the articles were filed or has become inaccurate due to changed circumstances shall promptly:

(a) Cause the articles to be amended; and

(b) If appropriate, deliver a statement of:

(I) Change to the secretary of state for filing pursuant to section 7-90-305.5; or

(II) Correction to the secretary of state for filing pursuant to section 7-90-305.

(3) Upon filing, an amendment of the articles that has been properly adopted by the members is effective as provided in section 7-90-304.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 778, § 1, effective April 2, 2012.

PART 5

MEMBERS

7-58-501. Members.

To begin business, a limited cooperative association must have at least two patron members unless the sole member is a cooperative.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 778, § 1, effective April 2, 2012.

7-58-502. Becoming a member.

(1) A person becomes a member:

(a) As provided in the articles or bylaws;

(b) As the result of a merger or conversion under part 16 of this article; or

(c) With the consent of all the members.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 778, § 1, effective April 2, 2012.

7-58-503. No power as member to bind association.

A member, solely by reason of being a member, may not act for or bind the limited cooperative association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 779, § 1, effective April 2, 2012.

7-58-504. No liability as member for association's obligations.

Unless the articles otherwise provide, a debt, obligation, or other liability of a limited cooperative association is solely that of the association and is not the debt, obligation, or liability of a member solely by reason of being a member.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 779, § 1, effective April 2, 2012.

7-58-505. Right of member and former member to information.

(1) Not later than ten business days after receipt of a demand made in a record, a limited cooperative association shall permit a member to obtain, inspect, and copy in the association's principal office required information listed in section 7-58-112 (1)(a) to (1)(f) during regular business hours. A member need not have any particular purpose for seeking the information. The association is not required to provide the information listed in section 7-58-112 (1)(b) to (1)(f) to the same member more than once during a six-month period.

(2) On demand made in a record received by the limited cooperative association, a member may obtain, inspect, and copy in the association's principal office required information listed in section 7-58-112 (1)(g), (1)(h), (1)(j), and (1)(o) during regular business hours, if:

(a) The member seeks the information in good faith and for a proper purpose reasonably related to the member's interest;

(b) The demand includes a description, with reasonable particularity, of the information sought and the purpose for seeking the information;

(c) The information sought is directly connected to the member's purpose; and

(d) The demand is otherwise reasonable.

(3) Not later than ten business days after receipt of a demand pursuant to subsection (2) of this section, a limited cooperative association shall provide, in a record, the following information to the member that made the demand:

(a) If the association agrees to provide the demanded information:

(I) What information the association will provide in response to the demand; and

(II) A reasonable time and reasonable place at which the association will provide the information; or

(b) If the association declines to provide some or all of the demanded information, the association's reasons for declining.

(4) A person dissociated as a member may obtain, inspect, and copy information available to a member under subsection (1) or (2) of this section by delivering a demand in a record to the limited cooperative association, in the same manner and subject to the same conditions applicable to a member under subsection (2) of this section, if:

(a) The information pertains to the period during which the person was a member in the association; and

(b) The person seeks the information in good faith.

(5) A limited cooperative association shall respond to a demand made pursuant to subsection (4) of this section in the manner provided in subsection (3) of this section.

(6) Not later than ten business days after receipt by a limited cooperative association of a demand made by a member in a record, but not more often than once in a six-month period, the association shall deliver to the member a record stating the information with respect to the member required by section 7-58-112 (1)(n).

(7) A limited cooperative association may impose reasonable restrictions, including nondisclosure restrictions, on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection (7), the association has the burden of proving reasonableness.

(8) A limited cooperative association may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of equipment, labor, and material.

(9) A person that may obtain information under this section may obtain the information through an attorney or other agent. A restriction imposed on the person under subsection (7) of this section or by the articles or bylaws applies to the attorney or other agent.

(10) The rights stated in this section do not extend to a person as transferee.

(11) The articles or bylaws may require a limited cooperative association to provide more information than required by this section and may establish conditions and procedures for providing the information.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 779, § 1, effective April 2, 2012.

7-58-506. Annual meeting of members.

(1) Members shall meet annually at a time provided in the articles or bylaws or set by the board of directors not inconsistent with the articles and bylaws.

(2) An annual members meeting may be held inside or outside this state at the place stated in the articles or bylaws or selected by the board of directors not inconsistent with the articles and bylaws.

(3) Unless the articles or bylaws otherwise provide, members may attend or conduct an annual members meeting through any means of communication if all members attending the meeting can communicate with each other during the meeting.

(4) The board of directors shall report, or cause to be reported, at the association's annual members meeting the association's business and financial condition as of the close of the most recent fiscal year.

(5) Unless the articles or bylaws otherwise provide, the board of directors shall designate the presiding officer of the association's annual members meeting.

(6) Failure to hold an annual members meeting does not affect the validity of any action by the limited cooperative association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 780, § 1, effective April 2, 2012.

7-58-507. Special meeting of members.

(1) A special meeting of members may be called only:

(a) As provided in the articles or bylaws;

(b) By a majority vote of the board of directors on a proposal stating the purpose of the meeting;

(c) By demand in a record signed by members holding at least twenty percent of the voting power of the persons in any district or class entitled to vote on the matter that is the purpose of the meeting stated in the demand; or

(d) By demand in a record signed by members holding at least ten percent of the total voting power of all the persons entitled to vote on the matter that is the purpose of the meeting stated in the demand.

(2) A demand under paragraph (c) or (d) of subsection (1) of this section must be submitted to the officer of the limited cooperative association charged with keeping its records.

(3) Any voting member may withdraw its demand under paragraph (c) or (d) of subsection (1) of this section before receipt by the limited cooperative association of demands sufficient to require a special meeting of members.

(4) A special meeting of members may be held inside or outside this state at the place stated in the articles or bylaws or selected by the board of directors not inconsistent with the articles and bylaws.

(5) Unless the articles or bylaws otherwise provide, members may attend or conduct a special meeting of members through the use of any means of communication if all members attending the meeting can communicate with each other during the meeting.

(6) Only business within the purpose or purposes stated in the notice of a special meeting of members may be conducted at the meeting.

(7) Unless the articles or bylaws otherwise provide, the presiding officer of a special meeting of members shall be designated by the board of directors.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 781, § 1, effective April 2, 2012.

7-58-508. Notice of members meeting.

(1) A limited cooperative association shall notify each member of the time, date, and place of a members meeting at least ten and not more than sixty days before the meeting; except that, if the notice is of a meeting of the members in one or more districts or classes of members, the notice shall be given only to members in those districts or classes.

(2) Unless this article or the articles otherwise provide, notice of an annual members meeting need not include any purpose of the meeting.

(3) Notice of a special meeting of members shall include each purpose of the meeting as contained in the demand under section 7-58-507 (1)(c) or (1)(d) or as voted upon by the board of directors under section 7-58-507 (1)(b).

(4) Notice of a members meeting shall be given in a record unless oral notice is reasonable under the circumstances.

(5) (a) Notwithstanding any other provision of this section, whenever notice is required to be given under this section or under any other provision of this article to any member, such notice shall not be required to be given to a member if:

(I) Notice of two consecutive annual meetings, and all notices of meetings during the period between the two consecutive annual meetings, have been sent to the member at the member's address as shown on the records of the limited cooperative association and have been returned undeliverable; or

(II) All, but not less than two, payments of distributions during a twelve-month period, or two consecutive payments of distributions during a period of more than twelve months, have been sent to the member at the member's address as shown on the records of the association and have been returned undeliverable.

(b) If any such member delivers to the association a notice in a record setting forth the member's then-current address, the requirement that notice be given to the member shall be reinstated.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 782, § 1, effective April 2, 2012.

7-58-509. Waiver of members meeting notice.

(1) A member may waive notice of a members meeting before, during, or after the meeting.

(2) A member's participation in a members meeting is a waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon the member's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 782, § 1, effective April 2, 2012.

7-58-510. Quorum of members.

Unless the articles or bylaws otherwise require a different number of members or percentage of the voting power, a quorum for conducting business at all meetings of the members consists of five percent of the total number of members or thirty members present at the meeting, whichever is less. Nothing prevents the articles or bylaws from requiring a greater or lesser number or percentage of members, or members of classes, districts, or voting groups as a quorum.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 783, § 1, effective April 2, 2012.

7-58-511. Voting by patron members.

Except as provided by section 7-58-512 (1), each patron member has one vote. The articles or bylaws may allocate voting power among patron members as provided in section 7-58-512 (1).

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 783, § 1, effective April 2, 2012.

7-58-512. Determination of voting power of patron member.

(1) The articles or bylaws may allocate voting power among patron members on the basis of one or a combination of the following:

(a) One member, one vote;

(b) Use or patronage;

(c) Equity; or

(d) If a patron member is a cooperative, the number of its patron members.

(2) If the articles or bylaws allocate voting power on the basis of use or patronage and a member would be denied a vote because the member did not use the limited cooperative association or conduct patronage with it during the period on which the allocation of voting power is determined, the articles or bylaws must provide that the member shall nevertheless be

allocated a vote equal to at least the minimum voting power allocated to members who used the association or conducted patronage with it during the period.

(3) The articles or bylaws may provide for the allocation of patron member voting power by districts or class or any combination thereof.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 783, § 1, effective April 2, 2012.

7-58-513. Voting by investor members.

If the articles or bylaws provide for investor members, each investor member has one vote unless the articles or bylaws otherwise provide. The articles or bylaws may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 783, § 1, effective April 2, 2012.

7-58-514. Voting requirements for members.

(1) If a limited cooperative association has both patron and investor members, the following rules apply:

(a) The total voting power of all patron members must not be less than a majority of the entire voting power entitled to vote.

(b) Action on any matter is approved only upon the affirmative vote of at least a majority of:

(I) All members voting at the meeting unless more than a majority is required or permitted by parts 4, 12, 15, and 16 of this article or the articles or bylaws; and

(II) Votes cast by patron members unless the articles or bylaws require a larger affirmative vote by patron members.

(c) The articles or bylaws may provide for the percentage of the affirmative votes that must be cast by investor members to approve the matter.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 784, § 1, effective April 2, 2012.

7-58-515. Manner of voting.

(1) Unless the articles or bylaws otherwise provide, voting by a proxy at a members meeting is prohibited. This subsection (1) does not prohibit delegate voting based on district or class.

(2) If voting by a proxy is permitted, a patron member may appoint only another patron member as a proxy and, if investor members are permitted, an investor member may appoint only another investor member as a proxy.

(3) The articles or bylaws may provide for the manner of and provisions governing the appointment of a proxy.

(4) The articles or bylaws may provide for voting on any question by ballot delivered by mail or voting by other means on questions that are subject to vote by members.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 784, § 1, effective April 2, 2012.

7-58-516. Action without a meeting.

(1) Unless the articles or bylaws require that action be taken at a members meeting, any action required or permitted by this article to be taken at a members meeting may be taken without a meeting if notice of the proposed action is given as provided in subsection (6) of this section, and:

(a) All of the members entitled to vote thereon consent to the action in a record; or

(b) If expressly provided for in the articles, the members holding membership interests having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all of the membership interests entitled to vote thereon were present and voted consent to the action in a record.

(2) (a) No action taken pursuant to this section is effective unless, within sixty days after the date the limited cooperative association first receives a record describing and consenting to the action and signed by a member, the association has received records that describe and consent to the action, signed by members holding at least the number of votes entitled to be voted on the action as required by subsection (1) of this section, disregarding any record that has been revoked pursuant to subsection (3) of this section. The articles or bylaws may provide for the receipt of any record by the association by electronically transmitted facsimile or other form of wire or wireless communication providing the association with a complete copy thereof, including a copy of the signature thereon.

(b) Action taken pursuant to this section is effective as of the date the limited cooperative association receives the last record necessary to effect the action unless all of the records necessary to effect the action state another date as the effective date of the action, in which case the stated date is the effective date of the action.

(3) Any member who has signed a record describing and consenting to action taken pursuant to this section may revoke the consent by a record signed and dated by the member describing the action and stating that the member's prior consent thereto is revoked, if the record is received by the limited cooperative association prior to the effectiveness of the action.

(4) If not otherwise fixed under subsection (7) of this section, the record date for determining members entitled to take action pursuant to this section or entitled to be given notice under subsection (6) of this section of action taken pursuant to this section is the date the limited cooperative association first receives a writing upon which the action is taken pursuant to this section.

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

(6) (a) If action is to be taken under subsection (1) of this section, the limited cooperative association shall give notice of the proposed action to the members entitled to vote thereon. The notice must:

(I) Be given in a record;

(II) Describe the proposed action; and

(III) Specify the date on or before which consents to be given pursuant to subsection (1) of this section must be received by the association.

(b) (I) Notwithstanding paragraph (a) of this subsection (6), whenever notice is required to be given under this subsection (6) to any member, the notice is not required to be given to a member if:

(A) Notice of two consecutive annual meetings, and all notices of meetings during the period between the two consecutive annual meetings, have been sent to the member at the member's address as shown on the records of the limited cooperative association and have been returned undeliverable; or

(B) All, but not less than two, payments of distributions during a twelve-month period, or two consecutive payments of distributions during a period of more than twelve months, have been sent to the member at the member's address as shown on the records of the association and have been returned undeliverable.

(II) If any such member delivers to the association a notice in a record setting forth the member's then-current address, the requirement that notice be given to the member is reinstated.

(7) The proper court may, upon application of the association 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 records consenting to an action under this section and may enter other orders necessary or appropriate to effect the purposes of this section.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 784, § 1, effective April 2, 2012.

7-58-517. Districts and delegates - classes of members.

(1) The articles or bylaws may provide for the formation of geographic districts of patron members, the conduct of patron member meetings by districts, the election of directors at the meetings, the election of district delegates to represent and vote for the district at members meetings, or any combination thereof.

(2) A delegate elected under subsection (1) of this section has one vote unless voting power is otherwise allocated by the articles or bylaws.

(3) The articles or bylaws may provide for the establishment of classes of members; the preferences, rights, and limitations of the classes; the conduct of members meetings by classes and the election of directors at the meetings; the election of class delegates to represent and vote for the district at members meetings; or any combination thereof.

(4) A delegate elected under subsection (3) of this section has one vote unless voting power is otherwise allocated by the articles or bylaws.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 786, § 1, effective April 2, 2012.

PART 6

MEMBER'S INTEREST IN LIMITED COOPERATIVE ASSOCIATION

7-58-601. Member's interest.

(1) A member's interest:

(a) Is personal property;

(b) Consists of:

(I) Governance rights;

(II) Financial rights; and

(III) The right or obligation, if any, to do business with the limited cooperative association; and

(c) May be in certificated or uncertificated form.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 786, § 1, effective April 2, 2012.

7-58-602. Patron and investor members' interests.

(1) Unless the articles or bylaws establish investor members' interests, a member's interest is a patron member's interest.

(2) Unless the articles or bylaws otherwise provide, if a limited cooperative association has investor members, while a person is a member of the association, the person:

(a) If admitted as a patron member, remains a patron member;

(b) If admitted as an investor member, remains an investor member; and

(c) If admitted as a patron member and investor member, remains a patron and investor member if not dissociated in one of the capacities.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 787, § 1, effective April 2, 2012.

7-58-603. Transferability of member's interest.

(1) Section 7-90-104 applies to this article.

(2) Unless the articles or bylaws otherwise provide, a member's interest other than financial rights is not transferable.

(3) Unless a transfer is restricted or prohibited by the articles or bylaws, a member may transfer its financial rights in the limited cooperative association.

(4) The terms of any restriction on transferability of financial rights must be:

(a) Set forth in the articles or bylaws and the member records of the association; and

(b) Conspicuously noted on any certificates evidencing a member's interest.

(5) A transferee of a member's financial rights, to the extent the rights are transferred, has the right to share in the allocation of profits or losses and to receive the distributions to the member transferring the interest to the same extent as the transferring member.

(6) A transferee of a member's financial rights does not become a member upon transfer of the rights unless the transferee is admitted as a member by the limited cooperative association.

(7) A limited cooperative association need not give effect to a transfer under this section until the association has notice of the transfer.

(8) A transfer of a member's financial rights in violation of a restriction on transfer contained in the articles or bylaws is ineffective as to a person having notice of the restriction at the time of transfer.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 787, § 1, effective April 2, 2012.

7-58-604. Security interest and set-off.

(1) A member or transferee may create an enforceable security interest in its financial rights in a limited cooperative association.

(2) Unless the articles or bylaws otherwise provide, a member may not create an enforceable security interest in the member's governance rights in, or in the right or obligation, if any, to do business with, a limited cooperative association.

(3) The articles or bylaws may provide that a limited cooperative association has a security interest in the financial rights of a member to secure payment of any indebtedness or other obligation of the member to the association. A security interest provided for in the articles or bylaws is enforceable under, and governed by, article 9 of title 4, C.R.S.

(4) Unless the articles or bylaws otherwise provide, a member may not compel the limited cooperative association to offset financial rights against any indebtedness or obligation owed to the association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 788, § 1, effective April 2, 2012.

7-58-605. Charging orders for judgment creditor of member or transferee.

(1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the financial rights of the judgment debtor for the unsatisfied amount of the judgment. A charging order issued under this subsection (1) constitutes a lien on the judgment debtor's financial rights and requires the limited cooperative association to pay over to the creditor or receiver, to the extent necessary to satisfy the judgment, any distribution that would otherwise be paid to the judgment debtor.

(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order under subsection (1) of this section, the court may:

(a) Appoint a receiver of the share of the distributions due or to become due to the judgment debtor under the judgment debtor's financial rights, with the power to make all inquiries the judgment debtor might have made; and

(b) Make all other orders that the circumstances of the case may require to give effect to the charging order.

(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the financial rights. The purchaser at the foreclosure sale obtains only the financial rights that are subject to the charging order, does not thereby become a member, and is subject to section 7-58-603.

(4) At any time before a sale pursuant to a foreclosure, a member or transferee whose financial rights are subject to a charging order under subsection (1) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(5) At any time before sale pursuant to a foreclosure, the limited cooperative association or one or more members whose financial rights are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and succeed to the rights of the judgment creditor, including the charging order. Unless the articles or bylaws otherwise provide, the association may act under this subsection (5) only with the consent of all members whose financial rights are not subject to the charging order.

(6) This article does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's financial rights.

(7) This section provides the exclusive remedy by which a judgment creditor of a member or transferee may satisfy the judgment from the member's or transferee's financial rights.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 788, § 1, effective April 2, 2012.

PART 7

MARKETING CONTRACTS

7-58-701. Authority.

(1) In this part 7, "marketing contract" means a contract between a limited cooperative association and another person, which person need not be a patron member:

(a) Requiring the other person to sell, or deliver for sale or marketing on the person's behalf, a specified part of the person's products, commodities, or goods exclusively to or through the association or any facilities furnished by the association; or

(b) Authorizing the association to act for the person in any manner with respect to the products, commodities, or goods.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 789, § 1, effective April 2, 2012.

7-58-702. Marketing contracts.

(1) If a marketing contract provides for the sale of products, commodities, or goods to a limited cooperative association, the sale transfers title to the association upon delivery or at any other specific time expressly provided by the contract.

(2) A marketing contract may:

(a) Authorize a limited cooperative association to create an enforceable security interest in the products, commodities, or goods delivered; and

(b) Allow the association to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.

(3) Some or all of the provisions of a marketing contract between a patron member and a limited cooperative association may be contained in the articles or bylaws.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 789, § 1, effective April 2, 2012.

7-58-703. Duration of marketing contract.

The initial duration of a marketing contract may not exceed ten years, but the contract may be self-renewing for additional periods not exceeding five years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in a record at least ninety days before the end of the current term.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 790, § 1, effective April 2, 2012.

7-58-704. Remedies for breach of contract.

(1) Damages to be paid to a limited cooperative association for breach or anticipatory repudiation of a marketing contract may be liquidated, but only at an amount or under a formula that is reasonable in light of the actual or anticipated harm caused by the breach or repudiation. A provision that so provides is not a penalty.

(2) Upon a breach of a marketing contract, whether by anticipatory repudiation or otherwise, a limited cooperative association may seek:

(a) An injunction to prevent further breach; and

(b) Specific performance.

(3) The remedies in this section are in addition to any other remedies available to an association under law other than this part 7.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 790, § 1, effective April 2, 2012.

PART 8

DIRECTORS AND OFFICERS

7-58-801. Board of directors.

(1) A limited cooperative association must have a board of directors of at least three individuals unless the association has fewer than three members. If the association has fewer than three members, the number of directors may not be fewer than the number of members.

(2) The affairs of a limited cooperative association must be managed by, or under the direction of, the board of directors. The board may adopt policies and procedures that do not conflict with the articles, bylaws, or this article.

(3) An individual is not an agent for a limited cooperative association solely by being a director.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 790, § 1, effective April 2, 2012.

7-58-802. No liability as director for limited cooperative association's obligations.

A debt, obligation, or other liability of a limited cooperative association is solely that of the association and is not a debt, obligation, or liability of a director solely by reason of being a director. An individual is not personally liable, directly or indirectly, for an obligation of an association solely by reason of being a director.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 791, § 1, effective April 2, 2012.

7-58-803. Qualifications of directors.

(1) Unless the articles or bylaws otherwise provide, and subject to subsection (3) of this section, each director of a limited cooperative association must be an individual who is a member of the association or an individual who is designated by a member that is not an individual for purposes of qualifying and serving as a director; except that initial directors need not be members or designees of a member. A director must be at least eighteen years of age.

(2) Unless the articles or bylaws otherwise provide, a director may be an officer or employee of the limited cooperative association.

(3) If the articles or bylaws provide for nonmember directors, the number of nonmember directors may not exceed:

(a) One, if there are two to four directors;

(b) Two, if there are five to eight directors; or

(c) One-third of the total number of directors if there are at least nine directors.

(4) The articles or bylaws may provide qualifications for directors in addition to those in this section.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 791, § 1, effective April 2, 2012.

7-58-804. Election of directors and composition of board.

(1) Unless the articles or bylaws require a greater number:

(a) The number of directors that must be patron members may not be fewer than:

(I) One, if there are two or three directors;

(II) Two, if there are four or five directors;

(III) Three, if there are six to eight directors; or

(IV) One-third of the directors if there are at least nine directors; and

(b) A majority of the board of directors must be elected exclusively by patron members.

(2) Unless the articles or bylaws otherwise provide, if a limited cooperative association has investor members, directors who are investor members and who are not elected exclusively by patron members must be elected by the investor members.

(3) Unless the articles or bylaws otherwise provide, all nonmember directors, if any, must be elected by the patron members and the investor members.

(4) Subject to subsection (1) of this section, the articles or bylaws may provide for the election of all or a specified number of directors by one or more districts or classes of members.

(5) Subject to subsection (1) of this section, the articles or bylaws may provide for the nomination or election of directors by districts or classes, directly or by district delegates.

(6) If a class of members consists of a single member, the articles or bylaws may provide for the member to appoint a director or directors.

(7) Unless the articles or bylaws otherwise provide, cumulative voting for directors is prohibited.

(8) Except as otherwise provided by the articles, bylaws, subsection (6) of this section, or section 7-58-303, 7-58-516, 7-58-517, or 7-58-809, member directors must be elected at an annual members meeting.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 791, § 1, effective April 2, 2012.

7-58-805. Term of director.

(1) Unless the articles or bylaws otherwise provide, and subject to subsections (3) and (4) of this section and section 7-58-304 (4), the term of a director expires at the annual members meeting following the director's election or appointment.

(2) Unless the articles or bylaws otherwise provide, a director may be reelected.

(3) Except as otherwise provided in subsection (4) of this section, a director continues to serve until a successor director is elected or appointed and qualifies or the director is removed, resigns, is adjudged incompetent, or dies.

(4) Unless the articles or bylaws otherwise provide, a director shall not serve the remainder of the director's term if the director ceases to qualify to be a director.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 792, § 1, effective April 2, 2012.

7-58-806. Resignation of director.

A director may resign at any time by giving notice in a record to the limited cooperative association. Unless the notice states a later effective date, a resignation is effective when the notice is received by the association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 792, § 1, effective April 2, 2012.

7-58-807. Removal of director.

(1) Unless the articles or bylaws otherwise provide:

(a) Members may remove a director with or without cause.

(b) A member or members holding at least ten percent of the total voting power entitled to be voted in the election of a director may demand removal of the director by one or more signed

petitions submitted to the officer of the limited cooperative association charged with keeping its records.

(c) Upon receipt of a petition for removal of a director, an officer of the association or the board of directors shall:

(I) Call a special meeting of members to be held not later than ninety days after receipt of the petition by the association; and

(II) Mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal, and to the director to be removed, notice of the meeting that complies with section 7-58-508.

(d) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 792, § 1, effective April 2, 2012.

7-58-808. Suspension of director by board.

(1) A board of directors may suspend a director if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the association and the director is engaging, or has engaged, in:

(a) Fraudulent conduct with respect to the association or its members;

(b) Gross abuse of the position of director;

(c) Intentional or reckless infliction of harm on the association; or

(d) Any other behavior, act, or omission as provided by the articles or bylaws.

(2) A suspension under subsection (1) of this section is effective for a period determined by the board of directors, not to exceed sixty days, unless, before the end of the suspension period, the board calls and gives notice of a special meeting of members for removal of the director, in which case the suspension is effective until the earlier of adjournment of the members meeting or removal of the director.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 793, § 1, effective April 2, 2012.

7-58-809. Vacancy on board.

(1) Unless the articles or bylaws otherwise provide, a vacancy on the board of directors must be filled:

(a) Within a reasonable time by majority vote of the remaining directors, until the next annual members meeting or a special meeting of members is called to fill the vacancy; and

(b) For the balance of the unexpired term by members at the next annual members meeting or a special meeting of members called to fill the vacancy.

(2) Unless the articles or bylaws otherwise provide, if a vacating director was elected or appointed by a class of members or a district:

(a) The new director must be of that class or district; and

(b) The selection of the director for the unexpired term must be conducted in the same manner as would the selection for that position without a vacancy.

(3) If a member appointed a vacating director, the articles or bylaws may provide for that member to appoint a director to fill the vacancy.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 793, § 1, effective April 2, 2012.

7-58-810. Remuneration of directors.

Unless the articles or bylaws otherwise provide, the board of directors may set the remuneration of directors and of nondirector committee members appointed under section 7-58-817 (1).

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 794, § 1, effective April 2, 2012.

7-58-811. Meetings.

(1) A board of directors shall meet at least annually and may hold meetings inside or outside this state.

(2) Unless the articles or bylaws otherwise provide, a board of directors may permit directors to attend or conduct board meetings through the use of any means of communication if all directors attending the meeting can communicate with each other during the meeting.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 794, § 1, effective April 2, 2012.

7-58-812. Action without meeting.

(1) Unless prohibited by the articles or bylaws, any action that may be taken by a board of directors may be taken without a meeting if each director consents in a record to the action.

(2) Consent under subsection (1) of this section may be withdrawn by a director in a record at any time before the limited cooperative association receives consent from all directors.

(3) A record of consent for any action under subsection (1) of this section may specify the effective date or time of the action.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 794, § 1, effective April 2, 2012.

7-58-813. Meetings - notice.

(1) Unless the articles or bylaws otherwise provide, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.

(2) Unless the articles or bylaws otherwise provide, notice of the time, date, and place of a special meeting of a board of directors must be given to all directors at least three days before the meeting, the notice must contain a statement of the purpose of the meeting, and the meeting is limited to the matters contained in the statement.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 794, § 1, effective April 2, 2012.

7-58-814. Waiver of notice of meeting.

(1) Unless the articles or bylaws otherwise provide, a director may waive any required notice of a meeting of the board of directors in a record before, during, or after the meeting.

(2) Unless the articles or bylaws otherwise provide, a director's participation in a meeting is a waiver of notice of that meeting unless:

(a) The director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote in favor of or otherwise assent to the action taken at the meeting; or

(b) The director promptly objects upon the introduction of any matter for which notice under section 7-58-813 is required and has not been given and does not thereafter vote in favor of or otherwise assent to the action taken on the matter.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 795, § 1, effective April 2, 2012.

7-58-815. Quorum.

(1) Unless the articles or bylaws provide for a greater number, a majority of the total number of directors specified by the articles or bylaws constitutes a quorum for a meeting of the directors.

(2) If a quorum of the board of directors is present at the beginning of a meeting, any action taken by the directors present is valid even if withdrawal of directors originally present results in the number of directors being fewer than the number required for a quorum.

(3) A director present at a meeting but objecting to notice under section 7-58-814 (2) does not count toward a quorum.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 795, § 1, effective April 2, 2012.

7-58-816. Voting.

(1) Each director has one vote for purposes of decisions made by the board of directors.

(2) Unless the articles or bylaws otherwise provide, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 795, § 1, effective April 2, 2012.

7-58-817. Committees.

(1) Unless the articles or bylaws otherwise provide, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

(2) Unless the articles or bylaws otherwise provide, an individual appointed to serve on a committee of a limited cooperative association need not be a director or member.

(3) An individual who is not a director and is serving on a committee has, with respect to the subject matter of the committee, the same rights, duties, and obligations as a director serving on the committee.

(4) Unless the articles or bylaws otherwise provide, and subject to the oversight responsibility of the board of directors, each committee of a limited cooperative association may exercise the powers delegated to it by the board of directors, but a committee may not:

(a) Approve allocations or distributions except according to a formula or method prescribed by the board of directors;

(b) Approve or propose to members action requiring approval of members; or

(c) Fill vacancies on the board of directors or any of its committees.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 795, § 1, effective April 2, 2012.

7-58-818. Standards of conduct and liability.

(1) Except as otherwise provided in section 7-58-820:

(a) The discharge of the duties of a director or member of a committee of the board of directors is governed by the law applicable to directors of entities organized under the "Colorado Business Corporation Act", articles 101 to 117 of this title; and

(b) The liability of a director or member of a committee of the board of directors is governed by the law applicable to directors of entities organized under the "Colorado Business Corporation Act", articles 101 to 117 of this title.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 796, § 1, effective April 2, 2012.

7-58-819. Conflict of interest.

(1) The law applicable to conflicts of interest relating to a director of an entity organized under the "Colorado Business Corporation Act", articles 101 to 117 of this title, governs conflicts of interest relating to a limited cooperative association and a director.

(2) A director does not have a conflict of interest under this article or the articles and bylaws solely because the director's conduct relating to the duties of the director may further the director's own interest.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 796, § 1, effective April 2, 2012.

7-58-820. Other considerations of directors.

(1) Unless the articles otherwise provide, in considering the best interests of a limited cooperative association, a director of the association in discharging the duties of director, in conjunction with considering the long- and short-term interest of the association and its members, may consider:

(a) The interest of employees, customers, and suppliers of the association;

(b) The interest of the community in which the association operates; and

(c) Other cooperative principles and values that may be applied in the context of the decision.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 796, § 1, effective April 2, 2012.

7-58-821. Right of director or committee member to information.

A director or a member of a committee appointed under section 7-58-817 may obtain, inspect, and copy all information regarding the state of activities and financial condition of the limited

cooperative association and other information regarding the activities of the association if the information is reasonably related to the performance of the director's duties as director or the committee member's duties as a member of the committee. Information obtained in accordance with this section may not be used by a director or a committee member in any manner that would violate any duty of or to the association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 796, § 1, effective April 2, 2012.

7-58-822. Appointment and authority of officers.

(1) A limited cooperative association has the officers:

(a) Provided in the articles or bylaws; or

(b) Established by the board of directors in a manner not inconsistent with the articles and bylaws.

(2) The articles or bylaws may designate or, if the articles or bylaws do not designate, the board of directors shall designate, one of the association's officers for preparing all records required by section 7-58-112 and for the authentication of records.

(3) Unless the articles or bylaws otherwise provide, the board of directors shall appoint the officers of the limited cooperative association.

(4) Officers of a limited cooperative association shall perform the duties the articles and bylaws prescribe or as authorized by the board of directors in a manner not inconsistent with the articles and bylaws.

(5) The election or appointment of an officer of a limited cooperative association does not of itself create a contract between the association and the officer.

(6) Unless the articles or bylaws otherwise provide, an individual may simultaneously hold more than one office in a limited cooperative association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 797, § 1, effective April 2, 2012.

7-58-823. Resignation and removal of officers.

(1) The board of directors may remove an officer at any time with or without cause.

(2) An officer of a limited cooperative association may resign at any time by giving notice in a record to the association. Unless the notice specifies a later time, the resignation is effective when the notice is received by the association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 797, § 1, effective April 2, 2012.

PART 9

INDEMNIFICATION

7-58-901. Indemnification.

(1) Indemnification of an individual who has incurred liability or is a party, or is threatened to be made a party, to litigation because of the performance of a duty to, or activity on behalf of, a limited cooperative association is governed by the "Colorado Business Corporation Act", articles 101 to 117 of this title.

(2) A limited cooperative association may purchase and maintain insurance on behalf of any individual against liability asserted against or incurred by the individual to the same extent and subject to the same conditions as provided by the "Colorado Business Corporation Act", articles 101 to 117 of this title.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 797, § 1, effective April 2, 2012.

PART 10

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

7-58-1001. Members' contributions.

The articles or bylaws must establish the amount, manner, or method of determining any contribution requirements for members or must authorize the board of directors to establish the amount, manner, or other method of determining any contribution requirements for members.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 798, § 1, effective April 2, 2012.

7-58-1002. Contribution and valuation.

(1) Unless the articles or bylaws otherwise provide, the contributions of a member to a limited cooperative association may consist of tangible or intangible property or other benefit to the association, including money, labor or other services performed or to be performed, promissory notes, other agreements to contribute money or property, and contracts to be performed.

(2) The receipt and acceptance of contributions and the valuation of contributions must be reflected in a limited cooperative association's records.

(3) Unless the articles or bylaws otherwise provide, the board of directors shall determine the value of a member's contributions received or to be received, and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been met.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 798, § 1, effective April 2, 2012.

7-58-1003. Contribution agreements.

Persons may enter into agreements to make contributions to a limited cooperative association before or after it is formed. Those agreements are enforceable by the association in accordance with their terms.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 798, § 1, effective April 2, 2012.

7-58-1004. Allocations of profits and losses.

(1) Unless the articles or bylaws otherwise provide, all profits and losses of a limited cooperative association must be allocated to patron members. Unless the articles or bylaws otherwise provide, losses of the association must be allocated in the same proportion as profits.

(2) The articles or bylaws may provide for allocating profits of a limited cooperative association among members, among persons that are not members but conduct business with the association, to an unallocated account, or to any combination thereof.

(3) If a limited cooperative association has investor members, the articles or bylaws may not reduce the allocation to patron members to less than fifty percent of profits. For purposes of this subsection (3), the following rules apply:

(a) Amounts paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members.

(b) Amounts paid, due, or allocated to investor members as a stated fixed or variable rate of return on investment are not considered amounts allocated to investor members if the determination of the return is not related to or based on profits.

(4) Unless prohibited by the articles or bylaws, in determining the profits for allocation under subsections (1), (2), and (3) of this section, the board of directors may first deduct and set aside a part of the profits to create or accumulate:

(a) Unallocated capital; and

(b) Reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, and cooperative development; creation and distribution of information concerning principles of cooperation; and community responsibility.

(5) Subject to subsections (1) and (6) of this section and the articles and bylaws, the board of directors shall allocate the amount remaining after any deduction or setting aside of amounts under subsection (4) of this section:

(a) To patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and

(b) To investor members, if any, in the ratio of each investor member's contributions to the total contributions of all investor members.

(6) For purposes of allocation of profits and losses or specific items of profits or losses of a limited cooperative association to members, the articles or bylaws may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 798, § 1, effective April 2, 2012.

7-58-1005. Distributions.

(1) Unless the articles or bylaws otherwise provide and subject to section 7-58-1007, the board of directors may authorize, and the limited cooperative association may make, distributions to members.

(2) Unless the articles or bylaws otherwise provide, distributions to members may be made in any form, including money, capital credits, allocated patronage equities, revolving fund certificates, and the limited cooperative association's own or other securities.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 799, § 1, effective April 2, 2012.

7-58-1006. Redemption or repurchase.

Property distributed to a member by a limited cooperative association, other than money, may be redeemed or repurchased as provided in the articles or bylaws, but a redemption or repurchase may not be made without authorization by the board of directors. The board may withhold authorization for any reason in its sole discretion. A redemption or repurchase is treated as a distribution for purposes of section 7-58-1007.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 800, § 1, effective April 2, 2012.

7-58-1007. Limitation on distributions.

(1) A limited cooperative association may not make a distribution if, after the distribution:

(a) The association would not be able to pay its debts as they become due in the ordinary course of the association's activities; or

(b) The association's assets would be less than the sum of its total liabilities.

(2) A limited cooperative association may base a determination that a distribution is not prohibited under subsection (1) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(3) Except as otherwise provided in subsection (4) of this section, the effect of a distribution allowed under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the date money or other property is transferred or debt is incurred by the association; and

(b) In all other cases, as of the date:

(I) The distribution is authorized, if the payment occurs not later than one hundred twenty days after that date; or

(II) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

(4) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(5) For purposes of this section, "distribution" does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide employee retirement or other benefits program.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 800, § 1, effective April 2, 2012.

7-58-1008. Liability for improper distributions - limitation of action.

(1) A director who consents to a distribution that violates section 7-58-1007 is personally liable to the limited cooperative association for the amount of the distribution that exceeds the amount that could have been distributed without the violation if it is established that, in consenting to the distribution, the director failed to comply with section 7-58-818 or 7-58-819.

(2) A member or transferee of financial rights that received a distribution knowing that the distribution was made in violation of section 7-58-1007 is personally liable to the limited cooperative association to the extent that the distribution exceeded the amount that could have been properly paid.

(3) A director against whom an action is commenced under subsection (1) of this section may:

(a) Implead in the action any other director who is liable under subsection (1) of this section and compel contribution from the director; and

(b) Implead in the action any person that is liable under subsection (2) of this section and compel contribution from the person in the amount the person received as described in subsection (2) of this section.

(4) An action under this section is barred if it is commenced later than three years after the distribution.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 801, § 1, effective April 2, 2012.

7-58-1009. Relation to state securities law.

Any security, patronage refund, per unit retain certificate, capital credit, evidence of membership, preferred equity certificate, or other equity instrument issued, sold, or reported by a limited cooperative association as an investment in its stock or capital to the patron members of the association or by an entity subject to this article or a similar law of any other jurisdiction and authorized to transact business or conduct activities in this state is exempt from the securities laws contained in the "Colorado Securities Act", article 51 of title 11, C.R.S. Such securities, patronage refunds, per unit retain certificates, capital credits, or evidences of membership, preferred equity certificates, or other equity instruments may be issued, sold, or reported to patron members of the association or entity lawfully by the issuer or its directors, officers, members, or salaried employees without the necessity of the issue or its directors, officers, members, or employees being registered as brokers or dealers under the "Colorado Securities Act", article 51 of title 11, C.R.S.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 801, § 1, effective April 2, 2012.

7-58-1010. Alternative distribution of unclaimed property, distributions, redemptions, or payments.

A limited cooperative association may provide in its articles or bylaws for the disposition of funds when declared payable by the association and remaining unclaimed by the holder for three years after notification has been mailed to the holder's last-known address of record on the books of the association, which disposition may consist of transferring the funds to the general operating account of the association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 801, § 1, effective April 2, 2012.

PART 11

DISSOCIATION

7-58-1101. Member's dissociation.

(1) A member has the power to dissociate at any time, rightfully or wrongfully, by notice in a record.

(2) Unless the articles or bylaws otherwise provide, a member's dissociation from a limited cooperative association is wrongful only if the dissociation:

(a) Breaches an express provision of the articles or bylaws; or

(b) Occurs before the termination of the limited cooperative association and:

(I) The person is expelled as a member under paragraph (c) or (d) of subsection (4) of this section; or

(II) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a member because it dissolved or terminated in bad faith.

(3) Unless the articles or bylaws otherwise provide, a person that wrongfully dissociates as a member is liable to the limited cooperative association for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the person to the association.

(4) A member is dissociated from the limited cooperative association as a member when:

(a) The association receives notice from the member in a record of dissociation as a member or, if the member specifies in the notice an effective date later than the date the association received notice, on that later date;

(b) An event stated in the articles or bylaws as causing the member's dissociation as a member occurs;

(c) The member is expelled as a member under the articles or bylaws;

(d) The member is expelled as a member by the board of directors because:

(I) It is unlawful to carry on the association's activities with the member as a member;

(II) There has been a transfer of all the member's financial rights in the association, other than:

(A) A creation or perfection of a security interest; or

(B) A charging order in effect under section 7-58-605 that has not been foreclosed;

(III) The member is a limited liability company or partnership that has been dissolved and its business is being wound up;

(IV) The member is a corporation or cooperative and:

(A) The member filed a statement of dissolution or the equivalent, or the jurisdiction of formation revoked the member's charter or right to conduct business;

(B) The association sends a notice to the member that it will be expelled as a member for a reason described in sub-subparagraph (A) of this subparagraph (IV); and

(C) Not later than ninety days after the notice was sent under sub-subparagraph (B) of this subparagraph (IV), the member did not reinstate or the jurisdiction of formation did not reinstate the member's charter or right to conduct business; or

(V) The member is an individual and is adjudged incompetent;

(e) In the case of a member who is an individual, the individual dies;

(f) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, all the trust's financial rights in the association are distributed;

(g) In the case of a member that is an estate, the estate's entire financial interest in the association is distributed;

(h) In the case of a member that is not an individual, partnership, limited liability company, cooperative, corporation, trust, or estate, the member is terminated; or

(i) The association's participation in a merger if, under the plan of merger as approved under part 16 of this article, the member ceases to be a member.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 802, § 1, effective April 2, 2012.

7-58-1102. Effect of dissociation as member.

(1) Upon a member's dissociation, subject to section 7-58-1103:

(a) The dissociated member has no further rights as a member; and

(b) Any financial rights owned by the dissociated member in the dissociated member's capacity as a member immediately before dissociation are owned by the dissociated member as a transferee.

(2) A dissociated member's dissociation as a member does not of itself discharge the dissociated member from any debt, obligation, or liability to the limited cooperative association that the dissociated member incurred under the articles or bylaws, by contract, or by other means while a member.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 803, § 1, effective April 2, 2012.

7-58-1103. Power of estate of member.

Unless the articles or bylaws provide for greater rights, if a member is dissociated in accordance with section 7-58-1101 (4)(d)(V) or (4)(e), the member's personal representative or other legal representative may exercise the rights of a transferee of the member's financial rights and, for purposes of settling the estate of a deceased member, may exercise the informational rights of a current member to obtain information under section 7-58-505 (1).

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 804, § 1, effective April 2, 2012.

PART 12

DISSOLUTION

7-58-1201. Dissolution - winding up.

A limited cooperative association may be dissolved only as provided in this part 12 and in part 9 of article 90 of this title, and upon dissolution its business and activities must be wound up as provided in this part 12 and part 9 of article 90 of this title.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 804, § 1, effective April 2, 2012.

7-58-1202. Voluntary dissolution.

(1) Except as otherwise provided in sections 7-58-1203 and 7-90-908, a limited cooperative association is dissolved and its activities must be wound up:

(a) Upon the occurrence of an event or at a time specified in the articles;

(b) Upon the action of the association's organizers, board of directors, or members under section 7-58-1205 or 7-58-1206; or

(c) Ninety days after the dissociation of a member that results in the association having one patron member and no other members, unless the association:

(I) Has a sole member that is a cooperative; or

(II) Not later than the end of the ninety-day period, admits at least one member in accordance with the articles or bylaws and has at least two members, at least one of which is a patron member.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 804, § 1, effective April 2, 2012.

7-58-1203. Judicial dissolution - grounds.

(1) A limited cooperative association may be dissolved in a proceeding brought in court by the attorney general if it is established that:

(a) The association obtained its articles of organization through fraud; or

(b) The association has continued to exceed or abuse the authority conferred upon it by law.

(2) A limited cooperative association may be dissolved in a proceeding brought in court by a member if it is established that:

(a) The directors are deadlocked in the management of the association's affairs, the members are unable to break the deadlock, and irreparable injury to the association is occurring or is threatened because of the deadlock;

(b) The directors or those in control of the association 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 to elect successors to directors whose terms have expired for two consecutive periods during which annual members meetings were held or were to be held; or

(d) The assets of the association are being misapplied or wasted.

(3) A limited cooperative association may be dissolved in a proceeding brought in court by a creditor if it is established that:

(a) A creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the association is insolvent; or

(b) The association is insolvent and the association has admitted in writing that a creditor's claim is due and owing.

(4) In lieu of dissolution in a proceeding described in subsection (1), (2), or (3) of this section, the court may order any other relief that is appropriate and equitable.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 804, § 1, effective April 2, 2012.

7-58-1204. Judicial dissolution - procedure.

(1) A judicial proceeding to dissolve a limited cooperative association must be brought in the proper court.

(2) It is not necessary to make members parties to a judicial proceeding to dissolve a limited cooperative association unless relief is sought against them individually.

(3) A court in a judicial proceeding brought to dissolve a limited cooperative association 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 limited liability company's assets wherever located, and carry on the business of the association until a full hearing can be held.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 805, § 1, effective April 2, 2012.

7-58-1205. Voluntary dissolution before commencement of activity.

A majority of the organizers or initial directors of a limited cooperative association that has not yet begun business activity or the conduct of its affairs may dissolve the association.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 806, § 1, effective April 2, 2012.

7-58-1206. Voluntary dissolution by the board and members.

(1) Except as otherwise provided in section 7-58-1205, for a limited cooperative association to voluntarily dissolve:

(a) A resolution to dissolve must be approved by a majority vote of the board of directors unless a greater percentage is required by the articles or bylaws;

(b) The board of directors must call a members meeting to consider the resolution, to be held not later than ninety days after adoption of the resolution; and

(c) The board of directors must mail or otherwise transmit or deliver to each member in a record that complies with section 7-58-508:

(I) The resolution required by paragraph (a) of this subsection (1);

(II) A recommendation that the members vote in favor of the resolution or, if the board determines that because of conflict of interest or any other reason it should not make a favorable recommendation, the basis of that determination; and

(III) Notice of the members meeting, which must be given in the same manner as notice of a special meeting of members.

(2) Subject to subsection (3) of this section, a resolution to dissolve must be approved by:

(a) At least two-thirds of the voting power of members present at a members meeting called under paragraph (b) of subsection (1) of this section; and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the articles or bylaws require a greater percentage.

(3) The articles or bylaws may require that the percentage of votes required under paragraph (a) of subsection (2) of this section is:

(a) A different percentage that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of paragraphs (a) and (b) of this subsection (3).

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 806, § 1, effective April 2, 2012.

7-58-1207. Winding up.

(1) A limited cooperative association continues its existence after dissolution only for purposes of winding up its activities.

(2) In winding up a limited cooperative association's activities, the board of directors shall cause the association to:

(a) Collect its assets;

(b) Preserve the association or its property as a going concern for no more than a reasonable time;

(c) Prosecute and defend actions and proceedings;

(d) Dispose of its properties that will not be distributed in kind to its members;

(e) Discharge or make provision for discharging its liabilities;

(f) Distribute its remaining property among its members; and

(g) Do every other act necessary to wind up and liquidate its business and affairs.

(3) After dissolution and upon application of a limited cooperative association, a member, or a holder of financial rights, the proper court may order judicial supervision of the winding up of the association, including the appointment of a person to wind up the association's activities, if:

(a) After a reasonable time, the association has not wound up its activities; or

(b) The applicant establishes other good cause.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 807, § 1, effective April 2, 2012.

7-58-1208. Distribution of assets in winding up.

(1) In winding up a limited cooperative association's business, the association shall apply its assets to discharge its obligations to creditors, including members that are creditors. The association shall apply any remaining assets to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (2) of this section.

(2) Unless the articles or bylaws otherwise provide, in this subsection (2), "financial interests" means the amounts recorded in the names of members in the records of a limited cooperative association at the time a distribution is made, including amounts paid to become a

member, amounts allocated but not distributed to members, and amounts of distributions authorized but not yet paid to members. Unless the articles or bylaws otherwise provide, each member is entitled to a distribution from the association of any remaining assets in the proportion of the member's financial interests to the total financial interests of the members after all other obligations are satisfied.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 807, § 1, effective April 2, 2012.

7-58-1209. Court proceeding.

(1) Upon application by a dissolved limited cooperative association that has published a notice under section 7-90-912, the proper court may determine the amount and form of security to be provided for payment of claims against the association that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution but that, based on the facts known to the association, are reasonably anticipated to arise after the effective date of dissolution.

(2) Not later than ten days after filing an application under subsection (1) of this section, a dissolved limited cooperative association shall give notice of the proceeding to each known claimant holding a contingent claim.

(3) The court may appoint a representative in a proceeding brought under this section to represent all claimants whose identities are unknown. The dissolved limited cooperative association shall pay reasonable fees and expenses of the representative, including all reasonable attorney fees and expert witness fees.

(4) Provision by the dissolved limited cooperative association for security in the amount and the form ordered by the court satisfies the association's obligations with respect to claims that are contingent, have not been made known to the association, or are based on an event occurring after the effective date of dissolution, and the claims shall not be enforced against a member that received a distribution.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 808, § 1, effective April 2, 2012.

7-58-1210. Statement of dissolution.

(1) Upon dissolution, the limited cooperative association shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of dissolution stating:

(a) The domestic entity name of the limited cooperative association; and

(b) The principal office address of the limited cooperative association's principal office.

(2) A limited cooperative association is dissolved as provided in section 7-58-1202, 7-58-1203, or 7-90-908.

(3) A person who is not a director or member has notice of the dissolution of a limited cooperative association on the earlier of:

(a) The ninetieth day after the limited cooperative association's statement of dissolution is on file with the secretary of state; or

(b) The date on which the person first has actual knowledge of the dissolution.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 808, § 1, effective April 2, 2012.

PART 13

ACTION BY MEMBER

7-58-1301. Derivative action.

(1) A member may maintain a derivative action to enforce a right of a limited cooperative association if:

(a) The member demands in a record that the association bring an action to enforce the right; and

(b) Any of the following occur:

(I) The association does not, within ninety days after the association receives the demand, agree to bring the action;

(II) The association notifies the member in a record that it has rejected the demand;

(III) Irreparable harm to the association would result by waiting ninety days after the association receives the demand; or

(IV) The association agrees to bring an action demanded and fails to bring the action within a reasonable time.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 809, § 1, effective April 2, 2012.

7-58-1302. Proper plaintiff.

(1) A derivative action to enforce a right of a limited cooperative association may be maintained only by a person that:

(a) Is a member or a dissociated member at the time the action is commenced and:

(I) Was a member when the conduct giving rise to the action occurred; or

(II) Whose status as a member devolved upon the person by operation of law or the articles or bylaws from a person that was a member at the time of the conduct; and

(b) Adequately represents the interests of the association.

(2) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member who meets the requirements of subsection (1) of this section to be substituted as plaintiff.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 809, § 1, effective April 2, 2012.

7-58-1303. Pleading.

(1) In a derivative action to enforce a right of a limited cooperative association, the complaint must state:

(a) The date and content of the plaintiff's demand under section 7-58-1301 (1)(a) and the association's response;

(b) If ninety days have not expired since the demand was received by the association, how irreparable harm to the association would result by waiting for the expiration of ninety days; and

(c) If the association agreed to bring an action demanded, that the action has not been brought within a reasonable time.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 809, § 1, effective April 2, 2012.

7-58-1304. Approval for discontinuance or settlement.

A derivative action to enforce a right of a limited cooperative association may not be discontinued or settled without notice to the association and the court's approval.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 810, § 1, effective April 2, 2012.

7-58-1305. Proceeds and expenses.

(1) Except as otherwise provided in subsection (2) of this section:

(a) Any proceeds or other benefits of a derivative action to enforce a right of a limited cooperative association, whether by judgment, compromise, or settlement, belong to the association and not to the plaintiff; and

(b) If the plaintiff in the derivative action receives any proceeds, the plaintiff shall immediately remit them to the association.

(2) If a derivative action to enforce a right of a limited cooperative association is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the association if not otherwise awarded against the defendant.

(3) On the termination of a derivative proceeding commenced pursuant to this part 13, where the court finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose, the court may order the plaintiff to pay any of the defendant's reasonable expenses, including attorney fees, incurred by the defendant in connection with the defense of the proceeding.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 810, § 1, effective April 2, 2012.

7-58-1306. Applicability of derivative proceeding to foreign limited cooperative associations.

In any derivative proceeding in the right of a foreign limited cooperative association, the right of a person to commence or maintain a derivative proceeding in the right of a foreign limited cooperative association and any matters raised in the proceeding covered by sections 7-58-1301 to 7-58-1305 are governed by the law of the jurisdiction under which the foreign limited cooperative association was formed; except that any matters raised in the proceeding covered by section 7-58-1304 are governed by the law of this state.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 810, § 1, effective April 2, 2012.

PART 14

FOREIGN COOPERATIVES

7-58-1401. Authority to transact business or 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 limited cooperative associations.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 811, § 1, effective April 2, 2012.

7-58-1402. Registered agent - service of process.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to foreign limited cooperative associations.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 811, § 1, effective April 2, 2012.

PART 15

DISPOSITION OF ASSETS

7-58-1501. Disposition of assets not requiring member approval.

(1) Unless the articles of organization otherwise provide, member approval under section 7-58-1502 is not required for a limited cooperative association to:

(a) Sell, lease, exchange, license, or otherwise dispose of all or any part of the assets of the association in the usual and regular course of business; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, or otherwise encumber in any way all or any part of the assets of the association, whether or not in the usual and regular course of business.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 811, § 1, effective April 2, 2012.

7-58-1502. Member approval of other disposition or encumbrance of assets.

A sale, lease, exchange, license, or other disposition of assets or an encumbrance of assets of a limited cooperative association, other than a disposition or encumbrance described in section 7-58-1501, requires approval of the association's members under sections 7-58-1503 and 7-58-1504.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 811, § 1, effective April 2, 2012.

7-58-1503. Notice and action on disposition or encumbrance of assets.

(1) For a limited cooperative association to dispose of or encumber assets under section 7-58-1502:

(a) A majority of the board of directors, or a greater percentage if required by the articles or bylaws, must approve the proposed disposition or encumbrance; and

(b) The board of directors must call a members meeting to consider the proposed disposition or encumbrance, hold the meeting not later than ninety days after approval of the proposed

disposition or encumbrance by the board, and mail or otherwise transmit or deliver in a record to each member:

(I) The terms of the proposed disposition or encumbrance;

(II) A recommendation that the members approve the disposition or encumbrance or, if the board determines that because of conflict of interest or any other reason it should not make a favorable recommendation, the basis for that determination;

(III) A statement of any condition of the board's submission of the proposed disposition or encumbrance to the members; and

(IV) Notice of the meeting at which the proposed disposition or encumbrance will be considered, which notice must be given in the same manner as notice of a special meeting of members.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 811, § 1, effective April 2, 2012.

7-58-1504. Disposition or encumbrance of assets.

(1) Subject to subsection (2) of this section, a disposition or encumbrance of assets under section 7-58-1502 must be approved by:

(a) At least a majority of the voting power of members present at a members meeting called under section 7-58-1503 (1)(b); and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the articles or bylaws require a greater percentage vote by patron members.

(2) The articles or bylaws may require that the percentage of votes required under paragraph (a) of subsection (1) of this section is:

(a) A different percentage that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of paragraphs (a) and (b) of this subsection (2).

(3) Subject to any contractual obligations, after a disposition or encumbrance of assets is approved and at any time before the consummation of the disposition or encumbrance, a limited cooperative association may approve an amendment to the contract for the disposition or

encumbrance or the resolution authorizing the disposition or encumbrance or approve abandonment of the disposition or encumbrance:

(a) As provided in the contract or the resolution; and

(b) Except as limited or prohibited by the resolution, with the same affirmative vote of the board of directors and of the members as was required to approve the disposition or encumbrance.

(4) The voting requirements for districts, classes, or voting groups under section 7-58-404 apply to approval of a disposition of assets under this part 15.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 812, § 1, effective April 2, 2012.

PART 16

CONVERSION AND MERGER

7-58-1601. Definitions.

In this part 16, unless the context otherwise requires:

(1) "Constituent entity" means an entity that is a party to a merger.

(2) "Constituent limited cooperative association" means a limited cooperative association that is a party to a merger.

(3) "Converting limited cooperative association" means a converting entity that is a limited cooperative association.

(4) "Organizational documents" means articles of incorporation, bylaws, articles of organization, operating agreements, partnership agreements, and any other documents serving a similar function in the creation and governance of an entity.

(5) "Personal liability" means personal liability for a debt, liability, or other obligation of an entity imposed, by operation of law or otherwise, on a person that co-owns or has an interest in the entity:

(a) By the entity's organic statute solely because of the person co-owning or having an interest in the entity; or

(b) By the entity's organizational documents under a provision of the entity's organic statute authorizing those documents to make one or more specified persons liable for all or specified

parts of the entity's debts, liabilities, and other obligations solely because the person co-owns or has an interest in the entity.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 812, § 1, effective April 2, 2012.

Cross references: For additional definitions applicable to this part 16, see § 7-90-102.

7-58-1602. Conversion.

A limited cooperative association may convert into any form of entity permitted by section 7-90-201 if the board of directors of the limited cooperative association 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 7-58-1603, approve the plan of conversion.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 813, § 1, effective April 2, 2012.

7-58-1603. Action on plan of conversion by converting limited cooperative association.

(1) For a limited cooperative association to convert into another form of entity, a plan of conversion must be approved by a majority of the board of directors, or a greater percentage if required by the articles or bylaws, and the board of directors must call a members meeting to consider the plan of conversion, hold the meeting not later than ninety days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

(a) The plan, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;

(b) A recommendation that the members approve the plan of conversion or, if the board determines that because of a conflict of interest or any other reason it should not make a favorable recommendation, the basis for that determination;

(c) A statement of any condition of the board's submission of the plan of conversion to the members; and

(d) Notice of the meeting at which the plan of conversion will be considered, which notice must be given in the same manner as notice of a special meeting of members.

(2) Subject to subsections (3) and (4) of this section, a plan of conversion must be approved by:

(a) At least a majority of the voting power of members present at a members meeting called under subsection (1) of this section; and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the articles or bylaws require a greater percentage vote by patron members.

(3) The articles or bylaws may require that the percentage of votes required under paragraph (a) of subsection (2) of this section is:

(a) A different percentage that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of paragraphs (a) and (b) of this subsection (3).

(4) The vote required to approve a plan of conversion must not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.

(5) Consent in a record to a plan of conversion by a member must be delivered to the limited cooperative association before delivery of a statement of conversion for filing pursuant to section 7-58-1608 (1) if, as a result of the conversion, the member will have:

(a) Personal liability for an obligation of the association; or

(b) An obligation or liability for an additional contribution.

(6) Subject to subsection (5) of this section and any contractual rights, after a conversion is approved and at any time before the effective date of the conversion, a converting limited cooperative association may amend a plan of conversion or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same affirmative vote of the board of directors and of the members as was required to approve the plan.

(7) The voting requirements for districts, classes, or voting groups under section 7-58-404 apply to approval of a conversion under this part 16.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 813, § 1, effective April 2, 2012.

7-58-1604. Merger.

(1) One or more domestic limited cooperative associations may merge into another domestic entity if the board of directors of each association 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 association, if required by sections 7-58-1605 and 7-58-1606, approve the plan of merger.

(2) One or more domestic limited cooperative associations may merge with one or more foreign entities if:

(a) The merger is permitted by section 7-90-203 (2);

(b) The foreign entity complies with section 7-90-203.7 if it is the surviving entity of the merger; and

(c) Each domestic limited cooperative association complies with the applicable provisions of sections 7-58-1605 and 7-58-1606 and, if it is the surviving association of the merger, with section 7-58-1608 (2).

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 815, § 1, effective April 2, 2012.

7-58-1605. Notice and action on plan of merger by constituent limited cooperative association.

(1) For a limited cooperative association to merge with another entity, a plan of merger must be approved by a majority vote of the board of directors or a greater percentage if required by the association's articles or bylaws.

(2) The board of directors shall call a members meeting to consider a plan of merger approved by the board, hold the meeting not later than ninety days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

(a) The plan of merger, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;

(b) A recommendation that the members approve the plan of merger or, if the board determines that because of conflict of interest or any other reason it should not make a favorable recommendation, the basis for that determination;

(c) A statement of any condition of the board's submission of the plan of merger to the members; and

(d) Notice of the meeting at which the plan of merger will be considered, which notice must be given in the same manner as notice of a special meeting of members.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 815, § 1, effective April 2, 2012.

7-58-1606. Approval or abandonment of merger by members.

(1) Subject to subsections (2) and (3) of this section, a plan of merger must be approved by:

(a) At least a majority of the voting power of members present at a members meeting called under section 7-58-1605 (2); and

(b) If the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the articles or bylaws require a greater percentage vote by patron members.

(2) The articles or bylaws may provide that the percentage of votes required under paragraph (a) of subsection (1) of this section is:

(a) A different percentage that is not less than a majority of members voting at the meeting;

(b) Measured against the voting power of all members; or

(c) A combination of paragraphs (a) and (b) of this subsection (2).

(3) The vote required to approve a plan of merger must not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.

(4) Consent in a record to a plan of merger by a member must be delivered to the limited cooperative association before delivery of a statement of merger for filing pursuant to section 7-58-1608 (2) if, as a result of the merger, the member will have:

(a) Personal liability for an obligation of the association; or

(b) An obligation or liability for an additional contribution.

(5) Subject to subsection (4) of this section and any contractual rights, after a merger is approved, and at any time before the effective date of the merger, a limited cooperative association that is a party to the merger may approve an amendment to the plan of merger or approve abandonment of the planned merger:

(a) As provided in the plan; and

(b) Except as limited by the plan, with the same affirmative vote of the board of directors and of the members as was required to approve the plan.

(6) The voting requirements for districts, classes, or voting groups under section 7-58-404 apply to approval of a merger under this part 16.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 816, § 1, effective April 2, 2012.

7-58-1607. Merger of parent and subsidiary.

(1) Notwithstanding sections 7-58-1605 and 7-58-1606, by complying with this section, any parent limited cooperative association owning one hundred percent of the voting power, memberships, or interests of a subsidiary may either merge the subsidiary into itself or merge itself into the subsidiary.

(2) Subject to subsection (3) of this section, the boards of directors of the parent association and of the subsidiary shall adopt by resolution a plan of merger that states the following:

(a) The entity names of the parent association and subsidiary and the entity name of the surviving entity;

(b) The terms and conditions of the proposed merger;

(c) The manner and basis of converting the shares of the parent association and subsidiary into shares, obligations, or other securities of the surviving entity or any other limited cooperative association into money or other property in whole or part;

(d) Any amendments to the organizational documents of the surviving party to be effected by the merger; and

(e) Any other provisions relating to the merger as are deemed necessary or desirable.

(3) The members of the parent association are not required to vote on the merger unless the articles, bylaws, or the board require otherwise; except that if, as a result of the merger, the voting shares, memberships, or other interests of members of the parent association would be materially altered, then the members of the parent association have the right to vote on the plan of merger. If the members of the parent association have the right to vote on the plan of merger, the parent association shall mail a copy or summary of the plan of merger to each member of the parent association who has the right to vote on the plan. Notice and meeting requirements as provided for in this article shall apply.

(4) If the members of the parent limited cooperative association have the right to vote on the plan of merger, unless the articles, bylaws, or the board requires a greater vote, the plan of merger must be approved by a majority of the members of the parent association present and voting on the plan in person or in any other manner authorized by the association pursuant to section 7-58-515.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 816, § 1, effective April 2, 2012.

7-58-1608. Filings required for conversion or merger.

(1) After a plan of conversion is approved, the converting entity 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.

(2) After a plan of merger is approved, the surviving entity 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.

(3) If the plan of conversion or merger provides for amendments to the organizational documents of the converting or surviving entity, the converting or surviving entity shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment effecting the amendments.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 817, § 1, effective April 2, 2012.

7-58-1609. Effect of conversion or merger.

(1) The effect of a conversion is determined by section 7-90-202.

(2) The effect of a merger is determined by section 7-90-204.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 818, § 1, effective April 2, 2012.

7-58-1610. Consolidation.

(1) Constituent entities that are limited cooperative associations or foreign cooperatives may agree to call a merger a consolidation under this part 16.

(2) All provisions governing mergers or using the term merger in this part 16 apply equally to mergers that the constituent entities choose to call consolidations under subsection (1) of this section.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 818, § 1, effective April 2, 2012.

7-58-1611. Part not exclusive.

This part 16 does not prohibit a limited cooperative association from being converted or merged under law other than this part 16.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 818, § 1, effective April 2, 2012.

PART 17

MISCELLANEOUS PROVISIONS

7-58-1701. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it or similar statutes.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 818, § 1, effective April 2, 2012.

7-58-1702. Relation to electronic signatures in global and national commerce act.

This article modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede

section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 818, § 1, effective April 2, 2012.

7-58-1703. Saving clause.

This article does not affect an action or proceeding commenced, or right accrued, before April 2, 2012.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 818, § 1, effective April 2, 2012.

7-58-1704. Effective date.

This article takes effect April 2, 2012.

Source: L. 2011: Entire article added, (SB 11-191), ch. 197, p. 818, § 1, effective April 2, 2012.

PARTNERSHIPS

ARTICLE 60

Uniform Partnership Law

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7-60-152. Failure of limited liability partnerships to comply with part 5 of article 90 of this title. (Repealed)

7-60-152.5. Registered agent - service of process.

7-60-153. Application of corporation case law to set aside limited liability.

7-60-154. Scope of article - choice of law - application to professions and occupations.

7-60-101. Short title.

This article shall be known and may be cited as the "Uniform Partnership Law".

Source: L. 31: p. 645, § 1. **CSA:** C. 123, § 1. **CRS 53:** § 104-1-1. **C.R.S. 1963:** § 104-1-1.

ANNOTATION

Law reviews. For article, "One Year Review of Corporations, Partnership, and Agency", see 37 Dicta 11 (1960). For article, "Research and Development Tax Shelter Partnerships", see 11 Colo. Law. 1851 (1982).

The uniform act governs the formation, operation, and dissolution of partnerships and the rights and duties of partners, one to another and to third persons. Mann v. Friden, 132 Colo. 273, 287 P.2d 961 (1955).

This article governs in a dispute involving a partnership formed before 1998. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

Derivative actions not authorized. This act contains no provision analogous to C.R.C.P. 23.1 or § 7-62-1001 that would give a general partner the right to bring a derivative action, absent exceptional circumstances. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

7-60-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Bankrupt" includes bankrupt or debtor under the federal bankruptcy code of 1978, title 11 of the United States Code, or insolvent under any state insolvency act.

(2) "Business" includes every trade, occupation, or profession.

(3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

(4) "Court" includes every court and judge having jurisdiction in the case.

(4.5) Repealed.

(4.7) "Limited liability partnership" means a partnership that has registered under section 7-60-144.

(5) Repealed.

(6) "Real property" includes land and any interest or estate in land.

(7) (Deleted by amendment, L. 2004, p. 1421, § 67, effective July 1, 2004.)

Source: L. 31: p. 645, § 2. **CSA:** C. 123, § 2. **CRS 53:** § 104-1-2. **C.R.S. 1963:** § 104-1-2. **L. 80:** (1) amended, p. 782, § 1, June 5. **L. 95:** (4.5) and (7) added, p. 778, § 1, effective May 24. **L. 2003:** (4.5)(b) and (5)(b) added by revision, pp. 2356, 2357, §§ 347, 348. **L. 2004:** (4.7) added and (7) amended, p. 1421, § 67, effective July 1.

Editor's note: Subsections (4.5)(b) and (5)(b) provided for the repeal of subsections (4.5) and (5), respectively, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

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

ANNOTATION

Law reviews. For note, "Corporations — Investment Clubs", see 31 Rocky Mt. L. Rev. 358 (1959).

Applied in Frazier v. Carlin, 42 Colo. App. 226, 591 P.2d 1348 (1979).

7-60-103. Knowledge and notice.

(1) A person has "knowledge" of a fact within the meaning of this article not only when the person has actual knowledge thereof but also when the person has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this article when the person who claims the benefit of the notice:

(a) States the fact to such person; or

(b) Delivers through the mail or by other means of communication a written statement of the facts to such person or to a proper person at such person or recipient's place of business or residence.

Source: L. 31: p. 646, § 3. **CSA:** C. 123, § 3. **CRS 53:** § 104-1-3. **C.R.S. 1963:** § 104-1-3. **L. 2004:** (1) and (2)(b) amended, p. 1421, § 68, effective July 1.

ANNOTATION

Law reviews. For note, "Corporations — Investment Clubs", see 31 Rocky Mt. L. Rev. 358 (1959).

7-60-104. Rules of construction.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this article.

(2) The law of estoppel shall apply under this article.

(3) The law of agency shall apply under this article.

(4) This article shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This article shall not be construed so as to impair the obligations of any contract existing prior to April 17, 1931, nor to affect any action or proceedings begun or right accrued before said date.

Source: L. 31: p. 646, § 4. **CSA:** C. 123, § 4. **CRS 53:** § 104-1-4. **C.R.S. 1963:** § 104-1-4.

7-60-105. Rules for cases not covered.

In any case not provided for in this article, the rules of law and equity, including the law merchant, shall govern.

Source: L. 31: p. 647, § 5. **CSA:** C. 123, § 5. **CRS 53:** § 104-1-5. **C.R.S. 1963:** § 104-1-5.

7-60-106. Partnership defined.

(1) A partnership is an association of two or more persons to carry on, as co-owners, a business for profit and includes, without limitation, a limited liability partnership.

(2) But any association formed under any other statute of this state or any statute adopted by an authority other than the authority of this state is not a partnership under this article unless such association has been a partnership in this state prior to April 17, 1931. This article shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

Source: L. 31: p. 647, § 6. **CSA:** C. 123, § 6. **CRS 53:** § 104-1-6. **C.R.S. 1963:** § 104-1-6. **L. 95:** (1) amended, p. 778, § 2, effective May 24. **L. 2004:** (1) amended, p. 1422, § 69, effective July 1.

Cross references: For provisions on limited partnerships, see articles 61 and 62 of this title.

ANNOTATION

Law reviews. For article, "Partnership or LLC: Alternative to an Irrevocable Life Insurance Trust?", see 25 Colo. Law. 43 (Jan. 1996).

A partnership is formed when an agreement is entered into which clearly embodies every element necessary for the formation and creation of a partnership and when it is executed by the parties nothing further remains to be done to legally bring about a partnership relation. Roberts v. Roberts, 113 Colo. 128, 155 P.2d 155 (1945); Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

An express agreement is not required to create a partnership; a partnership may be formed by the conduct of the parties. Stratman v. Dietrich, 765 P.2d 603 (Colo. App. 1988); In re Winden, 120 B.R. 570 (Bankr. D. Colo. 1990).

And the partnership relation continues until it is dissolved either by mutual agreement or by action of the parties or decree of court. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

Failure by a partner to contribute his share of capital does not necessarily negative existence of a partnership, as such

failure may be waived by the other partner where, following execution of the agreement, the other partner authorizes and makes payments of profits to the noncontributing partner. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

An agreement providing "all profits and losses in this venture are to be borne equally by the parties", expresses a consideration in the form of mutual promises and is sufficient to bring about a partnership. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

And partner's liability for losses indicates right to profit. If a partnership incurs losses and there is no question but that a partner would be liable for his share of the losses under the terms of the partnership agreement, this clearly indicates that the parties intended that partner to have an equal share of the profits. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

Applied in Frazier v. Carlin, 42 Colo. App. 226, 591 P.2d 1348 (1979); Damrell v. Creagar, 42 Colo. App. 281, 599 P.2d 262 (1979).

7-60-107. Partnership determined - how.

(1) In determining whether a partnership exists these rules shall apply:

(a) Except as provided by section 7-60-116, persons who are not partners as to each other are not partners as to third persons;

(b) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property;

(c) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;

(d) The receipt by a person of a share of the profits of a business is prima facie evidence that the person is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(I) As a debt by installments or otherwise;

(II) As wages of an employee or rent to a landlord;

(III) As an annuity to a surviving spouse or representative of a deceased partner;

(IV) As interest on a loan, though the amount of payment varies with the profits of the business;

(V) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

Source: L. 31: p. 647, § 7. **CSA:** C. 123, § 7. **CRS 53:** § 104-1-7. **C.R.S. 1963:** § 104-1-7. **L. 77:** (1)(d)(III) amended, p. 294, § 1, effective July 1. **L. 2004:** IP(1)(d) amended, p. 1422, § 70, effective July 1.

ANNOTATION

A partnership can only be created by a contract of the parties whereby they agree to place their money, effects, labor, and skill in a lawful business and to divide the profits and bear the loss in certain proportions. Mann v. Friden, 132 Colo. 273, 287 P.2d 961 (1955).

Mere joint ownership of land does not establish a partnership even though profits are shared. Brown v. Miller, 111 Colo. 327, 141 P.2d 682 (1943).

Subsection (1)(d) makes receipt of a share of the profits of a business prima facie evidence that the person receiving it is a partner. Quier v. Rickly, 166 Colo. 5, 177 P.2d 549 (1947); Montgomery v. Tufford, 165 Colo. 18, 437 P.2d 36 (1968).

And where there is no evidence indicating that the landlord-tenant relationship exists between individuals, the mere fact that profits come from rental property does not bring them within the exception of subsection (1)(d)(II) as "rent to a landlord". Montgomery v. Tufford, 165 Colo. 18, 437 P.2d 36 (1968).

Assignment of right to profits. Where a partner assigns his rights to profits, but the remaining partners have not agreed to admit the assignee as a partner, § 7-60-127 assures that the assignee does not become a partner without the consent of the remaining partners in contravention of § 7-60-118 (1)(g). Hence, the provision that the partnership is not dissolved merely protects the original parties from an unwanted partner or from a finding of partnership from the fact of the assignee's receipt of a share of the profits. Wester & Co. v. Nestle, 669 P.2d 1046 (Colo. App. 1983).

No evidence of joint venture. Where each party was to be separately and solely responsible for the expenses involved in the development of certain land into residential building sites, one party could have enjoyed an individual profit while the other might have sustained an individual loss. For such reason, the parties cannot be said to be actual joint venturers even though the agreement between the parties provided that the "gross sales price" was to be divided equally between them. Colo. Performance v. Mariposa Assoc., 754 P.2d 401 (Colo. App. 1987).

Trial court properly found that plaintiff and defendant had not formed a partnership. There was no agreement between plaintiff and defendant to share

profits and losses in the house venture, and execution of a quitclaim deed and promissory note by plaintiff indicated that defendant's contribution was a loan secured by the house as collateral. Reid v. Pyle, 51 P.3d 1064 (Colo. App. 2002).

For the relevant cases decided prior to enactment of the uniform partnership law in 1931, see Leavitt v. Windsor Land & Inv. Co., 54 F. 439 (8th Cir. 1893); Omaha & Grant Smelting & Ref. Co. v. Rucker, 6 Colo. App. 334, 40 P. 853 (1895); Mason v. Sieglitz, 22 Colo. 320, 44 P. 588 (1896); Robinson v. Compher, 13 Colo. App. 343, 57 P. 754 (1899); L. Baldwin & Co. v. Patrick, 39 Colo. 347, 91 P. 828 (1907); Kent v. Cobb, 24 Colo. App. 264, 133 P. 424 (1913); Bond-Connell Sheep & Wool Co. v. Snyder, 68 Colo. 238, 188 P. 740 (1920).

Applied in Golden v. Sanderson, 103 Colo. 359, 86 P.2d 252 (1938); Damrell v. Creagar, 42 Colo. App. 281, 599 P.2d 262 (1979); Yoder v. Hooper, 695 P.2d 1182 (Colo. App. 1984), aff'd, 737 P.2d 852 (Colo. 1987).

7-60-108. Partnership property.

(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

Source: L. 31: p. 648, § 8. **CSA:** C. 123, § 8. **CRS 53:** § 104-1-8. **C.R.S. 1963:** § 104-1-8.

ANNOTATION

Law reviews. For article, "One Year Review of Agency, Partnerships, and Corporations", see 39 Dicta 61 (1962).

The intent of the parties with respect to the issue of contribution of individually held property to the partnership is a question of fact and several factors reflecting the parties' intent shall be weighed by the fact finder. Standring v. Standring, 794 P.2d 1089 (Colo. App. 1990).

Property acquired with partnership funds is presumed to belong to the partnership unless it is shown that all the partners had a contrary intention. This

presumption is not negated by property so acquired being placed in the name of one of the individual members. Oswald v. Dawn, 143 Colo. 487, 354 P.2d 505 (1960); Wise v. Nu-Tone Prods. Co., 148 Colo. 574, 367 P.2d 346 (1961).

Mutual abandonment of proposed partnership entails return to status quo as to real property. Where real estate is purchased by one partner to be used by a proposed partnership and the suggested partnership is mutually rescinded and abandoned, it is for both parties to return to status quo. Acker v. Johns, 121 Colo. 336, 216 P.2d 426 (1950).

Where an insurance policy is issued on the life of one member of a partnership with the other partner being the beneficiary, the partnership as contingent beneficiary, and the premiums paid from partnership funds, such policy constitutes a partnership asset in the absence of evidence to indicate a contrary intention on the part of the partners. Wise v. Nu-Tone Prods. Co., 148 Colo. 574, 367 P.2d 346 (1961).

And the cash value of such a policy during the lifetime of the insured is a partnership asset where all premiums are paid with partnership funds. Wise v. Nu-Tone Prods. Co., 148 Colo. 574, 367 P.2d 346 (1961).

Moreover, the fact that an accountant does not include the case value of an insurance policy as an asset of the partnership is not always significant in determining whether it is a partnership asset. Wise v. Nu-Tone Prods. Co., 148 Colo. 574, 367 P.2d 346 (1961).

Where deeds of trust to property owned by the partnership are signed only by the partners in their individual capacity and are recorded under the partners' names, there was no indication in the record of a conveyance by the partnership and the bankruptcy trustee was not charged with constructive knowledge of the deeds of trust signed by the individual partners. Nile Valley Fed. Sav. & Loan Ass'n v. Sec. Title Guarantee Corp., 813 P.2d 849 (Colo. App. 1991).

Applied in Frazier v. Carlin, 42 Colo. App. 226, 591 P.2d 1348 (1979).

7-60-109. Partner agent of partnership.

(1) Subject to the effect of a statement of partnership authority under section 7-64-303, every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument for apparently carrying on in the usual way the business of the partnership of which the partner is a member, binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom the partner is dealing has knowledge of the fact that the partner has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

(b) Dispose of the goodwill of the business;

(c) Do any other act which would make it impossible to carry on the ordinary business of the partnership;

(d) Confess a judgment.

(e) Repealed.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

Source: L. 31: p. 649, § 9. **CSA:** C. 123, § 9. **CRS 53:** § 104-1-9. **C.R.S. 1963:** § 104-1-9. **L. 75:** (3)(e) repealed, p. 578, § 3, effective July 14. **L. 2004:** (1) amended, p. 1422, § 71, effective July 1.

ANNOTATION

Law reviews. For article, "A Law Firm Pension Plan?", see 37 Dicta 351 (1960).

Annotator's note. Relevant cases decided prior to the earliest source of § 7-60-109 have been included with the annotations to this section.

Effect of subsection (1) is that the status of a partner, as both principal and agent of the partnership, serves as complete authority with respect to acts which are apparently within the usual course of the partnership's particular business, unless the other party knows that he has no such authority. This obviates the necessity of a specific written authorization from the other partners. Ball v. Carlson, 641 P.2d 303 (Colo. App. 1981).

Each active partner a general agent. When acting in furtherance of the objects and business of the firm and within the scope of its business, one partner is clothed with the full powers of all the partners and is authorized to bind the firm in all transactions, for the very nature and purposes of a partnership association necessarily constitute each active partner a general agent of the firm. Wilcox v. Jackson, 7 Colo. 521, 4 P. 966 (1884); Sch. Dist. No.

3, Clear Creek County v. Central Sav. Bank & Trust Co., 113 Colo. 487, 159 P.2d 361 (1945).

This agency principle is subject to the terms of the partnership agreement. Dissenting partners, who had delegated to the managing partners the right to enter into certain transactions, could not later rely on their status as agents of the partnership to attempt to rescind those transactions. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

Where a promissory note was made by a partner, purportedly in a partnership capacity, and the partnership's name appeared thereon, which inferred that the note was partnership business, these facts indicated a basis for the court's conclusion that the partner had ostensible authority to sign the note on behalf of the partnership. Rocky Mt. Nat'l Bank v. McCaskill, 16 Colo. 408, 26 P. 821 (1891); Kruse v. Bank of Fountain Valley, 28 Colo. App. 364, 473 P.2d 171 (1970).

A confession of judgment by one partner without any authority from the other partner is void. Buchanan v. Scandia Plow Co., 6 Colo. App. 34, 39 P. 899 (1895).

Sale of partnership realty. The act of a partner in selling real estate, when in the apparent scope of the partnership's business, is binding upon the partnership and the other partners without obtaining their written consent, notwithstanding the statute of frauds requirement of § 38-10-109, that the authority of an agent to sell real estate must be in writing. Ball v. Carlson, 641 P.2d 303 (Colo. App. 1981).

Transfer of assets under plan authorized by partnership did not violate subsection (3)(c). Silverberg v. Colantuno, 991 P.2d 280 (Colo. App. 1998).

The acts of one joint venturer are binding upon other joint venturers if those acts pertain to matters within the scope of the joint venture, and the joint venturer had authority to act. A.B. Hirschfeld Press v. Weston Group, 824 P.2d 44 (Colo. App. 1991).

Applied in Moynahan v. Prentiss, 10 Colo. App. 295, 51 P. 94 (1897); Singer Hous. Co. v. Seven Lakes Venture, 466 F. Supp. 369 (D. Colo. 1979); Erickson v. Oberlohr, 749 P.2d 996 (Colo. App. 1987).

7-60-110. Conveyance of real property.

(1) Subject to the effect of a statement of partnership authority under section 7-64-303, where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; except that the partnership may recover such property unless the partner's act binds the partnership under the provisions of section 7-60-109 (1) or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded the partner's authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner in the partner's own name passes the equitable interest of the partnership if the act is one within the authority of the partner under the provisions of section 7-60-109 (1).

(3) Where title to real property is in the name of one or more but not all the partners and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of section 7-60-109 (1), unless the purchaser or the purchaser's assignee is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name or in the partner's own name passes the equitable interest of the partnership if the act is one within the authority of the partner under the provisions of section 7-60-109 (1).

(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

Source: L. 31: p. 650, § 10. **CSA:** C. 123, § 10. **CRS 53:** § 104-1-10. **C.R.S. 1963:** § 104-1-10. **L. 2004:** (1) to (4) amended, p. 1422, § 72, effective July 1.

ANNOTATION

Law reviews. For article, "Evidence in the Proof of Real Estate Titles", see 24 Rocky Mt. L. Rev. 424 (1952). For article, "Guess Who's Coming to Closing", see 11 Colo. Law. 689 (1982). For article, "Signatures on Documents Affecting Title to Colorado Real Property — Part II", see 12 Colo. Law. 258 (1983). For article, "Partnership Status of Joint Ventures in Colorado: Editorial Comments on CRS § 38-30-166", see 25 Colo. Law. 61 (Feb. 1996).

This section contemplates that real estate may be a partnership asset whether it is titled in the partnership name or in the name of one or more but not all of the partners; therefore, a written conveyance from a partner who contributes real estate to a partnership, although a factor to consider, is not required to convert the property into partnership property. Courts must look to the parties' intention to determine whether the property is a partnership asset, including consideration of: (1) The language of any partnership agreement; (2) the use of the property in the partnership business; (3) the listing of the property as an asset or liability in the partnership books and tax returns; (4) the construction of improvements on the property at partnership expense; (5) the payment of taxes and insurance premiums on the property out of partnership funds; (6) a party's declaration of intent when entering the partnership; and, generally, (7) the

parties' conduct with respect to the property. In re Estate of Grosboll, 2013 COA 141, 315 P.3d 1284.

Applied in Ball v. Carlson, 641 P.2d 303 (Colo. App. 1981).

7-60-111. Admission of partner binds partnership.

An admission or representation made by any partner concerning partnership affairs within the scope of the partner's authority as conferred by this article is evidence against the partnership.

Source: L. 31: p. 651, § 11. **CSA:** C. 123, § 11. **CRS 53:** § 104-1-11. **C.R.S. 1963:** § 104-1-11. **L. 2004:** Entire section amended, p. 1423, § 73, effective July 1.

7-60-112. Notice to partner - effect.

Notice to any partner of any matter relating to partnership affairs and the knowledge of the partner acting in the particular matter acquired while a partner or then present to the partner's mind and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Source: L. 31: p. 651, § 12. **CSA:** C. 123, § 12. **CRS 53:** § 104-1-12. **C.R.S. 1963:** § 104-1-12. **L. 2004:** Entire section amended, p. 1423, § 74, effective July 1.

ANNOTATION

Knowledge of one partner concerning the partnership business is knowledge possessed by all the partners. Lee v. Durango Music, 144 Colo. 270, 355 P.2d 1083 (1960).

When a general partner has knowledge and notice of a matter concerning partnership business, received or acquired while transacting partnership business, that knowledge and notice must generally be imputed to the limited partners. BMS P'ship v. Winter Park Devil's Thumb Inv. Co., 910 P.2d 61 (Colo. App. 1995), aff'd on other grounds, 926 P.2d 1253 (Colo. 1996).

Applied in Spiker v. Hoogeboom, 628 P.2d 177 (Colo. App. 1981); In re Lynch v. Three Ponds Co., 656 P.2d 51 (Colo. App. 1982).

7-60-113. Partner's wrongful acts - liability.

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of the other partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same intent as the partner so acting or omitting to act.

Source: L. 31: p. 652, § 13. **CSA:** C. 123, § 13. **CRS 53:** § 104-1-13. **C.R.S. 1963:** § 104-1-13. **L. 2004:** Entire section amended, p. 1423, § 75, effective July 1.

ANNOTATION

Law reviews. For note, "Liability of Joint Tortfeasors in Colorado", see 30 Dicta 176 (1953). For article, "One Year Review of Contracts", see 34 Dicta 85 (1957).

Knowledge that note is given outside scope of partnership's business precludes recovery. Where one purchases a note from a partner with the knowledge that it is given for a purpose clearly outside of the scope of the partnership's business, he is not entitled to recover as against the partnership or either of the nonsigning partners. King v. Meckleburg, 43 Colo. 316, 95 P. 951 (1908) (decided prior to the earliest source of § 7-60-113).

Applied in Williams v. Burns, 463 F. Supp. 1278 (D. Colo. 1979).

7-60-114. Partner's breach of trust - liability.

(1) The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of such partner's apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

Source: L. 31: p. 652, § 14. **CSA:** C. 123, § 14. **CRS 53:** § 104-1-14. **C.R.S. 1963:** § 104-1-14. **L. 2004:** (1)(a) amended, p. 1423, § 76, effective July 1.

ANNOTATION

Law reviews. For note, "Liability of Joint Tortfeasors in Colorado", see 30 Dicta 176 (1953). For article, "One Year Review of Contracts", see 34 Dicta 85 (1957).

Applied in Frazier v. Carlin, 42 Colo. App. 226, 591 P.2d 1348 (1979).

7-60-115. Nature of partner's liability.

(1) Except as otherwise provided in subsection (2) of this section, all partners are liable:

(a) Jointly and severally for everything chargeable to the partnership under sections 7-60-113 and 7-60-114;

(b) Jointly and severally for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract.

(2) (a) Except as otherwise provided in the partnership agreement, partners in a limited liability partnership are not liable directly or indirectly, including by way of indemnification, contribution, or otherwise, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of or chargeable to the partnership while it is a limited liability partnership; except that this subsection (2) shall not affect the liability of a partner in a limited liability partnership for such partner's own negligence, wrongful acts, or misconduct.

(b) Partners in a limited liability partnership do not become liable, directly or indirectly, for debts, obligations, or liabilities incurred while the partnership was a limited liability partnership merely because the partnership ceases to be a limited liability partnership.

Source: L. 31: p. 652, § 15. **CSA:** C. 123, § 15. **CRS 53:** § 104-1-15. **C.R.S. 1963:** § 104-1-15. **L. 73:** p. 1082, § 1. **L. 95:** Entire section amended, p. 778, § 3, effective May 24. **L. 2004:** (2) amended, p. 1423, § 77, effective July 1.

Cross references: For service on partnerships, see rule 4(e)(4), C.R.C.P.; for judgments against partners and partnerships, see rule 54(e), C.R.C.P.; for judgments against partners not served with process, see rule 106 (a)(5), C.R.C.P.; for joint rights and obligations, see § 13-50-101.

ANNOTATION

Law reviews. For article, "One Year Review of Contracts", see 34 Dicta 85 (1957). For article, "A Law Firm Pension Plan?", see 37 Dicta 351 (1960).

Section 13-21-111.5 abolishing joint and several liability does not apply to partnerships under this section. Bank of Denver v. Southeastern Capital Group, Inc., 763 F. Supp. 1552 (D. Colo. 1991).

Section is not abrogated by § 13-21-111.5 which calculates liability based upon wrongdoer's percentage of fault. Hughes v. Johnson, 764 F. Supp. 1412 (D. Colo. 1991).

Partners and creditors may expressly agree to limit the liability of the partners and the terms of each obligation must be examined to determine the extent of each partner's liability. Black v. First Federal Savings and Loan, 830 P.2d 1103 (Colo. App. 1992).

The creditor's waiver of personal guarantees by the general partners did not waive the general partners' liability under this section where the evidence showed that the creditor did not contemplate a total waiver of liability and nothing in the limited partnership agreement limited the general partners' liability. Black v. First Federal Savings and Loan, 830 P.2d 1103 (Colo. App. 1992).

General partners are estopped to deny the validity of contracts and deeds they enter into if the limited partnership received the full benefits and use of the proceeds for the purposes intended. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

Although the general rule is that partners are jointly and severally liable for all debts and obligations of the partnership, partners and creditors may expressly agree to limit the liability of partners for the debts of the partnership, and the terms of each obligation must be ascertained to determine the extent of the partners' liability. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

Where partnership is assessed for use taxes and incurs liability owing to its failure to protest liability, taxpayer, as general partner of a limited partnership, is jointly and severally liable therefor. AF Prop. v. Dept. of Rev., 852 P.2d 1267 (Colo. App. 1992).

When issue of material fact existed as to whether general partnership had been assessed with a use tax, trial court erred in entering motion for summary judgment in favor of individual partner on grounds that partner could not be held jointly and severally liable for deficiency owed by partnership. AF Prop. v. Dept. of Rev., 852 P.2d 1267 (Colo. App. 1992).

The trial court's finding that the lender's waiver of personal guarantees did not relieve the general partners on the note is supported by the record including testimony by an officer of the lender that he and other officers did not seek personal guarantees because they considered it redundant in view of the general partner's liability and nothing in the limited partnership agreement expressly limited the general partner's liability for the limited partnership's obligations that might have given notice of such an intent to the lender. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

Applied in Singer Hous. Co. v. Seven Lakes Venture, 466 F. Supp. 369 (D. Colo. 1979); Ball v. Carlson, 641 P.2d 303 (Colo. App. 1981); Keneco Oil & Gas v. Univ. Nat. Bank, 732 P.2d 247 (Colo. App. 1986).

7-60-116. Liability of purported partner.

(1) If a person, by words or conduct, purports to be a partner or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If a partnership obligation results, the purported partner is liable with respect to that obligation as if the purported partner were a partner in the partnership, and, if the partnership is a limited liability partnership, the purported partner's liability is subject to section 7-60-115 (2) as if the purported partner were a partner in the limited liability partnership. If no partnership obligation results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(2) When a partnership liability results, such person is liable as though the person were an actual member of the partnership; except that, in the case of a limited liability partnership, the person's liability is subject to section 7-60-115 (2).

(3) When no partnership liability results, such person is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(4) When a person has been thus represented to be a partner in an existing partnership or with one or more persons not actual partners, the purported partner is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though the purported partner were a partner in fact with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

Source: L. 31: p. 653, § 16. **CSA:** C. 123, § 16. **CRS 53:** § 104-1-16. **C.R.S. 1963:** § 104-1-16. **L. 95:** (2) amended, p. 779, § 4, effective May 24. **L. 2004:** (1), (2), and (4) amended, p. 1424, § 78, effective July 1.

ANNOTATION

Law reviews. For article, "The Convertible, Participating Mortgage: Planning Opportunities and Legal Pitfalls in Structuring the Transaction", see 54 U. Colo. L. Rev. 295 (1983).

7-60-117. Liability of incoming partner.

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before such admission as though the person had been a partner when such obligations were incurred; except that this liability shall be satisfied only out of partnership property.

Source: L. 31: p. 654, § 17. **CSA:** C. 123, § 17. **CRS 53:** § 104-1-17. **C.R.S. 1963:** § 104-1-17. **L. 2004:** Entire section amended, p. 1425, § 79, effective July 1.

ANNOTATION

This section held inapplicable to an incoming partner who expressly assumed a pre-existing obligation. Absent that express assumption however, the incoming partner's personal liability under a modified note would be limited to the amount of the new obligation created after his partnership interest began. Resolution Trust Corp. v. Teem P'ship, 835 F. Supp. 563 (D. Colo. 1993).

7-60-118. Rights and duties of partners.

(1) The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid such partner's contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied and shall contribute toward the losses whether of capital or otherwise sustained by the partnership according to such partner's share in the profits; except that a partner in a limited liability partnership shall not be obligated to contribute to partnership losses in excess of the partner's interest in the partnership beyond the extent:

(I) Such obligation to contribute is set out in a writing signed by the partner; or

(II) Such loss is attributable to an obligation or liability for which the partner would have individual liability under section 7-60-115 (2).

(b) The partnership shall indemnify every partner in respect of payments made and personal liabilities reasonably incurred by the partner in the ordinary and proper conduct of its business or for the preservation of its business or property.

(c) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital that the partner agreed to contribute shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by the partner only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, but a surviving partner is entitled to reasonable compensation for the partner's services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Source: L. 31: p. 654, § 18. **CSA:** C. 123, § 18. **CRS 53:** § 104-1-18. **C.R.S. 1963:** § 104-1-18. **L. 95:** (1)(a) amended, p. 779, § 5, effective May 24. **L. 2004:** IP(1)(a), (1)(b), (1)(c), (1)(d), and (1)(f) amended, p. 1425, § 80, effective July 1.

ANNOTATION

Law reviews. For article, "A Law Firm Pension Plan?", see 37 Dicta 351 (1960).

Each partner is to be repaid his contribution, and the partners are to share equally in the profits and surplus after all liabilities, including those to the partners, are satisfied. Rossi v. Rossi, 154 Colo. 21, 389 P.2d 191 (1963).

And the fact that one partner has failed to make the required capital contribution is not sufficient to impose a forfeiture where the contribution can be deducted from his share of the profits. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

A division of the profits may be enforced by a partner entitled to share in the profits. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

And where one partner "grubstakes" another partner, he becomes entitled to that partner's agreed share of the profits. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

Assignment of partner's right to profits. Where a partner assigns his rights to profits, but the remaining partners have not agreed to admit the assignee as a partner, § 7-60-127 assures that the assignee does not become a partner without the consent of the remaining partners in contravention of subsection (1)(g). Hence, the provision that the partnership is not dissolved merely protects the original parties from an unwanted partner or from a finding of partnership from the fact of the assignee's receipt of a share of the profits. Wester & Co. v. Nestle, 669 P.2d 1046 (Colo. App. 1983).

The rights of a party to a joint venture agreement are subject to any agreements between the parties of the venture. Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998); Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

Where transactions were authorized and approved by the managing partners, after the objections of the minority partners had been considered, the minority partners were nevertheless bound by the actions of the general partners. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

Partner violated subsection (1)(g) by unilaterally including his children in partnership without the other partner's consent. Tucker v. Ellbogen, 793 P.2d 592 (Colo. App. 1989).

Individual members of partnership cannot maintain an action for damages against another member unless there has been an accounting. Boner v. L.C. Fulenwider, Inc., 32 Colo. App. 440, 513 P.2d 730 (1973).

There is no provision in this act which provides a general partner with the right to bring a derivative action. Kline Hotel Partners v. Aircoa Equity Interests, 708 F. Supp. 1193 (D. Colo. 1989).

Trial court properly determined the allocation of losses of partnership on the basis of the partners' ambiguous agreement and testimony by the partners. The court, however, erred in determining that compensation to one partner was an advance against profits to be earned, despite the partners' testimony and the court's earlier finding that the term "draw" in the ambiguous partnership agreement meant compensation to one of the partners in exchange for greater participation in the partnership. Tucker v. Ellbogen, 793 P.2d 592 (Colo. App. 1989).

Applied in Hooper v. Yoder, 737 P.2d 852 (Colo. 1987).

7-60-119. Partnership books.

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

Source: L. 31: p. 655, § 19. **CSA:** C. 123, § 19. **CRS 53:** § 104-1-19. **C.R.S. 1963:** § 104-1-19.

ANNOTATION

Applied in Heinold Hog Mkt., Inc. v. McCoy, 700 F.2d 611 (10th Cir. 1983).

7-60-120. Duty to render information.

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner under legal disability.

Source: L. 31: p. 656, § 20. **CSA:** C. 123, § 20. **CRS 53:** § 104-1-20. **C.R.S. 1963:** § 104-1-20.

ANNOTATION

Applied in Skeen v. Harms, 10 B.R. 817 (Bankr. D. Colo. 1981).

7-60-121. Accountable as a fiduciary.

(1) Every partner shall account to the partnership for any benefit and hold as trustee for it any profits derived by such partner without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by such partner of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

Source: L. 31: p. 656, § 21. **CSA:** C. 123, § 21. **CRS 53:** § 104-1-21. **C.R.S. 1963:** § 104-1-21. **L. 2004:** (1) amended, p. 1425, § 81, effective July 1.

ANNOTATION

Law reviews. For article, "The Fiduciary Duties of General Partners", see 17 Colo. Law. 1959 (1988).

Where a partner exchanges property which belongs to the partnership for real estate and he takes the deed to the real estate in his own name but refuses to transfer any part of the land to the partnership, the land belongs to the partnership and is held by the exchanging partner in trust for the use and benefit of the partnership. Payne v. Martin, 39 Colo. 265, 89 P. 46 (1907) (decided prior to the earliest source of § 7-60-121).

"Benefit" and "profit" would be the rental value of the partnership equipment wrongfully used, not the value of the property upon which it was used. Thompson v. McCormick, 169 Colo. 151, 454 P.2d 934 (1969).

Partner who excluded other partner from partnership business breached fiduciary duty to wind up partnership expeditiously by: Failing to wind up the partnership in a reasonable period of time; allowing an accumulation of $200,000 in interest on a loan guaranteed by the partnership; allowing various oil and gas leases to expire; and unilaterally including his children in the partnership without the other partner's consent. Tucker v. Ellbogen, 793 P.2d 592 (Colo. App. 1989).

Liabilities that accrued after reasonable time for winding up partnership are to be assessed against the partner responsible for winding up the partnership, as are liabilities affected by the partner's breach of his fiduciary duty in unilaterally bringing his children into partnership without the other partner's consent. Tucker v. Ellbogen, 793 P.2d 592 (Colo. App. 1989).

Partner did not breach fiduciary duty by participating in a personal capacity in the purchase and sale of a lease where the partners had previously agreed to such action by the partner. Tucker v. Ellbogen, 793 P.2d 592 (Colo. App. 1989).

Section does not per se create the level of fiduciary duty required under federal bankruptcy laws for purposes of dischargeability; however, coupled with Colorado case law, a fiduciary obligation is imposed upon partners. In re Winden, 120 B.R. 570 (Bankr. D. Colo. 1990); In re Schwenn, 126 B.R. 351 (Bankr. D. Colo. 1991).

Applied in Yoder v. Hooper, 695 P.2d 1182 (Colo. App. 1984), aff'd, 737 P.2d 852 (Colo. 1987).

7-60-122. Right to an account.

(1) Any partner shall have the right to a formal account as to partnership affairs:

(a) If the partner is wrongfully excluded from the partnership business or possession of its property by the other partners;

(b) If the right exists under the terms of any agreement;

(c) As provided by section 7-60-121;

(d) Whenever other circumstances render it just and reasonable.

Source: L. 31: p. 656, § 22. **CSA:** C. 123, § 22. **CRS 53:** § 104-1-22. **C.R.S. 1963:** § 104-1-22. **L. 2004:** (1)(a) amended, p. 1425, § 82, effective July 1.

ANNOTATION

Having determined that a partnership exists, the right to an accounting necessarily follows. Roberts v. Roberts, 113 Colo. 128, 155 P.2d 155 (1945).

But no right to receivership. A partner has a right to an accounting, a right to a dissolution, the right to contribution, and various rights on dissolution, but nowhere does the uniform act provide that even a bona fide partner has a right to receivership for property that he says belongs to the firm. Mann v. Friden, 132 Colo. 273, 287 P.2d 961 (1955).

No right to derivative action, absent exceptional circumstances. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

7-60-123. Rights and duties beyond term.

(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, insofar as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

Source: L. 31: p. 657, § 23. **CSA:** C. 123, § 23. **CRS 53:** § 104-1-23. **C.R.S. 1963:** § 104-1-23.

7-60-124. Property rights of a partner.

(1) The property rights of a partner are:

(a) Such partner's rights in specific partnership property;

(b) Such partner's interest in the partnership; and

(c) Such partner's right to participate in the management.

Source: L. 31: p. 657, § 24. **CSA:** C. 123, § 24. **CRS 53:** § 104-1-24. **C.R.S. 1963:** § 104-1-24. **L. 2004:** Entire section amended, p. 1426, § 83, effective July 1.

7-60-125. Right in specific property.

(1) A partner is co-owner with the other partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of tenancy in partnership are such that:

(a) A partner, subject to the provisions of this article and to any agreement between the partners, has an equal right with the other partners to possess specific partnership property for partnership purposes; except that a partner has no right to possess such property for any other purpose without the consent of the other partners;

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property;

(c) A partner's right in specific partnership property is not subject to attachment or execution except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner, the deceased partner's right in specific partnership property vests in the surviving partner or partners, except where the deceased partner was the last surviving partner, when the right in such property vests in the deceased partner's legal representative. The surviving partner or partners or the legal representative of the last surviving partner has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

Source: L. 31: p. 657, § 25. **CSA:** C. 123, § 25. **CRS 53:** § 104-1-25. **C.R.S. 1963:** § 104-1-25. **L. 2004:** (1), (2)(a), and (2)(d) amended, p. 1426, § 84, effective July 1.

ANNOTATION

Law reviews. For article, "Non-Tax Advantages of the Revocable Trust (With Emphasis on Use as Will Substitute)", see 37 Dicta 333 (1960).

A partner's right in specific partnership property is not assignable by an individual partner, nor is it subject to attachment or execution except upon a claim against the partnership. Upon a partner's death, the partner's right in such property vests in the surviving partner or partners. Mtn. States Bank v. Irvin, 809 P.2d 1113 (Colo. App. 1991).

This section does not confer upon partners a right to redress for individual losses where such losses are not unique and are shared by other partners. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

Applied in Erickson v. Oberlohr, 749 P.2d 996 (Colo. App. 1987).

7-60-126. Nature of partner's interest.

A partner's interest in the partnership is the partner's share of the profits and surplus, and the same is personal property.

Source: L. 31: p. 659, § 26. **CSA:** C. 123, § 26. **CRS 53:** § 104-1-26. **C.R.S. 1963:** § 104-1-26. **L. 2004:** Entire section amended, p. 1426, § 85, effective July 1.

ANNOTATION

Law reviews. For article, "Financing Real Estate Developments", see 11 Colo. Law. 2093 (1982). For article, "Campbell: A Caveat for Service Partners", see 20 Colo. Law. 75 (1991).

Where the partner's interest in the partnership is deemed personalty and consists of a proportionate share of the partnership's profits and surplus, the court cannot order a division of specific partnership interest to a non-partner spouse if there are other partners in the venture besides the other spouse. In re Paul, 821 P.2d 925 (Colo. App. 1991).

7-60-127. Assignment of partner's interest.

(1) A conveyance by a partner of the partner's interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to

receive in accordance with the assignee's contract the profits to which the assigning partner would otherwise be entitled.

(2) In a dissolution of the partnership, the assignee is entitled to receive the assignor's interest and may require an account only from the date of the last account agreed to by all the partners.

Source: L. 31: p. 659, § 27. **CSA:** C. 123, § 27. **CRS 53:** § 104-1-27. **C.R.S. 1963:** § 104-1-27. **L. 2004:** Entire section amended, p. 1426, § 86, effective July 1.

ANNOTATION

Law reviews. For article, "Non-Tax Advantages of the Revocable Trust (With Emphasis on Use as Will Substitute)", see 37 Dicta 333 (1960).

Purpose of section. Where a partner assigns his rights to profits, but the remaining partners have not agreed to admit the assignee as a partner, this section assures that the assignee does not become a partner without the consent of the remaining partners in contravention of § 7-60-118 (1)(g). Hence, the provision that the partnership is not dissolved merely protects the original parties from an unwanted partner or from a finding of partnership from the fact of the assignee's receipt of a share of the profits. Wester & Co. v. Nestle, 669 P.2d 1046 (Colo. App. 1983).

Applied in In re Dews, 152 B.R. 982 (Bankr. D. Colo. 1993).

7-60-128. Interest subject to charging order.

(1) On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court that entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of the judgment with interest thereon; and may then or later appoint a receiver of the debtor partner's share of the profits and of any other money due or to fall due to the debtor partner in respect of the partnership and make all other orders, directions, accounts, and inquiries that the debtor partner might have made, or that the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) With separate property by any one or more of the partners; or

(b) With partnership property by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this article shall be held to deprive a partner of the partner's right, if any, under the exemption laws, as regards the partner's interest in the partnership.

Source: L. 31: p. 659, § 28. **CSA:** C. 123, § 28. **CRS 53:** § 104-1-28. **C.R.S. 1963:** § 104-1-28. **L. 2004:** (1) and (3) amended, p. 1427, § 87, effective July 1.

ANNOTATION

Law reviews. For comment on Phillips v. Phillips (cited below), see 37 U. Colo. L. Rev. 425 (1965). For article, "Charging Partnership and LLC Interests To Satisfy Debts of Individuals", see 23 Colo. Law. 2743 (1994).

The "due application" referred to in this section means an application made to the court upon adequate notice to the persons whose rights might be adversely affected by the granting of the relief sought. Phillips v. Phillips, 155 Colo. 538, 400 P.2d 450 (1964); First Nat'l Bank v. District Court, 652 P.2d 613 (Colo. 1982).

Partner has no right to receivership. A partner has a right to an accounting, and in a proper case to a dissolution of the partnership, but no right to a receivership. Mann v. Friden, 132 Colo. 273, 287 P.2d 961 (1955).

Rather, receivership rests in discretion of the court. Equity will not lend its extraordinary aid of receivership for property of an alleged partnership, unless an actual partnership is shown; and then, it rests in the discretion of the court, since a receivership is an extraordinary remedy and should be exercised with the gravest of caution. Mann v. Friden, 132 Colo. 273, 287 P.2d 961 (1955).

Moreover, a receiver for a solvent going concerning cannot be appointed in the absence of a charge of fraud. Mann v. Friden, 132 Colo. 273, 287 P.2d 961 (1955).

Notice requirements. Where a sale of debtors' partnership interests would affect the partnerships themselves, as well as other partners who are not parties to this action, ordering such a sale without first providing notice and hearing to those who would be affected, is void under the notice requirements of subsection (1). First Nat'l Bank v. District Court, 652 P.2d 613 (Colo. 1982).

Method of apportioning payment to judgment creditors who obtain charging orders directed to same partnership interest should be parallel to the method of determining priority among judgment creditors who seek execution on other kinds of personal property. Union Colony Bank v. United Bank, 832 P.2d 1112 (Colo. App. 1992).

Trial court erred in issuing unsecured judgment creditor's charging order nunc pro tunc to the creditor's first writ of garnishment. Other judgment creditor which

had charging order issued and served prior to time charging order was issued was entitled to full satisfaction of judgment from debtor's partnership interest. Union Colony Bank v. United Bank, 832 P. 2d 1112 (Colo. App. 1992).

7-60-129. Dissolution defined.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

Source: L. 31: p. 660, § 29. **CSA:** C. 123, § 29. **CRS 53:** § 104-1-29. **C.R.S. 1963:** § 104-1-29.

ANNOTATION

No party is compelled to continue as a partner when, by his express will, he chooses to withdraw. Wester & Co. v. Nestle, 669 P.2d 1046 (Colo. App. 1983).

Remaining partners may continue as partnership. When one partner withdraws from the business, the partnership is dissolved as to that party, although the remaining partners may elect to continue operating as a partnership. Wester & Co. v. Nestle, 669 P.2d 1046 (Colo. App. 1983).

In distributing marital assets, awarding the nonpartner spouse an in-kind division of the partner spouse's partnership interest could result in dissolution of the partnership or disruption of partnership business. In re Paul, 821 P.2d 925 (Colo. App. 1991).

7-60-130. Dissolution is not termination.

On dissolution the partnership is not terminated but continues until the winding up of partnership affairs is completed.

Source: L. 31: p. 660, § 30. **CSA:** C. 123, § 30. **CRS 53:** § 104-1-30. **C.R.S. 1963:** § 104-1-30.

ANNOTATION

Harmless error to join dissolved partnership as defendant. Where a trial court renders judgment against a partnership as such when it is in fact dissolved when its assets and liabilities were transferred to a trust, it is harmless error which does not require reversal of the judgment by having joined the partnership, since if, in fact, the partnership has no assets and is a nonentity, then the judgment against a nonentity can do no harm and since the individual partners were also named parties, then they cannot escape personal liability for the partnership debts if the partnership is no longer existent as such. Western Spring Serv. Co. v. Andrew, 229 F.2d 413 (10th Cir. 1956).

Applied in Hooper v. Yoder, 737 P.2d 852 (Colo. 1987).

7-60-131. Causes of dissolution.

(1) Dissolution is caused:

(a) Without violation of the agreement between the partners:

(I) By the termination of the definite term or particular undertaking stated in the agreement;

(II) By the express will of any partner when no definite term or particular undertaking is stated;

(III) By the express will of all the partners who have not assigned their interests or allowed them to be charged for their separate debts either before or after the termination of any stated term or particular undertaking;

(IV) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(b) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(c) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(d) By the death of any partner;

(e) By the bankruptcy of any partner or the partnership;

(f) By decree of court under section 7-60-132.

Source: L. 31: p. 660, § 31. **CSA:** C. 123, § 31. **CRS 53:** § 104-1-31. **C.R.S. 1963:** § 104-1-31. **L. 2003:** (1)(a)(I) to (1)(a)(III) amended, p. 2236, § 112, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "A Law Firm Pension Plan?", see 37 Dicta 351 (1960). For article, "Partnership Reorganization Under Chapter 11", see 12 Colo. Law. 1207 (1983).

A partnership is not dissolved by the failure on the part of one of its members in some respect to perform his duty or obligation to it, nor does such an individual thereby lose his right to come into a court of equity and have an accounting and settlement of the partnership affairs. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

Limited partnership dissolves without general partner. Since a limited partnership cannot exist without a general partner, a limited partnership dissolves when the limited partners are without their general partner. Skeen v. Harms, 10 B.R. 817 (Bankr. D. Colo. 1981).

During a specified term of existence or in the midst of a particular undertaking, a partnership may only be dissolved by a mutual agreement which settles the rights and obligations of the parties inter se or by judicial decree which determines such rights and obligations. Yoder v. Hooper, 695 P.2d 1182 (Colo. App. 1984), aff'd, 737 P.2d 852 (Colo. 1987); Tucker v. Ellbogen, 793 P.2d 592 (Colo. App. 1989).

Appointment of bankruptcy trustee dissolves partnership. A bankruptcy trustee cannot assume the position of general partner of a limited partnership where he is not the person with whom the limited partners contracted: thus, the partnership dissolves when the trustee is appointed. Skeen v. Harms, 10 B.R. 817 (Bankr. D. Colo. 1981).

As does debtor-in-possession. Where limited partners have not consented to the performance of a debtor-in-possession as their general partner, the limited partnership, having no general partner as of the day the debtor came into possession, ceases to exist, except for purposes of winding up. Skeen v. Harms, 10 B.R. 817 (Bankr. D. Colo. 1981).

Where partners organize a corporation to operate the business of the partnership and where partnership assets are transferred to the corporation, the partnership is dissolved. Hooper v. Yoder, 737 P.2d 852 (Colo. 1987); Tucker v. Ellbogen, 793 P.2d 592 (Colo. App. 1989).

Party not compelled to continue as partner. Under subsection (1)(a)(II), no party is compelled to continue as a partner when, by his express will, he chooses to withdraw. Wester & Co. v. Nestle, 669 P.2d 1046 (Colo. App. 1983).

Disposition of goodwill interest. On the occasion of the dissolution of a partnership, absent a contrary agreement, there is no obligation on either partner to buy the goodwill interest of the other partner, which remains as an undistributed asset of the dissolved partnership. Orzolek v. Forman, 670 P.2d 443 (Colo. App. 1983).

Applied in First Nat'l Bank v. District Court, 652 P.2d 613 (Colo. 1982).

7-60-132. Dissolution by decree of court.

(1) On application by or for a partner, the court shall decree a dissolution if:

(a) A partner has been determined by the court to be mentally incompetent to such a degree that the partner is incapable of performing the partner's part of the partnership contract or a court of competent jurisdiction has made such a finding pursuant to part 3 or part 4 of article 14 of title 15 or section 27-65-110 (4) or 27-65-127;

(b) A partner becomes in any other way incapable of performing the partner's part of the partnership contract;

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of business;

(d) A partner willfully or persistently commits a breach of the partnership agreement or otherwise so acts in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with the partner;

(e) The business of the partnership can only be carried on at a loss;

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 7-60-127 and 7-60-128, the court shall decree a dissolution:

(a) After the termination of the stated term or particular undertaking;

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

Source: L. 31: p. 662, § 32. **CSA:** C. 123, § 32. **CRS 53:** § 104-1-32. **C.R.S. 1963:** § 104-1-32. **L. 75:** (1)(a) R&RE, p. 922, § 7, effective July 1. **L. 91:** (1)(a) amended, p. 1781, § 4, effective July 1. **L. 2003:** (2)(a) amended, p. 2236, § 113, effective July 1, 2004. **L. 2004:** (1)(a), (1)(b), and (1)(d) amended, p. 1427, § 88, effective July 1. **L. 2010:** (1)(a) amended, (SB 10-175), ch. 188, p. 777, § 4, effective April 29. **L. 2022:** (1)(a) amended, (HB 22-1256), ch. 451, p. 3222, § 6, effective August 10.

ANNOTATION

Law reviews. For article, "A Law Firm Pension Plan?", see 37 Dicta 351 (1960).

Section not used to defeat defendant-partner's rights. In the absence of substantial misconduct on a defendant-partner's part, a partner-plaintiff should not be permitted to defeat the defendant-partner's rights by the simple expedient of bringing suit. Master Garage, Inc. v. Bugdanowitz, 690 P.2d 879 (Colo. App. 1984).

Derivative actions not authorized. The Uniform Partnership Law contains no provision analogous to C.R.C.P. 23.1 or § 7-62-1001 that would give a general partner the right to bring a derivative action. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

Date of dissolution by court decree. Where trial court record was replete with statements by partner of unwillingness to participate in partnership, the date partner filed action under this section was properly declared the date of dissolution for purposes of valuation of partnership interests. Master Garage, Inc. v. Bugdanowitz, 690 P.2d 879 (Colo. App. 1984).

Applied in Beals v. Tri-B Assocs., 644 P.2d 78 (Colo. App. 1982); First Nat'l Bank v. District Court, 652 P.2d 613 (Colo. 1982); Mahon v. Harst, 738 P.2d 1190 (Colo. App. 1987).

7-60-133. General effect of dissolution.

(1) Except insofar as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

(a) With respect to the partners:

(I) When the dissolution is not by the act, bankruptcy, or death of a partner; or

(II) When the dissolution is by such act, bankruptcy, or death of a partner, in cases where section 7-60-134 so requires.

(b) With respect to persons not partners, as declared in section 7-60-135.

Source: L. 31: p. 663, § 33. **CSA:** C. 123, § 33. **CRS 53:** § 104-1-33. **C.R.S. 1963:** § 104-1-33.

7-60-134. Right of partner to contribution.

(1) Except as otherwise provided in subsection (2) of this section, where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to the other partners for

such partner's share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

(b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

(2) A partner in a limited liability partnership shall not be liable to the other partners except to the extent that:

(a) The partner's liability is set out in a writing signed by the partner; or

(b) The partner's obligation to contribute is attributable to a liability for which the partner would have individual liability under section 7-60-115 (2).

Source: L. 31: p. 663, § 34. **CSA:** C. 123, § 34. **CRS 53:** § 104-1-34. **C.R.S. 1963:** § 104-1-34. **L. 95:** Entire section amended, p. 780, § 6, effective May 24. **L. 2004:** IP(2) amended, p. 1427, § 89, effective July 1.

7-60-135. Power of partner to bind partnership after dissolution.

(1) After dissolution, a partner can bind the partnership, except as provided in subsection (3) of this section:

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) By any transaction which would bind the partnership if dissolution had not taken place, if the other party to the transaction:

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) Though the other party had not so extended credit, had nevertheless known of the partnership prior to dissolution, and had no knowledge or notice of dissolution, the fact of dissolution having not been advertised in a newspaper of general circulation in the place, or in each place if more than one, at which the partnership business was regularly carried on.

(2) The liability of a partner under subsection (1)(b) of this section shall be satisfied out of partnership assets alone when such partner had been, prior to dissolution:

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to the partner's connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs except by transaction with one who:

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the partner's want of authority; or

(II) Had not extended credit to the partnership prior to dissolution, and had no knowledge or notice of the partner's want of authority, the fact of the partner's want of authority having not been advertised in the manner provided for advertising the fact of dissolution in subsection (1)(b)(II) of this section.

(4) Nothing in this section shall affect the liability under section 7-60-116 of any person who, after dissolution, purports to be a partner or consents to being represented by another as a partner in a partnership engaged in carrying on business.

Source: L. 31: p. 664, § 35. **CSA:** C. 123, § 35. **CRS 53:** § 104-1-35. **C.R.S. 1963:** § 104-1-35. **L. 2004:** (1)(b)(II), (2)(b), (3)(c)(I), (3)(c)(II), and (4) amended, p. 1428, § 90, effective July 1.

ANNOTATION

Partner's filing of voluntary bankruptcy dissolved the partnership and terminated his authority to receive service for the partnership. Bush v. Winker, 907 P.2d 79 (Colo. 1995).

When new partner not liable for debt incurred after dissolution. Where a partnership debt is incurred after dissolution and at that time a new member of the partnership is unknown to the creditors as a partner and is so far unknown and inactive in the affairs of the partnership that the business reputation of the partnership could not be said to have been due to his connection with it, the new partner cannot be held personally liable. Van Andel v. Smith, 248 F.2d 915 (10th Cir. 1957).

7-60-136. Effect of dissolution on existing liability.

(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between such partner, the partnership creditor, and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of the creditor's obligations.

(4) The individual property of a deceased person who was a partner shall be liable, to the extent the deceased person was or would have been liable under section 7-60-115, 7-60-118, or 7-60-134, for all obligations of the partnership incurred while the deceased person was a partner but subject to the prior payment of the deceased person's separate debts.

Source: L. 31: p. 666, § 36. **CSA:** C. 123, § 36. **CRS 53:** § 104-1-36. **C.R.S. 1963:** § 104-1-36. **L. 95:** (4) amended, p. 780, § 7, effective May 24. **L. 2004:** (2), (3), and (4) amended, p. 1428, § 91, effective July 1.

ANNOTATION

Conditions for discharge from liability found to exist. Wester & Co. v. Nestle, 669 P.2d 1046 (Colo. App. 1983).

Trial court erred in entering summary judgment since dissolution of partnership, without more, did not determine partner's remaining obligations to his partners; rather, obligations are dependent upon a variety of factual and legal issues, such as the partner's right to dissolve the partnership and the propriety of other partners' actions in winding-up or continuing the partnership. Travers v. Rainey, 888 P.2d 372 (Colo. App. 1994).

One partner's liability for overdue employment taxes was not discharged by an agreement concerning payment that was made by the other partner and the internal revenue service. Such agreement was merely an act of forbearance and did not constitute a material alteration of the nature or time of payment of the obligations as required by subsection (3) of this section. U.S. v. Hays, 877 F.2d 843 (10th Cir. 1989).

Where the limited partnership benefited from the loan entered into after the filing of the partnership certificate, the general partners were estopped from denying the validity of their acts on behalf of the partnership, even though the limited partnership was declared void as to the limited partner. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

Partner could not avoid his liability to his partners or lessor under the Soldiers' and Sailors' Civil Relief Act by providing notice of termination of a lease to his partners since termination of a lease under the Act can only be accomplished by providing notice in writing to the lessor. Travers v. Rainey, 888 P.2d 372 (Colo. App. 1994).

A limited partnership that is void as to a limited partner is not void as to the general partners. The general partners were liable because at the time the limited partnership's obligation to the lender arose, all parties had contracted in accordance with their belief based on the filing of a partnership certificate with the secretary of state that a limited partnership existed. Therefore, the general partners were jointly and severally liable when they executed a note and deed of trust to the lender. Also, because the limited partnership benefitted from the proceeds of the loan, the general partners were estopped from denying the validity of their acts on behalf of the limited partnership. Finally, regardless of when the limited partnership was dissolved, the general partners were not relieved of their personal liability for the partnership's obligations by virtue of the dissolution. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

Applied in Faricy v. J. S. Brown Mercantile Co., 87 Colo. 427, 288 P. 639 (1930) (decided prior to the earliest source of § 7-60-136); Colo-Tex Leasing, Inc. v. Neitzert, 746 P.2d 972 (Colo. App. 1987); Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

7-60-137. Right to wind up.

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; except that any partner or any partner's legal representative or assignee, upon cause shown, may obtain winding up by the court.

Source: L. 31: p. 667, § 37. **CSA:** C. 123, § 37. **CRS 53:** § 104-1-37. **C.R.S. 1963:** § 104-1-37. **L. 2004:** Entire section amended, p. 1429, § 92, effective July 1.

7-60-138. Application of partnership property.

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner as against the other partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 7-60-136 (2), the expelled partner shall receive in cash only the net amount due the expelled partner from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement, the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(I) All the rights stated in subsection (1) of this section;

(II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name either by themselves or jointly with others, may do so during the agreed term of the partnership and for that purpose may possess the partnership property, if they secure the payment by bond approved by the court or pay to any partner who has caused the dissolution wrongfully the value of such partner's interest in the partnership at the dissolution, less any damages recoverable under subparagraph (II) of paragraph (a) of this subsection (2), and in like manner indemnify such partner against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (b) of this subsection (2), all the rights of a partner under subsection (1) of this section, subject to paragraph (a)(II) of this subsection (2);

(II) If the business is continued under paragraph (b) of this subsection (2), the right as against the other partners and all claiming through them, in respect of their interests in the partnership, to have the value of such partner's interest in the partnership, less any damages caused to the other partners by the dissolution, ascertained and paid to such partner in cash or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; except that, in ascertaining the value of such partner's interest, the value of the goodwill of the business shall not be considered.

Source: L. 31: p. 667, § 38. **CSA:** C. 123, § 38. **CRS 53:** § 104-1-38. **C.R.S. 1963:** § 104-1-38. **L. 2003:** (2)(a)(I) amended, p. 2236, § 114, effective July 1, 2004. **L. 2004:** (1), (2)(b), and (2)(c)(II) amended, p. 1429, § 93, effective July 1.

ANNOTATION

Partnership property converted into cash. This section embodies the essence of the rule that in an action for a partnership accounting and dissolution the entire partnership property will be converted into cash. Davis v. Davis, 149 Colo. 1, 366 P.2d 857 (1962).

Date of dissolution if by court decree. Where trial court record was replete with statements by partner of unwillingness to participate in partnership, the date partner filed action under § 7-60-132 was properly declared the date of dissolution for purposes of valuation of partnership interests. Master Garage, Inc. v. Bugdanowitz, 690 P.2d 879 (Colo. App. 1984).

7-60-139. Rights dissolved for fraud.

(1) Where a partnership contract is rescinded on the ground of fraud or misrepresentation of one of the parties, the party entitled to rescind is, without prejudice to any other right, entitled:

(a) To a lien on or right of retention of the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by such party for the purchase of an interest in the partnership and for any capital or advances contributed by such party; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by such party in respect of the partnership liabilities, subject to the limitations in section 7-60-115, if the partnership was a limited liability partnership at the time of its dissolution; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

Source: L. 31: p. 669, § 39. **CSA:** C. 123, § 39. **CRS 53:** § 104-1-39. **C.R.S. 1963:** § 104-1-39. **L. 95:** (1)(b) amended, p. 780, § 8, effective May 24. **L. 2004:** (1)(a) and (1)(b) amended, p. 1430, § 94, effective July 1.

ANNOTATION

This section means that even though the partnership contract is procured by the fraud of one of the partners nevertheless the partnership entity is created, and until it is dissolved, the defrauded partner is liable for debts of the partnership to third persons incurred during the life of the partnership. Van Andel v. Smith, 248 F.2d 915 (10th Cir. 1957).

And the phrase "without prejudice to any other right" does not permit the defrauded partner to plead the fraud as a bar to liability to creditors, for, if that were true, paragraphs (a), (b), and (c) of subsection (1) would be meaningless. Van Andel v. Smith, 248 F.2d 915 (10th Cir. 1957).

This section does not authorize the imposition of a lien on partnership property at the request of a limited partner. Central Allied Profit Sharing v. Bailey, 759 P.2d 849 (Colo. App. 1988).

7-60-140. Rules for distribution.

(1) In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are:

(I) The partnership property;

(II) The contributions of the partners, as limited by paragraph (d) of this subsection (1), necessary for the payment of all the liabilities specified in paragraph (b) of this subsection (1).

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than a partner;

(II) Those owing to partners other than for capital and profits;

(III) Those owing to partners in respect of capital;

(IV) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in paragraph (a) of this subsection (1) to the satisfaction of the liabilities.

(d) The partners shall contribute the amount necessary to satisfy the liabilities as provided by section 7-60-118 (1)(a) and as limited by said section and sections 7-60-115 and 7-60-134; but if any but not all of the partners are insolvent or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in paragraph (d) of this subsection (1).

(f) Any partner or legal representative of a partner shall have the right to enforce the contributions specified in paragraph (d) of this subsection (1), to the extent of the amount that the partner has paid in excess of the partner's share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in paragraph (d) of this subsection (1).

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or the estate of a partner is insolvent, the claims against the partner's separate property shall rank in the following order:

(I) Those owing to separate creditors;

(II) Those owing to partnership creditors;

(III) Those owing to partners by way of contributions.

Source: L. 31: p. 669, § 40. **CSA:** C. 123, § 40. **CRS 53:** § 104-1-40. **C.R.S. 1963:** § 104-1-40. **L. 95:** (1)(a) and (1)(d) amended, p. 781, § 9, effective May 24. **L. 2004:** (1)(f) and IP(1)(i) amended, p. 1430, § 95, effective July 1.

ANNOTATION

In the settlement of accounts between the partners after dissolution the individual partner shall be repaid his capital contributions. Rossi v. Rossi, 154 Colo. 21, 389 P.2d 191 (1963).

Before division of net profits. Upon a dissolution of the partnership and payment of its debts, capital contributions (unless not paid or unless waived) are to be returned to the contributing partner before division of the net profits. Thompson v. McCormick, 149 Colo. 465, 370 P.2d 442 (1962).

7-60-141. Liability of persons continuing business.

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns or the representative of the deceased partner assigns the deceased partner's right in partnership property to two or more of the partners or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership

affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign or the representative of a deceased partner assigns the deceased partner's rights in the partnership property to the remaining partner who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued, as set forth in subsections (1) and (2) of this section, with the consent of the retired partner or the representative of the deceased partner but without any assignment of such partner's right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When a partner wrongfully causes a dissolution and the remaining partners continue the business, under the provisions of section 7-60-138 (2)(b), either alone or with others and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person who becomes a partner in the partnership continuing the business under this section to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for the retired or deceased partner's right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name or the name of a deceased partner as part thereof shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

(11) If the business of a limited liability partnership is continued after the death, retirement, or expulsion of a partner or the admission of a new partner, the partnership continuing the business is a limited liability partnership.

Source: L. 31: p. 671, § 41. **CSA:** C. 123, § 41. **CRS 53:** § 104-1-41. **C.R.S. 1963:** § 104-1-41. **L. 95:** (11) added, p. 781, § 10, effective May 24. **L. 2004:** (1), (2), (3), (8), and (11) amended, p. 1430, § 96, effective July 1.

ANNOTATION

Law reviews. For article, "One Year Review of Agencies, Partnerships, and Corporation", see 39 Dicta 61 (1962).

7-60-142. Rights of retiring partner.

When any partner retires or dies and the business is continued under any of the conditions set forth in section 7-60-141 (1), (2), (3), (5), and (6), or in section 7-60-138 (2)(b), without any settlement of accounts as between the partner or the partner's estate and the person or partnership continuing the business, unless otherwise agreed, the partner or the partner's legal representative as against such persons or partnership may have the value of the partner's interest at the date of dissolution ascertained and shall receive as an ordinary creditor an amount equal to such value with interest, or, at the partner's option or at the option of the partner's legal representative in lieu of interest, the profits attributable to the use of the partner's right in the property of the dissolved partnership; except that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section as provided by section 7-60-141 (8).

Source: L. 31: p. 674, § 42. **CSA:** C. 123, § 42. **CRS 53:** § 104-1-42. **C.R.S. 1963:** § 104-1-42. **L. 2004:** Entire section amended, p. 1431, § 97, effective July 1.

ANNOTATION

Method of valuation of partnership interest. In consideration of the uniformity, certainty, and ease of application promoted by adoption of a per se rule, as a matter of law, in the absence of a contractual provision to the contrary, an accounting between partners must be based on the fair market value of partnership assets at the time of dissolution. Rasheed v. Mubarak, 695 P.2d 754 (Colo. App. 1984).

Applied in Thompson v. McCormick, 169 Colo. 151, 454 P.2d 934 (1969); Jump v. Boardman, 169 Colo. 274, 455 P.2d 206 (1969).

7-60-143. Accrual of actions.

The right to an account of the partner's interest shall accrue to any partner or any partner's legal representative, as against the winding up partners, the surviving partners, or the person or partnership continuing the business at the date of dissolution, in the absence of any agreement to the contrary.

Source: L. 31: p. 675, § 43. **CSA:** C. 123, § 43. **CRS 53:** § 104-1-43. **C.R.S. 1963:** § 104-1-43. **L. 2004:** Entire section amended, p. 1431, § 98, effective July 1.

ANNOTATION

For a withdrawing partner seeking an accounting against any partners who are winding up or continuing the business, the cause of action accrues on the date the withdrawing partner ceases to be associated with the business, resulting in dissolution of the partnership. Once the plaintiff ceased to be associated with the partnership, not only did this dissolve any still-existing partnership, it also caused the statute of limitations to begin to run on the plaintiff's own claim for an accounting. Tafoya v. Perkins, 932 P.2d 836 (Colo. App. 1996).

7-60-144. Registration of partnerships.

(1) A partnership governed by this article may register as a limited liability partnership, and a limited partnership that has not made the election provided for in section 7-61-129 or 7-62-1104 may register as a limited liability limited partnership, by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of registration. If a certificate of limited partnership is being filed, the statement of registration may be included in the certificate of limited partnership. The statement of registration shall be approved in the manner provided in the partnership agreement or, if not so provided, shall be approved by all of the general partners. The statement of registration shall state:

(a) The name that has been the true name of the partnership or limited partnership and the name that will be the domestic entity name of the partnership or limited partnership, which domestic entity name shall comply with part 6 of article 90 of this title;

(b) The principal office address of its principal office; and

(c) The registered agent name and registered agent address of its registered agent.

(d) (Deleted by amendment, L. 2004, p. 1432, § 99, effective July 1, 2004.)

(2) (Deleted by amendment, L. 2003, p. 2236, § 115, effective July 1, 2004.)

(3) (Deleted by amendment, L. 2004, p. 1432, § 99, effective July 1, 2004.)

(4) 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 limited liability partnerships and foreign limited liability limited partnerships.

(4.5) A limited liability partnership or a limited liability limited partnership may cease to be a limited liability partnership or a limited liability limited partnership by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of withdrawal of registration. The statement of withdrawal of registration shall be approved in the manner provided in the partnership agreement or, if not so provided, shall be approved by all of the general partners. The withdrawal of registration shall be effective upon the effective date of the statement of withdrawal of registration.

(5) A partnership or a limited partnership that has been registered under this article is for all purposes the same entity that existed before it registered. A partnership or a limited partnership that withdraws its registration as a limited liability partnership or a limited liability limited partnership is for all purposes the same entity that existed before it withdrew its registration.

(6) Unless the partnership agreement otherwise provides, registration of a partnership shall require the unanimous consent of the general partners in the partnership at the time the statement of registration is delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title. The filing of a statement of registration shall be conclusive as to third parties and shall be incontestable by third parties that all conditions precedent to registering as a limited liability partnership or limited liability limited partnership, as the case may be, have been met.

(7) Except as to persons who were partners at the time of filing, the filing of a statement of registration shall be conclusive that all conditions precedent to registration under this section have been met.

Source: L. 95: Entire section added, p. 781, § 11, effective May 24. **L. 2000:** (1)(a) amended, p. 952, § 18, effective July 1. **L. 2002:** IP(1), (2)(b), and (3) amended, p. 1821, § 37, effective

July 1; IP(1), (2)(b), and (3) amended, p. 1685, § 35, effective October 1. **L. 2003:** (1) to (4) and (6) amended, p. 2236, § 115, effective July 1, 2004. **L. 2004:** (1), (3), (5), and (6) amended and (4.5) and (7) added, p. 1432, § 99, effective July 1.

ANNOTATION

Law reviews. For article, "Limited Liability Partnerships and Other Entities Authorized in Colorado", see 24 Colo. Law. 1525 (1995). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-60-144.5. Statement of partnership authority or statement of denial.

With respect to a partnership governed by this article or a limited partnership that has not made the election provided for in section 7-61-129 (1)(a) or 7-62-1104 (2)(a), a statement of partnership authority may be delivered to the secretary of state pursuant to section 7-64-303, and a statement of denial may be delivered to the secretary of state pursuant to section 7-64-304, as if the partnership were governed by article 64 of this title or the limited partnership had made the election. Such statements have the effects specified in sections 7-64-303 and 7-64-304, respectively.

Source: L. 2004: Entire section added, p. 1433, § 100, effective July 1. **L. 2016:** Entire section amended, (HB 16-1333), ch. 241, p. 987, § 4, effective August 10.

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-60-145. Name of registered limited liability partnership. (Repealed)

Source: L. 95: Entire section added, p. 783, § 11, effective May 24. **L. 97:** IP(1), (1)(a), and (3) amended, p. 1498, § 1, effective June 3. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-60-146. Limitations on distribution from limited liability partnerships.

(1) A limited liability partnership or limited liability limited partnership shall not make a distribution to a general partner to the extent that, at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability partnership or limited liability limited partnership, other than liabilities to general partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the partnership, exceed the fair value of the assets of the partnership; except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the partnership only to the extent that the fair value of that property exceeds that liability. For purposes of this section and sections 7-62-607 and 7-62-608, the term "distribution" shall not include payments to the extent that the payments do not exceed amounts equal to or constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(2) A general partner in a limited liability partnership or limited liability limited partnership who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that such distribution violated subsection (1) of this section, shall be liable to the partnership for the amount of the distribution. A general partner in a limited liability partnership or limited liability limited partnership who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a general partner under an agreement or other applicable law for the amount of a distribution.

(3) Unless otherwise agreed, a partner in a limited liability partnership or limited liability limited partnership who receives a distribution from the partnership shall have no liability under this article or other applicable law for the amount of the distribution after the expiration of three years after the date of the distribution unless an action to recover the distribution from such partner is commenced prior to the expiration of the said three-year period and an adjudication of liability against such partner is made in the said action.

Source: L. 95: Entire section added, p. 784, § 11, effective May 24. **L. 2004:** Entire section amended, p. 1433, § 101, effective July 1. **L. 2006:** Entire section amended, p. 849, § 8, effective July 1.

7-60-147. Liability of partner in limited liability partnership upon return of contribution. (Repealed)

Source: L. 95: Entire section added, p. 784, § 11, effective May 24. **L. 2004:** Entire section amended, p. 1433, § 102, effective July 1. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-60-148. Law governing foreign limited liability partnerships - repeal. (Repealed)

Source: L. 95: Entire section added, p. 784, § 11, effective May 24. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-60-149. Limited liability partnership periodic reports.

Part 5 of article 90 of this title, providing for periodic reports from reporting entities, applies to limited liability partnerships subject to this article.

Source: L. 95: Entire section added, p. 784, § 11, effective May 24. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1. **L. 2003:** Entire section RC&RE, p. 2238, § 116, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1434, § 103, effective July 1. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 1994, § 5, effective August 11.

7-60-150. Filing of report - repeal. (Repealed)

Source: L. 95: Entire section added, p. 785, § 11, effective May 24. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-60-151. Filing, service, and copying fees. (Repealed)

Source: L. 95: Entire section added, p. 785, § 11, effective May 24. **L. 98:** (2) amended, p. 1321, § 16, effective June 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-60-152. Failure of limited liability partnerships to comply with part 5 of article 90 of this title. (Repealed)

Source: L. 95: Entire section added, p. 786, § 11, effective May 24. **L. 2000:** (3)(d) amended, p. 952, § 19, effective July 1. **L. 2003:** Entire section amended, p. 2238, § 117, effective July 1, 2004. **L. 2004:** IP(1), (1)(a), and IP(4) amended, p. 1434, § 104, effective July 1. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-60-152.5. Registered agent - service of process.

Part 7 of article 90 of this title, providing for registered agents and service of process, shall apply to limited liability partnerships and limited liability limited partnerships and to foreign limited liability partnerships and foreign limited liability limited partnerships that are authorized to transact business or conduct activities in this state pursuant to part 8 of article 90 of this title.

Source: L. 2004: Entire section added, p. 1434, § 105, effective July 1.

7-60-153. Application of corporation case law to set aside limited liability.

(1) In any case in which a party seeks to hold the partners of a limited liability partnership or limited liability limited partnership personally responsible for the alleged improper actions of the

limited liability partnership or limited liability limited partnership, the court shall apply the case law that interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under Colorado law.

(2) For purposes of this section, the failure of a limited liability partnership or limited liability limited partnership to observe the formalities or requirements relating to the management of its business and affairs is not in itself a ground for imposing personal liability on the partners for liabilities of the limited liability partnership or limited liability limited partnership.

Source: L. 95: Entire section added, p. 787, § 11, effective May 24. **L. 2004:** Entire section amended, p. 1434, § 106, effective July 1.

7-60-154. Scope of article - choice of law - application to professions and occupations.

(1) A partnership, including a limited liability partnership or limited liability limited partnership, may conduct its business, carry on its operations, and exercise the powers granted by this article within and without the state.

(2) (a) It is the intent of the general assembly that the legal existence of limited liability partnerships and limited liability limited partnerships be recognized outside the boundaries of this state and that the law of this state governing the limited liability partnership or limited liability limited partnership transacting business outside this state be granted the protection of full faith and credit under section 1 of article IV of the constitution of the United States.

(b) It is the intent of the general assembly that the internal affairs of a limited liability partnership or limited liability limited partnership formed in this state be subject to and governed by the law of this state, including the provisions governing liability of partners for debts, obligations, and liabilities chargeable to partnerships.

(3) Nothing in this article shall be construed to permit a limited liability partnership to engage in a profession or occupation as described in title 12, C.R.S., for which there is a specific statutory provision applicable to the practice of such profession or occupation by a corporation or professional corporation in this state unless authorized under applicable provisions of title 12, C.R.S.

Source: L. 95: Entire section added, p. 787, § 11, effective May 24. **L. 2003:** (2) amended, p. 2239, § 118, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1435, § 107, effective July 1.

ARTICLE 61

Uniform Limited Partnership Law of 1931

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7-61-101. Short title.

This article shall be known and may be cited as the "Uniform Limited Partnership Law of 1931", and shall be applicable to limited partnerships as provided in section 7-61-129.5.

Source: L. 31: p. 643, § 27. **CSA:** C. 123, § 70. **CRS 53:** § 104-2-27. **C.R.S. 1963:** § 104-2-27. **L. 81:** Entire section amended, p. 453, § 2, effective November 1.

ANNOTATION

Law reviews. For article, "Research and Development Tax Shelter Partnerships", see 11 Colo. Law. 1851 (1982). For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982).

7-61-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Limited partnership" means a partnership formed by two or more persons, under the provisions of section 7-61-103, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

(2) "Member" means a general partner or a limited partner.

Source: L. 31: p. 626, § 1. **CSA:** C. 123, § 44. **CRS 53:** § 104-2-1. **C.R.S. 1963:** § 104-2-1. **L. 2004:** Entire section amended, p. 1435, § 108, effective July 1.

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

ANNOTATION

Law reviews. For article, "One Year Review of Corporations, Partnership, and Agency", see 37 Dicta 11 (1960).

That a limited partnership was discussed by members of a partnership during its formative period but that the

parties thereafter entered into a general partnership by articles signed by all the parties is insufficient to establish a claim of limited partnership. Baumgartner v. Tweedy, 143 Colo. 556, 354 P.2d 586 (1960).

The article on limited partnerships does not have a comparable or parallel provision to § 7-60-108 dealing with partnership property. Wise v. Nu-Tone Prods. Co., 148 Colo. 574, 367 P.2d 346 (1961).

Limited partnerships cannot exist without general partners. Skeen v. Harms, 10 B.R. 817 (Bankr. D. Colo. 1981).

Applied in Frazier v. Carlin, 42 Colo. App. 226, 591 P.2d 1348 (1979).

7-61-103. Formation.

(1) Two or more persons desiring to form a limited partnership shall:

(a) Sign and swear to a certificate which shall state:

(I) The name of the partnership;

(II) The character of the business;

(III) The location of the principal place of business;

(IV) The name and place of residence of each member, general and limited partners being respectively designated;

(V) The duration for which the partnership is to exist;

(VI) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;

(VII) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;

(VIII) The time, if agreed upon, when the contribution of each limited partner is to be returned;

(IX) The share of the profits or the other compensation by way of income that each limited partner shall receive by reason of the limited partner's contribution;

(X) The right, if given, of a limited partner to substitute an assignee as contributor in the place of the limited partner and the terms and conditions of the substitution;

(XI) The right, if given, of the partners to admit additional limited partners;

(XII) The right, if given, of one or more of the limited partners to priority over other limited partners as to contributions or as to compensation by way of income and the nature of such priority;

(XIII) The right, if given, of remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner; and

(XIV) The right, if given, of a limited partner to demand and receive property other than cash in return for the limited partner's contribution.

(b) File for record the certificate in the office of the county clerk and recorder.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of this section.

Source: L. 31: p. 626, § 2. **CSA:** C. 123, § 45. **CRS 53:** § 104-2-2. **C.R.S. 1963:** § 104-2-2. **L. 2004:** (1)(a)(V), (1)(a)(IX), (1)(a)(X), and (1)(a)(XIV) amended, p. 1436, § 109, effective July 1.

ANNOTATION

Law reviews. For article, "Guess Who's Coming to Closing", see 11 Colo. Law. 689 (1982).

Annotator's note. Since § 7-61-103 is similar to repealed laws antecedent to CSA, C. 123, § 80, a relevant case construing a prior provision has been included with the annotations to this section.

The purpose of this section is to prevent parties putting in property of uncertain and estimated value and calling it cash, thus obtaining a credit to which their capital would not entitle them. Holliday v. Union Bag Co., 3 Colo. 342 (1877).

However, this section does not require that capital should be paid in cash. Holliday v. Union Bag Co., 3 Colo. 342 (1877).

Rather, this section intends that when capital is paid in property it should be so stated, and its cash value given, for one of the essential precautions of the law is, that public notice must be given of the amount paid in so that the public may be enabled to estimate correctly the credit to be given to the partnership. Holliday v. Union Bag Co., 3 Colo. 342 (1877).

Section 7-61-117, when considered in conjunction with this section and § 7-61-118, does not bar suit nor entry of judgment and only reflects that a limited partner "shall not receive" a cash distribution in preference to creditors of the partnership when such distribution would result in insufficient assets remaining to pay creditors. Horizon Venture v. Horizon P'ship, 791 P.2d 1223 (Colo. App. 1990).

7-61-104. Business which may be carried on.

A limited partnership may carry on any business which a partnership without limited partners may carry on.

Source: L. 31: p. 628, § 3. **CSA:** C. 123, § 46. **CRS 53:** § 104-2-3. **C.R.S. 1963:** § 104-2-3.

7-61-105. Limited partner's contribution.

The contributions of a limited partner may be cash or other property but not services.

Source: L. 31: p. 628, § 4. **CSA:** C. 123, § 47. **CRS 53:** § 104-2-4. **C.R.S. 1963:** § 104-2-4.

ANNOTATION

Law reviews. For comment on Silvola v. Rowlett (cited below), see 27 Rocky Mt. L. Rev. 98 (1954). For article, "A Law Firm Pension Plan?", see 37 Dicta 351 (1960).

The word "contributions" as it is used in this section is limited to the contribution to be made by the limited partner at the time of the formation of the partnership for the benefit of the partnership's creditors, as there is a clear general purpose and intent by the general assembly to encourage trade by authorizing and permitting a capitalist to put his money into a partnership with general partners possessed of skill and business character only without becoming a general partner or hazarding anything in the business except the capital originally subscribed. Silvola v. Rowlett, 129 Colo. 522, 272 P.2d 287 (1954).

And services rendered by a limited partner after the formation of a limited partnership are not included in the "contributions" as that term is used in the section. Silvola v. Rowlett, 129 Colo. 522, 272 P.2d 287 (1954).

Hence, services rendered by a limited partner in the operation of a partnership does not deprive him of protection as a limited partner, for the fact that he is interested in the success thereof to the extent of rendering services does not, in and of itself, violate the provisions of this section nor does that alone charge him with liability of a general partner. Silvola v. Rowlett, 129 Colo. 522, 272 P.2d 287 (1954).

7-61-106. Name not to contain surname of limited partner - exceptions.

(1) The surname of a limited partner shall not appear in the partnership name, unless:

(a) It is also the surname of a general partner; or

(b) Prior to the time when the limited partner became such, the business had been carried on under a name in which the limited partner's surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of subsection (1) of this section is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that the limited partner is not a general partner.

Source: L. 31: p. 628, § 5. **CSA:** C. 123, § 48. **CRS 53:** § 104-2-5. **C.R.S. 1963:** § 104-2-5. **L. 2004:** (1)(b) and (2) amended, p. 1436, § 110, effective July 1.

7-61-107. Liability for false statement in certificate.

(1) If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

(a) At the time such party signed the certificate; or

(b) Subsequently but within a sufficient time before the statement was relied upon to enable such party to cancel or amend the certificate or to file a petition for its cancellation or amendment as provided in section 7-61-126 (3).

Source: L. 31: p. 629, § 6. **CSA:** C. 123, § 49. **CRS 53:** § 104-2-6. **C.R.S. 1963:** § 104-2-6. **L. 2004:** Entire section amended, p. 1436, § 111, effective July 1.

7-61-108. Limited partner not liable to creditors - when.

A limited partner shall not become liable as a general partner unless, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner takes part in the control of the business.

Source: L. 31: p. 629, § 7. **CSA:** C. 123, § 50. **CRS 53:** § 104-2-7. **C.R.S. 1963:** § 104-2-7. **L. 2004:** Entire section amended, p. 1436, § 112, effective July 1.

ANNOTATION

This section provides for a limited liability if he who invokes its protection shows that he has both strictly and substantially complied with the conditions upon which immunity from common law liability is granted. Holliday v. Union Bag Co., 3 Colo. 342 (1877) (decided under repealed laws antecedent to CSA, C. 123, § 74).

This section does not impose silence on a limited partner who has a material interest in the success of a partnership business, especially so when his opinion and suggestions are sought by a general partner. Silvola v. Rowlett, 129 Colo. 522, 272 P.2d 287 (1954).

A limited partner cannot be treated as a general partner for purposes of dissolution and winding up even though he performed some functions of a general partner. Roeschlein v. Watkins, 686 P.2d 1347 (Colo. App. 1983).

Provisions of a limited partnership agreement structuring expenses and establishing net profit and loss distribution formulae do not in themselves render a limited partner liable as a general partner for partnership debts. Alzado v. Blinder, Robinson & Co., Inc., 752 P.2d 544 (Colo. 1988).

A limited partner may become liable to partnership creditors as a general partner if the limited partner assumes control of partnership business. Whether limited partner's conduct amounts to assumption of control must be determined by consideration of several factors, including the purpose of the partnership, the administrative activities undertaken, the manner in which the entity actually functioned, and the nature and frequency of the limited partner's purported activities. Alzado v. Blinder, Robinson & Co., Inc., 752 P.2d 544 (Colo. 1988).

Style of suit against limited partnership. A limited partnership may be used either in its common name or by naming the general partners and designating their capacity. Frazier v. Carlin, 42 Colo. App. 226, 591 P.2d 1348 (1979).

And notice to general partners satisfactory. Because the general partners possess sole management responsibility for a limited partnership, notice to them in their capacities as general partners affords that notice to the limited partnership which is necessary to satisfy the demands of due process. Frazier v. Carlin, 42 Colo. App. 226, 591 P.2d 1348 (1979).

7-61-109. Admission of additional limited partners.

After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 7-61-126.

Source: L. 31: p. 630, § 8. **CSA:** C. 123, § 51. **CRS 53:** § 104-2-8. **C.R.S. 1963:** § 104-2-8.

7-61-110. General partner - rights - liabilities.

(1) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, but without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to:

(a) Do any act in contravention of the certificate;

(b) Do any act which would make it impossible to carry on the ordinary business of the partnership;

(c) Confess a judgment against the partnership;

(d) Possess partnership property or assign their rights in specific partnership property for other than a partnership purpose;

(e) Admit a person as a general partner;

(f) Admit a person as a limited partner, unless the right to do so is given in the certificate;

(g) Continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right to do so is given in the certificate.

(2) For a limited partnership that has made the election permitted by section 7-61-129, the article so elected shall be the governing law for purposes of subsection (1) of this section. For a limited partnership that has not made the election permitted by section 7-61-129, article 60 of this title shall be the governing law for purposes of subsection (1) of this section.

Source: L. 31: p. 630, § 9. **CSA:** C. 123, § 52. **CRS 53:** § 104-2-9. **C.R.S. 1963:** § 104-2-9. **L. 97:** (2) added, p. 915, § 2, effective January 1, 1998.

Cross references: For common law fiduciary duty of good faith, sound business judgment, candor, forthrightness, and fairness owed by a general partner to his limited partners in winding up partnership affairs, see Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972), and Roeschlein v. Watkins, 686 P.2d 1347 (Colo. App. 1984).

ANNOTATION

Law reviews. For article, "One Year Review of Agencies, Partnerships, and Corporations", see 39 Dicta 61 (1962). For article, "Guess Who's Coming to Closing", see 11 Colo. Law. 689 (1982). For article, "The Fiduciary Duties of General Partners", see 17 Colo. Law. 1959 (1988). For article, "Contractually Binding Colorado Entities", see 28 Colo. Law. 33 (Dec. 1999).

Breach of fiduciary duty by general partner. Since a general partner owes a fiduciary duty to the limited partners, the doing of an act proscribed by this section is a breach of that duty. Gundelach v. Gollehon, 42 Colo. App. 437, 598 P.2d 521 (1979).

Transfer of sole asset of limited partnership. Upon transfer of the sole asset of a limited partnership, it is no longer possible for the partnership to carry on its ordinary business within the meaning of this section. Gundelach v. Gollehon, 42 Colo. App. 437, 598 P.2d 521 (1979).

Remuneration of partner impermissible without express agreement. The provisions of § 7-60-118 apply to limited partnerships. Mahan v. Harst, 738 P.2d 1190 (Colo. App. 1987).

Applied in Skeen v. Harms, 10 B.R. 817 (Bankr. D. Colo. 1981).

7-61-111. Rights of a limited partner.

(1) A limited partner shall have the same rights as a general partner to:

(a) Have the partnership books kept at the principal place of business of the partnership and at all times to inspect and copy any of them;

(b) Have on demand true and full information of all things affecting the partnership and a formal account of partnership affairs whenever circumstances render it just and reasonable; and

(c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income and to the return of the limited partner's contribution as provided in sections 7-61-116 and 7-61-117.

Source: L. 31: p. 631, § 10. **CSA:** C. 123, § 53. **CRS 53:** § 104-2-10. **C.R.S. 1963:** § 104-2-10. **L. 2004:** (2) amended, p. 1437, § 113, effective July 1.

ANNOTATION

Right to sue derivatively. The right of the limited partners of a limited partnership formed prior to 1981 to sue derivatively is governed by this article and the common law, not § 7-62-1001. Moore v. 1600 Downing St., Ltd., 668 P.2d 16 (Colo. App. 1983).

Absent a statement in the certificate to the contrary and irrespective of the nature of the contributions, a limited partner has only the right to demand and receive cash in return for his contribution. Horizon Venture v. Horizon P'ship, 791 P.2d 1223 (Colo. App. 1990).

Membership interest may be a "security". The presumption that a general partnership interest is not a security is not applicable to a limited liability partnership interest in Colorado. Instead, the structure of the entity and the terms of the agreement will control. Toothman v. Freeborn & Peters, 80 P.3d 804 (Colo. App. 2002).

7-61-112. Status of person erroneously believing self to be a limited partner.

A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that the person has become a limited partner in a limited partnership is not, by reason of the person's exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business or bound by the obligations of such person or partnership if, on ascertaining the mistake, the person promptly renounces the person's interest in the profits of the business or other compensation by way of income.

Source: L. 31: p. 631, § 11. **CSA:** C. 123, § 54. **CRS 53:** § 104-2-11. **C.R.S. 1963:** § 104-2-11. **L. 2004:** Entire section amended, p. 1437, § 114, effective July 1.

7-61-113. One person both general and limited partner.

(1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general partner and at the same time a limited partner shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect

to such person's contribution, the person shall have the rights against the other members that the person would have had if the person were not also a general partner.

Source: L. 31: p. 632, § 12. **CSA:** C. 123, § 55. **CRS 53:** § 104-2-12. **C.R.S. 1963:** § 104-2-12. **L. 2004:** (2) amended, p. 1437, § 115, effective July 1.

7-61-114. Transactions with limited partner.

(1) A limited partner also may loan money to and transact other business with the partnership and, unless the limited partner is also a general partner, receive, on account of resulting claims against the partnership, a pro rata share of the assets with general creditors.

(2) No limited partner shall, in respect to any such claim:

(a) Receive or hold as collateral security any partnership property; or

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(3) The receiving of collateral security or a payment, conveyance, or release in violation of the provisions of subsection (1) of this section is a fraud on the creditors of the partnership.

Source: L. 31: p. 632, § 13. **CSA:** C. 123, § 56. **CRS 53:** § 104-2-13. **C.R.S. 1963:** § 104-2-13. **L. 2004:** (1) amended, p. 1437, § 116, effective July 1.

7-61-115. Relation of limited partners inter se.

Where there are several limited partners, the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and, in the absence of such a statement, all the limited partners shall stand upon equal footing.

Source: L. 31: p. 633, § 14. **CSA:** C. 123, § 57. **CRS 53:** § 104-2-14. **C.R.S. 1963:** § 104-2-14.

7-61-116. Compensation of limited partner.

A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate, if after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

Source: L. 31: p. 633, § 15. **CSA:** C. 123, § 58. **CRS 53:** § 104-2-15. **C.R.S. 1963:** § 104-2-15.

ANNOTATION

Absent a statement in the certificate to the contrary and irrespective of the nature of the contributions, a limited partner has only the right to demand and receive cash in return for his contribution. Horizon Venture v. Horizon P'ship, 791 P.2d 1223 (Colo. App. 1990).

7-61-117. Withdrawal or reduction of limited partner's contribution.

(1) A limited partner shall not receive from a general partner or out of partnership property any part of the limited partner's contributions until:

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them;

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of subsection (2) of this section; and

(c) The certificate is canceled or so amended as to state the withdrawal or reduction.

(2) Subject to the provisions of subsection (1) of this section, a limited partner may rightfully demand the return of the limited partner's contribution:

(a) On the dissolution of a partnership;

(b) When the date stated in the certificate for its return has arrived; or

(c) After the limited partner has given six months' notice in writing to all other members if no time is stated in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of the limited partner's contribution, has only the right to demand and receive cash in return for such contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when:

(a) The limited partner rightfully but unsuccessfully demands the return of the limited partner's contribution; or

(b) The other liabilities of the partnership have not been paid or the partnership property is insufficient for their payment as required by subsection (1)(a) of this section and the limited partner would otherwise be entitled to the return of the limited partner's contribution.

Source: L. 31: p. 633, § 16. **CSA:** C. 123, § 59. **CRS 53:** § 104-2-16. **C.R.S. 1963:** § 104-2-16. **L. 2003:** (1)(c), (2)(b), and (2)(c) amended, p. 2240, § 119, effective July 1, 2004. **L. 2004:** IP(1), IP(2), (2)(c), (3), and (4) amended, p. 1437, § 117, effective July 1.

ANNOTATION

Damages for breach of fiduciary duty. This section does not limit damages for a breach of fiduciary duty, but rather, the amount upon nonbreaching partner's contribution is the minimum assessable damages. Gundelach v. Gollehon, 42 Colo. App. 437, 598 P.2d 521 (1979).

Limited partner's remedy in a derivative suit is not limited to the return of his contribution with interest. Such a remedy is nonexclusive. Moore v. 1600 Downing St., Ltd., 668 P.2d 16 (Colo. App. 1983).

Partnership agreement is not void on its face and does not violate this section where agreement did not on its face guarantee that the limited partner would receive an unlawful priority over other partnership creditors. Alzado v. Blinder, Robinson & Co., Inc., 752 P.2d 544 (Colo. 1988).

Entry of a judgment against a partnership by a limited partner was not violative of this section. This section merely provides that the liabilities owed by the partnership to general creditors must be paid before such judgment is satisfied. Horizon Venture v. Horizon P'ship, 791 P.2d 1223 (Colo. App. 1990).

This section, considered in conjunction with §§ 7-61-103 and 7-61-118, does not bar suit nor entry of judgment and only reflects that a limited partner "shall not receive" a cash distribution in preference to creditors of the partnership when such distribution would result in insufficient assets remaining to pay creditors. Horizon Venture v. Horizon P'ship, 791 P.2d 1223 (Colo. App. 1990).

Absent a statement in the certificate to the contrary and irrespective of the

nature of the contributions, a limited partner has only the right to demand and receive cash in return for his contribution. Horizon Venture v. Horizon P'ship, 791 P.2d 1223 (Colo. App. 1990).

7-61-118. Liability of limited partner to partnership.

(1) A limited partner is liable to the partnership:

(a) For the difference between the contribution as actually made by the limited partner and that stated in the certificate as having been made; and

(b) For any unpaid contribution that the limited partner agreed in the certificate to make in the future, at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership:

(a) Specific property stated in the certificate as contributed by the limited partner but that was not contributed or that has been wrongfully returned; and

(b) Money or other property wrongfully paid or conveyed to the limited partner on account of the limited partner's contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of the contributor's contribution, the contributor is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

Source: L. 31: p. 635, § 17. **CSA:** C. 123, § 60. **CRS 53:** § 104-2-17. **C.R.S. 1963:** § 104-2-17. **L. 2004:** (1), (2), and (4) amended, p. 1438, § 118, effective July 1.

ANNOTATION

This section, when considered in conjunction with §§ 7-61-103 and 7-61-117, does not bar suit nor entry of judgment and only reflects that a limited partner "shall not receive" a cash distribution in preference to creditors of the partnership when such distribution would result in insufficient assets remaining to pay creditors. Horizon Venture v. Horizon P'ship, 791 P.2d 1223 (Colo. App. 1990).

7-61-119. Nature of limited partner's interest.

A limited partner's interest in the partnership is personal property.

Source: L. 31: p. 636, § 18. **CSA:** C. 123, § 61. **CRS 53:** § 104-2-18. **C.R.S. 1963:** § 104-2-18.

ANNOTATION

Law reviews. For article, "Financing Real Estate Developments", see 11 Colo. Law. 2093 (1982).

7-61-120. Assignment of limited partner's interest.

(1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned the limited partner's interest in a partnership.

(3) An assignee who does not become a substituted limited partner has no right to require any information or accounting of the partnership transactions or to inspect the partnership books. The assignee is only entitled to receive the share of the profits or other compensation by way of income or the return of the contribution to which the assignee's assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members, except the assignor, consent thereto or if the assignor, being empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 7-61-126.

(6) The substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of the substituted limited partner's assignor, except those liabilities of which the substituted limited partner was ignorant at the time the substituted limited partner became a limited partner and that could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 7-61-108 and 7-61-118.

Source: L. 31: p. 636, § 19. **CSA:** C. 123, § 62. **CRS 53:** § 104-2-19. **C.R.S. 1963:** § 104-2-19. **L. 2004:** (2), (3), and (6) amended, p. 1438, § 119, effective July 1.

7-61-121. Effect of retirement, death, or insanity of a general partner.

(1) The retirement, death, or insanity of a general partner dissolves the partnership unless the business is continued by the remaining general partners:

(a) Under a right to do so as stated in the certificate; or

(b) With the consent of all members.

Source: L. 31: p. 638, § 20. **CSA:** C. 123, § 63. **CRS 53:** § 104-2-20. **C.R.S. 1963:** § 104-2-20.

7-61-122. Death of limited partner.

(1) On the death of a limited partner, the deceased limited partner's executor or administrator shall have all the rights of a limited partner for the purpose of settling the deceased limited partner's estate and such power as the deceased limited partner had to constitute the deceased limited partner's assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all of the liabilities of the deceased limited partner as a limited partner.

Source: L. 31: p. 638, § 21. **CSA:** C. 123, § 64. **CRS 53:** § 104-2-21. **C.R.S. 1963:** § 104-2-21. **L. 2004:** Entire section amended, p. 1439, § 120, effective July 1.

7-61-123. Rights of creditors of limited partner.

(1) On due application to a court of competent jurisdiction by any creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of such claim and may appoint a receiver and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner but may not be redeemed with partnership property.

(3) The remedies conferred by subsection (1) of this section shall not be deemed exclusive of others which may exist.

(4) Nothing in this article shall be held to deprive a limited partner of the limited partner's statutory exemption.

Source: L. 31: p. 638, § 22. **CSA:** C. 123, § 65. **CRS 53:** § 104-2-22. **C.R.S. 1963:** § 104-2-22. **L. 2004:** (4) amended, p. 1439, § 121, effective July 1.

ANNOTATION

Law reviews. For article, "Letters of Credit in Limited Partnership Financing — A Legal Time Bomb?", see 13 Colo. Law. 1989 (1984).

7-61-124. Distribution of assets.

(1) In settling accounts after dissolution, the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions and to general partners;

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions;

(c) Those to limited partners in respect to the capital of their contributions;

(d) Those to general partners other than for capital and profits;

(e) Those to general partners in respect to profits;

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

Source: L. 31: p. 639, § 23. **CSA:** C. 123, § 66. **CRS 53:** § 104-2-23. **C.R.S. 1963:** § 104-2-23.

ANNOTATION

Applied in Beals v. Tri-B Assocs., 644 P.2d 78 (Colo. App. 1982).

7-61-125. When certificate shall be canceled or amended.

(1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when:

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner;

(b) A person is substituted as a limited partner;

(c) An additional limited partner is admitted;

(d) A person is admitted as a general partner;

(e) A general partner retires, dies, or is unable to function as a general partner as a result of a mental health disorder and the business is continued under section 7-61-121;

(f) There is a change in the character of the business of the partnership;

(g) There is a false or erroneous statement in the certificate;

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution;

(i) A time is fixed for the dissolution of the partnership or the return of a contribution, no time having been stated in the certificate; or

(j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

Source: L. 31: p. 640, § 24. **CSA:** C. 123, § 67. **CRS 53:** § 104-2-24. **C.R.S. 1963:** § 104-2-24. **L. 2003:** (2)(i) amended, p. 2240, § 120, effective July 1, 2004. **L. 2017:** (2)(e) amended, (SB 17-242), ch. 263, p. 1263, § 32, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

7-61-126. Requirements for amendment and for cancellation of certificate.

(1) The writing to amend a certificate shall:

(a) Conform to the requirements of section 7-61-103 insofar as necessary to state clearly the change in the certificate that is desired; and

(b) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) If any person designated in subsections (1) and (2) of this section as a person who must execute the writing to cancel a certificate refuses to do so, a person desiring the cancellation or amendment of such certificate may petition the district court to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county clerk and recorder in the office in which the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree stating the amendment.

(5) A certificate is amended or canceled when there is filed for record in the office of the county clerk and recorder in which the certificate is recorded:

(a) A writing in accordance with the provisions of subsections (1) and (2) of this section; or

(b) A certified copy of the order of court in accordance with the provisions of subsection (4) of this section.

(6) After the certificate is duly amended in accordance with this section, the amended certificate thereafter shall be for all purposes the certificate provided for by this article.

Source: L. 31: p. 641, § 25. **CSA:** C. 123, § 68. **CRS 53:** § 104-2-25. **C.R.S. 1963:** § 104-2-25. **L. 2003:** (1)(a), (4), and IP(5) amended, p. 2240, § 121, effective July 1, 2004.

7-61-127. Parties to actions.

A contributor, unless the contributor is a general partner, is not a proper party to proceedings by or against a partnership except where the object is to enforce a limited partner's right against or liability to the partnership.

Source: L. 31: p. 642, § 26. **CSA:** C. 123, § 69. **CRS 53:** § 104-2-26. **C.R.S. 1963:** § 104-2-26. **L. 2004:** Entire section amended, p. 1439, § 122, effective July 1.

ANNOTATION

Derivative action under the common law. Under the common law, a limited partner may bring a derivative action against the general partners for breach of fiduciary duty in the management of the affairs of the partnership if the general partners refuse to or are unable to bring such an action, and this section does not prevent such an action. Moore v. 1600 Downing St., Ltd., 668 P.2d 16 (Colo. App. 1983).

Determining federal diversity jurisdiction. A limited partnership is basically an association of individuals, and the uniform act has no effect on the determination of federal diversity jurisdiction. The question of federal jurisdiction cannot be decided according to what various states determine the state substantive law should be. Grynberg v. B.B.L. Assocs., 436 F. Supp. 564 (D. Colo. 1977).

Applied in Frazier v. Carlin, 42 Colo. App. 226, 591 P.2d 1348 (1979).

7-61-128. Rules of construction.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this article.

(2) This article shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This article shall not be so construed as to impair the obligations of any contract existing on April 11, 1931, nor to affect any action on proceedings begun or right accrued before said date.

Source: L. 31: p. 643, § 28. **CSA:** C. 123, § 71. **CRS 53:** § 104-2-28. **C.R.S. 1963:** § 104-2-28.

7-61-129. Law governing cases not covered.

(1) In any case not provided for in this article, the provisions of either article 60 or 64 of this title shall govern, to the extent applicable, as follows:

(a) A limited partnership may elect to be governed by article 64 of this title by filing for record in the office of the county clerk and recorder in which its certificate of limited partnership is filed of record an amendment which includes a declaration that it elects to be governed by such article. If the election is made, the amendment shall be signed by all general partners, notwithstanding section 7-61-126 (1)(b).

(b) A limited partnership that has made the election in paragraph (a) of this subsection (1) shall be governed by article 64 of this title.

(c) A limited partnership that has not made the election in paragraph (a) of this subsection (1) shall be governed by article 60 of this title.

Source: L. 31: p. 643, § 29. **CSA:** C. 123, § 72. **CRS 53:** § 104-2-29. **C.R.S. 1963:** § 104-2-29. **L. 97:** Entire section amended, p. 916, § 3, effective January 1, 1998.

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-61-129.5. Applicability.

Except as provided in section 7-62-1103, this article shall apply to limited partnerships formed between April 11, 1931, and prior to November 1, 1981. On or after November 1, 1981, all limited partnerships shall be formed under the provisions of article 62 of this title.

Source: L. 81: Entire section added, p. 453, § 3, effective November 1.

7-61-130. Provisions for existing limited partnerships.

(1) A limited partnership formed under any statute of this state prior to April 11, 1931, may become a limited partnership under this article by complying with the provisions of section 7-61-103 if the certificate states:

(a) The amount of the original contributions of each limited partner and the time when the contribution was made; and

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under any statute of this state prior to April 11, 1931, unless it becomes a limited partnership under this article, shall continue to be governed by the provisions of prior existing law, except that such partnership shall not be renewed unless so provided in the original agreement.

Source: L. 31: p. 643, § 30. **CSA:** C. 123, § 73. **CRS 53:** § 104-2-30. **C.R.S. 1963:** § 104-2-30. **L. 2003:** IP(1) amended, p. 2241, § 122, effective July 1, 2004.

ARTICLE 62

Colorado Uniform Limited Partnership Act of 1981

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PART 1

GENERAL PROVISIONS

7-62-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in section 7-62-201, and the certificate as amended.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services that a partner contributes to a limited partnership in the partner's capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 7-62-402.

(3.5) and (4) (Deleted by amendment, L. 2003, p. 2241, § 123, effective July 1, 2004.)

(5) "General partner" means a person:

(a) Who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement or this article, including a person who is admitted as a general partner without making or being obligated to make a contribution or without acquiring a partnership interest, if in either case such admission is pursuant to a written partnership agreement or other writing confirming the admission; and

(b) Who is named in the certificate of limited partnership as a general partner.

(5.5) "Limited liability partnership" means a limited liability partnership as defined in section 7-60-102 (4.7) or section 7-64-101 (13).

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement or this article, including a person who is admitted as a limited partner without making or being obligated to make a contribution or without acquiring a partnership interest, if in either case such admission is pursuant to a written partnership agreement or other writing confirming the admission, as provided in sections 7-62-301 and 7-62-306 or, in the case of a foreign limited partnership, in accordance with the law of the foreign jurisdiction under which the limited partnership is formed.

(7) "Limited partnership" or "domestic limited partnership" means an entity formed under this article by two or more persons and having one or more general partners and one or more limited partners. A limited liability limited partnership is for all purposes a limited partnership. At formation, a limited partnership shall have at least one partner who has a partnership interest.

(8) "Partner" means a limited or general partner.

(9) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(11) (Deleted by amendment, L. 2003, p. 2241, § 123, effective July 1, 2004.)

(12) "Limited liability limited partnership" means a domestic limited partnership that has registered under section 7-60-144 or 7-64-1002.

Source: L. 81: Entire article added, p. 433, § 1, effective November 1. **L. 86:** (6) amended, p. 448, § 1, effective July 1. **L. 95:** (4) and (7) amended and (3.5), (5.5), and (12) added, p. 787, § 12, effective May 24. **L. 97:** (5.5) and (12) amended, p. 916, § 4, effective January 1, 1998. **L. 2003:** (3.5), (4), (6), (7), (11), and (12) amended, p. 2241, § 123, effective July 1, 2004. **L. 2004:** (2), (5.5), (7), and (12) amended, p. 1439, § 123, effective July 1. **L. 2009:** (5), (6), and (7) amended, (HB 09-1248), ch. 252, p. 1129, § 4, effective May 14.

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

ANNOTATION

Law reviews. For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982).

A partnership that was part of a Ponzi scheme was void and therefore the provisions of the Colorado Limited Partnership Act of 1981 did not apply. Sender v. Simon, 174 B.R. 601 (Bankr. D. Colo. 1994).

7-62-102. Name of limited partnership. (Repealed)

Source: L. 81: Entire article added, p. 434, § 1, effective November 1. **L. 86:** (2) added, p. 448, § 2, effective July 1. **L. 90:** (1)(c) amended, p. 446, § 7, effective April 18. **L. 97:** (1)(a) and (1)(b) amended and (3) added, p. 1498, § 2, effective June 3. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-62-103. Reservation of name. (Repealed)

Source: L. 81: Entire article added, p. 434, § 1, effective November 1. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-62-104. Registered office - registered agent - repeal. (Repealed)

Source: L. 81: Entire article added, p. 435, § 1, effective November 1. **L. 86:** Entire section amended, p. 449, § 3, effective July 1. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-62-104.5. Registered agent - service of process.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to limited partnerships.

Source: L. 2003: Entire section added, p. 2241, § 124, effective July 1, 2004.

7-62-105. Records.

(1) Each limited partnership shall keep at an office stated in the manner provided in the partnership agreement or, if no such provision is made, at the street address of the principal office, if any, of the limited partnership or, if none, at the street address of the registered agent, the following:

(a) A current list of the full name and last-known business, residence, or mailing address of each partner, stating separately the general partners and the limited partners, stated in alphabetical order;

(b) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed or delivered to the secretary of state for filing;

(c) Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of any currently effective written partnership agreements, copies of any writings permitted or required under section 7-62-502 (2) and (3), and copies of any financial statements of the limited partnership for the three most recent years; and

(e) Unless contained in a written partnership agreement or in a writing permitted or required under section 7-62-502 (2) and (3), a statement prepared and certified as accurate by the general partners which describes:

(I) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;

(II) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(III) If agreed upon, the time at which or the events on the happening of which a partner may terminate the partner's membership in the limited partnership and the amount of, or the method of determining, the distribution to which the partner may be entitled respecting the partner's partnership interest and the terms and conditions of the termination and distribution;

(IV) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution.

(2) Such records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

Source: L. 81: Entire article added, p. 435, § 1, effective November 1. **L. 86:** IP(1), (1)(a), (1)(c), and (1)(d) amended and (1)(e) added, p. 449, § 4, effective July 1. **L. 2003:** IP(1), (1)(a), and (1)(b) amended, p. 2241, § 125, effective July 1, 2004. **L. 2004:** (1)(a) and (1)(e)(III) amended, p. 1440, § 124, effective July 1.

ANNOTATION

Law reviews. For article, "Significant Improvements to Colorado's Limited Partnership Act Adopted", see 15 Colo. Law. 1635 (1986).

7-62-106. Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on except as prohibited by law.

Source: L. 81: Entire article added, p. 435, § 1, effective November 1.

ANNOTATION

Law reviews. For article, "Research and Development Tax Shelter Partnership", see 11 Colo. Law. 1851 (1982). For article, "Partnership or LLC: Alternative to an

Irrevocable Life Insurance Trust?", see 25 Colo. Law. 43 (Jan. 1996).

7-62-107. Business transactions of partner with the partnership.

Except as provided in the partnership agreement, a partner may lend money to, act as surety for, and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

Source: L. 81: Entire article added, p. 435, § 1, effective November 1.

ANNOTATION

Law reviews. For article, "Limited Partnership Act Update", see 11 Colo. Law. 688 (1982).

A special district which was a limited partner is authorized to contract with the partnership unless the contract is unconstitutional in which event the contract is ultra vires and void. Black v. First Federal Savings and Loan, 830 P.2d 1103 (Colo. App. 1992).

7-62-108. Service of process on limited partnership - repeal. (Repealed)

Source: L. 81: Entire article added, p. 435, § 1, effective November 1. **L. 2003:** (6) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

7-62-109. Conversion of limited partnership into other entities - repeal. (Repealed)

Source: L. 95: Entire section added, p. 788, § 13, effective May 24. **L. 97:** Entire section amended, p. 916, § 5, effective January 1, 1998. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-62-110. Statute of frauds - applicability.

A partnership agreement is not subject to any statute of frauds, including section 38-10-112, C.R.S., regarding void agreements, but not including any requirement under this article that a particular action or provision be reflected in a writing.

Source: L. 2016: Entire section added, (HB 16-1333), ch. 241, p. 986, § 1, effective August 10.

PART 2

CERTIFICATE OF LIMITED PARTNERSHIP

7-62-201. Certificates - contents - filing with secretary of state.

(1) In order to form a limited partnership, a certificate of limited partnership shall be delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title. The certificate of limited partnership shall state:

(a) The domestic entity name of the limited partnership, 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 limited partnership's initial registered agent;

(c) The true name and mailing address of each general partner;

(c.5) The principal office address of the limited partnership's initial principal office;

(d) That there are at least two partners in the partnership, at least one of whom is a limited partner; and

(e) Any other matters relating to the limited partnership or the certificate the general partners determine to include therein.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state, or at any later time not more than ninety days after the date of the filing of the certificate, stated in the certificate of limited partnership, if, in either case, there has been substantial compliance with the requirements of this section.

Source: L. 81: Entire article added, p. 436, § 1, effective November 1. **L. 86:** (1) R&RE, p. 450, § 5, effective July 1. **L. 2000:** (1)(a) amended, p. 952, § 20, effective July 1. **L. 2002:** IP(1) amended, p. 1821, § 38, effective July 1; IP(1) amended, p. 1685, § 36, effective October 1. **L. 2003:** IP(1), (1)(a) to (1)(c), (1)(e), and (2) amended and (1)(c.5) added, p. 2242, § 126, effective July 1, 2004. **L. 2004:** IP(1) and (1)(c) amended, p. 1440, § 125, effective July 1. **L. 2006:** (1)(d) amended, p. 850, § 9, effective July 1. **L. 2008:** (1)(c) amended, p. 19, § 3, effective August 5.

ANNOTATION

Law reviews. For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982). For article, "Significant Improvements to Colorado's Limited Partnership Act Adopted", see 15 Colo. Law. 1635 (1986). For article, "Trade Name Registration Requirements and Customs in Colorado — Parts I and II", see 16 Colo. Law. 238 and 454 (1987).

Where the certificate of limited partnership was properly filed and there was no evidence to suggest the limited partner and the general partners did not have a good faith belief that they had formed a limited partnership, the partnership and limited partnership statutes concerning liability applied for the protection of the limited partnership's creditors. Black v. First Federal Savings and Loan, 830 P.2d 1103 (Colo. App. 1992).

Because all of the parties at the time of contract believed that a limited partnership existed based on the filing of the certificate, the general partners were jointly and severally liable on the note and deed of trust. Black v. First Federal Savings and Loan, 830 P.2d 1103 (Colo. App. 1992).

Where the limited partnership benefited from the loan entered into after the filing of the partnership certificate, the general partners were estopped from denying the validity of their acts on behalf of the partnership, even though the limited partnership was declared void as to the limited partner. Black v. First Federal Savings and Loan, 830 P.2d 1103 (Colo. App. 1992).

A limited partnership is formed when there is good faith, substantial compliance with the statutory requirements to execute and file a certificate of limited partnership in the office of the secretary of state. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

The law does not intend for the certificate of limited partnership to control the rights and obligations of the partners among themselves. The statutory provisions that require that the certificate of limited partnership specify the amount of cash and property contributed by each partner and the times at which any additional contributions will be made by each partner do not prohibit limited partners from contractually agreeing to allow an

increase in capital contributions by majority vote. Fox v. I-10, Ltd., 957 P.2d 1018 (Colo. 1998) (decided under former § 7-62-201(1)(e) and (f) prior to the 1986 amendments that eliminated these certificate requirements).

Certificate does not need to indicate the process by which partners to a partnership may amend their agreement in the future. Instead, certificate must merely specify the initial contribution agreed upon by the partners. Fox v. I-10, Ltd., 957 P.2d 1018 (Colo. 1998) (decided under former § 7-62-201 prior to the 1986 amendments that eliminated certificate requirement of § 7-62-201 (1)(f)).

7-62-202. Amendment to certificate.

(1) A limited partnership may amend its certificate of limited partnership by delivering a certificate of amendment to the secretary of state, for filing pursuant to part 3 of article 90 of this title, stating:

(a) The domestic entity name of the limited partnership; and

(b) (Deleted by amendment, L. 2004, p. 1440, § 126, effective July 1, 2004.)

(c) The amendment to the certificate.

(2) Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(a) The admission of a new general partner; or

(b) The withdrawal of a general partner.

(3) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, including but not limited to a change in the registered agent name or registered agent address of the registered agent, shall promptly amend the certificate.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) No person has any liability because an amendment to a certificate of limited partnership has not been filed in the records of the secretary of state to reflect the occurrence of any event referred to in subsection (2) or (3) of this section if the amendment is filed within the time periods specified.

Source: L. 81: Entire article added, p. 437, § 1, effective November 1. **L. 86:** (1)(b) and (3) amended and (2) R&RE, p. 450, §§ 6, 7, effective July 1. **L. 2003:** IP(1), (1)(a), (3), and (5) amended, p. 2242, § 127, effective July 1, 2004. **L. 2004:** IP(1), (1)(a), and (1)(b) amended, p. 1440, § 126, effective July 1.

ANNOTATION

Change in amount or character of the contribution of any partner or in any partner's obligation to make a contribution as determined by amendment to the certificate, must be recorded. Subsection (2)(a) requires the partners to record any change in obligation accomplished by amendment. Fox v. I-10, Ltd., 957 P.2d 1018 (Colo. 1998) (decided under former § 7-62-202 prior to the 1986 amendments that eliminated certificate requirement of subsection (2)(a)).

7-62-203. Statement of dissolution.

(1) Upon the dissolution of the partnership or at any time there are no limited partners, the partnership shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of dissolution stating:

(a) The domestic entity name of the limited partnership;

(b) (Deleted by amendment, L. 2003, p. 2243, § 128, effective July 1, 2004.)

(b.5) The principal office address of the limited partnership's principal office; and

(c) That the partnership is dissolved.

(d) and (e) (Deleted by amendment, L. 2004, p. 1441, § 127, effective July 1, 2004.)

(2) The statement of dissolution shall not affect the limited liability of the partners during the period of winding up and termination of the partnership.

Source: L. 81: Entire article added, p. 438, § 1, effective November 1. **L. 86:** (1)(b) and (1)(e) amended, p. 450, § 8, effective July 1. **L. 97:** (2) amended, p. 1499, § 3, effective June 3. **L. 2000:** (1)(a) amended, p. 952, § 21, effective July 1. **L. 2003:** IP(1), (1)(b) to (1)(e), and (2) amended, p. 2243, § 128, effective July 1, 2004. **L. 2004:** (1)(b.5) added and (1)(c), (1)(d), and (1)(e) amended, p. 1441, § 127, effective July 1.

7-62-204. Approval of certificates.

(1) Certificates and statements required by this article to be filed in the office of the secretary of state shall be approved in the following manner:

(a) An original certificate of limited partnership shall be approved by all general partners;

(b) A certificate of amendment shall be approved by at least one general partner and by each other general partner designated in the certificate as a new general partner; and

(c) A statement of dissolution shall be approved by all general partners or, if there are no general partners as a result of the application of section 7-62-402, by any person authorized under the partnership agreement or, if the partnership agreement does not so provide, by a person designated by a majority of the limited partners.

(2) Any person may approve a certificate or statement by an attorney-in-fact.

(3) (Deleted by amendment, L. 2002, p. 1821, § 39, effective July 1, 2002; p. 1686, § 37, effective October 1, 2002.)

Source: L. 81: Entire article added, p. 438, § 1, effective November 1. **L. 86:** (1)(a), (1)(b), (1)(c), and (3) amended, p. 451, § 9, effective July 1. **L. 2002:** Entire section amended, p. 1821, § 39, effective July 1; entire section amended, p. 1686, § 37, effective October 1. **L. 2003:** IP(1), (1)(c), and (2) amended, p. 2243, § 129, effective July 1, 2004.

Cross references: For penalties for perjury, see part 5 of article 8 of title 18.

ANNOTATION

Law reviews. For article, "Significant Improvements to Colorado's Limited Partnership Act Adopted", see 15 Colo. Law. 1635 (1986).

7-62-205. Presumptions.

(1) (Deleted by amendment, L. 2003, p. 2244, § 130, effective July 1, 2004.)

(2) (a) For the purposes of this subsection (2), the definitions in section 7-62-101 shall apply; except that:

(I) "General partner" includes a partner who is identified or otherwise classified as a general partner by or in accordance with the agreement of the partners, notwithstanding any delay or failure to file an original certificate of limited partnership naming the general partner as such.

(II) "Limited partner" includes a partner who is identified or otherwise classified as a limited partner by or in accordance with the agreement of the partners, notwithstanding any delay or failure to file an original certificate of limited partnership.

(III) "Limited partnership" includes a partnership before the filing of the original certificate of limited partnership with the secretary of state and in which there is at least one general partner and one limited partner.

(IV) "Partner" includes a person who enters into the agreement contemplated in paragraph (b) of this subsection (2) as a co-owner with the rights of a general partner or a limited partner or who acquires an interest in a limited partnership as a co-owner with such rights.

(b) The presumptions set forth in this subsection (2) shall apply to each limited partnership whose partners enter into an agreement on or after October 31, 1981, to form such limited partnership, and to which a contribution is made by or on behalf of one or more of such partners before the filing of an original certificate of limited partnership for such partnership.

(c) It shall be presumed that the partners of such limited partnership shall have agreed that:

(I) The relationship of the partners with respect to any contributions made to the partnership and relations among the partners and between the partners and the partnership shall be the same as if a certificate of limited partnership had been filed pursuant to section 7-62-201 at the time the partners entered into the agreement contemplated in paragraph (b) of this subsection (2); and

(II) The general partners of such limited partnership shall approve such certificate and that the same shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title.

(III) (Deleted by amendment, L. 2003, p. 2244, § 130, effective July 1, 2004.)

(c.5) The failure or refusal of the general partners to approve such certificate or to deliver such certificate to the secretary of state, for filing pursuant to part 3 of article 90 of this title, shall entitle any partner to obtain a court order pursuant to section 7-90-313 approving an appropriate certificate and ordering the secretary of state to file the approved certificate.

(d) The presumptions set forth in this subsection (2) shall apply to such a limited partnership, notwithstanding any one or more provisions of any agreement of the partners of such limited partnership that:

(I) The term of such partnership shall commence upon the filing of such certificate;

(II) An agreement sets forth the entire understanding of the parties; or

(III) The agreement of the parties shall be in writing.

(e) The presumption set forth in subparagraph (II) of paragraph (c) of this subsection (2) shall not apply in an action for damages against a general partner by the other partners based on any delay or failure in the filing of a certificate of limited partnership.

Source: L. 81: Entire article added, p. 439, § 1, effective November 1. **L. 86:** Entire section R&RE, p. 451, § 10, effective July 1. **L. 99:** Entire section amended, p. 143, § 1, effective March 24. **L. 2002:** (1), (2)(c)(II), (2)(c)(III), and (2)(e) amended, p. 1822, § 40, effective July 1; (1), (2)(c)(II), (2)(c)(III), and (2)(e) amended, p. 1686, § 38, effective October 1. **L. 2003:** (1) and (2)(c) amended and (2)(c.5) added, p. 2244, § 130, effective July 1, 2004.

7-62-206. Filing in office of secretary of state. (Repealed)

Source: L. 81: Entire article added, p. 439, § 1, effective November 1. **L. 86:** IP(1) and (2) amended, p. 451, § 11, effective July 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-62-207. Liability for false statement in certificate.

(1) If any certificate of limited partnership, certificate of amendment, or statement of dissolution containing a false statement is delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title, one who suffers loss by reliance on the statement may recover damages for the loss from:

(a) Any general partner who knew or should have known the certificate of limited partnership, certificate of amendment, or statement of dissolution to be false at the time the same was approved; and

(b) Any general partner who thereafter knows or should have known that any statement in the certificate of limited partnership, certificate of amendment, or statement of dissolution has changed, making the same inaccurate in any respect within a sufficient time before the certificate of limited partnership, certificate of amendment, or statement of dissolution was relied upon reasonably to have enabled that general partner to correct the inaccuracy or to file a petition for its correction under section 7-90-313.

Source: L. 81: Entire article added, p. 439, § 1, effective November 1. **L. 2002:** IP(1) and (1)(a) amended, p. 1822, § 41, effective July 1; IP(1) and (1)(a) amended, p. 1687, § 39, effective October 1. **L. 2003:** IP(1) and (1)(b) amended, p. 2244, § 131, effective July 1, 2004. **L. 2004:** (1)(a) and (1)(b) amended, p. 1441, § 128, effective July 1.

7-62-208. Notice of existence of limited partnership.

The fact that a certificate of limited partnership is on file in the records of the secretary of state is notice that the partnership is a limited partnership and is notice of all other facts stated therein that are required to be stated in a certificate of limited partnership by section 7-62-201 (1).

Source: L. 81: Entire article added, p. 439, § 1, effective November 1. **L. 86:** Entire section amended, p. 451, § 12, effective July 1. **L. 2003:** Entire section amended, p. 2245, § 132, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1441, § 129, effective July 1. **L. 2006:** Entire section amended, p. 850, § 10, effective July 1.

ANNOTATION

Public recordation of the certificate of limited partnership protects third parties who deal with the partnership. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

Where a certificate of limited partnership was properly filed and there is no evidence suggesting the limited partner or the general partners lacked a good faith belief that they had substantially conformed with the statutory requirements for creating a limited partnership, a lender that funded a loan to the limited partnership was entitled to rely on the certificate as evidence that the limited partnership was in existence. Therefore, the partnership and limited partnership statutes concerning contractual liability to creditors applied at the time the limited partnership's obligation to the lender arose. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

7-62-209. Delivery of certificates to limited partners - repeal. (Repealed)

Source: L. 81: Entire article added, p. 439, § 1, effective November 1. **L. 2002:** Entire section amended, p. 1823, § 42, effective July 1; entire section amended, p. 1687, § 40, effective October 1. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-62-210. Merger and consolidation of limited partnerships - repeal. (Repealed)

Source: L. 86: Entire section added, p. 452, § 13, effective July 1. **L. 2002:** IP(3) amended, p. 1823, § 43, effective July 1; IP(3) amended, p. 1687, § 41, 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.)

PART 3

LIMITED PARTNERS

7-62-301. Admission of limited partners.

(1) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(a) In the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners;

(b) In the case of an assignee of a partnership interest of a partner who has the power, as provided in section 7-62-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power; and

(c) Either upon formation of the limited partnership or thereafter without making a contribution or being obligated to make a contribution to the limited partnership or acquiring a partnership interest, if in either case such admission is pursuant to a written partnership agreement or other writing confirming the admission.

(2) A person becomes a limited partner on the later of:

(a) The date the original certificate of limited partnership is filed in the records of the secretary of state; and

(b) The date reflected in the records of the limited partnership as the date that person becomes a limited partner.

Source: L. 81: Entire article added, p. 440, § 1, effective November 1. **L. 86:** (2) R&RE, p. 453, § 14, effective July 1. **L. 2003:** (2)(a) amended, p. 2245, § 133, effective July 1, 2004. **L. 2009:** (1) amended, (HB 09-1248), ch. 252, p. 1130, § 5, effective May 14.

ANNOTATION

Law reviews. For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982). For article, "Significant Improvements to Colorado's Limited Partnership Act Adopted", see 15 Colo. Law. 1635 (1986).

7-62-302. Voting.

Subject to the provisions of section 7-62-303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

Source: L. 81: Entire article added, p. 440, § 1, effective November 1.

ANNOTATION

Law reviews. For article, "Limited Partnership Act Update", see 11 Colo. Law. 688 (1982).

7-62-303. Liability to third parties.

(1) (a) A limited partner is not liable for the obligations of a limited partnership incurred while it is not a limited liability limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business at the time such liability is incurred, the limited partner is liable only to persons who transact business or conduct activities with the limited partnership reasonably believing, notwithstanding the fact that the limited partner is not

designated as a general partner in the certificate of limited partnership, based upon the limited partner's conduct, that the limited partner is a general partner at the time such liability is incurred.

(b) A limited partner of a limited liability limited partnership is not liable for the obligations of the partnership incurred while it is a limited liability limited partnership.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) of this section solely by doing one or more of the following:

(a) Being a contractor for or an agent or employee of the limited partnership or of a general partner;

(b) Being an officer, director, or shareholder of a corporate general partner;

(c) Consulting with and advising a general partner with respect to the business of the limited partnership;

(d) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership or providing collateral for an obligation of the limited partnership;

(e) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to part 10 of this article;

(f) Calling, requesting, or participating in a meeting of the partners;

(g) Proposing or approving or disapproving, by voting or otherwise, one or more of the following matters:

(I) The dissolution and winding up or continuation of the limited partnership;

(II) The sale, exchange, lease, mortgage, pledge, or other transfer of any assets of the limited partnership;

(III) The incurrence of indebtedness by the limited partnership;

(IV) A change in the nature of the business;

(V) The admission or removal of a partner;

(VI) A transaction or other matter involving an actual or potential conflict of interest;

(VII) An amendment to the partnership agreement or certificate of limited partnership; or

(VIII) Such other matters as are stated in writing in the partnership agreement;

(h) Winding up the limited partnership pursuant to section 7-62-803; or

(i) Exercising any right or power permitted to limited partners under this article and not specifically enumerated in this subsection (2).

(3) The enumeration in subsection (2) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(4) Repealed.

Source: L. 81: Entire article added, p. 440, § 1, November 1. **L. 86:** (1) amended and (2) R&RE, p. 453, §§ 15, 16, effective July 1. **L. 97:** (1) amended and (4) repealed, pp. 1499, 1500, §§ 4, 5, effective June 3. **L. 2003:** (1)(a) amended, p. 2245, § 134, effective July 1, 2004. **L. 2004:** (1)(a), (1)(b), and (3) amended, p. 1442, § 130, effective July 1.

ANNOTATION

Law reviews. For article, "Limited Partnership Act Update", see 11 Colo. Law. 688 (1982). For article, "The Tax Status of Limited Partnerships Formed Under CULPA", see 11 Colo. Law. 1193 (1982). For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982). For article, "The Convertible, Participating Mortgage: Planning Opportunities and Legal Pitfalls in Structuring the Transaction", see 54 U. Colo. L. Rev. 295 (1983). For article, "Significant Improvements to Colorado's Limited Partnership Act Adopted", see 15 Colo. Law. 1635 (1986).

Where a limited partner can not maintain its position as a limited partner and protect itself from participation in an ultra vires contract, the limited partner's participation in the limited partnership is void and the limited partner is not liable for the debts and obligations incurred by the limited partnership. Black v. First Federal Savings and Loan, 830 P.2d 1103 (Colo. App. 1992).

While a limited partnership protects the partners from liability for partnership debt and obligations, it does not necessarily protect the partners from liability to the partnership. With respect to capital contribution, liability to the partnership is defined by the partnership agreement itself. Fox v. I-10, Ltd., 957 P.2d 1018 (Colo. 1998).

7-62-304. Person erroneously believing self to be a limited partner.

(1) Except as provided in subsection (2) of this section, a person who makes a contribution to a business enterprise and erroneously, but in good faith, believes that the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, the person causes an

appropriate certificate of limited partnership or a certificate of amendment to be delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title.

(2) A person who makes a contribution of the kind described in subsection (1) of this section is liable as a general partner to any third party who transacts business with the enterprise before an appropriate certificate is filed in the records of the secretary of state to show that the person is not a general partner, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

Source: L. 81: Entire article added, p. 441, § 1, effective November 1. **L. 86:** (2) amended, p. 454, § 17, effective July 1. **L. 2002:** (1) amended, p. 1823, § 44, effective July 1; (1) amended, p. 1687, § 42, effective October 1. **L. 2003:** Entire section amended, p. 2245, § 135, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1442, § 131, effective July 1.

ANNOTATION

Law reviews. For article, "Limited Partnership Act Update", see 11 Colo. Law. 688 (1982). For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982).

7-62-305. Information and accounting.

(1) Each limited partner has the right to:

(a) Inspect and copy partnership records, as provided by section 7-62-105; and

(b) Obtain from the general partners from time to time, subject to such reasonable standards as may be stated in the partnership agreement or otherwise established by the general partners, upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:

(I) True and full information regarding the state of the business and financial condition of the limited partnership and any other information regarding the affairs of the limited partnership; and

(II) Promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) Have a formal accounting of partnership affairs whenever circumstances render it just and reasonable.

Source: L. 81: Entire article added, p. 441, § 1, effective November 1. **L. 86:** (1)(a) and IP(1)(b) amended, p. 454, § 18, effective July 1. **L. 2003:** IP(1)(b) amended, p. 2246, § 136, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "Significant Improvements to Colorado's Limited Partnership Act Adopted", see 15 Colo. Law. 1635 (1986).

7-62-306. Time of admission.

A person acquiring a partnership interest is admitted as a limited partner upon the later to occur of the formation of the limited partnership and the time provided in the partnership agreement or, if no such time is provided, when the person's admission is reflected in the records of the limited partnership.

Source: L. 86: Entire section added, p. 454, § 19, effective July 1.

PART 4

GENERAL PARTNERS

7-62-401. Admission of general partners.

(1) After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not so provide, with the written consent of all partners.

(1.5) A person may be admitted as a general partner to a limited partnership either upon formation of the limited partnership or thereafter without making a contribution or being obligated to make a contribution to the limited partnership or acquiring a partnership interest, if in either case such admission is pursuant to a written partnership agreement or other writing confirming the admission.

(2) Upon the withdrawal of the last remaining general partner, unless otherwise provided in writing in the partnership agreement for the admission of a general partner, one or more persons who consent to be general partners shall be admitted as follows:

(a) A majority of the limited partners may admit one or more general partners; and

(b) If a majority of the limited partners fails to act within a reasonable time, the district court for the county in this state in which the street address of the limited partnership's principal office is located, or, if the limited partnership 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 limited partnership has no registered agent, the district court for the city and county of Denver shall, upon the application of any limited partner, admit one or more general partners. Such court may appoint a custodian to manage the business of the limited partnership during the pendency of the proceedings.

(3) Subsection (2) of this section shall not apply to a limited partnership formed prior to June 3, 1997, if on or before one year after June 3, 1997, one or more partners signs and delivers to a general partner an election in writing against the application of subsection (2) of this section. The general partner shall file any such election with the records required to be kept by section 7-62-105. The absence of such an election in the records shall give rise to a presumption that no such election has been delivered.

Source: L. 81: Entire article added, p. 442, § 1, November 1. **L. 86:** Entire section amended, p. 455, § 20, effective July 1. **L. 97:** Entire section amended, p. 1500, § 6, effective June 3. **L. 2003:** (2)(b) amended, p. 2246, § 137, effective July 1, 2004. **L. 2009:** (1.5) added, (HB 09-1248), ch. 252, p. 1130, § 6, effective May 14.

ANNOTATION

Law reviews. For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982). For article, "Significant Improvements to Colorado's Limited Partnership Act Adopted", see 15 Colo. Law. 1635 (1986).

7-62-402. Events of withdrawal.

(1) A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(a) The general partner withdraws from the limited partnership as provided in section 7-62-602;

(b) The general partner ceases to be a member of the limited partnership as provided in section 7-62-702;

(c) The general partner is removed as a general partner in accordance with the partnership agreement;

(d) Unless otherwise provided in writing in the partnership agreement or unless all partners give their consent in writing at the time, the general partner:

(I) Makes an assignment for the benefit of creditors;

(II) Files a voluntary petition in bankruptcy;

(III) Is adjudicated a bankrupt or insolvent;

(IV) Files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(V) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature; or

(VI) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties;

(e) Unless otherwise provided in writing in the partnership agreement or unless all partners give their consent in writing at the time, if, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed; or if, within ninety days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or stayed; or if, within ninety days after the expiration of any such stay, the appointment is not vacated;

(f) In the case of a general partner who is an individual:

(I) The general partner's death; or

(II) The appointment of a guardian or general conservator for the general partner;

(g) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(h) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(i) In the case of a general partner that is a corporation, the filing of articles of dissolution, or its equivalent, for the corporation or the revocation of its charter or articles of incorporation; or

(j) In the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Source: L. 81: Entire article added, p. 442, § 1, effective November 1. **L. 86:** IP(1)(d) and (1)(e) amended, p. 455, § 21, effective July 1. **L. 2004:** (1)(d)(IV), (1)(d)(V), (1)(d)(VI), (1)(e), and (1)(f) amended, p. 1442, § 132, effective July 1. **L. 2008:** (1)(i) amended, p. 19, § 4, effective August 5.

ANNOTATION

Law reviews. For article, "Limited Partnership Act Update", see 11 Colo. Law. 688 (1982).

7-62-403. General powers and liabilities.

(1) Except as provided in this article or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(2) (a) Except as provided in this article:

(I) A general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners; and

(II) A general partner of a limited liability limited partnership has the liabilities of a partner in a limited liability partnership to persons other than the partnership and the other partners.

(b) Except as provided in this article or in the partnership agreement:

(I) A general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners; and

(II) A general partner of a limited liability limited partnership has the liabilities of a partner in a limited liability partnership to the partnership and to the other partners.

(3) For a limited partnership that has made the election permitted by section 7-62-1104, the article so elected shall be the governing law for purposes of subsections (1) and (2) of this section. For a limited partnership that has not made the election permitted by section 7-62-1104, article 60 of this title shall be the governing law for purposes of subsections (1) and (2) of this section.

Source: L. 81: Entire article added, p. 443, § 1, effective November 1. **L. 83:** Entire section amended, p. 400, § 1, effective May 23. **L. 95:** (2) amended, p. 788, § 14, effective May 24. **L.**

97: (3) added, p. 916, § 6, effective January 1, 1998. **L. 2004:** (2)(a)(II) and (2)(b)(II) amended, p. 1443, § 133, effective July 1.

ANNOTATION

Law reviews. For article, "Limited Partnership Act Update", see 11 Colo. Law. 688 (1982). For article, "The Tax Status of Limited Partnerships Formed Under CULPA", see 11 Colo. Law. 1193 (1982). For article, "The Fiduciary Duties of General Partners", see 17 Colo. Law. 1959 (1988). For article, "Contractually Binding Colorado Entities", see 28 Colo. Law. 33 (Dec. 1999).

Because all of the parties at the time of contract believed that a limited partnership existed based on the filing of the certificate, the general partners were jointly and severally liable on the note and deed of trust. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

Where partnership is assessed for use taxes and incurs liability owing to its failure to protest liability, taxpayer, as general partner of a limited partnership, is jointly and severally liable therefor. AF Prop. v. Dept. of Rev., 852 P.2d 1267 (Colo. App. 1992).

When issue of material fact existed as to whether general partnership had been assessed with a use tax, trial court erred in entering motion for summary judgment in favor of individual partner on grounds that partner could not be held jointly and severally liable for deficiency owed by partnership. AF Prop. v. Dept. of Rev., 852 P.2d 1267 (Colo. App. 1992).

Where the limited partnership benefited from the loan entered into after the filing of the partnership certificate, the general partners were estopped from denying the validity of their acts on behalf of the partnership, even though the limited partnership was declared void as to the limited partner. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

A district that acted as both a special district and as a limited partner could not maintain its position as a limited partner and also protect itself from becoming a party to an ultra vires contract, therefore, the district's participation in the limited partnership was void and consequently the district was not liable for debts and obligations incurred by the limited partnership. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

A limited partner who does not participate in the control of the business is liable to third persons only to the extent of the limited partner's contribution. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

7-62-404. Contributions by a general partner.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of the person's participation in the partnership as a limited partner.

Source: L. 81: Entire article added, p. 443, § 1, effective November 1. **L. 2004:** Entire section amended, p. 1443, § 134, effective July 1.

7-62-405. Voting.

The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners on any matter.

Source: L. 81: Entire article added, p. 443, § 1, November 1.

PART 5

FINANCE

7-62-501. Form of contribution.

The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

Source: L. 81: Entire article added, p. 443, § 1, effective November 1.

ANNOTATION

Law reviews. For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982).

7-62-502. Liability for contributions.

(1) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept by section 7-62-105, of the stated contribution that has not been made.

(2) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this article may be compromised only by consent in writing of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation.

(3) No promise by a limited partner to contribute to the limited partnership is enforceable unless set out in a writing signed by the limited partner.

Source: L. 81: Entire article added, p. 443, § 1, effective November 1. **L. 86:** Entire section amended, p. 455, § 22, effective July 1. **L. 2004:** (1) amended, p. 1444, § 135, effective July 1.

ANNOTATION

Partnership agreement held sufficient "writing" under subsection (3) to obligate additional capital contribution by limited partner. Fox v. I-10, Ltd., 936 P.2d 580 (Colo. App. 1996), aff'd, 957 P.2d 1018 (Colo. 1998).

7-62-503. Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value (as stated in the partnership records required to be kept pursuant to section 7-62-105) of the contributions made by each partner.

Source: L. 81: Entire article added, p. 456, § 1, effective November 1. **L. 86:** Entire section amended, p. 456, § 23, effective July 1.

7-62-504. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value (as stated in the partnership records required to be kept pursuant to section 7-62-105) of the contributions made by each partner.

Source: L. 81: Entire article added, p. 444, § 1, effective November 1. **L. 86:** Entire section amended, p. 456, § 24, effective July 1.

PART 6

DISTRIBUTIONS AND WITHDRAWAL

7-62-601. Interim distributions.

Except as provided in this part 6, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events stated in the partnership agreement.

Source: L. 81: Entire article added, p. 444, § 1, effective November 1. **L. 86:** Entire section R&RE, p. 456, § 25, effective July 1. **L. 2003:** Entire section amended, p. 2246, § 138, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1444, § 136, effective July 1.

ANNOTATION

Law reviews. For article, "The Tax Status of Limited Partnerships Formed Under CULPA", see 11 Colo. Law. 1193 (1982). For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982).

7-62-602. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the general partner. The withdrawal of a general partner who is also a limited partner shall not constitute the withdrawal of the partner as a limited partner or affect the partner's rights as a limited partner.

Source: L. 81: Entire article added, p. 444, § 1, effective November 1. **L. 97:** Entire section amended, p. 1501, § 7, effective June 3.

7-62-603. Withdrawal of limited partner.

A limited partner may only withdraw from a limited partnership at the time or upon the happening of events stated in writing in the partnership agreement.

Source: L. 81: Entire article added, p. 444, § 1, effective November 1. **L. 86:** Entire section amended, p. 456, § 26, effective July 1. **L. 95:** Entire section amended, p. 789, § 15, effective May 24. **L. 2003:** Entire section amended, p. 2246, § 139, effective July 1, 2004.

7-62-604. Distribution upon withdrawal.

Except as provided in this part 6, upon withdrawal, any withdrawing partner is entitled to receive any distribution to which the withdrawing partner is entitled under the partnership agreement, and, if not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the withdrawing partner's partnership interest in the limited partnership as of the date of withdrawal based upon the withdrawing partner's right to share in distributions from the limited partnership.

Source: L. 81: Entire article added, p. 445, § 1, effective November 1. **L. 2004:** Entire section amended, p. 1444, § 137, effective July 1.

7-62-605. Distribution in kind.

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset that is equal to the percentage in which the partner shares in distributions from the limited partnership.

Source: L. 81: Entire article added, p. 445, § 1, effective November 1. **L. 86:** Entire section amended, p. 456, § 27, effective July 1. **L. 2004:** Entire section amended, p. 1444, § 138, effective July 1.

7-62-606. Right to distribution.

At the time a partner becomes entitled to receive a distribution, the partner has the status of and is entitled to all remedies available to a creditor of the limited partnership with respect to the distribution.

Source: L. 81: Entire article added, p. 445, § 1, effective November 1. **L. 2004:** Entire section amended, p. 1445, § 139, effective July 1.

7-62-607. Limitations on distribution.

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

Source: L. 81: Entire article added, p. 445, § 1, effective November 1.

Cross references: For exclusions from the term "distribution" see §§ 7-60-146 (1) and 7-64-1004 (1).

ANNOTATION

A partner need not have violated the act or the partnership agreement to be liable under this section and § 7-62-608. The only act necessary by the partner is the receipt of a return of contribution, such return exceeding that amount permitted by the partnership agreement. Sender v. C & R Co., 149 B.R. 941 (Bankr. D. Colo. 1992).

7-62-608. Liability upon return of contribution.

(1) If a partner has received the return of any part of the partner's contribution without violation of the partnership agreement or this article, the partner is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liability to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of the partner's contribution in violation of the partnership agreement or this article, the partner is liable to the limited partnership for a period of three years thereafter for the amount of the contribution wrongfully returned.

(3) A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the value, as stated in the partnership records required to be kept pursuant to section 7-62-105, of the partner's contribution that has not been distributed to the partner.

Source: L. 81: Entire article added, p. 445, § 1, effective November 1. **L. 86:** (3) amended, p. 457, § 28, effective July 1. **L. 2003:** (3) amended, p. 2247, § 140, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1445, § 140, effective July 1. **L. 2007:** (2) amended, p. 225, § 11, effective May 29.

Cross references: For exclusions from the term "distribution" see §§ 7-60-146 (1) and 7-64-1004 (1).

ANNOTATION

A partner need not have violated the act or the partnership agreement to be liable under this section and § 7-62-607. The only act necessary by the partner is the receipt of a return of contribution, such return exceeding that amount permitted by the partnership agreement. Sender v. C & R Co., 149 B.R. 941 (Bankr. D. Colo. 1992).

PART 7

ASSIGNMENT OF PARTNERSHIP INTERESTS

7-62-701. Nature of partnership interest.

A partnership interest is personal property.

Source: L. 81: Entire article added, p. 445, § 1, effective November 1.

ANNOTATION

Law reviews. For article, "Financing Real Estate Developments", see 11 Colo. Law. 2093 (1982). For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982). For article, "Campbell: A Caveat for Service Partners", see 20 Colo. Law. 75 (1991).

7-62-702. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all of the partner's partnership interest.

Source: L. 81: Entire article added, p. 445, § 1, effective November 1. **L. 2004:** Entire section amended, p. 1445, § 141, effective July 1.

7-62-703. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This article shall not deprive any partner of the benefit of any exemption laws applicable to the partner's partnership interest.

Source: L. 81: Entire article added, p. 446, § 1, effective November 1. **L. 2004:** Entire section amended, p. 1445, § 142, effective July 1.

ANNOTATION

Law reviews. For article, "Charging Partnership and LLC Interests To Satisfy Debts of Individuals", see 23 Colo. Law. 2743 (1994).

Entry of judgment is a prerequisite to a charging order under this section. Trial court erred in dismissing plaintiffs' request for a charging order along with other claims in complaint without first conducting an inquiry to determine the interest of individual defendant in defendant partnership. Sands v. New Age Family P'ship, Ltd., 897 P.2d 917 (Colo. App. 1995).

Applied in Yetter Well Serv., Inc. v. Cimarron Oil Co., Inc., 841 P.2d 1068 (Colo. App. 1992).

7-62-704. Right of assignee to become limited partner.

(1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that the assignor gives the assignee that right in accordance with authority described in writing in the partnership agreement or all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and this article. An assignee who becomes a limited partner also is liable for the obligations of the assignee's assignor to make and return contributions as provided in parts 5 and 6 of this article. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under sections 7-62-207 and 7-62-502.

Source: L. 81: Entire article added, p. 446, § 1, effective November 1. **L. 86:** (1) and (2) amended, p. 457, § 29, effective July 1. **L. 2004:** (2) and (3) amended, p. 1445, § 143, effective July 1.

7-62-705. Deceased or incompetent individual partners - dissolved or terminated corporate partners.

(1) If a partner who is an individual dies or a court of competent jurisdiction appoints a guardian or general conservator for the partner, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power the partner had to give an assignee the right to become a limited partner.

(2) If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

Source: L. 81: Entire article added, p. 446, § 1, effective November 1. **L. 2004:** (1) amended, p. 1446, § 144, effective July 1.

PART 8

DISSOLUTION

Editor's note: For common law fiduciary duty of good faith, sound business judgment, candor, forthrightness, and fairness owed by a general partner to his limited partners in winding up partnership affairs, see Herald Co. v. Bonfils, 315 F.Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972) and Roeschlein v. Watkins, 686 P.2d 1347 (Colo. App. 1984).

7-62-801. Dissolution - general rules.

(1) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(a) At the time or upon the happening of events stated in writing in the partnership agreement;

(b) Written consent of all partners;

(c) Except as otherwise provided in the written provisions of a partnership agreement, written consent of a majority of the limited partners within ninety days after an event of withdrawal of the last remaining general partner; and

(d) Entry of a decree of judicial dissolution under section 7-62-802.

Source: L. 81: Entire article added, p. 446, § 1, effective November 1. **L. 86:** (1)(a) and (1)(c) amended, p. 457, § 30, effective July 1. **L. 97:** (1)(c) amended, p. 1501, § 8, effective June 3. **L. 2003:** (1)(a) amended, p. 2247, § 141, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "The Tax Status of Limited Partnerships Formed Under CULPA", see 11 Colo. Law. 1193 (1982). For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982).

A limited partnership that is void as to a limited partner is not void as to the general partners. The general partners were liable because at the time the limited partnership's obligation to the lender arose, all parties had contracted in accordance with their belief based on the filing of a partnership certificate with the secretary of state that a limited partnership existed. Therefore, the general partners were jointly and severally liable when they executed a note and deed of trust to the lender. Also, because the limited partnership benefitted from the proceeds of the loan, the general partners were estopped from denying the validity of their acts on behalf of the limited partnership. Finally, regardless of when the limited partnership was dissolved, the general partners were not relieved of their personal liability for the partnership's obligations by virtue of the dissolution. Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

Applied in Black v. First Fed. Sav. & Loan Ass'n, 830 P.2d 1103 (Colo. App. 1992).

7-62-802. Judicial dissolution.

On application by or for a partner, the district court for the county in this state in which the street address of the partnership's principal office is located, or, if the partnership 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 partnership has no registered agent, the district court for the city and county of Denver may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

Source: L. 81: Entire article added, p. 447, § 1, effective November 1. **L. 2003:** Entire section amended, p. 2247, § 142, effective July 1, 2004.

ANNOTATION

An order for the dissolution of a limited liability partnership ordering the liquidation of the partnership assets instead of partitioning the partnership's property was not in error because partition of the property would be contrary to the plain language of the partnership agreement, would be unreasonable, and would threaten further litigation. Hogue v. Hogue, 2025 COA 5, 565 P.3d 1123.

7-62-803. Winding up.

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners may wind up the limited partnership's affairs; except that, upon cause shown, the district court for the county in this state in which the street address of the limited partnership's principal office is located, or, if the limited partnership 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 limited partnership has no registered agent, the district court for the city and county of Denver may wind up the limited partnership's affairs upon application of any partner, the partner's legal representative, or the partner's assignee.

Source: L. 81: Entire article added, p. 447, § 1, effective November 1. **L. 2003:** Entire section amended, p. 2247, § 143, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1446, § 145, effective July 1.

7-62-804. Distribution of assets.

(1) Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(a) To creditors, including partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section 7-62-601 or 7-62-604;

(b) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 7-62-601 or 7-62-604;

(c) Except as provided in the partnership agreement, to partners for the return of their contributions and respecting their partnership interests in the proportions in which the partners share in distributions.

Source: L. 81: Entire article added, p. 447, § 1, effective November 1.

7-62-805. Domestic entity names - dissolution - repeal. (Repealed)

Source: L. 2000: Entire section added, p. 953, § 22, effective July 1. **L. 2003:** (3) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

PART 9

FOREIGN LIMITED PARTNERSHIPS

Editor's note: This part 9 was added in 1981. This part 9 was 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 9 prior to 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

7-62-901. Law governing foreign limited partnership or foreign limited liability limited partnership. (Repealed)

Source: L. 2003: Entire part R&RE, p. 2247, § 144, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1446, § 146, effective July 1.

7-62-902. Authority to transact business or 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 limited partnerships and foreign limited liability limited partnerships.

Source: L. 2003: Entire part R&RE, p. 2247, § 144, effective July 1, 2004.

7-62-903. Registered agent - service of process.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to foreign limited partnerships.

Source: L. 2003: Entire part R&RE, p. 2247, § 144, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1446, § 147, effective July 1.

PART 10

DERIVATIVE ACTIONS

7-62-1001. Right of action.

(1) A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor. In order to bring the action, a limited partner must establish the following:

(a) That those general partners with authority to do so have refused to bring the action or that an effort to cause those general partners to bring the action is not likely to succeed;

(b) That the general partners' decision not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unprejudiced exercise of judgment; and

(c) That the plaintiff was a limited partner at the time of the transaction of which the plaintiff complains or the plaintiff's status as a limited partner had devolved upon the plaintiff by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

Source: L. 81: Entire article added, p. 450, § 1, effective November 1. **L. 2004:** (1)(c) amended, p. 1447, § 148, effective July 1.

ANNOTATION

Law reviews. For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982).

Partnership formed prior to 1981. The right of the limited partners of a limited partnership formed prior to 1981 to sue derivatively is governed by the Uniform Limited Partnership Law and the common law, and not by this section. Moore v. 1600 Downing St., Ltd., 668 P.2d 16 (Colo. App. 1983).

Compliance with rules of civil procedure required. To bring derivative action, limited partners must comply with this section and also the requirements of C.R.C.P. 23.1. Caley Investments v. Lowe Family Assoc., 754 P.2d 793 (Colo. App. 1988).

Trial court erred in disregarding an independent counsel's conclusion that litigation should not proceed without first addressing whether the independent counsel lacked the authority or ability to make a disinterested and independent decision. Hirsch v. Jones Intercable, Inc., 984 P.2d 629 (Colo. 1999).

The purpose of a special litigation committee (SLC) is to substitute its independent and objective judgment for that of the directors who have been accused of wrongdoing. Such purpose cannot be fulfilled where the committee is given only the power of recommendation while the power of ultimate decision is still retained in the hands of the accused wrongdoers. Greenfield v. Hamilton Oil Corp., 760 P.2d 664 (Colo. App. 1988); Hirsch v. Jones Intercable, Inc., 984 P.2d 629 (Colo. 1999).

New York law adopted as the standard for reviewing the decision of an SLC, because "most courts are ill equipped and infrequently called on to evaluate what are and must be essentially business judgments." The court is limited to one inquiry: Whether the members of the committee are disinterested and independent. The court cannot inquire into the actions of corporate directors taken in good faith and in the exercise of honest judgment. Hirsch v. Jones Intercable, Inc., 984 P.2d 629 (Colo. 1999).

Burden of persuasion is on those seeking dismissal based on an SLC's report. Day v. Stascavage, 251 P.3d 1225 (Colo. App. 2010).

SLC's investigation, which never sought independently to value the property sold at the time of an insider sale, was patently inadequate to reach an informed decision as to the merits of the derivative claims. Day v. Stascavage, 251 P.3d 1225 (Colo. App. 2010).

7-62-1002. Expenses.

In any action instituted in the right of any domestic or foreign limited partnership by a limited partner, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff to pay to the parties named as defendant the costs and reasonable expenses directly attributable to the defense of such action, but not including fees of attorneys.

Source: L. 81: Entire article added, p. 450, § 1, effective November 1.

7-62-1003. Security and costs.

In any action instituted in the right of any domestic or foreign limited partnership, unless the contributions of or allocable to plaintiff to partnership property amount to five percent or more of the contributions of all limited partners, in their status as limited partners, or such contributions of or allocable to the plaintiff have a market value in excess of twenty-five thousand dollars, the limited partnership in whose right such action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses that may be directly attributable to and incurred by it in the defense of such action or may be incurred by other parties named as defendant for which it may become legally liable, but not including fees of attorneys. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that the intervenor becomes a party to the action. 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. The limited partnership shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action if the court finds the action was brought without reasonable cause.

Source: L. 81: Entire article added, p. 450, § 1, effective November 1. **L. 2004:** Entire section amended, p. 1447, § 149, effective July 1.

PART 11

MISCELLANEOUS

7-62-1101. Applicability.

This article shall apply to all limited partnerships formed on or after November 1, 1981.

Source: L. 81: Entire article added, p. 451, § 1, effective November 1.

ANNOTATION

Law reviews. For article, "Guess Who's Coming to Closing", see 11 Colo. Law. 689 (1982). For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982).

7-62-1102. Construction and application.

(1) This article shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

(2) This article shall not be construed so as to impair the obligations of any contract existing on November 1, 1981, nor to affect any action or proceeding begun or right accrued before such date.

(3) No amendment of this article shall impair or otherwise affect the organization, registration, or continued existence of a limited partnership existing on July 1, 1986, nor shall any such amendment be construed or applied so as to impair any contract or affect any right accrued prior to July 1, 1986.

Source: L. 81: Entire article added, p. 451, § 1, effective November 1. **L. 86:** (3) added, p. 458, § 36, effective July 1.

7-62-1103. Provisions for existing limited partnerships.

(1) A limited partnership formed under any statute of this state prior to November 1, 1981, may elect to be governed by the provisions of this article. The general partner or partners may make the election for the limited partnership at any time on or after November 1, 1981, by complying with the provisions of section 7-62-201; except that the limited partners shall not be required to execute a new certificate of limited partnership. Notwithstanding such election by the general partner or partners, the following rules shall apply:

(a) Sections 7-62-501, 7-62-502, and 7-62-608 apply only to contributions and distributions made after the date of the election;

(b) Section 7-62-704 applies only to assignments made after the date of the election; and

(c) Section 7-62-804 shall not be construed so as to change the priority of creditors for transactions entered into prior to the date of the election.

(2) A limited partnership formed under any statute of this state prior to November 1, 1981, until or unless it elects to be governed by this article, shall be governed by the provisions of article 61 of this title, or other applicable prior law; except that such limited partnership shall not be renewed unless provision therefor is specifically provided in the original partnership agreement or any amendment thereto prior to November 1, 1981.

Source: L. 81: Entire article added, p. 451, § 1, effective November 1.

ANNOTATION

Law reviews. For article, "Limited Partnership Act Update", see 11 Colo. Law. 688 (1982). For article, "Guess Who's Coming to Closing", see 11 Colo. Law. 689 (1982). For comment, "The Colorado Changes to the Revised Uniform Limited Partnership Act", see 53 U. Colo. L. Rev. 823 (1982). For article, "Trade Name Registration Requirements and Customs in Colorado — Parts I and II", see 16 Colo. Law. 238 and 454 (1987).

7-62-1104. Rules for cases not provided for in this article - registration as limited liability limited partnership.

(1) For any limited partnership formed under this article on or after August 10, 2016, article 64 of this title governs to the extent applicable in any case not otherwise provided for in this article.

(2) For any limited partnership formed under this article before August 10, 2016, in any case not provided for in this article, either article 60 or 64 of this title governs, to the extent applicable, as follows:

(a) A limited partnership may elect to be governed by article 64 of this title by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a certificate of limited partnership or a certificate of amendment of limited partnership that includes a declaration that it elects to be governed by such article. If the election is made by a certificate of amendment, the certificate of amendment must be approved by all general partners, notwithstanding section 7-62-204 (1)(b).

(b) A limited partnership that has made the election in paragraph (a) of this subsection (2) is governed by article 64 of this title.

(c) A limited partnership that has not made the election in paragraph (a) of this subsection (2) is governed by article 60 of this title.

Source: L. 81: Entire article added, p. 451, § 1, effective November 1. **L. 95:** Entire section amended, p. 789, § 17, effective May 24. **L. 97:** Entire section amended, p. 916, § 7, effective January 1, 1998. **L. 2002:** (1)(a) amended, p. 1824, § 47, effective July 1; (1)(a) amended, p. 1688, § 45, effective October 1. **L. 2016:** Entire section amended, (HB 16-1333), ch. 241, p. 986, § 3, effective August 10.

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-62-1105. Short title.

This article shall be known and may be cited as the "Colorado Uniform Limited Partnership Act of 1981".

Source: L. 81: Entire article added, p. 452, § 1, effective November 1.

PART 12

FEES

7-62-1201. Fees for filing documents and certificates - other charges. (Repealed)

Source: L. 81: Entire article added, p. 452, § 1, effective November 1. **L. 83:** Entire section R&RE, p. 873, § 32, effective July 1. **L. 98:** (2) amended, p. 1322, § 17, effective June 1. **L. 2000:** (1)(c) and (1)(d) amended, p. 953, § 25, effective July 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

ARTICLE 63

Colorado Limited Partnership Association Act

7-63-101. Short title.
7-63-102. Definitions.
7-63-103. Nature of business.
7-63-104. Formation of association.
7-63-105. Articles.
7-63-106. Names. (Repealed)
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7-63-112. Capital contributions.
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7-63-114. Membership participation - interests.
7-63-115. Information and accounting.
7-63-116. Dissolution and termination.
7-63-117. Conversion - repeal. (Repealed)

7-63-101. Short title.

This article shall be known and may be cited as the "Colorado Limited Partnership Association Act".

Source: L. 95: Entire article added, p. 790, § 18, effective May 24.

7-63-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Articles of association" and "bylaws" include amendments and restatements of the same.

(2) "Limited partnership association" or "association" means an unincorporated business association formed under this article.

Source: L. 95: Entire article added, p. 790, § 18, effective May 24.

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

7-63-103. Nature of business.

A limited partnership association may be formed under this article for any lawful activity, including ownership of real or personal property, subject to any provisions of law governing or regulating such activity within this state.

Source: L. 95: Entire article added, p. 790, § 18, effective May 24.

7-63-104. Formation of association.

Any two or more persons may form a limited partnership association by subscribing to the capital of the association and by approving and delivering articles of association to the secretary of state for filing pursuant to part 3 of article 90 of this title. The association shall be formed upon the effective date of the filing of the articles by the secretary of state.

Source: L. 95: Entire article added, p. 790, § 18, effective May 24. **L. 2002:** Entire section amended, p. 1824, § 48, effective July 1; entire section amended, p. 1688, § 46, effective October 1.

7-63-105. Articles.

(1) The articles of association shall state:

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

(b) A statement that the association is formed under this article;

(c) If management is vested in the members or in one or more classes of members as provided in section 7-63-110 (3), a statement to that effect and, if any class or classes of members, but not all, are so vested with management, the name of each of the classes of members indicating which are and which are not so vested with management;

(d) Any notice of provisions of the bylaws permitted by section 7-63-111 (3) concerning the authority of officers and managers or otherwise restricting the application of section 7-63-111 (4);

(e) The principal office address of the association's initial principal office; and

(f) The registered agent name and registered agent address of the association's initial registered agent.

(g) (Deleted by amendment, L. 2003, p. 2248, § 145, effective July 1, 2004.)

(2) Any amendment to or restatement of the articles of association shall be approved in a separate writing or writings by all of the members. This subsection (2) is a default rule, subject to the bylaws.

(3) (Deleted by amendment, L. 2002, p. 1824, § 49, effective July 1, 2002; p. 1688, § 47, effective October 1, 2002.)

(4) Except in a proceeding by the state to involuntarily dissolve an association, the filing of the articles of association by the secretary of state is conclusive as to formation of the association and it shall be incontestable that all conditions precedent to formation have been met.

Source: L. 95: Entire article added, p. 790, § 18, effective May 24. **L. 2000:** (1)(a) amended, p. 953, § 26, effective July 1. **L. 2002:** (2) and (3) amended, p. 1824, § 49, effective July 1; (2) and (3) amended, p. 1688, § 47, effective October 1. **L. 2003:** IP(1), (1)(a), (1)(e), (1)(f), and (1)(g) amended, p. 2248, § 145, effective July 1, 2004.

7-63-106. Names. (Repealed)

Source: L. 95: Entire article added, p. 791, § 18, effective May 24. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-63-107. Limited liability.

The managers, officers, and members, including their transferees and other successors, of an association shall not be liable under any judgment, decree, or order of any court, or in any other manner, for a debt, obligation, or other liability of the association. This section is a default rule, subject to the bylaws.

Source: L. 95: Entire article added, p. 791, § 18, effective May 24.

7-63-108. Reference to corporation law.

(1) In a case in which a party seeks to hold the members of an association personally responsible for the alleged improper actions of the association, the court shall apply the case law that interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under the law of this state.

(2) For purposes of subsection (1) of this section, the failure of an association to observe the formalities or requirements relating to the management of the association's business and affairs is not in itself a ground for imposing personal liability on the members for the liabilities of the association.

(3) Except as otherwise provided in this article, article 90 of this title and, to the extent not addressed in said article 90, the law of this state applicable to a corporation formed under the "Colorado Business Corporation Act", articles 101 to 117 of this title, apply to an association with respect to the following matters:

(a) The filing by the secretary of state of articles for the formation or dissolution of an association, periodic reports concerning an association, change of principal office, change of registered agent or registered agent address, and other documents including withdrawal and restatement of, amendments to, and statements with respect to any articles, periodic reports, and other documents;

(b) Certification of documents and facts of record and provision of other information and services by the secretary of state;

(c) The effect of approving documents to be filed by the secretary of state, the effective date and effect of any filing by or certification of documents or facts by the secretary of state, and the effect and effective date of any filing or recording of a document with a clerk and recorder;

(d) The penalties payable to the secretary of state and other civil and criminal penalties with respect to documents permitted or required to be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title;

(e) (Deleted by amendment, L. 2002, p. 1824, § 50, effective July 1, 2002; p. 1689, § 48, effective October 1, 2002.)

(f) The maintenance of a registered agent, the designation of a principal office, and service of process upon the association;

(g) The judicial dissolution of an association; and

(h) The election to reject worker's compensation coverage under section 8-41-202, C.R.S., and, for this purpose, the term "corporate officer" as used in said section includes any manager who owns at least a ten percent interest in the association.

(4) Service of process may also be made on any manager, the chairperson or secretary of the association, or any agent of the association appointed for that purpose.

(5) The prohibition against and the penalties and liabilities imposed upon persons doing business as a corporation without authority under the "Colorado Business Corporation Act", articles 101 to 117 of this title, shall apply to persons doing business in this state as an association without authority under this article or in this state as a limited partnership association, formed under the law of another jurisdiction, without authority as provided in subsection (6) of this section.

(6) The provisions of part 8 of article 90 of this title shall apply with respect to a limited partnership association formed under the law of a jurisdiction other than this state.

Source: L. 95: Entire article added, p. 791, § 18, effective May 24. **L. 2000:** (3)(e) amended, p. 953, § 27, effective July 1. **L. 2002:** (3)(a), (3)(c), (3)(d), and (3)(e) amended, p. 1824, § 50, effective July 1; (3)(a), (3)(c), (3)(d), and (3)(e) amended, p. 1689, § 48, effective October 1. **L. 2003:** IP(3), (3)(a), (3)(f), and (6) amended, p. 2248, § 146, effective July 1, 2004. **L. 2004:** (4) and (5) amended, p. 1447, § 150, effective July 1. **L. 2005:** IP(3) and (3)(g) amended, p. 1203, § 1, effective October 1. **L. 2010:** IP(3) and (3)(a) amended, (HB 10-1403), ch. 404, p. 1994, § 6, effective August 11.

7-63-109. Bylaws.

(1) The initial bylaws shall be adopted by all of the members either before or after its articles of association are filed.

(2) The bylaws may be amended at any time, either before or after the articles of association are filed, by all of the members.

(3) Except as otherwise provided in subsection (4) or (6) of this section:

(a) The bylaws govern all matters relating to the business and affairs of an association;

(b) The affairs of an association governed by the bylaws include, without limitation, the rights; duties; authority; liability; indemnification; admission and qualifications of; limitations on and dealings and other relations among and between the managers, officers, agents, members, transferees and other successors to the interest of a member; and the association; and

(c) The bylaws may confer rights on and impose duties, limitations, and other provisions for the protection or benefit of any other person or persons, including the public, as third-party beneficiaries.

(4) Except as otherwise provided in subsection (6) of this section:

(a) The bylaws shall control over any provision of this article to the contrary that is designated in this article as "a default rule, subject to the bylaws";

(b) The provisions of this article that are so designated shall control only to the extent that the bylaws do not otherwise provide;

(c) The other provisions of this article shall control over provisions of the bylaws to the contrary; and

(d) The bylaws shall control only to the extent that such other provisions of this article do not otherwise provide.

(5) The references in this article to matters that may be addressed in the bylaws and to matters designated as "default rules, subject to the bylaws" or with respect to which provisions of this article otherwise defer shall not be construed to limit the scope of the matters governed or controlled by the bylaws.

(6) The bylaws may not:

(a) Unreasonably restrict a member's right of access to books and records;

(b) Unreasonably reduce the duty of care of a manager to the association and its members;

(c) Eliminate the obligation of a manager to perform the manager's duty of care in good faith; except that the bylaws may determine the standards by which the performance of the obligation is to be measured if such standards are not manifestly unreasonable; or

(d) Except as provided in section 7-63-111 (3) or for the restriction of rights conferred by or arising under the bylaws, restrict the rights of, or impose duties on, persons other than the managers, officers, agents, members and their transferees and other successors, and the association, without the consent of such persons.

(7) Subsections (2) and (3)(c) of this section are default rules, subject to the bylaws.

Source: L. 95: Entire article added, p. 793, § 18, effective May 24.

7-63-110. Management - officers, managers, and members.

(1) Subsection (2) of this section shall apply to an association unless its articles of association have vested management in the members or one or more classes of members.

(2) There shall be at least one meeting of the members in each year. At least two managers shall be elected at such meeting by the members from among their number. Such managers shall hold their respective managerships for one year and until their successors have been elected and qualified. The members shall also elect the officers at such meeting. The election of a manager or officer shall require a majority vote of the members in number and interest.

(3) The management of the business and affairs of an association may be vested by the articles of association in the members as members or in one or more classes of members as members of such class or classes. If management is so vested, then:

(a) Any reference in this article to a manager or managers shall be deemed to refer to the member or members who are so vested with management authority; and

(b) Subsection (4) of this section shall apply to the association in lieu of subsection (2) of this section.

(4) There shall be at least one meeting of the managers in each year. The managers shall elect the officers at such meeting. The election of an officer shall require a vote of a majority in number of the managers.

(5) An association may have more than one class of members and more than one class of managers. Any class may consist of one or more members or managers. The bylaws may provide that all or any number or portion of the members or managers or any class or classes of members or managers consent, vote, elect, determine, exercise authority, or otherwise act, with or without a meeting, on a per capita or other basis on any matter, or not act or have authority on any matter. Members and managers may be compensated for services performed for an association as a manager, officer, member, employee, agent, or other contractor.

(6) The duties of a manager shall be discharged in good faith, with the degree of care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner that the manager reasonably believes to be in the best interests of the association. Managers and officers may rely in good faith on the same kinds of opinions, reports, statements, data, and other information and shall have the same kinds of defenses, limitations on liability, and other protections as directors of a corporation formed under the "Colorado Business Corporation Act", articles 101 to 117 of this title.

(7) An association shall have officers, including a chairperson with responsibility for presiding at meetings of managers and members and a secretary with responsibility for the preparation, maintenance, and authentication of minutes and the other records of the association. The officers shall be chosen from among the managers including the representatives of any manager who is not an individual, and shall hold their respective offices for one year and until their successors have been elected and qualified.

(8) Officers must be individuals at least eighteen years of age.

(9) The failure to hold annual or other meetings of or elections by the members or managers does not affect the continuation of the term of any person elected or any other association action and does not work a dissolution or termination of the association.

(10) Subsections (2), (4) to (7), and (9) of this section are default rules, subject to the bylaws.

Source: L. 95: Entire article added, p. 794, § 18, effective May 24. **L. 2003:** (6) amended, p. 2249, § 147, effective July 1, 2004. **L. 2004:** (7) amended, p. 1448, § 151, effective July 1.

7-63-111. Dealings on behalf of association.

(1) As used in this section, "property" includes property wherever located, tangible personal property, intangible personal property, including interests in the association or any other entity, and real property and any legal or equitable interest in property.

(2) Subject to subsections (4) and (6) of this section, each manager shall have agency authority to bind and otherwise represent the association and may, in the exercise of such authority, on behalf of the association and in its domestic entity name, do anything that an individual may do, including:

(a) Make contracts and guarantees, incur liabilities, borrow money or other property, issue notes, bonds, and other obligations, secure obligations by mortgage or pledge of any of its property, lend money or other property, receive and hold property as security for repayment or other performance, and invest and reinvest funds;

(b) Sue and be sued, complain, and defend;

(c) Be a promoter, partner, member, associate, manager, trustee or other fiduciary, or nominee or other agent of, or hold any similar position with, any person;

(d) Purchase, lease, take by donative transfer, devise or bequest, and otherwise acquire, disclaim, or renounce property, and own, hold, use, improve, exchange, sell, convey, endorse, transfer, lease, mortgage, pledge, encumber, and otherwise deal with or dispose of property, including all or any part of the property of the association;

(e) Execute, acknowledge, and deliver a conveyance or other transfer, contract, or other instrument with respect to any property or other dealings;

(f) Locate offices, conduct business, have dealings, and carry on other activities, including the holding of property, and otherwise exercise the authority pursuant to this article and the bylaws, whether within or without this state; and

(g) Appoint, compensate, and define the duties and authority, including any authority conferred upon a manager by this subsection (2) or by the bylaws, of agents of the association and delegate such authority to officers and direct the performance of duties and the exercise of authority by the agents and officers.

(3) Provisions of the bylaws may eliminate, limit, and otherwise restrict the application of all or any portion of subsection (4) of this section; except that such provisions of the bylaws shall not take effect until stated in the articles of association. The provisions stated shall only have prospective effect.

(4) Except as otherwise provided in subsection (3) of this section:

(a) As used in this subsection (4), the term "instrument":

(I) Includes any contract, conveyance, transfer, mortgage, pledge, encumbrance, note, endorsement, or other writing and any authentication of records; designation or authorization of or delegation to any officer, manager, or agent; acknowledgment; or other statement or representation of any fact; and

(II) Implies the requirement of a writing and excludes anything that is not in writing.

(b) Every manager is an agent of the association for the purpose of its business, and the act of every manager, including the signing in the domestic entity name of any instrument for apparently carrying on in the usual way the business of the association of which the manager is a manager, binds the association, unless the manager so acting has in fact no authority to act for the association in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(c) Except as otherwise provided in paragraph (d) of this subsection (4), an act of a manager which is not apparently for carrying on the business of the association in the usual way does not bind the association.

(d) No instrument signed by the chairperson, any manager or vice-chairperson, and by the secretary or any assistant secretary nor the delivery of any such instrument shall be invalidated as to the association by any lack of authority of any officer or manager of the association signing or delivering the instrument, if:

(I) The instrument is in the domestic entity name of the association and signed or entered into with or issued or delivered to a person or the instrument evidences, authorizes, or facilitates a transaction on behalf of the association with a person; and

(II) The person gives value for the instrument or in the transaction and the person is without knowledge that the officer or manager did not have authority to so act or was acting in contravention of a restriction on such authority.

(5) No act of a manager who in fact has no authority to act for the association in a particular matter shall bind the association to persons having knowledge of the fact that the manager does not have such authority. No act of a manager in contravention of a restriction on authority shall bind the association to persons having knowledge of the restriction.

(6) An interest in the association may be issued or redeemed only as authorized in writing by all of the members.

(7) Subsections (2) and (6) of this section are default rules, subject to the bylaws.

Source: L. 95: Entire article added, p. 795, § 18, effective May 24. **L. 2000:** IP(2), (4)(b), and (4)(d)(I) amended, p. 954, § 28, effective July 1. **L. 2003:** (3) amended, p. 2249, § 148, effective July 1, 2004. **L. 2004:** (4)(b) and IP(4)(d) amended, p. 1448, § 152, effective July 1.

7-63-112. Capital contributions.

(1) The persons forming an association shall make contribution to its capital in cash or in other property.

(2) The valuation of property contributed as contemplated in subsection (1) of this section must be approved by all of the initial members. This subsection (2) is a default rule, subject to the bylaws.

Source: L. 95: Entire article added, p. 797, § 18, effective May 24.

7-63-113. Dividends.

(1) As used in this section, the term "dividend" includes all distributions by an association to its members in respect of their interests in the association as members.

(2) An association may pay dividends from time to time to its members in cash or other property as its managers determine pursuant to this section and the bylaws. For principal and income accounting purposes of a fiduciary, and subject to the instrument under which the fiduciary acts, a dividend shall constitute income unless otherwise declared by the managers as chargeable to the capital accounts of the members.

(3) The determinations and declarations concerning a dividend shall be made by a majority in number of the managers; except that, if management is vested in the members or one or more classes of members, such determinations must also be approved by a majority in number and interest of the members. No debt of or interest in the association may be paid as a dividend unless authorized in writing by all of the members.

(4) No dividend may be paid if, after giving it effect:

(a) The association would not be able to pay its debts as they become due in the usual course of business; or

(b) The association's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the association were to be dissolved, to satisfy the preferential rights of members whose preferential rights are superior to those receiving the dividend.

(5) The managers authorizing a dividend contrary to subsection (4) of this section shall be jointly and severally liable to the association in the amount by which the dividend exceeds the dividend that could have been paid without violating said subsection (4) if it is established, subject to section 7-63-110 (6), that such managers did not perform their duties in compliance

with section 7-63-110 (6). Section 7-63-110 (6) shall be applied for purposes of this subsection (5) without taking any contrary provisions of the bylaws into account.

(6) Managers shall also have the same rights of contribution from other managers and members as directors have against other directors and shareholders under the "Colorado Business Corporation Act", articles 101 to 117 of this title.

(7) Subsections (3) and (6) of this section are default rules, subject to the bylaws.

Source: L. 95: Entire article added, p. 797, § 18, effective May 24.

7-63-114. Membership participation - interests.

(1) Any person, except an individual under the age of eighteen years or a person prohibited from so acting, may participate in the formation or become a member or manager of an association; except that a custodian, conservator, guardian, or other fiduciary may participate in the formation or become and act as a member or manager on behalf of the estate of an individual under the age of eighteen years. Notwithstanding any provision of this subsection (1) to the contrary, the bylaws may set qualifications for and otherwise restrict the eligibility of persons to become or act as members or managers.

(2) Members may vote, exercise their rights, and otherwise act by proxy or other agent.

(3) The interest of a member in an association is personal property.

(4) An interest in the association may be transferred or encumbered only as provided in the bylaws. A member may not resign or withdraw.

(5) A person may be admitted to membership by a vote of all of the members. If there are no members and there is no other provision for admission of successor members, then a majority in number and interest of the transferees of, and other successors in interest to, the members may admit one or more of the transferees and successors as members. Such majority in number shall be determined by counting all of the transferees and other successors of each former member as one.

(6) Except for persons forming an association or admitted to its membership, no transferee; representative of the estate of a deceased, incompetent, insolvent, or bankrupt member; or other successor to an interest of a member or any other person shall be entitled to any participation in the management of the business and affairs of the association or have any right to become a member. No transfer, succession, encumbrance, judgment, decree, order, or other claim upon the interest of a member or against a member, shall give a person any of the rights of the member or

with respect to the member's interest other than the right to be paid the dividends and other distributions when and to the extent that the member would otherwise have been paid.

(7) Subsections (2) and (4) to (6) of this section are default rules, subject to the bylaws.

Source: L. 95: Entire article added, p. 798, § 18, effective May 24.

7-63-115. Information and accounting.

(1) Each member has the right to:

(a) Inspect and copy the books and records of account, the records of the contributions and holdings of the members and their transferees and other successors, the bylaws, and the minutes of the members and of the managers;

(b) Obtain from the managers true and full information regarding the state of the business and the financial condition of the association and any other information regarding the affairs of the association;

(c) Obtain copies from the managers, upon becoming available, of the association's federal, state, and local income tax returns for each year; and

(d) Have a formal accounting of association affairs whenever circumstances render it just and reasonable.

(2) Subsection (1) of this section is a default rule, subject to the bylaws.

Source: L. 95: Entire article added, p. 799, § 18, effective May 24.

7-63-116. Dissolution and termination.

(1) An association shall have indefinite duration and shall continue until terminated as provided in this section. An association shall continue even though it has only one member or only one person owning all of the interests in the association. An association may be dissolved by a vote of all of its members or upon the other events or circumstances as may be provided in the bylaws.

(2) After an association is dissolved, its business and affairs shall be wound up and its property distributed; except that the property of the association shall be applied first to the satisfaction of its liabilities and indebtedness and then to distributions among the members with respect to their interests as members.

(3) If assets of an association have been distributed to members in the winding up of the association before its liabilities and indebtedness have been paid or adequately provided for, the association before its termination, and, after its termination, the creditors of an association shall have a claim against members receiving distributions for such liabilities and indebtedness not barred by applicable statutes of limitation; except that a member's total liability for all claims under this section may not exceed the total value of assets distributed to the member, as such value is determined at the time of distribution. Any member required to return any portion of the value of assets received by the member in liquidation shall be entitled to contribution from all other members. Each such contribution shall be in accordance with the contributing member's rights and interests and shall not exceed the value of the assets received by the contributing member in dissolution.

(4) Distributions among members shall be in accordance with the priorities and proportions of their respective claims and interests.

(5) Upon the apparent completion of the winding up and distribution, the association shall file articles of dissolution with the secretary of state stating the domestic entity name of the association, the principal office address of the association's principal office, and that the association is dissolved. After the filing of articles of dissolution, the association's managers and agents shall continue to have authority to convey any real or personal property held in the domestic entity name of the association and otherwise act as provided in the bylaws or, subject to the bylaws, as provided in this article to complete the winding up or distribution.

(6) Subsections (1) and (4) of this section are default rules, subject to the bylaws.

(7) (Deleted by amendment, L. 2004, p. 1448, § 153, effective July 1, 2004.)

Source: L. 95: Entire article added, p. 800, § 18, effective May 24. **L. 2000:** (5) amended and (7) added, p. 954, § 29, effective July 1. **L. 2004:** (5) and (7) amended, p. 1448, § 153, effective July 1.

7-63-117. Conversion - repeal. (Repealed)

Source: L. 95: Entire article added, p. 801, § 18, effective May 24. **L. 2002:** (4) amended, p. 1825, § 51, effective July 1; (4) amended, p. 1689, § 49, effective October 1. **L. 2003:** (6) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

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Colorado Uniform Partnership Act (1997)

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PART 1

GENERAL PROVISIONS

7-64-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(2) "Business" includes every trade, occupation, and profession.

(3) "Debtor in bankruptcy" means a person who is the subject of:

(a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) A comparable order under federal, state, or foreign law governing insolvency.

(4) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(5) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to a transferee of all or a part of a partner's transferable interest.

(6) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(7) "Filed statement" means a statement that has been filed by the secretary of state pursuant to part 3 of article 90 of this title. A copy of a filed statement means a copy of the filed statement that the secretary of state has certified to be in the records of the secretary of state.

(8) to (10) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(11) (Deleted by amendment, L. 2004, p. 1448, § 154, effective July 1, 2004.)

(12) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(13) "Limited liability partnership" means a partnership that is registered as a limited liability partnership under section 7-64-1002 (1).

(14) and (15) (Deleted by amendment, L. 2004, p. 1448, § 154, effective July 1, 2004.)

(16) and (17) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(18) "Partner" means a person who is admitted to a partnership as a partner of the partnership.

(19) "Partnership" shall have the meaning set forth in section 7-64-202 (1).

(20) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners that governs relations among the partners and between the partners and the partnership. For purposes of part 10 of this article, the term "partnership agreement" shall have the meaning set forth in section 7-64-1001 (2).

(21) "Partnership at will" means a partnership that is not a partnership for a definite term or particular undertaking.

(22) "Partnership for a definite term or particular undertaking" means a partnership in which the partners have agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(23) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(24) "Partnership obligation" means any debt, obligation, or liability of the partnership, whether sounding in tort, contract, or otherwise.

(25) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(26) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(27) "Registrant" means a person that is registered under section 7-64-1002.

(28) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(29) "Statement" means a statement of partnership authority under section 7-64-303, a statement of denial under section 7-64-304, a statement of dissociation under section 7-64-704, a statement of dissolution under section 7-64-805, a statement of registration under section 7-64-1002, a statement of withdrawal of registration under section 7-64-1002, a statement of correction under section 7-90-305, or a statement of change under section 7-90-305.5 of any of the foregoing.

(30) (Deleted by amendment, L. 2003, p. 2249, § 149, effective July 1, 2004.)

(31) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(32) "Transferable interest" means a partner's share of the profits and losses of the partnership and the partner's right to receive distributions.

Source: L. 97: Entire article added, p. 866, § 1, effective January 1, 1998. **L. 2002:** (6), (7), and (29) amended, p. 1825, § 52, effective July 1; (6), (7), and (29) amended, p. 1690, § 50, effective October 1. **L. 2003:** (1), (4), (6), (8), (9), (10), (12), (15) to (20), (25), (28), (29), and (30) amended, p. 2249, § 149, effective July 1, 2004. **L. 2004:** (11), (14), (15), (18), and (20) amended, p. 1448, § 154, effective July 1. **L. 2009:** (18) amended, (HB 09-1248), ch. 252, p. 1130, § 7, effective May 14.

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

7-64-102. Knowledge and notice.

(1) A person knows or has knowledge of a fact if the person has conscious awareness of the fact.

(2) A person has notice of a fact:

(a) If the person knows of the fact;

(b) If the person has received a notification of the fact;

(c) If the person has reason to know the fact exists from all of the facts known to the person at the time in question; or

(d) By reason of a filing or recording to the extent provided by and subject to limitations set forth in section 7-64-303 (4) and (5), 7-64-704 (3), or 7-64-805 (3).

(3) A person notifies or gives a notification to another by taking steps reasonably appropriate to inform the other person in ordinary course, whether or not the other person thereby obtains knowledge of the fact.

(4) A person receives a notification when the notification:

(a) Comes to the person's attention; or

(b) Is received at the person's place of business or at any other place held out by the person as a place for receiving communications, or is received by a person who is apparently authorized to receive the notification; or

(c) Has been given and the circumstances are such that it is fair and reasonable, as against the person to whom such notice has been given, to treat the notice as having been received.

(5) Except as otherwise provided in subsection (6) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when an individual conducting the transaction on that person's behalf knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to such an individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to an individual conducting the transaction on the person's behalf and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Source: L. 97: Entire article added, p. 869, § 1, effective January 1, 1998.

7-64-103. Effect of partnership agreement - nonwaivable provisions - statute of frauds.

(1) To the extent the partnership agreement does not otherwise provide, this article governs relations among the partners and between the partners and the partnership.

(2) The partnership agreement may not:

(a) Vary the rights and duties under section 7-64-105, except to eliminate the duty to provide copies of statements to all of the partners;

(b) Unreasonably restrict the right of access to books and records under section 7-64-403 (2) or unreasonably limit the obligations of the partners or the partnership under section 7-64-403 (3);

(c) Eliminate any of the duties specified in section 7-64-404 (1)(a), (1)(b), or (1)(c) or in section 7-64-603 (2)(c); except that:

(I) The partnership agreement may identify types or categories of activities that do not violate any of the duties specified in section 7-64-404 (1)(a), (1)(b), or (1)(c), if not manifestly unreasonable; or

(II) All of the partners or a number or percentage stated in the partnership agreement may authorize or ratify, after full disclosure of all material facts, an act or transaction that otherwise would violate any of the duties stated in section 7-64-404 (1)(a), (1)(b), or (1)(c);

(d) Unreasonably reduce the duty of care under section 7-64-404 (3) or 7-64-603 (2)(c);

(e) Eliminate the obligation of good faith and fair dealing under section 7-64-404 (3), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(f) Vary the power to dissociate as a partner under section 7-64-602 (1), except to require the notice under section 7-64-601 (1)(a) to be in writing;

(g) Vary the right of a court to expel a partner in the events specified in section 7-64-601 (1)(e);

(h) Vary the requirement to wind up the partnership business in cases specified in section 7-64-801 (1)(d), (1)(e), or (1)(f);

(i) Restrict rights of third persons under this article; or

(j) Vary the law applicable to limited liability partnerships as set forth in section 7-64-106 (3).

(3) A partnership agreement is not subject to any statute of frauds, including section 38-10-112, C.R.S., regarding void agreements, but not including any requirement under this article that a particular action or provision be reflected in a writing.

Source: L. 97: Entire article added, p. 870, § 1, effective January 1, 1998. **L. 2003:** (2)(c)(II) amended, p. 2251, § 150, effective July 1, 2004. **L. 2004:** IP(2)(c) and (2)(c)(II) amended, p. 1449, § 155, effective July 1. **L. 2016:** (3) added, (HB 16-1333), ch. 241, p. 986, § 2, effective August 10.

7-64-104. Supplemental principles of law.

(1) Unless displaced by particular provisions of this article, the principles of law and equity supplement this article.

(2) If an obligation to pay interest arises under this article and the rate is not specified, the rate is that specified in section 5-12-102, C.R.S.

Source: L. 97: Entire article added, p. 871, § 1, effective January 1, 1998.

7-64-105. Filing and recording of statements.

(1) A statement may be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title. A certified copy of a statement that is filed in an office in another jurisdiction may be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title. Either filing in this state has the effect provided in this article with respect to partnership property located in or transactions that occur in this state.

(2) Only a copy of a filed statement recorded in the office for recording transfers of real property has the effect provided for recorded statements in this article.

(3) and (4) (Deleted by amendment, L. 2003, p. 2251, § 151, effective July 1, 2004.)

(5) A person who delivers or causes a statement to be delivered to the secretary of state for filing pursuant to this section shall promptly deliver a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to deliver a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

Source: L. 97: Entire article added, p. 871, § 1, effective January 1, 1998. **L. 2002:** (4) amended, p. 1826, § 53, effective July 1; (4) amended, p. 1690, § 51, effective October 1. **L. 2003:** (1), (3), (4), and (5) amended, p. 2251, § 151, effective July 1, 2004.

7-64-106. Law governing internal relations.

(1) Except as provided in subsection (3) of this section, the law of the jurisdiction under which a partnership is formed governs relations among the partners and between the partners and the partnership.

(2) A partnership is presumed to have been formed in the jurisdiction in which it has its chief executive office.

(3) The law of this state shall govern relations among the partners and between the partners and the partnership, and the liability of partners for partnership obligations, in a partnership that has filed a statement of registration as a limited liability partnership in this state.

Source: L. 97: Entire article added, p. 872, § 1, effective January 1, 1998. **L. 2003:** (3) amended, p. 2252, § 152, effective July 1, 2004.

7-64-107. Partnership subject to amendment or repeal of article.

A partnership governed by this article is subject to any amendment to or repeal of this article.

Source: L. 97: Entire article added, p. 872, § 1, effective January 1, 1998.

PART 2

NATURE OF PARTNERSHIP

7-64-201. Partnership as entity.

A partnership is an entity distinct from its partners.

Source: L. 97: Entire article added, p. 872, § 1, effective January 1, 1998.

7-64-202. Formation of partnership.

(1) Except as otherwise provided in subsection (2) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership. A limited liability partnership is for all purposes a partnership.

(2) Subject to section 7-64-1205, an association is not a partnership under this article if it is formed under a statute other than:

(a) This article;

(b) Article 60 of this title; or

(c) A comparable statute of another jurisdiction. A partnership that is subject to article 60 of this title by reason of the first sentence of subsection (2) of section 7-60-106 shall be deemed to be formed under article 60 for purposes of this subsection (2).

(3) In determining whether a partnership is formed, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(b) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(I) Of a debt by installments or otherwise;

(II) For services as an independent contractor or of wages or other compensation to an employee;

(III) Of rent;

(IV) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(V) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral or rights to income, proceeds, or increase in value derived from the collateral; or

(VI) For the sale of the goodwill of a business or other property by installments or otherwise.

Source: L. 97: Entire article added, p. 872, § 1, effective January 1, 1998.

ANNOTATION

Applied in In re Long, 478 B.R. 441 (Bankr. D. Colo. 2012).

7-64-203. Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

Source: L. 97: Entire article added, p. 874, § 1, effective January 1, 1998.

7-64-204. When property is partnership property.

(1) Property is partnership property if acquired in the name of:

(a) The partnership; or

(b) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(2) Property is acquired in the name of the partnership by a transfer to:

(a) The partnership in its name; or

(b) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets is presumed to be separate property, even if used for partnership purposes.

Source: L. 97: Entire article added, p. 874, § 1, effective January 1, 1998.

7-64-205. Admission without contribution or transferrable interest.

A person may be admitted as a partner to a partnership either upon formation of the partnership or thereafter without making a contribution or being obligated to make a contribution to the partnership, and a person may be admitted as a partner to a partnership either upon formation of the partnership or thereafter without acquiring a transferrable interest, if in either case such admission is pursuant to a written partnership agreement or other writing confirming the admission.

Source: L. 2009: Entire section added, (HB 09-1248), ch. 252, p. 1130, § 8, effective May 14.

PART 3

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

7-64-301. Partner agent of partnership.

(1) Subject to the effect of a statement of partnership authority under section 7-64-303:

(a) Each partner is an agent of the partnership for the purposes of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing had notice that the partner lacked authority.

(b) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

Source: L. 97: Entire article added, p. 874, § 1, effective January 1, 1998.

7-64-302. Transfer of partnership property.

(1) Partnership property may be transferred as follows:

(a) Subject to the effect of a statement of partnership authority under section 7-64-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(b) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(2) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 7-64-301 and:

(a) As to a subsequent transferee who gave value for property transferred under paragraph (a) or (b) of subsection (1) of this section, proves that the subsequent transferee had notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(b) As to a transferee who gave value for property transferred under paragraph (c) of subsection (1) of this section, proves that the transferee had notice that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (2) of this section, from any earlier transferee of the property.

(4) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Source: L. 97: Entire article added, p. 875, § 1, effective January 1, 1998.

7-64-303. Statement of partnership authority.

(1) A partnership may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of partnership authority, which statement shall include:

(a) The true name of the partnership;

(b) The principal office address of its principal office, if any, or, if it has no principal office, the street address, and, if different, the mailing address, of its chief executive office, and, in either case, the street address, and, if different, the mailing address, of one office in this state, if there is one; and

(c) The true names or a description of the partners as to which the partnership makes a statement of partnership authority to execute an instrument transferring real property held in the name of the partnership or to enter into other transactions on behalf of the partnership and the authority, or limitations on authority, of such partners, which authority and limitations may vary among such partners as such variations are stated in the statement of partnership authority.

(2) If a filed statement of partnership authority states the true name of the partnership but does not contain all of the other information required by subsection (1) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (3) and (4) of this section.

(3) A filed statement of partnership authority is prima facie evidence of the existence of the partnership and of the facts stated therein and supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without notice to the contrary, so long as and to the extent that a limitation on that authority is not then contained in that or another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A grant of authority to transfer real property held in the true name of the partnership, contained in a copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property, is conclusive in favor of a person who gives value

without having notice to the contrary, so long as and to the extent that a copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a copy of a filed statement canceling a limitation on authority revives the previous grant of authority.

(4) A person not a partner has notice of a limitation on the authority of a partner to transfer real property held in the true name of the partnership if a copy of a filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(5) Except as otherwise provided in subsections (3) and (4) of this section and in sections 7-64-704 (3) and 7-64-805 (3), a person not a partner does not have notice of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

Source: L. 97: Entire article added, p. 876, § 1, effective January 1, 1998. **L. 2000:** (1)(a)(I), (3), (4)(b), and (5) amended, p. 955, § 30, effective July 1. **L. 2002:** IP(1) amended, p. 1826, § 54, effective July 1; IP(1) amended, p. 1690, § 52, effective October 1. **L. 2003:** (1)(a)(I), (1)(a)(II), (3), (4)(b), and (5) amended, p. 2252, § 153, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1449, § 156, effective July 1.

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-64-304. Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of denial stating the true name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 7-64-303 (3) and (4).

Source: L. 97: Entire article added, p. 877, § 1, effective January 1, 1998. **L. 2000:** Entire section amended, p. 955, § 31, effective July 1. **L. 2002:** Entire section amended, 1826, § 55, effective July 1; entire section amended, p. 1690, § 53, effective October 1. **L. 2003:** Entire

section amended, p. 2253, § 154, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1451, § 157, effective July 1. **L. 2006:** Entire section amended, p. 851, § 11, effective July 1.

7-64-305. Partnership liable for partner's actionable conduct.

(1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(2) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

Source: L. 97: Entire article added, p. 877, § 1, effective January 1, 1998.

7-64-306. Partner's liability.

(1) Except as otherwise provided in this section, all partners are liable jointly and severally for all partnership obligations unless otherwise agreed by the claimant or provided by law.

(2) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligations incurred before the person's admission as a partner.

(3) Except as otherwise provided in a written partnership agreement, a person is not, solely by reason of being a partner, liable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for partnership obligations which are incurred, created, or assumed by the partnership while the partnership is a limited liability partnership.

(4) A partner in a limited liability partnership does not become liable, directly or indirectly, for partnership obligations incurred, created, or assumed while the partnership was a limited liability partnership merely because the partnership ceases to be a limited liability partnership.

Source: L. 97: Entire article added, p. 877, § 1, effective January 1, 1998.

ANNOTATION

Applied in In re Long, 478 B.R. 441 (Bankr. D. Colo. 2012).

7-64-307. Actions by and against partnership and partners.

(1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from the assets of a partner liable as provided in section 7-64-306 for the partnership obligation unless there is also a judgment against the partner for such obligation.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) The claim is for a partnership obligation for which the partner is liable as provided in section 7-64-306 and either:

(I) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(II) The partnership is a debtor in bankruptcy;

(III) The partner has agreed that the creditor need not exhaust partnership assets; or

(IV) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(b) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership obligation resulting from a representation by a partner or purported partner under section 7-64-308.

Source: L. 97: Entire article added, p. 878, § 1, effective January 1, 1998. **L. 2003:** (1) amended, p. 2253, § 155, effective July 1, 2004. **L. 2004:** (1) amended, p. 1451, § 158, effective July 1.

7-64-308. Liability of purported partner.

(1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If a partnership obligation results, the purported partner is liable with respect to that obligation as if the purported partner were a partner in the partnership, and, if the partnership is a limited liability partnership, the purported partner's liability is subject to section 7-64-306 as if the purported partner were a partner in the limited liability partnership. If no partnership obligation results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(2) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or partnership obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(4) A person does not continue to be liable as a partner merely because of a failure to deliver to the secretary of state for filing a statement of dissociation or an amendment of a statement of partnership authority to indicate the partner's dissociation from the partnership.

(5) Except as otherwise provided in subsections (1) and (2) of this section, persons who are not partners as to each other are not liable as partners to other persons.

Source: L. 97: Entire article added, p. 879, § 1, effective January 1, 1998. **L. 2004:** (1) amended, p. 1451, § 159, effective July 1.

ANNOTATION

This section concerns liability to someone who relied on a representation of a partnership. Holding oneself out as a partner does not create a partnership. Owners Ins. Co. v. Dakota Station II, 2017 COA 103, 444 P.3d 784, aff'd in part, rev'd in part on other grounds, 2019 CO 65, 443 P.3d 47.

PART 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

7-64-401. Partner's rights and duties.

(1) Each partner is deemed to have an account that is:

(a) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(b) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property; provided, however, that such payments were made or liabilities incurred without violation of the partner's duties to the partnership or the other partners.

(4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all of the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(11) This section does not affect the obligations of a partnership to other persons under section 7-64-301.

Source: L. 97: Entire article added, p. 879, § 1, effective January 1, 1998.

7-64-402. Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

Source: L. 97: Entire article added, p. 881, § 1, effective January 1, 1998.

7-64-403. Partner's rights and duties with respect to information.

(1) A partnership shall keep its books and records, if any, at its chief executive office.

(2) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(3) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(a) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this article; and

(b) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

Source: L. 97: Entire article added, p. 881, § 1, effective January 1, 1998.

7-64-404. General standards of partner's conduct.

(1) The duties a partner owes to the partnership and the other partners, in addition to those established elsewhere in this article, include the duties to:

(a) Account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct or winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(b) Refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership;

(c) Refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership; and

(d) Comply with the provisions of the partnership agreement.

(2) A partner owes to the partnership and the other partners a duty of care in the conduct and winding up of the partnership business which shall be limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(3) A partner shall discharge the partner's duties to the partnership and the other partners and exercise any rights consistently with the obligation of good faith and fair dealing.

(4) A partner does not violate a duty or obligation to the partnership or the other partners solely because the partner's conduct furthers the partner's own interest.

(5) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner may be exercised or performed in the same manner as those of a person who is not a partner, subject to other applicable law.

(6) If a partnership is formed, the duties a partner owes to the partnership and the other partners pertain to all transactions connected with the formation, conduct, or liquidation of the partnership.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Source: L. 97: Entire article added, p. 881, § 1, effective January 1, 1998.

7-64-405. Actions by partnership and partners.

(1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(a) Enforce the partner's rights under the partnership agreement;

(b) Enforce the partner's rights under this article, including:

(I) The partner's rights under section 7-64-401, 7-64-403, or 7-64-404;

(II) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 7-64-701 or enforce any other right under part 6 or part 7 of this article; or

(III) The partner's right to compel a dissolution and winding up of the partnership business under section 7-64-801 or enforce any other right under part 8 of this article; or

(c) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Source: L. 97: Entire article added, p. 882, § 1, effective January 1, 1998.

7-64-406. Continuation of partnership beyond definite term or particular undertaking.

(1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Source: L. 97: Entire article added, p. 883, § 1, effective January 1, 1998.

PART 5

TRANSFEREES AND CREDITORS OF PARTNER

7-64-501. Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

Source: L. 97: Entire article added, p. 883, § 1, effective January 1, 1998.

7-64-502. Partner's transferable interest in partnership.

A partner's transferable interest is personal property. Only a partner's transferable interest may be transferred.

Source: L. 97: Entire article added, p. 883, § 1, effective January 1, 1998.

7-64-503. Transfer of partner's transferable interest.

(1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) Is permissible;

(b) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(c) Does not entitle the transferee to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(c) To seek under section 7-64-801 (1)(f) a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest transferred.

(5) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer. On request of the partnership or any partner, the transferee shall furnish reasonable proof of the transfer.

(6) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Source: L. 97: Entire article added, p. 883, § 1, effective January 1, 1998.

7-64-504. Partner's transferable interest subject to charging order.

(1) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the transferable interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, a transferable interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than partnership property, by one or more of the other partners; or

(c) By the partnership with the consent of all of the partners whose transferable interests are not so charged or with such lesser consent as may be permitted by the partnership agreement.

(4) This article does not deprive a partner of a right under exemption laws with respect to the partner's transferable interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

Source: L. 97: Entire article added, p. 884, § 1, effective January 1, 1998.

PART 6

PARTNER'S DISSOCIATION

7-64-601. Events causing partner's dissociation.

(1) A partner is dissociated from a partnership upon the occurrence of any of the following events:

(a) The partnership's having notice of the partner's express will to withdraw as a partner; except that, if the partnership has notice that the partner's will is to withdraw at a later date, then the dissociation shall occur at the later date stated by the partner;

(b) An event agreed to in the partnership agreement as causing the partner's dissociation;

(c) The partner's expulsion pursuant to the partnership agreement;

(d) The partner's expulsion by the unanimous vote of the other partners if:

(I) It is unlawful to carry on the partnership business with that partner;

(II) There has been a transfer of all or substantially all of that partner's transferable interest, other than a transfer for security purposes which has not been foreclosed, or a court order charging the partner's interest which has not been foreclosed;

(III) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has been dissolved or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the dissolution or no reinstatement of its right to conduct business; or

(IV) A partnership, limited partnership, limited partnership association, or limited liability company that is a partner has been dissolved and its business is being wound up;

(e) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(I) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(II) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 7-64-404; or

(III) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(f) The partner's:

(I) Becoming a debtor in bankruptcy;

(II) Executing an assignment for the benefit of creditors;

(III) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(IV) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(g) In the case of a partner who is an individual:

(I) The partner's death;

(II) The appointment of a guardian or general conservator for the partner; or

(III) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(h) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(i) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(j) Termination of a partner's existence.

Source: L. 97: Entire article added, p. 885, § 1, effective January 1, 1998. **L. 2003:** (1)(a) amended, p. 2253, § 156, effective July 1, 2004.

7-64-602. Partner's power to dissociate - wrongful dissociation.

(1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 7-64-601 (1)(a).

(2) A partner's dissociation is wrongful only if:

(a) It is in breach of an express provision of the partnership agreement; or

(b) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(I) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under section 7-64-601 (1)(f) to (1)(j) or wrongful dissociation under this subsection (2);

(II) The partner is expelled by judicial determination under section 7-64-601 (1)(e);

(III) The partner is dissociated under section 7-64-601 (1)(f); or

(IV) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(3) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

Source: L. 97: Entire article added, p. 887, § 1, effective January 1, 1998.

7-64-603. Effect of partner's dissociation.

(1) If a partner's dissociation results in a dissolution and winding up of the partnership business, part 8 of this article applies; otherwise, part 7 of this article applies.

(2) Upon a partner's dissociation:

(a) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 7-64-803;

(b) The partner's duties under section 7-64-404 (1)(c) terminate; and

(c) The partner's duties under section 7-64-404 (1)(a), (1)(b), and (2) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 7-64-803.

Source: L. 97: Entire article added, p. 887, § 1, effective January 1, 1998.

PART 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

7-64-701. Purchase of dissociated partner's interest.

(1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 7-64-801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2) of this section.

(2) The buyout price of a dissociated partner's interest is an amount equal to the value of the partner's interest in the partnership. Interest shall be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under section 7-64-602 (2), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership obligations, whether incurred before or after the dissociation, except partnership obligations incurred by an act of the dissociated partner under section 7-64-702.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3) of this section.

(6) If a deferred payment is authorized under subsection (8) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) of this section shall be accompanied by the following:

(a) A written statement of partnership assets and liabilities as of the date of dissociation;

(b) The latest available partnership balance sheet and income statement, if any;

(c) A written explanation of how the estimated amount of the payment was calculated; and

(d) A written statement that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after receipt of the written statement, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3) of this section, or other terms of the obligation to purchase.

(8) Payment of any portion of the buyout price to a partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking may be deferred until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment shall be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to section 7-64-405 (2)(b)(II), to determine the buyout price of that partner's interest, any offsets under subsection (3) of this section, or other terms of the obligation to purchase. The action shall be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3) of this section, and accrued interest and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorneys' fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7) of this section.

Source: L. 97: Entire article added, p. 888, § 1, effective January 1, 1998.

7-64-702. Dissociated partner's power to bind and liability to partnership.

(1) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under part 2 of article 90 of this title, is bound by an act of the dissociated partner that would have bound the partnership under section 7-64-301 before dissociation only if at the time of entering into the transaction the other party:

(a) Reasonably believed that the dissociated partner was then a partner; and

(b) Did not have notice of the partner's dissociation.

(2) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1) of this section.

Source: L. 97: Entire article added, p. 889, § 1, effective January 1, 1998. **L. 2003:** IP(1) amended, p. 2253, § 157, effective July 1, 2004.

7-64-703. Dissociated partner's liability to other persons.

(1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2) of this section.

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under part 2 of article 90 of this title, within two years after the partner's dissociation, only if the partnership obligation arising from such transaction is one for which the partner would have been liable under section 7-64-306 had such partner not dissociated and, at the time of entering into the transaction, the other party:

(a) Substantially relied on a reasonable belief that the dissociated partner was then a partner; and

(b) Did not have notice of the partner's dissociation.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

Source: L. 97: Entire article added, p. 890, § 1, effective January 1, 1998. **L. 2003:** IP(2) amended, p. 2253, § 158, effective July 1, 2004.

7-64-704. Statement of dissociation.

(1) A dissociated partner or the partnership may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of dissociation stating the true name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for purposes of section 7-64-303 (3) and (4).

(3) For purposes of sections 7-64-702 (1)(b) and 7-64-703 (2)(b), a person other than the partnership or one of its partners has notice of the dissociation ninety days after the statement of dissociation is filed in the records of the secretary of state.

Source: L. 97: Entire article added, p. 890, § 1, effective January 1, 1998. **L. 2000:** (1) amended, p. 955, § 32, effective July 1. **L. 2002:** (1) amended, p. 1826, § 56, effective July 1; (1) amended, p. 1691, § 54, effective October 1. **L. 2003:** (1) and (3) amended, p. 2254, § 159, effective July 1, 2004. **L. 2004:** (1) and (2) amended, p. 1451, § 160, effective July 1.

7-64-705. Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

Source: L. 97: Entire article added, p. 890, § 1, effective January 1, 1998.

PART 8

WINDING UP PARTNERSHIP BUSINESS

7-64-801. Events causing dissolution and winding up of partnership business.

(1) A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

(a) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 7-64-601 (1)(b) to (1)(j), of that partner's express will to withdraw as a partner; except that, if the partnership has notice that the partner's will is to withdraw at a later date, then the dissolution shall occur at the later date stated by the partner;

(b) In a partnership for a definite term or particular undertaking:

(I) Within ninety days after a partner's wrongful dissociation under section 7-64-602 (2) or a partner's dissociation by death or otherwise under section 7-64-601 (1)(f) to (1)(j), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation, pursuant to section 7-64-602 (2)(b)(I), constitutes the expression of that partner's will;

(II) The express will of all of the partners to wind up the partnership business; or

(III) The expiration of the term or the completion of the undertaking;

(c) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(d) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after the partnership has notice of the event is effective retroactively to the date of the event for purposes of this section;

(e) On application by a partner, a judicial determination that:

(I) The economic purpose of the partnership is likely to be unreasonably frustrated;

(II) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner;

(III) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(IV) The partnership is not reasonably likely to pay liabilities against which it indemnifies the dissociated partner;

(f) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(I) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(II) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

Source: L. 97: Entire article added, p. 891, § 1, effective January 1, 1998. **L. 2003:** (1)(a) amended, p. 2254, § 160, effective July 1, 2004.

7-64-802. Partnership continues after dissolution.

(1) Subject to subsection (2) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(a) The partnership resumes carrying on its business as if dissolution had never occurred, and any debt, obligation, or liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(b) The rights of a third party accruing under section 7-64-804 (1) or arising out of conduct in reliance on the dissolution before the third party has notice of the waiver may not be adversely affected.

Source: L. 97: Entire article added, p. 892, § 1, effective January 1, 1998.

7-64-803. Right to wind up partnership business.

(1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court, for good cause shown, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle disputes, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge or provide for the partnership obligations, distribute the assets of the partnership pursuant to section 7-64-807, and perform other necessary acts.

Source: L. 97: Entire article added, p. 892, § 1, effective January 1, 1998.

7-64-804. Partner's power to bind partnership after dissolution.

(1) Subject to section 7-64-805, a partnership is bound by a partner's act after dissolution that:

(a) Is appropriate for winding up the partnership business; or

(b) Would have bound the partnership under section 7-64-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

Source: L. 97: Entire article added, p. 893, § 1, effective January 1, 1998.

7-64-805. Statement of dissolution.

(1) After dissolution, a partner who has not wrongfully dissociated may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of dissolution stating the true name of the partnership, the principal office address of the principal office of the partnership, and that the partnership has dissolved and is winding up its business.

(2) A statement of dissolution cancels a filed statement of partnership authority for purposes of section 7-64-303 (3) and is a limitation on authority for purposes of section 7-64-303 (4).

(3) For purposes of sections 7-64-301 and 7-64-804, a person not a partner has notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed in the records of the secretary of state.

(4) Notwithstanding dissolution or the filing or recording of a statement of dissolution, a partnership may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, and, if appropriate, record a statement of partnership authority that will operate with respect to a person not a partner as provided in section 7-64-303 (3) and (4) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

Source: L. 97: Entire article added, p. 893, § 1, effective January 1, 1998. **L. 2000:** (1) amended, p. 956, § 33, effective July 1. **L. 2002:** (1) and (4) amended, p. 1826, § 57, effective July 1; (1) and (4) amended, p. 1691, § 55, effective October 1. **L. 2003:** (1) and (3) amended, p. 2254, § 161, effective July 1, 2004. **L. 2004:** (1), (2), and (4) amended, p. 1452, § 161, effective July 1. **L. 2006:** (2) amended, p. 851, § 12, effective July 1.

7-64-806. Partner's liability to other partners after dissolution.

(1) Except as otherwise provided in subsection (2) of this section or in section 7-64-306, after dissolution a partner is liable to the other partners for the partner's share of any partnership obligation incurred under section 7-64-804.

(2) A partner who, with knowledge of the dissolution, incurs a partnership obligation under section 7-64-804 (1)(b) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the obligation.

Source: L. 97: Entire article added, p. 893, § 1, effective January 1, 1998.

7-64-807. Settlement of accounts and contributions among partners.

(1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge or provide for partnership obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account.

(3) If a partner fails to contribute, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to discharge or provide for the partnership obligations.

(4) A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.

(5) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to discharge or provide for partnership obligations that were not known at the time of the settlement.

(6) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(7) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

(8) Notwithstanding any other subsection of this section, no partner shall be obligated to contribute under this section with respect to any amounts that are attributable to a partnership obligation incurred while the partnership is a limited liability partnership.

Source: L. 97: Entire article added, p. 894, § 1, effective January 1, 1998.

PART 9

CONVERSIONS AND MERGERS

7-64-901 to 7-64-909. (Repealed)

Editor's note: (1) This article was added in 1997, and this part 9 was subsequently repealed in 2003, effective July 1, 2004. For amendments to this part 9 prior to its repeal in 2004, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 7-64-909 provided for the repeal of this part 9, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

PART 10

LIMITED LIABILITY PARTNERSHIPS; LIMITED LIABILITY LIMITED PARTNERSHIPS; FOREIGN LIMITED LIABILITY PARTNERSHIPS; FOREIGN LIMITED LIABILITY LIMITED PARTNERSHIPS

7-64-1001. Definitions.

As used in this part 10:

(1) "Partner" includes both a general partner and a limited partner.

(2) "Partnership agreement" means the partnership agreement in a partnership or a limited partnership.

Source: L. 97: Entire article added, p. 900, § 1, effective January 1, 1998.

Cross references: For additional definitions applicable to this part 10, see § 7-90-102.

7-64-1002. Registration.

(1) A domestic partnership governed by this article may register as a limited liability partnership, and a domestic limited partnership that has made the election provided for in section 7-61-129 or section 7-62-1104 may register as a limited liability limited partnership, by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of registration. If a certificate of limited partnership is being filed, the statement of registration may be included in the certificate of limited partnership.

(2) The statement of registration shall be approved in the manner provided in the partnership agreement or, if not so provided, shall be approved by all of the general partners.

(3) The statement of registration shall state:

(a) The name that has been the true name of the domestic partnership or of the domestic limited partnership and the name that will be the domestic entity name of the domestic limited liability partnership or domestic limited liability limited partnership, which domestic entity name shall comply with part 6 of article 90 of this title;

(b) The principal office address of its principal office; and

(c) The registered agent name and registered agent address of its registered agent.

(d) (Deleted by amendment, L. 2004, p. 1452, § 162, effective July 1, 2004.)

(4) 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 limited liability partnerships and foreign limited liability limited partnerships.

(5) A domestic limited liability partnership or a domestic limited liability limited partnership may cease to be a domestic limited liability partnership or a domestic limited liability limited partnership by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of withdrawal of registration. The statement of withdrawal of registration shall be approved in the manner provided in the partnership agreement or, if not so provided, shall be approved by all of the general partners. The withdrawal of registration shall be effective upon the effective date of the statement of withdrawal of registration.

(6) A domestic partnership or a domestic limited partnership that has been registered under this part 10 is for all purposes the same entity that existed before it registered. A domestic partnership or a domestic limited partnership that withdraws its registration as a domestic limited

liability partnership or a domestic limited liability limited partnership is for all purposes the same entity that existed before it withdrew its registration.

(7) Except as to persons who were partners at the time of filing, the filing of a statement of registration shall be conclusive that all conditions precedent to registration under this section have been met.

Source: L. 97: Entire article added, p. 900, § 1, effective January 1, 1998. **L. 2000:** (1)(a) and (2)(a) amended, p. 957, § 37, effective July 1. **L. 2002:** IP(1), IP(2), and (4) amended, p. 1827, § 60, effective July 1; IP(1), IP(2), and (4) amended, p. 1691, § 58, effective October 1. **L. 2003:** Entire section amended, p. 2255, § 162, effective July 1, 2004. **L. 2004:** (1) and (3) amended, p. 1452, § 162, effective July 1.

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-64-1003. Name. (Repealed)

Source: L. 97: Entire article added, p. 902, § 1, effective January 1, 1998. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-64-1004. Limitations on distributions to general partner.

(1) A limited liability partnership or limited liability limited partnership shall not make a distribution to a general partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability partnership or limited liability limited partnership, other than liabilities to general partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the partnership, exceed the fair value of the assets of the partnership; except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the partnership only to the extent that the fair value of that property exceeds that liability. For purposes of this section and sections 7-62-607 and 7-62-608, the term "distribution" shall not include payments to the extent that the payments do not exceed amounts

equal to or constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(2) A general partner in a limited liability partnership or limited liability limited partnership who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the partnership for the amount of the distribution. A general partner in a limited liability partnership or limited liability limited partnership who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a general partner under an agreement or other applicable law for the amount of a distribution.

(3) Unless otherwise agreed, a general partner in a limited liability partnership or limited liability limited partnership who receives a distribution from the partnership shall have no liability under this article or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such partner is commenced prior to the expiration of the said three-year period and an adjudication of liability against such partner is made in the said action.

Source: L. 97: Entire article added, p. 904, § 1, effective January 1, 1998. **L. 2006:** Entire section amended, p. 851, § 13, effective July 1.

7-64-1005. Liability of general partner upon return of contribution. (Repealed)

Source: L. 97: Entire article added, p. 904, § 1, effective January 1, 1998. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-64-1006. Governing law - repeal. (Repealed)

Source: L. 97: Entire article added, p. 904, § 1, effective January 1, 1998. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-64-1007. Periodic reports.

Part 5 of article 90 of this title, providing for periodic reports from reporting entities, applies to domestic limited liability partnerships and domestic limited liability limited partnerships and applies to foreign limited liability partnerships and foreign limited liability limited partnerships that are authorized to transact business or conduct activities in this state pursuant to part 8 of article 90 of this title.

Source: L. 97: Entire article added, p. 905, § 1, effective January 1, 1998. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1. **L. 2003:** Entire section RC&RE, p. 2257, § 163, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1453, § 163, effective July 1. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 1994, § 7, effective August 11.

7-64-1008. Failure to comply with part 5 of article 90 of this title. (Repealed)

Source: L. 97: Entire article added, p. 905, § 1, effective January 1, 1998. **L. 2000:** (1), (3)(b), and (3)(d) amended, p. 957, § 38, effective July 1. **L. 2003:** Entire section amended, p. 2257, § 164, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1453, § 164, effective July 1. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-64-1008.5. Registered agent - service of process.

Part 7 of article 90 of this title, providing for registered agents and service of process, shall apply to domestic limited liability partnerships and domestic limited liability limited partnerships and to foreign limited liability partnerships and foreign limited liability limited partnerships that are authorized to transact business or conduct activities in this state pursuant to part 8 of article 90 of this title.

Source: L. 2004: Entire section added, p. 1454, § 165, effective July 1.

7-64-1009. Application of corporation case law to set aside limited liability.

(1) In a case in which a party seeks to hold the general partners of a limited liability partnership or limited liability limited partnership personally responsible for the alleged improper actions of the limited liability partnership or limited liability limited partnership, the court shall apply the case law that interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under Colorado law.

(2) For purposes of this section, the failure of a limited liability partnership or limited liability limited partnership to observe the formalities or requirements relating to the management of its business and affairs is not in itself a ground for imposing personal liability on the partners for debts, obligations, or liabilities of the limited liability partnership or limited liability limited partnership.

Source: L. 97: Entire article added, p. 906, § 1, effective January 1, 1998. **L. 2003:** (1) amended, p. 2258, § 165, effective July 1, 2004.

7-64-1010. Scope of part - choice of law - application to professions and occupations.

(1) A limited liability partnership or limited liability limited partnership may conduct its business, carry on its operations, and exercise the powers granted by this part 10 within and without the state.

(2) (a) It is the intent of the general assembly that the legal existence of limited liability partnerships and limited liability limited partnerships be recognized outside the boundaries of this state and that the law of this state governing the limited liability partnership or limited liability limited partnership transacting business outside this state be granted the protection of full faith and credit under section 1 of article IV of the constitution of the United States.

(b) It is the intent of the general assembly that the internal affairs of a limited liability partnership or limited liability limited partnership formed in this state be subject to and governed by the law of this state including the provisions governing liability of general partners for debts, obligations, and liabilities chargeable to partnerships, limited liability partnerships, and limited liability limited partnerships.

(3) Nothing in this part 10 shall be construed to permit a limited liability partnership, foreign limited liability partnership, limited liability limited partnership, or foreign limited liability limited partnership to engage in a profession or occupation as described in title 12, C.R.S., for which there is a specific statutory provision applicable to the practice of such profession or occupation by a corporation or professional corporation in this state unless authorized under applicable provisions of title 12, C.R.S.

Source: L. 97: Entire article added, p. 906, § 1, effective January 1, 1998. **L. 2003:** (2) amended, p. 2258, § 166, effective July 1, 2004.

PART 11

FILING DOCUMENTS

Editor's note: This article was added in 1997, and this part 11 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 11 prior to 2004, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

7-64-1101. 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 this article.

Source: L. 2003: Entire part R&RE, p. 2258, § 167, effective July 1, 2004.

7-64-1102. Registered agent - service of process. (Repealed)

Source: L. 2003: Entire part R&RE, p. 2259, § 167, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1454, § 166, effective July 1.

PART 12

MISCELLANEOUS PROVISIONS

7-64-1201. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 97: Entire article added, p. 914, § 1, effective January 1, 1998.

7-64-1202. Title.

This article may be cited as the "Colorado Uniform Partnership Act (1997)".

Source: L. 97: Entire article added, p. 914, § 1, effective January 1, 1998.

7-64-1203. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Source: L. 97: Entire article added, p. 914, § 1, effective January 1, 1998.

7-64-1204. Effective date.

This article takes effect January 1, 1998.

Source: L. 97: Entire article added, p. 915, § 1, effective January 1, 1998.

7-64-1205. Applicability.

(1) This article governs only a partnership formed:

(a) After January 1, 1998, unless that partnership is continuing the business of a partnership that has dissolved under section 7-60-141; and

(b) Before January 1, 1998, that elects, as provided by subsection (2) of this section, to be governed by this article.

(2) A partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this article. The provisions of this article relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one

year preceding the partnership's election to be governed by this article, only if the third party has notice of the partnership's election to be governed by this article.

Source: L. 97: Entire article added, p. 915, § 1, effective January 1, 1998.

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

A dispute involving a partnership formed before 1998 is governed by the Uniform Partnership Law, article 60 of title 7. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

7-64-1206. Saving clause.

This article does not affect an action or proceeding commenced or right accrued before this article takes effect.

Source: L. 97: Entire article added, p. 915, § 1, effective January 1, 1998.

TRADEMARKS AND BUSINESS NAMES

ARTICLE 70

Trademarks

7-70-101. Definitions.
7-70-102. Statement of trademark registration.
7-70-103. Effect of filing statement of trademark registration.
7-70-104. Duration and renewal.
7-70-105. Statement of withdrawal of trademark registration.
7-70-106. Statement of transfer of trademark registration.
7-70-107. Judicial cancellation of statement of trademark registration.

7-70-108. Service of process on a registrant.

7-70-109. Statements of trademark registration filed prior to May 29, 2007.

7-70-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Class" means one of the classes listed in the "International Classification of Goods and Services for the Purposes of the Registration of Marks", published by the world intellectual property organization, as adopted and codified by the United States patent and trademark office of the United States department of commerce at 37 CFR 6.1, as amended from time to time, or in any successor classification list as determined by the secretary of state.

(2) "Drawing" means a pictorial representation of a special form trademark.

(3) "Registrant" means:

(a) A person who is identified as the registrant in the statement of trademark registration filed under this article; or

(b) Following the filing of a statement of transfer of trademark registration, a person who is identified as the transferee in the statement of transfer of trademark registration.

(4) "Special form trademark" means any trademark that is not a standard character trademark, such as a trademark made up of, or containing, in whole or in part, one or more special characteristics such as a logo, picture, design element, color, or style of lettering.

(5) "Specimen" means a sample of use of the trademark, on or in a medium acceptable to the secretary of state. A specimen for a trademark for goods must show the trademark as used on or in connection with the goods in commerce in this state, such as a label, tag, or container for the goods; a display associated with the goods; or an imprint on the goods, such as a stamping. A specimen for a trademark for services must show the trademark as used in connection with the sale or advertising of the services in commerce in this state.

(6) "Standard character trademark" means a trademark:

(a) In which the trademark is expressed only in English letters, roman or arabic numerals, or punctuation marks as may be acceptable to the secretary of state; and

(b) In which no stylization of lettering or numbers is claimed.

(7) "Trademark" means a word, name, symbol, device, or any combination thereof, including packaging, configuration of goods, or other trade dress, used by a person to identify and distinguish the person's goods or services from those manufactured, sold, or rendered by others and to indicate the source of the goods or services, even if that source is unknown.

(8) "Transfer" includes an assignment and a transfer by operation of law, but does not include a security interest or a license.

(9) "Use in commerce" means a bona fide use of a trademark in the ordinary course of trade, and not made merely to reserve a right in a trademark.

Source: L. 2006: Entire article R&RE, p. 109, § 1, effective May 29, 2007.

Editor's note: This section is similar to former § 7-70-101 as it existed prior to 2006.

Cross references: (1) For definitions applicable to this article, see § 7-90-102.

(2) For the unlawful use of trademarks or trade names on fuel products, see § 8-20-220.

ANNOTATION

Law reviews. For article, "The New Colorado Trade-Mark Law — Its Practical Effect", see 28 Dicta 183 (1951).

7-70-102. Statement of trademark registration.

(1) A person who adopts and makes use in commerce of a trademark in this state may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of trademark registration to which a specimen and, if the trademark is a special form trademark, a drawing is attached.

(2) A statement of trademark registration shall state:

(a) The true name of the registrant or, in the case of a general partnership that is not a limited liability partnership, the true name of at least one general partner of the general partnership;

(b) If the registrant is an entity, the form of entity and the jurisdiction under the law of which the entity is formed;

(c) If the registrant is an individual, the individual's principal address;

(d) If the registrant is an entity other than a reporting entity, the entity's principal address;

(e) If the registrant is neither an individual resident of this state nor an entity that is required to maintain a registered agent pursuant to part 7 of article 90 of this title, either of the following:

(I) If the registrant desires to appoint a registered agent pursuant to section 7-70-108, the registered agent name, the registered agent address, and a statement that the person appointed as the registered agent for the registrant has consented to being so appointed; or

(II) The mailing address to which service of process in any proceeding based on a cause of action with respect to the statement of trademark registration may be mailed pursuant to section 7-70-108;

(f) If the trademark is a standard character trademark, the characters constituting the trademark;

(g) If the trademark is a special form trademark, a description of the attached drawing;

(h) A detailed description of the goods or services in connection with which the trademark is used and the class into which such goods or services fall;

(i) A description of the attached specimen sufficient to identify the nature of the specimen;

(j) The date of first use in commerce of the trademark in this state by the registrant or the registrant's predecessor in interest; and

(k) That the registrant is currently using the trademark in commerce in this state and that the registrant believes, in good faith, that:

(I) The registrant has the right to use the trademark in connection with the goods or services listed pursuant to paragraph (h) of this subsection (2); and

(II) The registrant's use of the trademark does not infringe the rights of any other person in that trademark.

(3) A statement of trademark registration shall not state a delayed effective date.

Source: L. 2006: Entire article R&RE, p. 110, § 1, effective May 29, 2007. **L. 2007:** (2)(c) and (2)(d) amended, p. 225, § 12, effective May 29. **L. 2009:** (2)(a) amended, (HB 09-1248), ch. 252, p. 1131, § 9, effective May 14.

Editor's note: This section is similar to former § 7-70-102 as it existed prior to 2006.

7-70-103. Effect of filing statement of trademark registration.

(1) A statement of trademark registration filed by the secretary of state shall be notice of the claims made in the statement of trademark registration from and after the date and time the statement of trademark registration is filed.

(2) Except as provided in subsection (1) of this section, filing of a statement of trademark registration does not confer upon the registrant any substantive right or create any remedy not otherwise available. All substantive rights and remedies created by the laws of this state with respect to trademarks are created exclusively by common law.

(3) Except as provided in subsection (1) of this section, filing of a statement of trademark registration does not enlarge or otherwise affect rights with respect to the trademark that are created by the common law of this state or any other laws. The lack of filing of a statement of trademark registration does not impair or otherwise affect such rights.

(4) This article does not confer the right to use the phrase "registered in the United States patent and trademark office", the abbreviation "reg. U.S. pat. & tm. off.", or any other abbreviation of such phrase or variant thereof, or the letter R enclosed within a circle, or ® in connection with a trademark with respect to which a statement of trademark registration has been filed by the secretary of state.

Source: L. 2006: Entire article R&RE, p. 112, § 1, effective May 29, 2007.

7-70-104. Duration and renewal.

(1) Unless withdrawn in accordance with section 7-70-105, a statement of trademark registration shall be effective for a term of five years from the date on which the statement of trademark registration is filed by the secretary of state. A statement of trademark registration, with respect to which a statement of withdrawal of trademark registration has been filed by the secretary of state or with respect to which a statement of renewal of trademark registration has not been filed by the secretary of state within the time provided in this section, does not provide notice under section 7-70-103 (1).

(2) The effectiveness of a statement of trademark registration may be renewed by the registrant for successive terms of five years by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of renewal of trademark registration:

(a) No earlier than one hundred eighty days before the expiration of the current term of effectiveness of the statement of trademark registration; and

(b) No later than the date of expiration of the current term of effectiveness of the statement of trademark registration.

(3) The statement of renewal of trademark registration shall:

(a) State the true name of the registrant or, in the case of a general partnership that is not a limited liability partnership, the true name of at least one general partner of the general partnership;

(b) Identify the statement of trademark registration in a manner satisfactory to the secretary of state;

(c) If the registrant is an individual, state the individual's principal address;

(c.5) If the registrant is an entity other than a reporting entity, state the entity's principal address;

(c.7) If the registrant is neither an individual resident of this state nor an entity that is required to maintain a registered agent pursuant to part 7 of article 90 of this title, state either of the following:

(I) If the registrant desires to appoint a registered agent pursuant to section 7-70-108, the registered agent name, the registered agent address, and that the person appointed as the registered agent for the registrant has consented to being so appointed; or

(II) The mailing address to which service of process in any proceeding based on a cause of action with respect to the statement of trademark registration may be mailed pursuant to section 7-70-108;

(d) Identify any goods or services described in the statement of trademark registration, or in any previously filed statement related to the statement of trademark registration, with respect to which the trademark is no longer used;

(e) State that the registrant is currently using the trademark in commerce in this state in connection with the goods or services described in the statement of trademark registration, excluding any goods or services identified pursuant to paragraph (d) of this subsection (3);

(f) State that the registrant believes, in good faith, that:

(I) The registrant has the right to use the trademark in commerce in this state in connection with the goods or services, excluding any goods or services identified in paragraph (d) of this subsection (3); and

(II) The registrant's use of the trademark does not infringe the rights of any other person in that trademark;

(g) Have a current specimen attached; and

(h) Contain such other information as the secretary of state may require.

(4) Repealed.

(5) A statement of renewal of trademark registration shall not state a delayed effective date.

Source: L. 2006: Entire article R&RE, p. 112, § 1, effective May 29, 2007. **L. 2009:** (3)(a) and (3)(c) amended and (3)(c.5) and (3)(c.7) added, (HB 09-1248), ch. 252, p. 1131, § 10, effective May 14. **L. 2010:** (4) repealed, (HB 10-1403), ch. 404, p. 1995, § 10, effective August 11.

Editor's note: This section is similar to former § 7-70-104 as it existed prior to 2007.

7-70-105. Statement of withdrawal of trademark registration.

(1) A statement of trademark registration may be withdrawn by the registrant by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of withdrawal of trademark registration.

(2) A statement of withdrawal of trademark registration shall:

(a) State the true name of the registrant;

(b) Identify the statement of trademark registration in a manner satisfactory to the secretary of state;

(c) State that the statement of trademark registration is withdrawn; and

(d) Include such other information as the secretary of state may require.

Source: L. 2006: Entire article R&RE, p. 114, § 1, effective May 29, 2007.

7-70-106. Statement of transfer of trademark registration.

(1) Following the transfer of a trademark to another person by the registrant or by operation of law, the registrant or the transferee may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of transfer of trademark registration.

(2) A statement of transfer of trademark registration shall:

(a) State the true name of the registrant prior to the transfer;

(b) State the true name of the transferee;

(c) If the transferee is an entity, state the form of entity and the jurisdiction under the law of which it is formed;

(d) If the transferee is an individual, state the individual's principal address;

(e) If the transferee is an entity other than a reporting entity, state the entity's principal address;

(f) If the transferee is neither an individual resident of this state nor an entity that is required to maintain a registered agent pursuant to part 7 of article 90 of this title, state either:

(I) If the transferee desires to appoint a registered agent pursuant to section 7-70-108, the registered agent name, the registered agent address, and a statement that the person appointed as the registered agent for the registrant has consented to being so appointed; or

(II) The mailing address to which service of process in any action relating to the statement of trademark registration may be mailed pursuant to section 7-70-108;

(g) Identify the statement of trademark registration in a manner satisfactory to the secretary of state;

(h) State that the registrant has transferred to the transferee, or that the transferee has by operation of law succeeded to, the rights to the trademark, including all associated goodwill, to which the statement of trademark registration pertains; and

(i) Include such other information as the secretary of state may require.

(3) The filing of, or the failure to file, a statement of transfer of trademark registration shall not affect the validity or effectiveness of the underlying transfer of the trademark.

Source: L. 2006: Entire article R&RE, p. 114, § 1, effective May 29, 2007. **L. 2007:** (2)(d) and (2)(e) amended, p. 225, § 13, effective May 29.

7-70-107. Judicial cancellation of statement of trademark registration.

(1) A statement of trademark registration or any document affecting a statement of trademark registration filed by the secretary of state may be canceled in a proceeding in a court of competent jurisdiction if it is established:

(a) By a person that a statement of trademark registration, or any document affecting a statement of trademark registration, filed by the secretary of state in the name of the person, was not duly authorized by the person or was filed without the person's knowledge or consent; or

(b) By a person who is harmed by a statement of trademark registration, or any document affecting a statement of trademark registration, that it was delivered for filing by a person other than the person who is harmed and contains a material misstatement, was delivered for filing in bad faith, or is fraudulent.

(2) (a) If it is determined in the proceeding that one or more grounds for cancellation described in subsection (1) of this section exist, an order shall be issued canceling the statement of trademark registration or any other document filed by the secretary of state affecting the statement of trademark registration. Upon issuance of such order, the person requesting cancellation may deliver a certified copy of the order to the secretary of state for filing pursuant to part 3 of article 90 of this title.

(b) Upon good cause shown, it may also be ordered that after cancellation, the filed statement of trademark registration or the filed document affecting the statement of trademark registration be removed from the publicly accessible records of the secretary of state. In such a case the secretary of state may retain the original or a copy of the filed statement of trademark registration or the filed document affecting the statement of trademark registration, but such original or copy shall not be opened for inspection, and copies or printouts of the filed statement of trademark registration or the filed document affecting the statement of trademark registration shall not be furnished, except upon application to the secretary of state and only for good cause shown, notwithstanding any provision of part 2 of article 72 of title 24, C.R.S., or any other provision of law.

(3) This section does not provide the only grounds for cancellation of a statement of trademark registration or any document affecting a statement of trademark registration filed by the secretary of state, and any court of competent jurisdiction may order the cancellation of a statement of trademark registration or any document affecting a statement of trademark registration filed by the secretary of state when the court determines that such cancellation is appropriate relief in any action.

(4) In any proceeding under this section, the court, in exceptional cases, may award reasonable attorney fees to the prevailing party.

Source: L. 2006: Entire article R&RE, p. 115, § 1, effective May 29, 2007.

7-70-108. Service of process on a registrant.

(1) A registrant who is neither an individual resident of this state nor an entity that is required to maintain a registered agent pursuant to part 7 of article 90 of this title shall either:

(a) Continuously maintain a registered agent in this state to accept service on its behalf in any proceeding based on a cause of action with respect to the statement of trademark registration; or

(b) Be deemed to have authorized service of process on it in connection with any such cause of action by registered mail or by certified mail, return receipt requested, addressed to the registrant at the mailing address, if any, furnished pursuant to section 7-70-102 (2)(e)(II), 7-70-104 (3)(c.7)(II), or 7-70-106 (2)(f)(II), as it may have been corrected by a statement of correction filed pursuant to section 7-90-305 or changed in a statement of change filed pursuant to section 7-90-305.5, and, if no such address has been furnished, to the registrant at the registrant's principal address.

(2) Service is perfected under paragraph (b) of subsection (1) of this section at the earliest of:

(a) The date the registrant received the process;

(b) The date shown on the return receipt, if signed by or on behalf of the registrant; or

(c) Five days after mailing.

(3) A registrant who is neither an individual resident of this state nor an entity that is required to maintain a registered agent pursuant to part 7 of article 90 of this title may appoint a registered agent to accept service on its behalf in any proceeding based on a cause of action with respect to the statement of trademark registration by making the statements set forth in section 7-70-102 (2)(e)(I) in a statement of trademark registration, in a statement of renewal of trademark registration or the statements set forth in section 7-70-106 (2)(f)(I), in a statement of transfer of trademark registration, or in a statement of change filed pursuant to section 7-90-305.5, adding such statements to a filed statement of trademark registration or a filed statement of transfer of trademark registration. The registered agent shall be:

(a) An individual who is eighteen years of age or older and whose primary residence or usual place of business is in this state;

(b) A domestic entity having a usual place of business in this state; or

(c) A foreign entity authorized to transact business or conduct activities in this state that has a usual place of business in this state.

(4) A registrant having a usual place of business in this state may serve as its own registered agent.

(5) The provisions of sections 7-90-702 and 7-90-703 shall apply to a registered agent appointed by a registrant pursuant to subsection (3) of this section, notwithstanding that the registrant is not an entity otherwise covered by section 7-90-702 or 7-90-703, and to the registrant who appoints such a registered agent.

(6) This section does not prescribe the only means, or necessarily the required means, of serving a registrant in any proceeding based on a cause of action with respect to the statement of trademark registration. Nothing in this section shall authorize service of process on a registrant who maintains a registered agent pursuant to paragraph (a) of subsection (1) of this section in any proceeding other than a proceeding based on a cause of action with respect to the statement of trademark registration.

Source: L. 2006: Entire article R&RE, p. 116, § 1, effective May 29, 2007. **L. 2007:** (1)(b) amended, p. 225, § 14, effective May 29. **L. 2009:** (1)(b) amended, (HB 09-1248), ch. 252, p. 1132, § 11, effective May 14.

7-70-109. Statements of trademark registration filed prior to May 29, 2007.

(1) A statement of trademark registration that was filed in accordance with this article prior to May 29, 2007, and that is on file in the records of the secretary of state as of May 28, 2007, shall be deemed to have been filed pursuant to and in accordance with this article as repealed and reenacted and shall have the same effect as if filed pursuant to this article as repealed and reenacted. Each such statement of trademark registration shall remain effective until the expiration date for the statement of trademark registration under this article prior to its repeal and reenactment.

(2) Repeal and reenactment of this article shall not affect any actions or causes of action that have accrued under this article before its repeal and reenactment.

Source: L. 2006: Entire article R&RE, p. 118, § 1, effective May 29, 2007.

ARTICLE 71

Trade Names

7-71-101. Statement of trade name required.
7-71-102. Consequences for failure to have effective statement of trade name filed.
7-71-103. Statement of trade name.
7-71-104. Effect of filing a statement of trade name.
7-71-105. Renewal of statement of trade name.
7-71-106. Withdrawal of statement of trade name.

7-71-107. Nonprofit entities.

7-71-108. Recording of trade name affidavit.

7-71-109. Trade names registered with the department of revenue.

7-71-110. Existing trade names on file in the records of the secretary of state.

7-71-111. Affidavit or certification recorded before July 1, 1985.

7-71-112. Affidavit or certification recorded pursuant to 24-35-301 (1.5), C.R.S.

7-71-101. Statement of trade name required.

Except as otherwise provided in section 7-71-107, a person shall not transact business in this state under a name other than the true name of the person or, in the case of a general partnership that is not a limited liability partnership, under a name other than the true name of each general partner of the general partnership, except in compliance with this article and not unless an effective statement of trade name is on file in the records of the secretary of state.

Source: L. 2004: Entire article R&RE, p. 1538, § 1, effective May 30, 2006.

Editor's note: This section is similar to former § 7-71-101 (1) as it existed in prior to 2006.

ANNOTATION

I. General Consideration.

II. Trade Names.

III. Assumed Names.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The New Colorado Trade-Mark Law — Its Practical Effect", see 28 Dicta 183 (1951). For article, "One Year Review of Corporations, Partnership, and Agency", see 36 Dicta 27 (1959). For article, "Signatures on Documents Affecting Title to Colorado Real Property — Part I", see 12 Colo. Law. 61 (1983). For article, "Trade Name Registration Requirements and Customs in Colorado — Parts I and II", see 16 Colo. Law. 238 and 454 (1987). For article, "Entity and Trade Name Registration: 2004 Update", see 34 Colo. Law. 11 (Jan. 2005). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing

Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

Annotator's note. Since § 7-71-101 is similar to § 7-71-101 as it existed prior to the 2006 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

The purpose of this section is to afford the public the means of ascertaining the individual names of persons doing business under a common name where such names could not be found in the common name itself. Smith v. Stubbs, 16 Colo. App. 130, 63 P. 955 (1901).

Registration of a certificate of assumed or trade name pursuant to this section is intended only to afford the public a means of ascertaining the identities of persons or entities doing business under an assumed name and adds nothing to the common law relating to trademarks or unfair competition. MacPhail v. Stevens, 41 Colo. App. 99, 586 P.2d 1339 (1978).

However, this section makes no requirement of recordation; it is enough if the instrument is filed and thereafter kept in the office of the county clerk and recorder. Wallace Plumbing Co. v. Dillon, 71 Colo. 224, 205 P. 950 (1922).

Applied in Rosebud Corp. v. Boggio, 39 Colo. App. 84, 561 P.2d 367 (1977); Masinton v. Dean, 659 P.2d 50 (Colo. App. 1982); Beneficial Fin. Co. v. Bach, 665 P.2d 1034 (Colo. App. 1983).

II. TRADE NAMES.

A partnership using a company name must file with the county clerk and recorder an affidavit setting forth the names and addresses of its members. Fisher v. Colorado Cent. Power Co., 94 Colo. 218, 29 P.2d 641 (1934).

But not when surnames used. This section does not apply to a partnership of two members doing business under a name composed of the surnames of the partners. Smith v. Stubbs, 16 Colo. App. 130, 63 P. 955 (1901).

Nor in case of nonresident partnership. A nonresident partnership having its principal place of business outside of the state from which it transacts business through salesmen coming into the state is not "doing business in this state" within the meaning of that phrase as used in this section, and consequently, it has no application to such partnerships. Doll v. Rodgers, 98 Colo. 36, 52 P.2d 1147 (1935).

An affidavit is insufficient under this section where it does not contain the full name or the address of the person represented by the company. Wallace Plumbing Co. v. Dillon, 71 Colo. 224, 205 P. 950 (1922).

Failure to comply with the provisions of this section is a matter of abatement to be pleaded in the answer, and if not pleaded, one cannot raise the objection upon the trial of the case. Smith v. Stubbs, 16 Colo. App. 130, 63 P. 955 (1901); Rocky Mt. Seed Co. v. McArthur, 85 Colo. 1, 272 P. 1117 (1928).

Defense of plaintiff's failure to comply with this statute must be affirmatively pleaded, and where the defendants failed to so plead they are estopped from raising the objection at a later time. Zambruk v. Perlmutter 3rd Generation Bldrs., Inc., 32 Colo. App. 276, 510 P.2d 472 (1973).

But an allegation in an answer that plaintiff has failed to file an affidavit as required by this section and should not bring the action is a good defense, and a motion to strike it out may be properly denied. Elgin Jewelry Co. v. Wilson, 42 Colo. 270, 93 P. 1107 (1908).

Moreover, dismissal proper where variance between affidavit and caption in complaint. In an action by a party doing business under the trade name, a dismissal is proper where a variance is shown between the statutory affidavit on record and the caption in the complaint. Michard v. Myron Stratton Home, 144 Colo. 251, 355 P.2d 1078 (1960).

However, upon correction of the caption, or the filing of a new trade name affidavit to conform to the complaint, the action may be reinstated. Michard v. Myron Stratton Home, 144 Colo. 251, 355 P.2d 1078 (1960).

And only issue at new trial is compliance with this section. Where a cause of action is reversed on the ground that the plaintiff, an individual doing business under a trade name, has failed to file the affidavit required by this section, the only issue on a new trial is that of compliance with the statute. Wallace Plumbing Co. v. Dillon, 71 Colo. 224, 205 P. 950 (1922).

For it is not necessary that there be a new trial as to any issue except the one as to the filing of a proper trade name affidavit, since plaintiff's failure to file the proper affidavit is merely a matter in abatement. Admiral Corp. v. Trio Television Sales & Serv. Corp., 138 Colo. 157, 330 P.2d 1106 (1958); Michard v. Myron Stratton Home, 144 Colo. 251, 355 P.2d 1078 (1960); Campbell v. Graham, 144 Colo. 532, 357 P.2d 366 (1960).

And the affidavit may be filed at any time prior to the new trial. Wallace Plumbing Co. v. Dillon, 71 Colo. 224, 205 P. 950 (1922).

III. ASSUMED NAMES.

Foreign corporation not excluded from transacting business under assumed name. The phrase, "any corporation existing under the laws of this state", in this section is not intended to exclude foreign corporations from the right to transact all or a part of its business under an assumed name. Admiral Corp. v. Trio Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958).

Hence, a foreign corporation can resort to court action to enforce its rights if it carries on its business in any name other than that adopted in the state where it is incorporated. Admiral Corp. v. Trio Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958).

And where a foreign corporation doing business in Colorado under an assumed

name fails to comply with this section requiring the filing of a certificate with respect to such assumed name, such failure serves only to abate an action during the time the required certificate remains unrecorded. Admiral Corp. v. Trio Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958).

7-71-102. Consequences for failure to have effective statement of trade name filed.

(1) No person transacting business in this state under a name in violation of section 7-71-101, nor anyone on its behalf, shall be permitted to maintain a proceeding in any court in this state for the collection of a debt from another with whom or with which the person transacted business in violation of section 7-71-101 until an effective statement of trade name for such name is on file in the records of the secretary of state in accordance with this article.

(2) A person that transacts business in this state under a name in violation of section 7-71-101 shall be subject to a civil penalty not to exceed five hundred dollars. The civil penalty may be recovered in an action brought by the attorney general in the district court in and for the city and county of Denver and shall be transmitted to the state treasurer, who shall credit it to the general fund. Upon a finding by the court that a person, or any of its members, managers, or agents on its behalf, has transacted business in this state under a name in violation of section 7-71-101, the court may issue, in addition to or in lieu of the imposition of a civil penalty, an injunction restraining the further transaction of business in this state by the person and such members, managers, and agents under such name until the person has complied with the provisions of this article.

(3) Notwithstanding subsection (1) of this section, transacting business in this state by a person under a name in violation of section 7-71-101 does not impair the validity of the acts of the person at any time taken, affect title to any property or interest in property owned by the person, or prevent the person from defending any proceeding in this state at any time.

Source: L. 2004: Entire article R&RE, p. 1538, § 1, effective May 30, 2006.

Editor's note: This section is similar to former § 7-71-102 as it existed prior to 2006.

ANNOTATION

Law reviews. For article, "One Year Review of Corporations, Partnerships, and Agency", see 36 Dicta 27 (1959).

Annotator's note. Since § 7-71-102 is similar to § 7-71-102 as it existed prior to the 2006 repeal and reenactment of this

article, relevant cases construing that provision have been included in the annotations to this section.

Former section was penal. Wallbrecht v. Blush, 43 Colo. 329, 95 P. 927 (1908); Campbell v. Graham, 144 Colo. 532, 357 P.2d 366 (1960).

And so this section had to be strictly construed. Wallbrecht v. Blush, 43 Colo. 329, 95 P. 927 (1908); Savage v. United States, 270 F. 14 (8th Cir 1920).

Rather, the penalty provided by this section for failure to file the certificate is that such persons, associations, and corporations so trading and doing business shall not be permitted to prosecute any suits for the collection of their debts until such affidavit shall be filed. Admiral Corp. v. Trio Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958); Campbell v. Graham, 144 Colo. 532, 357 P.2d 366 (1960).

So when failure to comply with this section appears, an abatement of an action occurs. Admiral Corp. v. Trio Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958); Campbell v. Graham, 144 Colo. 532, 357 P.2d 366 (1960).

Subsequently, when an affidavit is filed, this disability is removed, and plaintiff is free to prosecute the action as originally filed. Admiral Corp. v. Trio Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958); Campbell v. Graham, 144 Colo. 532, 357 P.2d 366 (1960).

In any event this section only applies to suits for the collection of debts due a firm. Pedroni v. Eppstein, 17 Colo. App. 424, 68 P. 794 (1902); Melcher v. Beeler, 48 Colo. 233, 110 P. 181 (1910).

Thus it does not apply to suits for torts. Pedroni v. Eppstein, 17 Colo. App. 424, 68 P. 794 (1902); Melcher v. Beeler, 48 Colo. 233, 110 P. 181 (1910).

Or to recover possession of real property. The filing of the prescribed affidavit required by this section is not a condition precedent to the prosecution of an action to recover possession of real property. Wallbrecht v. Blush, 43 Colo. 329, 95 P. 927 (1908); Campbell v. Graham, 144 Colo. 532, 357 P.2d 366 (1960).

Moreover, since this section is procedural, it has no proper place in a bankruptcy proceeding. In re Thomas, 211 F. Supp. 187 (D. Colo. 1962), aff'd, 327 F.2d 667 (10th Cir. 1964).

This section does not expressly deprive the associations of the right to transact business. Wallbrecht v. Blush, 43 Colo. 329, 95 P. 927 (1908); Savage v. United States, 270 F. 14 (8th Cir. 1920).

Applied in B.C. Inv. Co. v. Throm, 650 P.2d 1333 (Colo. App. 1982).

7-71-103. Statement of trade name.

(1) A person may deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of trade name for any name other than the true name of the person or, in the

case of a general partnership that is not a limited liability partnership, other than the true name of each general partner of the general partnership, under which the person transacts business, or contemplates transacting business, in this state. A statement of trade name shall state:

(a) The true name of the person or, in the case of a general partnership that is not a limited liability partnership, the true name of at least one general partner of the general partnership;

(b) If the person is an entity, the form of entity and the jurisdiction under the law of which it is formed;

(c) If the person is not a reporting entity, the person's principal address;

(d) The name, other than the true name of the person, or, in the case of a general partnership that is not a limited liability partnership, other than the true name of each general partner of the general partnership, under which the person transacts business, or contemplates transacting business, in this state;

(e) A brief description of the kind of business transacted, or contemplated to be transacted, in this state under the name; and

(f) Such other information as the secretary of state may require.

Source: L. 2004: Entire article R&RE, p. 1539, § 1, effective May 30, 2006. **L. 2007:** (1)(c) amended, p. 226, § 15, effective May 29.

Editor's note: This section is similar to former § 7-71-101 (2) as it existed prior to 2006.

7-71-104. Effect of filing a statement of trade name.

(1) (a) A filed statement of trade name shall become effective as provided in section 7-90-304, and, unless the statement of trade name is withdrawn in accordance with section 7-71-106, for reporting entities shall remain effective in perpetuity, subject to the provisions of paragraphs (b) and (c) of this subsection (1), and for persons other than reporting entities shall remain effective only through the last day of the twelfth calendar month following the calendar month in which the statement of trade name becomes effective, unless it is renewed in accordance with section 7-71-105.

(b) A filed statement of trade name of a delinquent entity shall remain effective only through the last day of the twelfth calendar month following the calendar month of the effective date of delinquency under section 7-90-902 (1), unless it is renewed in accordance with section 7-71-105; except that this paragraph (b) shall not apply to a filed statement of trade name of a

delinquent entity that cures its delinquency pursuant to section 7-90-904 (1) while such filed statement of trade name is effective.

(c) A filed statement of trade name of a dissolved reporting entity shall remain effective only through the last day of the twelfth calendar month following the calendar month of the effective date of dissolution of the entity, unless it is renewed in accordance with section 7-71-105; except that this paragraph (c) shall not apply to a filed statement of trade name of a dissolved entity that is reinstated while such filed statement of trade name is effective.

(2) A person having an effective statement of trade name on file in the records of the secretary of state shall be liable in connection with the business transacted in this state by the person under the trade name stated in the statement of trade name to the same extent and in the same manner as if the business were transacted under its true name.

(3) A person having an effective statement of trade name on file in the records of the secretary of state at the time an action is brought by another person may be sued under the trade name stated in the statement of trade name in connection with any business transacted by the person in this state under the trade name with the person bringing the action.

Source: L. 2004: Entire article R&RE, p. 1540, § 1, effective May 30, 2006. **L. 2006:** (1) amended, p. 852, § 14, effective May 30. **L. 2010:** (1)(b) amended, (HB 10-1403), ch. 404, p. 1994, § 8, effective August 11.

Editor's note: This section is similar to former § 7-71-101 (4) as it existed prior to 2006.

7-71-105. Renewal of statement of trade name.

(1) A person other than a reporting entity having an effective statement of trade name on file in the records of the secretary of state may renew the statement of trade name by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of trade name renewal at any time during the last three calendar months the statement of trade name is effective. A filed statement of trade name renewal extends, by one calendar year, the period during which the statement of trade name to which it relates is effective. A statement of trade name renewal shall state, with respect to the statement of trade name to be renewed:

(a) The true name of the person, or, in the case of a general partnership that is not a limited liability partnership, the true name of at least one general partner of the partnership;

(b) The name under which the person transacts business in this state, as stated in the statement of trade name;

(c) The person's principal address;

(c.5) A brief description of the kind of business transacted, or contemplated to be transacted, in this state under the name; and

(d) Such other information as the secretary of state may require.

(1.5) No statement of trade name renewal shall state a delayed effective date.

(2) Repealed.

Source: L. 2004: Entire article R&RE, p. 1540, § 1, effective May 30, 2006. **L. 2006:** (1)(a) and (1)(c) amended and (1.5) added, p. 853, § 15, effective May 30. **L. 2009:** IP(1) and (1)(c) amended and (1)(c.5) added, (HB 09-1248), ch. 252, p. 1132, § 12, effective May 14. **L. 2010:** (2) repealed, (HB 10-1403), ch. 404, p. 1995, § 11, effective August 11.

7-71-106. Withdrawal of statement of trade name.

(1) A person having a statement of trade name on file in the records of the secretary of state may withdraw the statement of trade name by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of trade name withdrawal stating:

(a) The true name of the person;

(b) The trade name with respect to which the statement of trade name withdrawal relates;

(c) That the person will no longer transact business in this state under the trade name; and

(d) That the statement of trade name is withdrawn upon the filing of the statement of trade name withdrawal.

(2) Upon the filing of the statement of trade name withdrawal, the statement of trade name to which it relates shall no longer be effective.

Source: L. 2004: Entire article R&RE, p. 1541, § 1, effective May 30, 2006.

Editor's note: This section is similar to former § 7-71-101 (8) as it existed prior to 2006.

7-71-107. Nonprofit entities.

(1) A nonprofit entity for which a constituent filed document is in the records of the secretary of state may, but shall not be required to, deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of trade name for any name other than its true name under which the nonprofit entity transacts business or conducts activities, or contemplates transacting business or conducting activities, in this state. This article, other than section 7-71-102, shall apply to the statement of trade name and any other statement filed in connection therewith and to the trade name.

(2) Any member of a nonprofit entity for which a constituent filed document is not in the records of the secretary of state may, but shall not be required to, deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of trade name for any name other than the true name of all of its members under which the nonprofit entity transacts business or conducts activities, or contemplates transacting business or conducting activities, in this state. This article, other than section 7-71-102, shall apply to any such statement of trade name and any other statement filed in connection therewith and to any trade name stated in any such statement of trade name.

(3) As to any statement of trade name filed pursuant to this section and any other statement filed in connection with the filing, any reference in this article or in such statement to the phrase "transact business", or its derivatives or variants, shall include "conduct activities".

Source: L. 2004: Entire article R&RE, p. 1541, § 1, effective May 30, 2006. **L. 2006:** (1) and (2) amended, p. 853, § 16, effective May 30.

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-71-108. Recording of trade name affidavit.

(1) An affidavit stating that a person may hold title to real property in this state under one or more trade names may be recorded in the office of the clerk and recorder of any county in this state in which the person owns, or contemplates owning, any real property or interest in real property and, upon such recording, shall constitute prima facie evidence of the facts recited in

the affidavit insofar as such facts affect title to real property located in such county. The affidavit shall include the following:

(a) The true name of the person to which the affidavit relates;

(b) If the person is an entity, the form of entity and the jurisdiction under the law of which it is formed;

(c) If the person is an individual, the street address of the individual's primary residence or usual place of business in this state if the individual has one, or outside this state if the individual has no primary residence or usual place of business in this state, and, if different, the mailing address of the individual or, if the person is an entity, the street address of the entity's usual place of business in this state if it has one, or outside this state if it has no usual place of business in this state and, if different, the mailing address of the entity; and

(d) The trade name or trade names under which the person may hold title to real property in this state.

(2) If the person to which the affidavit relates is not an individual and is capable of holding title to real property under the law of this state, the affidavit also shall be a statement of authority under section 38-30-172, C.R.S., with the effect of a statement of authority as provided in such section, if the affidavit also contains the following:

(a) The true name or position of the person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the person to which the affidavit relates; and

(b) Any limitation that may exist upon the authority of the person named in the affidavit or holding the position described in the affidavit to bind the person to which the affidavit relates or a statement that no such limitation exists.

Source: L. 2004: Entire article R&RE, p. 1542, § 1, effective May 30, 2006.

7-71-109. Trade names registered with the department of revenue.

(1) Public records of the registration of trade names with the department of revenue pursuant to section 24-35-301, C.R.S., prior to its repeal, as to which the registration is in effect on May 29, 2006, shall be transferred to the secretary of state. On and after May 30, 2006, each such trade name shall be deemed a trade name for which a statement of trade name is on file in the records of the secretary of state. The statement of trade name deemed filed for each such trade name shall be effective until the date determined by the secretary of state, which date shall not be earlier than December 31, 2007. Applications to register, modify, delete, or renew trade names

that are filed with the department of revenue on or before May 29, 2006, but not part of the public records transferred to the secretary of state pursuant to this subsection (1), shall be transmitted by the department of revenue to the secretary of state, together with any fee paid for the applications. Each such application shall be deemed delivered to the secretary of state, for filing pursuant to part 3 of article 90 of this title, by the person on whose behalf the application was made and shall in all respects be subject to part 3 of article 90 of this title. After filing by the secretary of state, each such application shall be deemed effective for purposes of this article and section 7-90-304, as of May 30, 2006.

(2) Fees that have been collected by the department of revenue for registration, modification, deletion, and renewal of registration of trade names that are part of the public records transferred to the secretary of state pursuant to subsection (1) of this section shall be remitted to the state treasury pursuant to section 24-35-301 (3), C.R.S., as such section existed prior to its repeal.

Source: L. 2004: Entire article R&RE, p. 1542, § 1, effective May 30, 2006.

Cross references: For registration of trade names as it existed prior to its repeal in 2006, see part 3 of article 35 of title 24, C.R.S., in the 2005 Colorado Revised Statutes.

7-71-110. Existing trade names on file in the records of the secretary of state.

Certificates or statements of trade name filed in accordance with this article as in effect before May 30, 2006, that are on file in the records of the secretary of state as of May 29, 2006, shall be effective statements of trade name and shall be deemed to have been filed pursuant to and in accordance with this article. Each of such statements of trade name shall remain effective as provided in section 7-71-104 (1); except that any such statement of trade name for a trade name of a person other than a reporting entity shall remain effective until the date determined by the secretary of state, which date shall not be earlier than December 31, 2007.

Source: L. 2004: Entire article R&RE, p. 1543, § 1, effective May 30, 2006.

7-71-111. Affidavit or certification recorded before July 1, 1985.

Any affidavit or certification recorded pursuant to section 7-71-101 (1)(a) or (7) prior to July 1, 1985, shall continue to constitute prima facie evidence of the facts recited therein insofar as the same affect title to real property.

Source: L. 2006: Entire section added, p. 854, § 17, effective July 1.

7-71-112. Affidavit or certification recorded pursuant to 24-35-301 (1.5), C.R.S.

Any affidavit recorded pursuant to section 24-35-301 (1.5), C.R.S., prior to its repeal, shall continue to constitute prima facie evidence of the facts recited therein insofar as the same affect title to real property.

Source: L. 2006: Entire section added, p. 854, § 17, effective July 1.

ARTICLE 72

Registration of Farm Names

7-72-101 and 7-72-102. (Repealed)

Source: L. 95: Entire article repealed, p. 194, § 5, effective April 13.

Editor's note: This article was numbered as article 4 of chapter 141, C.R.S. 1963. For amendments to this article prior to its repeal in 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 73

Trademarks on Articles or Supplies - Registration

7-73-101 to 7-73-109. (Repealed)

Source: L. 2008: Entire article repealed, p. 24, § 22, effective August 5.

Editor's note: This article was numbered as article 4 of chapter 141, C.R.S. 1963. For amendments to this article prior to its repeal in 2008, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

TRADE SECRETS

ARTICLE 74

Uniform Trade Secrets Act

7-74-101. Short title.
7-74-102. Definitions.
7-74-103. Injunctive relief.
7-74-104. Damages.
7-74-105. Attorney fees.
7-74-106. Preservation of secrecy.
7-74-107. Statute of limitations.
7-74-108. Effect on other law.
7-74-109. Uniformity of application and construction.
7-74-110. Severability.

7-74-101. Short title.

This article shall be known and may be cited as the "Uniform Trade Secrets Act".

Source: L. 86: Entire article added, p. 460, § 1, effective July 1.

7-74-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(I) Used improper means to acquire knowledge of the trade secret; or

(II) At the time of disclosure or use, knew or had reason to know that such person's knowledge of the trade secret was:

(A) Derived from or through a person who had utilized improper means to acquire it;

(B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(III) Before a material change of such person's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) Repealed.

(4) "Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession which is secret and of value. To be a "trade secret" the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Source: L. 86: Entire article added, p. 460, § 1, effective July 1. **L. 2003:** (3)(b) added by revision, pp. 2356, 2357, §§ 347, 348. **L. 2004:** IP(2)(b)(II) and (2)(b)(III) amended, p. 1459, § 180, effective July 1.

Editor's note: Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

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

ANNOTATION

Law reviews. For article, "The Legality of Generative AI -- Part 2", see 52 Colo. Law. 30 (Sept. 2023).

The following factors are considered in determining whether certain information is a trade secret: (1) The extent to which the information is known outside the

business; (2) the extent to which the information is known to those inside the business; (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information. Harvey Barnett, Inc. v. Shidler, 143 F. Supp. 2d 1247 (D. Colo. 2001).

Indispensable to an effective allegation of a trade secret is proof that the matter is, more or less, secret. Hertz v. Luzenac Group, 576 F.3d 1103 (10th Cir. 2009).

The act of keeping a design secret does not necessarily mean that it is a trade secret. Rather, the design itself must be secret; focusing on the act of protecting the design's secrecy skips the first and fundamental step in the analytical process. Hawg Tools, LLC v. Newsco Int'l Energy Servs., 2016 COA 176M, 411 P.3d 1126.

A trade secret can exist in a combination of characteristics and components each of which, by itself, is in the public domain, but the unified process, design, and operation of which, in unique combination, affords a competitive advantage and is a protectable secret. Harvey Barnett, Inc. v. Shidler, 338 F.3d 1125 (10th Cir. 2003); Hertz v. Luzenac Group, 576 F.3d 1103 (10th Cir. 2009).

A trade secret can include a system where the elements are in the public domain, but there has been accomplished an effective, successful, and valuable integration of the public domain elements and the trade secret gave the claimant a competitive advantage that is protected from misappropriation. Rivendell Forest Prods., Ltd. v. Georgia-Pacific Corp., 28 F.3d 1042 (10th Cir. 1994).

Information can be a trade secret notwithstanding the fact that some of its components are well-known. Harvey Barnett, Inc. v. Shidler, 338 F.3d 1125 (10th Cir. 2003); Hertz v. Luzenac Group, 576 F.3d 1103 (10th Cir. 2009).

Both actual and prospective customer lists can be a trade secret since both can be of value to the owner. Hertz v. Luzenac Group, 576 F.3d 1103 (10th Cir. 2009).

It is error for the court to rule as a matter of law that customer lists are not trade secrets particularly when presentation of evidence and offers of proof were not permitted. Network Telecomm. v. Boor-Crepeau, 790 P.2d 901 (Colo. App. 1990).

Adoption of a per se rule that a bid on a contract cannot be a trade secret as a matter of law is also declined. The statutory definition of "trade secret", together with evidence of value and of measures to protect disclosure, is broad enough to include a bid on a contract. Ovation Plumbing, Inc. v. Furton, 33 P.3d 1221 (Colo. App. 2001).

Precautions taken pursuant to subsection (4) must be more than normal business procedures. Such efforts may include advising employees of the existence of a trade secret, limiting access to a need-to-know basis, and controlling access to

locations where the information may be learned. Harvey Barnett, Inc. v. Shidler, 143 F. Supp. 2d 1247 (D. Colo. 2001).

Subsection (4) applied in Colo. Supply Co., Inc. v. Stewart, 797 P.2d 1303 (Colo. App. 1990); In re S & D Foods, Inc., 144 B.R. 121 (Bankr. D. Colo. 1992).

No claim for misappropriation of trade secret. Nothing protectable was used by former employee when he took general business knowledge from one job to the next. Although misappropriation can be established without any copying or physical appropriation, business practices at best hold a tenuous claim to being trade secrets. Rivendell Forest Prods. v. Georgia-Pacific, 824 F. Supp. 961 (D. Colo. 1993).

State claims not preempted by federal copyright law. Plaintiff's claims of trade secret misappropriation under Colorado law require proof of a breach of trust or confidence - proof which is not required under the Copyright Act, therefore state claims are not preempted by the federal law. Gates Rubber Co. v. Bando Chem. Indus., Ltd., 9 F.3d 823 (10th Cir. 1993).

The Uniform Trade Secrets Act contains no requirement that there be actual use or commercial implementation of a misappropriated trade secret for damages to accrue. Misappropriation consists only of the improper disclosure or acquisition of a trade secret. Sonoco Prod. Co. v. Johnson, 23 P.3d 1287 (Colo. App. 2001).

Applied in Gold Messenger, Inc. v. McGuay, 937 P.2d 907 (Colo. App. 1997); Saturn Sys., Inc. v. Militare, 252 P.3d 516 (Colo. App. 2011).

7-74-103. Injunctive relief.

Temporary and final injunctions including affirmative acts may be granted on such equitable terms as the court deems reasonable to prevent or restrain actual or threatened misappropriation of a trade secret.

Source: L. 86: Entire article added, p. 461, § 1, effective July 1.

ANNOTATION

No claim for misappropriation of trade secret. Nothing protectable was used by former employee when he took general business knowledge from one job to the next. Although misappropriation can be established without any copying or physical appropriation, business practices at best hold a tenuous claim to being trade secrets. Rivendell Forest Prods. v. Georgia-Pacific, 824 F. Supp. 961 (D. Colo. 1993).

Awards of both damages and injunctive relief are authorized under the Uniform Trade Secrets Act, but the trial court is

not required to award both. The grant or denial of an injunction lies within the trial court's sound discretion and will be reversed on appeal only upon a showing of abuse of that discretion. Ovation Plumbing, Inc. v. Furton, 33 P.3d 1221 (Colo. App. 2001).

This section merely authorizes and does not mandate injunctive relief and thus does not allow a presumption of irreparable harm. First W. Capital Mgmt. Co. v. Malamed, 874 F.3d 1136 (10th Cir. 2017).

7-74-104. Damages.

(1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(2) If the misappropriation is attended by circumstances of fraud, malice, or a willful and wanton disregard of the injured party's right and feelings, the court or the jury may award exemplary damages in an amount not exceeding the award made under subsection (1) of this section.

Source: L. 86: Entire article added, p. 461, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Assessing Damages for Misappropriation of Trade Secrets", see 27 Colo. Law. 71 (Aug. 1998).

Revelations regarding trade secrets were so malicious and wanton that defendant was entitled to recover attorney's fees, costs, and exemplary damages under this section. In Re S & D Foods, Inc., 144 B.R. 121 (Bankr. D. Colo. 1992).

7-74-105. Attorney fees.

If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney fees to the prevailing party.

Source: L. 86: Entire article added, p. 461, § 1, effective July 1.

7-74-106. Preservation of secrecy.

In an action under this article, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Source: L. 86: Entire article added, p. 461, § 1, effective July 1.

7-74-107. Statute of limitations.

An action for misappropriation of a trade secret shall be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Source: L. 86: Entire article added, p. 462, § 1, effective July 1.

Cross references: For other provisions relating to limitations on personal actions, see article 80 of title 13.

ANNOTATION

The statute of limitations begins to run once a plaintiff learns a defendant improperly disclosed trade secrets, even though the defendant subsequently may also have unlawfully used those same trade secrets. Chasteen v. UNISIA JECS Corp., 216 F.3d 1212 (10th Cir. 2000).

The statute of limitations on trade secret misappropriation claims begins to run not when a plaintiff can positively and directly prove misappropriation rather than independent development, but simply when the plaintiff has knowledge of sufficient facts from which a reasonable jury could infer misappropriation. Chasteen v. UNISIA JECS Corp., 216 F.3d 1212 (10th Cir. 2000); Gognat v. Ellsworth, 224 P.3d 1039 (Colo.

App. 2009), aff'd, 259 P.3d 497 (Colo. 2011).

To bring a claim of trade secret misappropriation, one does not need to know the specific damage inflicted. Phillips v. AWH Corp., 363 F.3d 1207 (Fed. Cir. 2004).

Statute provides for a single accrual date for multiple misappropriations of a single trade secret or of multiple, related trade secrets, coinciding with the first date plaintiff has knowledge of sufficient facts from which a jury could reasonably infer misappropriation. Gognat v. Ellsworth, 224 P.3d 1039 (Colo. App. 2009), aff'd, 259 P.3d 497 (Colo. 2011).

By specifying that "a continuing misappropriation constitutes a single claim," statute evinces a clear legislative intent that multiple misappropriations by the same party be treated as a single claim for accrual purposes. Gognat v. Ellsworth, 224 P.3d 1039 (Colo. App. 2009), aff'd, 259 P.3d 497 (Colo. 2011).

7-74-108. Effect on other law.

(1) Except as provided in subsection (2) of this section, this article displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This article does not affect:

(a) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(b) Other civil remedies that are not based upon misappropriation of a trade secret; or

(c) Criminal remedies, whether or not based upon misappropriation of a trade secret.

Source: L. 86: Entire article added, p. 462, § 1, effective July 1.

Cross references: For theft of trade secrets, see § 18-4-408.

ANNOTATION

Claims for interference with business relations do not conflict with the Uniform Trade Secrets Act (USTA) and, therefore, are not preempted. Powell Prods., Inc. v. Marks, 948 F. Supp. 1469 (D. Colo. 1996).

Claims that, although involving a trade secret misappropriation issue, include additional elements not necessary to a misappropriation claim under the UTSA do not conflict with the UTSA and are not

preempted. Powell Prods., Inc. v. Marks, 948 F. Supp. 1469 (D. Colo. 1996).

Preemption is only appropriate where other claims are no more than a restatement of the same operative facts which would plainly and exclusively spell out only trade secret misappropriation. Powell Prods., Inc. v. Marks, 948 F. Supp. 1469 (D. Colo. 1996).

The economic loss rule does not preclude statutory claims under this act. Great Am. Opportunities, Inc. v. Kent, 352 F. Supp. 3d 1126 (D. Colo. 2018).

7-74-109. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 86: Entire article added, p. 462, § 1, effective July 1.

7-74-110. Severability.

If any provision of this article or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Source: L. 86: Entire article added, p. 462, § 1, effective July 1.

LIMITED LIABILITY COMPANIES

ARTICLE 80

Limited Liability Companies

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PART 1

DEFINITION AND APPLICATION

7-80-101. Short title.

This article shall be known and may be cited as the "Colorado Limited Liability Company Act".

Source: L. 90: Entire article added, p. 414, § 1, effective April 18.

7-80-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Articles of organization" means the articles of organization filed in the records of the secretary of state for the purpose of forming a limited liability company as specified in sections 7-80-203 and 7-80-204. "Articles of organization" includes amended articles of organization, restated articles of organization, statements of merger, 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 organization.

(2) "Bankrupt" means bankrupt or a debtor under the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, or an insolvent under any state insolvency act.

(3) "Business" means any lawful activity, including ownership of real or personal property, whether or not engaged in for profit.

(4) "Contribution" means anything of value that a person contributes to a limited liability company to become a member in the limited liability company or in the capacity of a member in the limited liability company, including cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services.

(5) "Court" includes every court and judge having jurisdiction in a case.

(6) and (6.5) (Deleted by amendment, L. 2003, p. 2263, § 174, effective July 1, 2004.)

(7) "Limited liability company" or "company" means a limited liability company formed under this article.

(7.5) and (7.6) (Deleted by amendment, L. 2003, p. 2263, § 174, effective July 1, 2004.)

(8) "Manager" means a person designated as a manager of a limited liability company to manage the company pursuant to section 7-80-402.

(9) "Member" means a person with an ownership interest in a limited liability company with the rights and obligations specified under this article. In the case of a limited liability company with only one member, "members" and "all of the members" refers to such one member.

(10) "Membership interest" means a member's share of the profits and losses of a limited liability company and the right to receive distributions of such company's assets.

(11) (a) "Operating agreement" means any agreement of all of the members as to the affairs of a limited liability company and the conduct of its business. Except as otherwise provided in this article or as otherwise required by a written operating agreement, the operating agreement need not be in writing. An operating agreement may contain any provisions required or permitted by section 7-80-108 (1). An operating agreement includes any amendments to the operating agreement.

(b) In the case of a limited liability company with only one member, "operating agreement" includes:

(I) Any writing, without regard to whether such writing otherwise constitutes an agreement, as to such company's affairs and the conduct of the limited liability company's business signed by the sole member;

(II) Any written agreement between the member and the company as to the limited liability company's affairs and the conduct of the limited liability company's business; or

(III) Any agreement, whether or not the agreement is in writing, between the member and the limited liability company as to a limited liability company's affairs and the conduct of its business if the limited liability company is managed by a manager who is a person other than the member.

(12) to (16) (Deleted by amendment, L. 2003, p. 2263, § 174, effective July 1, 2004.)

Source: L. 90: Entire article added, p. 414, § 1, effective April 18. **L. 94:** (3), (7), and (11) amended and (6.5), (7.5), (7.6), (14), (15), and (16) added, p. 709, § 1, effective July 1. **L. 95:** (7.6), (11), and (13) amended, p. 805, § 21, effective May 24. **L. 97:** (8), (9), and (11) amended and (14.5) added, p. 1502, § 11, effective June 3; (13) amended, p. 917, § 8, effective January 1, 1998. **L. 2002:** (1) amended, p. 1832, § 70, effective July 1; (1) amended, p. 1697, § 68, effective October 1. **L. 2003:** (1), (6) to (7.6), and (12) to (16) amended, p. 2263, § 174, effective July 1, 2004. **L. 2004:** (11)(a) amended, p. 936, § 1, effective July 1. **L. 2006:** (1), (4), and (8) amended, p. 854, § 18, effective July 1. **L. 2016:** (4) amended, (HB 16-1329), ch. 242, p. 988, § 1, effective August 10.

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

ANNOTATION

Applied in Condo v. Conners, 271 P.3d 524 (Colo. App. 2010), aff'd, 266 P.3d 1110 (Colo. 2011).

7-80-103. Nature of business.

A limited liability company may be formed under this article for any lawful business, subject to any provisions of law governing or regulating such business within this state.

Source: L. 90: Entire article added, p. 415, § 1, effective April 18. **L. 94:** Entire section amended, p. 710, § 2, effective July 1. **L. 2003:** Entire section amended, p. 2264, § 175, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "Partnership or LLC: Alternative to an Irrevocable Life Insurance Trust?", see 25 Colo. Law. 43 (Jan. 1996).

7-80-104. Powers.

(1) Each limited liability company formed and existing under this article may:

(a) Sue and be sued, complain and defend, and participate in administrative or other proceedings, in its name;

(b) Purchase, take, receive, lease or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or an interest in it, wherever situated;

(c) Sell, convey, assign, encumber, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(d) Lend money to and otherwise assist its members and employees;

(e) Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of any other person;

(f) Make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

(g) Lend money for its proper purposes, invest and reinvest its funds, and take and hold real property and personal property for the payment of funds so loaned or invested;

(h) Conduct its business, carry on its operations, and have and exercise the powers granted by this article in any jurisdiction;

(i) Have managers and other agents;

(j) Be a party to the operating agreement;

(k) Indemnify a member or manager or former member or manager of the limited liability company as provided in section 7-80-407;

(l) (Deleted by amendment, L. 2003, p. 2264, § 176, effective July 1, 2004.)

(m) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is formed;

(n) Be an agent, an associate, a fiduciary, a manager, a member, a partner, a promoter, or a trustee of, or hold any similar position with, any entity, trust, or estate.

Source: L. 90: Entire article added, p. 415, § 1, effective April 18. **L. 94:** (1)(d) amended, p. 710, § 3, effective July 1. **L. 2003:** IP(1), (1)(e), (1)(h), (1)(j), (1)(l), (1)(m), and (1)(n) amended, p. 2264, § 176, effective July 1, 2004. **L. 2004:** (1)(k) amended, p. 936, § 2, effective July 1. **L. 2006:** (1)(i), (1)(j), and (1)(n) amended, p. 854, § 19, effective July 1.

7-80-105. Unauthorized assumption of powers.

All persons who assume to act as a limited liability company without authority to do so and without good-faith belief that they have such authority shall be jointly and severally liable for all debts and liabilities incurred by such persons so acting.

Source: L. 90: Entire article added, p. 416, § 1, effective April 18.

7-80-106. Transaction of business outside state.

It is the intention of the general assembly by the enactment of this article that the legal existence of limited liability companies formed under this article be recognized beyond the limits of this state and that, subject to any reasonable registration requirements, any such limited liability company transacting business outside this state be granted the protection of full faith and credit under section 1 of article IV of the constitution of the United States.

Source: L. 90: Entire article added, p. 416, § 1, effective April 18.

7-80-107. Application of corporation case law to set aside limited liability.

(1) In any case in which a party seeks to hold the members of a limited liability company personally responsible for the alleged improper actions of the limited liability company, the court shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under Colorado law.

(2) For purposes of this section, the failure of a limited liability company to observe the formalities or requirements relating to the management of its business and affairs is not in itself a ground for imposing personal liability on the members for liabilities of the limited liability company.

(3) A limited liability company's status for federal tax purposes does not affect its status as a distinct entity organized and existing under this article.

Source: L. 90: Entire article added, p. 416, § 1, effective April 18. **L. 94:** Entire section amended, p. 710, § 4, effective July 1. **L. 2016:** (3) added, (HB 16-1329), ch. 242, p. 988, § 2, effective August 10.

ANNOTATION

This section is the only part of the Colorado Limited Liability Company Act that addresses applying the common law principle of piercing the corporate veil in the limited liability company (LLC) context. Sheffield Servs. Co. v. Trowbridge, 211 P.3d 714 (Colo. App. 2009).

The plain language of subsection (1) does not prohibit a court from applying the equitable common law doctrine of piercing the corporate veil to hold a manager of an LLC personally liable for the LLC's alleged improper actions. Sheffield Servs. Co. v. Trowbridge, 211 P.3d 714 (Colo. App. 2009), overruled in Weinstein v. Colborne Foodbotics, LLC, 2013 CO 33, 302 P.3d 263.

It is presumed that, in adopting subsection (1), the general assembly did not intend to create a safe harbor for LLC managers to perpetrate fraud and deceit. To construe subsection (1) as precluding application of the common law doctrine of piercing the corporate veil to LLC managers would open the door to fraud. Sheffield Servs. Co. v. Trowbridge, 211 P.3d 714 (Colo. App. 2009), overruled in Weinstein v. Colborne Foodbotics, LLC, 2013 CO 33, 302 P.3d 263.

A court determining whether to pierce the corporate veil of an LLC must tread carefully in light of subsection (2), particularly where the company in question is a single-member LLC and where management of the LLC is provided under contract by a management company. Sedgwick Props. Dev. Corp. v. Hinds, 2019 COA 102, 456 P.3d 64.

Absent a statutory restriction, the common law piercing doctrine applies to LLC managers. Because allowing a manager of an LLC to hide behind the LLC's cloak of limited liability would promote injustice, protect fraud, or defeat legitimate creditors' claims, the equitable common law doctrine of piercing the corporate veil may be applied to hold an LLC manager personally liable for the LLC's improper actions. Sheffield Servs. Co. v. Trowbridge, 211 P.3d 714 (Colo. App. 2009), overruled in Weinstein v. Colborne Foodbotics, LLC, 2013 CO 33, 302 P.3d 263.

Absent statutory authority, the manager of an insolvent LLC does not owe the LLC's creditors the same fiduciary duty that an insolvent corporation's directors owe the

corporation's creditors. Since the LLC act does not extend corporation common law to an LLC in any instance except a veil-piercing claim, creditors of an LLC may not assert a claim of breach of fiduciary duty against managers of an LLC. Weinstein v. Colborne Foodbotics, LLC, 2013 CO 33, 302 P.3d 263 (overruling Sheffield Servs. Co. v. Trowbridge, 211 P.3d 714 (Colo. App. 2009)).

7-80-108. Effect of operating agreement - nonwaivable provisions - statute of frauds.

(1) (a) The operating agreement may contain any provisions for the affairs of the limited liability company and the conduct of its business to the extent such provisions are consistent with law. Except as otherwise provided in subsection (1.5), (2), or (3) of this section, an operating agreement governs the rights, duties, limitations, qualifications, and relations among the managers, the members, the members' assignees and transferees, and the limited liability company. Such provisions shall control over any provision of this article to the contrary except as set forth in subsection (1.5), (2), or (3) of this section. To the extent the operating agreement does not otherwise provide, this article shall control.

(b) A limited liability company is bound by any operating agreement of its members.

(c) An operating agreement may be entered into before, after, or at the time of filing of articles of organization and, whether entered into before, after, or at the time of such filing, may be made effective as of the formation of the limited liability company or as of the time or date provided in the operating agreement.

(1.5) To the extent that a member or manager or other person that is a party to, or is otherwise bound by, the operating agreement has duties, including, but not limited to, fiduciary duties, to a limited liability company or to another member, manager, or other person that is a party to or is otherwise bound by an operating agreement, the duties of such member, manager, or other person may be restricted or eliminated by provisions in the operating agreement, as long as any such provision is not manifestly unreasonable.

(2) An operating agreement may not:

(a) (Deleted by amendment, L. 2006, p. 855, § 20, effective July 1, 2006.)

(b) Unreasonably restrict the rights of members and managers under section 7-80-408;

(c) (Deleted by amendment, L. 2006, p. 855, § 20, effective July 1, 2006.)

(d) Eliminate the obligation of good faith and fair dealing under section 7-80-404 (3); except that the operating agreement may prescribe the standards by which the performance of the obligation is to be measured, if such standards are not unreasonable;

(d.5) Eliminate or modify the provisions of section 7-80-801 (1)(c)(I), except to extend the time set forth therein to a time not later than the first anniversary of the date of the termination of the membership of the last remaining member; or

(e) Restrict rights of, or impose duties on, persons other than the members, their assignees and transferees, and the limited liability company without the consent of such persons.

(2.5) (a) An operating agreement may contain one or more provisions concerning the enforcement, interpretation, construction, application, severability of provisions, integration, effect of parole evidence, and other matters with respect to the operating agreement or any of its provisions.

(b) Unless otherwise provided in the operating agreement, if any provision of an operating agreement or application thereof to any person or circumstance is unenforceable or otherwise invalid under subsection (1.5) or (2) of this section or otherwise, the provision shall be limited, construed, and applied in a manner that is valid and enforceable, and, in any event, the remaining provisions of the operating agreement shall be given effect without the invalid provision or application.

(c) Unless otherwise provided in the operating agreement with respect to the unenforceability, invalidity, or application of any provision of the operating agreement under subsection (1.5) or (2) of this section, when it is claimed or appears to the court that any provision of the operating agreement may violate subsection (1.5) or (2) of this section, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(3) Unless contained in a written operating agreement or other writing approved in accordance with a written operating agreement, no operating agreement may:

(a) (Deleted by amendment, L. 2004, p. 936, § 3, effective July 1, 2004.)

(b) (Deleted by amendment, L. 97, p. 1503, § 12, effective June 3, 1997.)

(c) (Deleted by amendment, L. 2004, p. 936, § 3, effective July 1, 2004.)

(d) Vary any requirement under this article that a particular action or provision be reflected in a writing.

(4) It is the intent of this article to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

(5) An operating agreement is not subject to any statute of frauds, including section 38-10-112, C.R.S., regarding void agreements, but not including any requirement under this article that a particular action or provision be reflected in a writing.

Source: L. 94: Entire section added, p. 711, § 5, effective July 1. **L. 97:** IP(3) and (3)(b) amended, p. 1503, § 12, effective June 3. **L. 2003:** (2)(d) amended, p. 2265, § 177, effective July 1, 2004. **L. 2004:** (2) and (3) amended and (4) added, p. 936, § 3, effective July 1. **L. 2005:** (2)(d) amended, p. 1203, § 2, effective October 1. **L. 2006:** (1) and (2) amended and (1.5) and (2.5) added, p. 855, § 20, effective July 1. **L. 2016:** (5) added, (HB 16-1329), ch. 242, p. 988, § 3, effective August 10.

ANNOTATION

Agreement that required prior written approval of any assignment of a member's interest controlled over statute making interests assignable. Condo v. Conners, 271 P.3d 524 (Colo. App. 2010), aff'd, 266 P.3d 1110 (Colo. 2011).

Any profit from a contingency fee agreement case belongs to an LLC, not the member or manager in charge of winding up the case. These profits must be distributed in accordance with the LLC's profit sharing agreement that existed at the time the LLC dissolved. LaFond v. Sweeney, 2015 CO 3, 343 P.3d 939.

Members of a dissolved LLC must split any profit derived from a contingency fee case pending upon dissolution of the LLC. LaFond v. Sweeney, 2015 CO 3, 343 P.3d 939.

7-80-109. Construction of article.

The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this article.

Source: L. 2004: Entire section added, p. 938, § 4, effective July 1.

PART 2

FORMATION

7-80-201. Limited liability company name. (Repealed)

Source: L. 90: Entire article added, p. 417, § 1, effective April 18. **L. 93:** (1) amended, p. 63, § 1, effective March 22; (4)(a) and (4)(c) amended, p. 859, § 20, effective July 1, 1994. **L. 94:** (4)(d) added, p. 88, § 15, effective July 1. **L. 97:** (4)(a) amended, p. 760, § 24, effective July 1, 1998. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-80-202. Reservation of name - repeal. (Repealed)

Source: L. 90: Entire article added, p. 418, § 1, effective April 18. **L. 2003:** (3) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

7-80-203. Formation.

(1) One or more persons may form a limited liability company by delivering articles of organization to the secretary of state for filing pursuant to part 3 of article 90 of this title. Any such person who is an individual shall be of the age of eighteen years or older. Such person or persons need not be members of the limited liability company after formation has occurred.

(2) Repealed.

Source: L. 90: Entire article added, p. 418, § 1, effective April 18. **L. 94:** (2) repealed, p. 712, § 6, effective July 1. **L. 97:** (1) amended, p. 1503, § 13, effective June 3. **L. 2002:** (1) amended, p. 1833, § 71, effective July 1; (1) amended, p. 1697, § 69, effective October 1. **L. 2003:** (1) amended, p. 2265, § 178, effective July 1, 2004. **L. 2004:** (1) amended, p. 1459, § 181, effective July 1.

7-80-204. Articles of organization.

(1) The articles of organization shall state:

(a) The domestic entity name of the limited liability company, which domestic entity name shall comply with part 6 of article 90 of this title;

(b) (Deleted by amendment, L. 94, p. 712, § 7, effective July 1, 1994.)

(b.5) The principal office address of the limited liability company's initial principal office;

(c) The registered agent name and registered agent address of the limited liability company's initial registered agent;

(d) The true name and mailing address of each person forming the limited liability company pursuant to section 7-80-203;

(e) That management of the limited liability company is vested in one or more managers or is vested in the members, whichever be the case;

(f) (Deleted by amendment, L. 2003, p. 2265, § 179, effective July 1, 2004.)

(g) That there is at least one member of the limited liability company; and

(h) Any other matters relating to the limited liability company or the articles of organization the persons forming the limited liability company determine to include therein.

(2) (Deleted by amendment, L. 2003, p. 2265, § 179, effective July 1, 2004.)

Source: L. 90: Entire article added, p. 418, § 1, effective April 18. **L. 94:** (1)(b), (1)(d), and (1)(e) amended and (1)(f) added, p. 712, § 7, effective July 1. **L. 97:** (2) amended, p. 1503, § 14, effective June 3. **L. 2003:** Entire section amended, p. 2265, § 179, effective July 1, 2004. **L. 2004:** (1)(b.5) and (1)(d) amended and (1)(g) and (1)(h) added, p. 1460, § 182, effective July 1.

7-80-205. Filing of articles of organization - repeal. (Repealed)

Source: L. 90: Entire article added, p. 419, § 1, effective April 18. **L. 2003:** (3) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

7-80-206. Appeal from secretary of state. (Repealed)

Source: L. 90: Entire article added, p. 419, § 1, effective April 18. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-80-207. Effect of filing of articles of organization.

A limited liability company is formed when its articles of organization become effective.

Source: L. 90: Entire article added, p. 419, § 1, effective April 18. **L. 2000:** (3) amended, p. 959, § 41, effective July 1. **L. 2002:** (2) amended, p. 1833, § 72, effective July 1; (2) amended, p. 1697, § 70, effective October 1. **L. 2003:** Entire section R&RE, p. 2266, § 180, effective July 1, 2004.

7-80-208. Notice of existence of limited liability company.

The fact that the articles of organization are on file in the records of the secretary of state is notice that the limited liability company is a limited liability company and is notice of all other facts stated therein that are required to be stated in the articles of organization by section 7-80-204.

Source: L. 90: Entire article added, p. 420, § 1, effective April 18. **L. 97:** Entire section amended, p. 1503, § 15, effective June 3. **L. 2003:** Entire section amended, p. 2266, § 181, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1460, § 183, effective July 1.

ANNOTATION

This notice provision applies only where a third party seeks to impose liability on a limited liability company's (LLC) members or managers simply because of their status as members or managers of the LLC. When a third party sues a manager or member of an LLC under an agency theory, the principles of agency law apply notwithstanding the Colorado Limited Liability Company Act's statutory notice rules. Water, Waste & Land, Inc. v. Lanham, 955 P.2d 997 (Colo. 1998).

The general assembly did not intend this notice provision to alter the partially disclosed principal doctrine. The legislature did not intend the notice language to relieve the agent of an LLC of the duty to disclose its identity in order to avoid personal liability. Water, Waste & Land, Inc. v. Lanham, 955 P.2d 997 (Colo. 1998).

Where an agent fails to disclose either the fact that he is acting on behalf of a principal or the identity of the principal, this notice provision cannot relieve the agent of liability to a third party. Water, Waste & Land, Inc. v. Lanham, 955 P.2d 997 (Colo. 1998).

When a third party deals with an agent acting on behalf of an LLC, the existence and identity of which has been disclosed, the

third party is conclusively presumed to know that the entity is an LLC and not a partnership or some other type of business organization. Water, Waste & Land, Inc. v. Lanham, 955 P.2d 997 (Colo. 1998).

7-80-209. Amendment of articles of organization.

(1) The articles of organization may be amended at any time for any purpose and shall be amended when:

(a) There is a change in the domestic entity name of the limited liability company;

(b) There is a false or erroneous statement in the articles of organization.

(c) and (d) (Deleted by amendment, L. 94, p. 713, § 8, effective July 1, 1994.)

(1.5) An amendment to the articles of organization is invalid unless approved by all of the members or in such other manner as may be provided in the operating agreement.

(2) (Deleted by amendment, L. 2003, p. 2266, § 182, effective July 1, 2004.)

(3) and (4) (Deleted by amendment, L. 2002, p. 1833, § 73, effective July 1, 2002; p. 1697, § 71, effective October 1, 2002.)

(5) A limited liability company amends its articles of organization by delivering articles of amendment to its articles of organization to the secretary of state, for filing pursuant to part 3 of article 90 of this title, stating:

(a) The domestic entity name of the limited liability company; and

(b) The amendment to the articles of organization.

Source: L. 90: Entire article added, p. 420, § 1, effective April 18. **L. 94:** (1)(c), (1)(d), and (2) amended and (1.5) added, p. 713, § 8, effective July 1. **L. 2002:** (2) to (4) amended, p. 1833, § 73, effective July 1; (2) to (4) amended, p. 1697, § 71, effective October 1. **L. 2003:** IP(1), (1)(a), and (2) amended, p. 2266, § 182, effective July 1, 2004. **L. 2004:** (1.5) amended, p. 938, § 5, effective July 1; (5) added, p. 1460, § 184, effective July 1.

PART 3

REGISTERED AGENTS, SERVICE OF PROCESS, AND ANNUAL REPORTS

Editor's note: This article was added in 1990, and this part 3 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 3 prior to 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

7-80-301. Limited liability companies - registered agents - service of process - periodic reports.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to limited liability companies formed under this article. Part 5 of article 90 of this title, providing for periodic reports, applies to limited liability companies formed under this article.

Source: L. 2003: Entire part R&RE, p. 2267, § 183, effective July 1, 2004. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 1995, § 9, effective August 11.

PART 4

MANAGEMENT

Editor's note: This article was added in 1990, and this part 4 was subsequently repealed and reenacted in 2004, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 4 prior to 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

7-80-401. Management of limited liability company.

(1) Except as provided in subsection (2) of this section, decisions with respect to a limited liability company shall be made by a majority of the members or, if the limited liability company has one or more managers, by a majority of the managers.

(2) The consent of each member is necessary to:

(a) Amend the articles of organization;

(b) Amend the operating agreement; and

(c) Authorize an act of the limited liability company that is not in the ordinary course of the business of the limited liability company.

(3) A person or persons who will be admitted as a member or members pursuant to section 7-80-701 (2) may, by unanimous consent, amend the operating agreement to be effective immediately before the admission of the person or persons.

Source: L. 2004: Entire part R&RE, p. 938, § 6, effective July 1. **L. 2006:** (1) amended and (3) added, p. 857, § 21, effective July 1.

Editor's note: This section is similar to former § 7-80-401 as it existed prior to 2004.

7-80-402. Designation of managers.

The members of a limited liability company, the articles of organization of which provide that management of the limited liability company is vested in one or more managers, may designate one or more persons to be managers. A manager who is an individual shall be eighteen years of age or older. Managers may be designated and removed by the consent of a majority of the members.

Source: L. 2004: Entire part R&RE, p. 939, § 6, effective July 1. **L. 2006:** Entire section amended, p. 857, § 22, effective July 1.

Editor's note: This section is similar to former § 7-80-402 as it existed prior to 2004.

7-80-403. Officers and other agents.

(1) A limited liability company may have one or more officers or other agents with such titles, rights, duties, and authority as the limited liability company may determine. An officer or an agent who is an individual shall be eighteen years of age or older. Except as provided in subsection (2) of this section, officers and other agents may be designated or removed, and their titles, rights, duties, and authority may be established, by the consent of a majority of the members or, if the limited liability company has one or more managers, by a majority of the managers.

(2) Officers and other agents may be given authority to do any act that is not in the ordinary course of the business of the limited liability company only with the consent of all of the members.

Source: L. 2004: Entire part R&RE, p. 939, § 6, effective July 1. **L. 2006:** Entire section amended, p. 857, § 23, effective July 1.

7-80-404. Duties of members and managers.

(1) In addition to the duties established elsewhere in this article, the duties that each member in a limited liability company in which management is vested in the members and that each manager owes to the limited liability company include the duties to:

(a) Account to the limited liability company and hold as trustee for it any property, profit, or benefit derived by the member or manager in the conduct or winding up of the limited liability company business or derived from a use by the member or manager of property of the limited liability company, including the appropriation of an opportunity of the limited liability company;

(b) Refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company business as or on behalf of a party having an interest adverse to the limited liability company; and

(c) Refrain from competing with the limited liability company in the conduct of the limited liability company business before the dissolution of the limited liability company.

(d) (Deleted by amendment, L. 2006, p. 857, § 24, effective July 1, 2006.)

(2) Each member in a limited liability company, the articles of organization of which provide that management is vested in the members, and each manager owes to the limited liability company a duty of care in the conduct and winding up of the business of the limited liability company, which shall be limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(3) Each member and each manager shall discharge the member's or manager's duties to the limited liability company and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(4) A member in a limited liability company, the articles of organization of which provide that management is vested in the members, or a manager does not violate a duty or obligation to the limited liability company solely because the member's or manager's conduct furthers the member's or manager's own interest.

(5) A member or a manager may lend money to, and transact other business with, the limited liability company, and as to each loan or transaction the rights and obligations of the member or manager may be exercised or performed in the same manner as those of a person who is not a member or manager, subject to other applicable law.

(6) A member is not entitled to remuneration for services performed for the limited liability company except for reasonable compensation for services rendered in winding up the business of the limited liability company.

Source: L. 2004: Entire part R&RE, p. 939, § 6, effective July 1. **L. 2006:** Entire section amended, p. 857, § 24, effective July 1. **L. 2016:** (6) added, (HB 16-1329), ch. 242, p. 989, § 4, effective August 10.

Editor's note: This section is similar to former § 7-80-406 as it existed prior to 2004.

ANNOTATION

Law reviews. For article, "No Paper Required: Business Entity Legislation Makes Life Easier for Business Lawyers", see 33 Colo. Law. 11 (June 2004).

An attorney who continues to represent a client in an existing case after a law firm dissolves does so on the firm's behalf, thus any income received by a member from winding up unfinished business belongs to the dissolved firm, and any attempt by the member to convert the business solely to his or her own business violated the duty owed to the dissolved firm. LaFond v. Sweeney, 2012 COA 27, 345 P.3d 932, aff'd, 2015 CO 3, 343 P.3d 939.

Any profit from a contingency fee agreement case belongs to an LLC, not the member or manager in charge of winding up the case. These profits must be distributed in accordance with the LLC's profit sharing agreement that existed at the time the LLC dissolved. LaFond v. Sweeney, 2015 CO 3, 343 P.3d 939.

A winding-up member or manager is not entitled to additional compensation for his or her post-dissolution work. LaFond v. Sweeney, 2015 CO 3, 343 P.3d 939.

A contingency fee agreement is an executory contract and therefore the business of an LLC. LaFond v. Sweeney, 2015 CO 3, 343 P.3d 939.

7-80-405. Members and managers as agents of the limited liability company.

(1) If the articles of organization provide that management of the limited liability company is vested in one or more managers:

(a) A member is not an agent of the limited liability company and has no authority to bind the limited liability company solely by virtue of being a member; and

(b) Each manager is an agent of the limited liability company for the purposes of its business and an act of a manager, including the execution of an instrument in the name of the limited liability company, for apparently carrying on in the ordinary course the business of the limited liability company or business of the kind carried on by the limited liability company binds the limited liability company, unless the manager had no authority to act for the limited liability company in the particular matter and the person with whom the manager was dealing had notice that the manager lacked authority.

(2) If the articles of organization provide that management of the limited liability company is vested in the members, each member is an agent of the limited liability company for the purposes of its business and an act of a member, including the execution of an instrument in the name of the limited liability company, for apparently carrying on in the ordinary course the business of the limited liability company or business of the kind carried on by the limited liability company binds the limited liability company, unless the member had no authority to act for the limited liability company in the particular matter and the person with whom the member was dealing had notice that the member lacked authority.

Source: L. 2004: Entire part R&RE, p. 940, § 6, effective July 1. **L. 2006:** Entire section amended, p. 858, § 25, effective July 1.

7-80-406. Business transactions of member or manager with the limited liability company. (Repealed)

Source: L. 2004: Entire part R&RE, p. 940, § 6, effective July 1. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

Editor's note: This section was similar to former § 7-80-409 as it existed prior to 2004.

7-80-407. Reimbursement and indemnification of members and managers.

A limited liability company shall reimburse a person who is or was a member or manager for payments made, and indemnify a person who is or was a member or manager for liabilities incurred by the person, in the ordinary course of the business of the limited liability company or for the preservation of its business or property, if such payments were made or liabilities incurred without violation of the person's duties to the limited liability company.

Source: L. 2004: Entire part R&RE, p. 940, § 6, effective July 1. **L. 2006:** Entire section amended, p. 859, § 26, effective July 1.

Editor's note: This section is similar to former § 7-80-410 as it existed prior to 2004.

7-80-408. Access to and confidentiality of information - records - accounting.

(1) Each member of a limited liability company has the right, subject to such reasonable standards as may be established by the members or managers pursuant to section 7-80-401 (1), to inspect and copy at the expense of the requesting member the following records of the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(a) True and full information regarding the business and financial condition of the limited liability company, including written resolutions and minutes, if any, of the limited liability company;

(b) A copy of the limited liability company's federal, state, and local income tax returns for each year;

(c) A current list of the name and last-known business, residence, or mailing address of each member and manager;

(d) A copy of the limited liability company's articles of organization and a copy of any written operating agreement of the limited liability company;

(e) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and that each member has agreed to contribute in the future, and the date on which each became a member; and

(f) Other information regarding the affairs of the limited liability company as is just and reasonable.

(2) Each manager shall have the right to examine all of the information described in paragraph (a) of subsection (1) of this section for a purpose reasonably related to the position of manager.

(3) Each member of a limited liability company and each manager shall have the right to keep confidential from the members, for such period of time as the members or managers deem reasonable, any information that the members or managers reasonably believe to be in the nature of trade secrets or that the limited liability company is required by law or by agreement with a third party to keep confidential.

(4) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(5) Any demand by a member under this section shall be in writing and shall state the purpose of the demand.

(6) A member of a limited liability company shall have the right to have a formal accounting of limited liability company affairs whenever circumstances render it just and reasonable.

Source: L. 2004: Entire part R&RE, p. 941, § 6, effective July 1. **L. 2006:** (1)(d) and (3) amended, p. 859, § 27, effective July 1. **L. 2007:** (6) added, p. 226, § 16, effective May 29.

Editor's note: This section is similar to former § 7-80-411 as it existed prior to 2004.

PART 5

FINANCE

7-80-501. Form of contribution.

The contribution of a member may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in the operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company. Unless otherwise provided in the operating agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a membership interest in the limited liability company.

Source: L. 90: Entire article added, p. 431, § 1, effective April 18. **L. 2004:** Entire section amended, p. 942, § 7, effective July 1. **L. 2005:** Entire section amended, p. 1203, § 3, effective October 1.

7-80-502. Liability for contributions.

(1) A member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the limited liability records required to be kept by section 7-80-408, of such contribution that has not been made.

(2) The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this article may be compromised only by consent in writing of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation.

(3) No promise by a member to contribute to the limited liability company is enforceable unless set out in a writing signed by the member.

Source: L. 90: Entire article added, p. 431, § 1, effective April 18. **L. 94:** (1) and (2) amended, p. 716, § 18, effective July 1. **L. 2004:** (1) amended, p. 942, § 8, effective July 1.

7-80-503. Sharing of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members and among classes of members on the basis of the value, as stated in the limited liability company records required to be kept pursuant to section 7-80-408, of the contributions made by each member.

Source: L. 90: Entire article added, p. 431, § 1, effective April 18. **L. 94:** Entire section amended, p. 717, § 19, effective July 1. **L. 2004:** Entire section amended, p. 942, § 9, effective July 1.

ANNOTATION

Law reviews. For article, "Allocation of LLC Profits and Losses and the Basic Economic Effect Test", see 40 Colo. Law. 45 (Apr. 2011).

7-80-504. Sharing of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members on the basis of the value, as stated in the limited liability company records required to be kept pursuant to section 7-80-408, of the contributions made by each member.

Source: L. 90: Entire article added, p. 431, § 1, effective April 18. **L. 94:** Entire section amended, p. 717, § 20, effective July 1. **L. 2004:** Entire section amended, p. 942, § 10, effective July 1.

PART 6

DISTRIBUTIONS AND RESIGNATION

Law reviews: For article, "Limited Liability Companies: Structuring Members' Economic Rights", see 34 Colo. Law. 73 (Aug. 2005).

7-80-601. Interim distributions.

Except as provided in this part 6, a member is entitled to receive distributions from a limited liability company before the member's resignation from the limited liability company and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events stated in the operating agreement or as otherwise agreed by all of the members.

Source: L. 90: Entire article added, p. 432, § 1, effective April 18. **L. 97:** Entire section amended, p. 1505, § 18, effective June 3. **L. 2003:** Entire section amended, p. 2267, § 186, effective July 1, 2004.

7-80-602. Resignation of member.

A member may resign from a limited liability company at any time by giving notice to the other members, but, if the resignation violates the operating agreement, the limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning member.

Source: L. 90: Entire article added, p. 432, § 1, effective April 18. **L. 94:** Entire section amended, p. 717, § 21, effective July 1. **L. 2004:** Entire section amended, p. 943, § 11, effective July 1.

7-80-603. Interest of member upon resignation.

A member who has resigned shall have no right to participate in the management of the business and affairs of the limited liability company and is entitled only to receive the share of the profits or other compensation by way of income and the return of contributions, to which such member would have been entitled if the member had not resigned.

Source: L. 90: Entire article added, p. 432, § 1, effective April 18. **L. 94:** Entire section amended, p. 717, § 22, effective July 1. **L. 2007:** Entire section amended, p. 227, § 17, effective May 29.

7-80-604. Distribution in kind.

A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. A member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

Source: L. 90: Entire article added, p. 432, § 1, effective April 18. **L. 94:** Entire section amended, p. 718, § 23, effective July 1. **L. 2004:** Entire section amended, p. 1460, § 185, effective July 1.

7-80-605. Right to distribution.

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

Source: L. 90: Entire article added, p. 432, § 1, effective April 18. **L. 2004:** Entire section amended, p. 1461, § 186, effective July 1.

7-80-606. Limitations on distribution.

(1) A limited liability company shall not make a distribution to a member to the extent that at the time of distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their membership interests and liabilities for which the recourse of creditors is limited to a specific property of the limited liability company, exceed the fair value of the assets of the limited liability company; except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection (1), the term "distribution" shall not include payments to the extent that the payments do not exceed amounts equal to or constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(2) A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(3) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this article or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three-year period and an adjudication of liability against such member is made in the said action.

Source: L. 90: Entire article added, p. 432, § 1, effective April 18. **L. 2006:** Entire section amended, p. 860, § 28, effective July 1. **L. 2007:** (1) amended, p. 227, § 18, effective May 29.

ANNOTATION

Absent express statutory authority, creditors of a limited liability company (LLC) may not assert a claim against members of the LLC for unlawful distribution. Under this section, only the LLC may assert that claim against its members. Weinstein v. Colborne Foodbotics, LLC, 2013 CO 33, 302 P.3d 263.

7-80-607. Liability upon return of contribution. (Repealed)

Source: L. 90: Entire article added, p. 432, § 1, effective April 18. **L. 94:** (1) repealed, p. 718, § 24, effective July 1. **L. 2004:** (2) and (3) amended, p. 943, § 12, effective July 1. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

PART 7

MEMBERS

7-80-700.3. Definitions.

As used in this part 7, unless the context otherwise requires:

(1) "Derivative proceeding" means a civil suit in the right of a domestic limited liability company or, to the extent provided in section 7-80-719, in the right of a foreign limited liability company.

Source: L. 2025: Entire section added with relocations, (SB 25-275), ch. 377, p. 2033, § 25, effective August 6.

Editor's note: This section is similar to former § 7-80-713 (2) as it existed prior to 2025.

7-80-701. Admission of members.

(1) After the filing of a limited liability company's original articles of organization, one or more persons may be admitted as an additional member or members upon the consent of all members.

(2) At any time that a limited liability company has no members, upon the unanimous consent of all the persons holding by assignment or transfer any of the membership interest of the last remaining member of the limited liability company, one or more persons, including an assignee or transferee of the last remaining member, may be admitted as a member or members.

Source: L. 90: Entire article added, p. 433, § 1, effective April 18. **L. 2004:** Entire section amended, p. 943, § 13, effective July 1. **L. 2006:** Entire section amended, p. 860, § 29, effective July 1.

ANNOTATION

Agreement that required prior written approval of any assignment of a member's interest prevented putative assignee from becoming a member, therefore the putative assignee had no enforceable membership interest. Condo v. Conners, 271 P.3d 524 (Colo. App. 2010), aff'd, 266 P.3d 1110 (Colo. 2011).

7-80-702. Interest in limited liability company - transferability of interest.

(1) The interest of each member in a limited liability company constitutes the personal property of the member and may be assigned or transferred. Unless the assignee or transferee is admitted as a member, the assignee or transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled and shall have no right to participate in the management of the business and activities of the limited liability company or to become a member.

(2) A member ceases to be a member upon assignment or transfer of all the member's membership interest. A person to whom all of a member's membership interest has been assigned or transferred and who has been admitted as a member has all the rights and powers and is subject to all the restrictions and liabilities of the assignor or transferor with respect to the portion of the membership interest assigned or transferred. The admission of the assignee or transferee releases the assignor or transferor from liability to the limited liability company other than for liabilities under section 7-80-502 or 7-80-606.

(3) A person to whom a portion of a member's membership interest has been assigned or transferred and who has been admitted as a member has all the rights and powers and is subject to all the restrictions and liabilities of the assignor or transferor with respect to the portion of the membership interest assigned or transferred. The admission of the assignee or transferee terminates the assignor's or transferor's rights and powers as a member with respect to the portion of the membership interest assigned or transferred and releases the assignor or transferor from liability to the limited liability company with respect to the portion of the membership interest assigned or transferred other than for liabilities under section 7-80-502 or 7-80-606.

Source: L. 90: Entire article added, p. 433, § 1, effective April 18. **L. 94:** (1) amended, p. 718, § 25, effective July 1. **L. 2004:** Entire section amended, p. 943, § 14, effective July 1. **L. 2006:**

Entire section amended, p. 861, § 30, effective July 1. **L. 2007:** (2) amended, p. 227, § 19, effective May 29.

ANNOTATION

An LLC member's interest in the LLC is an intangible personal property interest, and, for purposes of enforcing a charging order, that interest is located in the state where the LLC was formed. JP Morgan Chase Bank, N.A. v. McClure, 2017 CO 22, 393 P.3d 955.

Where there are no other members in the limited liability company (LLC), the debtor's bankruptcy filing effectively assigned her entire membership interest in the LLC to the bankruptcy estate, and the trustee obtained all of the debtor's rights, including the right to control the management of the LLC. In re Albright, 291 B.R. 538 (Bankr. D. Colo. 2003).

Because the trustee became the sole member of the LLC upon the debtor's bankruptcy filing, the trustee controls, directly or indirectly, all governance of that entity, including any decision regarding liquidation of the entity's assets. Therefore, the trustee may cause the LLC to sell its property and distribute net proceeds to the bankruptcy estate. Alternatively, the trustee may elect to distribute the LLC's property to the bankruptcy estate, and, in turn, liquidate the property himself. In re Albright, 291 B.R. 538 (Bankr. D. Colo. 2003).

Agreement that required prior written approval of any assignment of a member's interest prevailed in conflict with this section. Condo v. Conners, 271 P.3d 524 (Colo. App. 2010), aff'd, 266 P.3d 1110 (Colo. 2011).

Membership interest may be a "security". The presumption that a general partnership interest is not a security is not applicable to a limited liability partnership interest in Colorado. Instead, the structure of the entity and the terms of the agreement will control. Toothman v. Freeborn & Peters, 80 P.3d 804 (Colo. App. 2002).

Colorado law requires a secured creditor to enforce the security agreement and become admitted as a member before voting rights associated with membership interests pledged as collateral can be exercised. Thus, neither the pledging of the membership rights as security nor the declaration of a breach by the secured party is sufficient to divest the pledging member of the right to vote. To hold otherwise would permit someone who is not a member or manager to control a limited liability company. In re Crossover Fin. I, LLC, 477 B.R. 196 (Bankr. D. Colo. 2012).

7-80-703. Rights of creditor against a member.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount

of the judgment with interest thereon and may then or later appoint a receiver of the member's share of the profits and of any other money due or to become due to the member in respect of the limited liability company and make all other orders, directions, accounts, and inquiries that the debtor member might have made, or that the circumstances of the case may require. To the extent so charged, except as provided in this section, the judgment creditor has only the rights of an assignee or transferee of the membership interest. The membership interest charged may be redeemed at any time before foreclosure. If the sale is directed by the court, the membership interest may be purchased without causing a dissolution with separate property by any one or more of the members. With the consent of all members whose membership interests are not being charged or sold, the membership interest may be purchased without causing a dissolution with property of the limited liability company. This article shall not deprive any member of the benefit of any exemption laws applicable to the member's membership interest.

Source: L. 90: Entire article added, p. 433, § 1, effective April 18. **L. 97:** Entire section amended, p. 1505, § 19, effective June 3. **L. 2006:** Entire section amended, p. 862, § 31, effective July 1.

ANNOTATION

Law reviews. For article, "Charging Partnership and LLC Interests To Satisfy Debts of Individuals", see 23 Colo. Law. 2743 (1994).

A charging order under this section is not an exclusive remedy for a limited liability company (LLC) judgment creditor member seeking to enforce a judgment against a judgment debtor's interest in the LLC. Although this section is silent on whether it provides an exclusive remedy, the general assembly's varied approach to exclusivity shows that it could have specified that a charging order remedy is exclusive but did not do so in this section. Bartch v. Barch, 111 F.4th 1043 (10th Cir. 2024).

The priority of charging orders issued against Colorado limited liability companies is determined by first-in-time service of charging orders enforceable in the state. Charging orders that are enforceable in Colorado include both those issued by state courts as well as foreign charging orders that have been domesticated in state court. McClure v. JP Morgan Chase Bank, N.A., 2015 COA 117, 395 P.3d 1123, aff'd, 2017 CO 22, 393 P.3d 955.

Where there are no other members in the limited liability company (LLC), the debtor's bankruptcy filing effectively assigned her entire membership interest in the LLC to the bankruptcy estate, and the trustee obtained all of the debtor's rights, including the right to control the management of the LLC. In re Albright, 291 B.R. 538 (Bankr. D. Colo. 2003).

Because the trustee became the sole member of the LLC upon the debtor's bankruptcy filing, the trustee controls, directly or indirectly, all governance of that entity, including any decision regarding liquidation of the entity's assets. Therefore, the trustee may cause the LLC to sell its property and distribute net proceeds to the bankruptcy estate. Alternatively, the trustee may elect to distribute the LLC's property to the bankruptcy estate, and, in turn, liquidate the property himself. In re Albright, 291 B.R. 538 (Bankr. D. Colo. 2003).

7-80-704. Deceased or incompetent members who are individuals - dissolved or terminated members who are legal entities.

(1) If a member who is an individual dies or a court of competent jurisdiction appoints a guardian or general conservator for the member, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the powers of an assignee or transferee of the member.

(2) If a member other than an individual is dissolved or terminated, the legal representative or successor of the member may exercise all of the powers of an assignee or transferee of the member.

(3) (Deleted by amendment, L. 2006, p. 862, § 32, effective July 1, 2006.)

Source: L. 90: Entire article added, p. 433, § 1, effective April 18. **L. 94:** Entire section amended, p. 718, § 26, effective July 1. **L. 2004:** (1) amended, p. 1461, § 187, effective July 1. **L. 2006:** (2) and (3) amended, p. 862, § 32, effective July 1.

7-80-705. Liability of members and managers.

Members and managers of limited liability companies are not liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company.

Source: L. 90: Entire article added, p. 434, § 1, effective April 18.

ANNOTATION

A member or manager of a limited liability company (LLC) who commits a tort in the scope of his or her employment is liable for the torts he or she commits,

even in the course of employment. While an officer of a corporation cannot be held personally liable for a corporation's tort solely by reason of his or her official capacity, an officer may be held personally liable for his or her individual acts of negligence even though committed on behalf of the corporation, which is also held liable. This rule applies equally to a manager of an LLC. All that is needed for an LLC's manager or member to be personally liable for a tort is evidence that the individual was directly involved in the conduct through conception or authorization. The corporate form does not protect managers or members of an LLC from liability for torts they individually committed — even if the torts were committed in the course and scope of their employment by, or relationship to, the LLC. And the fact that a defendant is at all times acting on behalf of the corporation does not relieve the defendant of liability. Levin v. Five Corners Strategies, 541 F. Supp. 3d 1262 (D. Colo. 2021).

7-80-706. Voting.

(1) Subject to the provisions of this article that require majority or unanimous consent, vote, or agreement of the members, the operating agreement may grant to all or a stated group of the members the right to consent, vote, or agree, on a per capita or other basis, upon any matter.

(2) Any member may vote in person or by proxy.

Source: L. 90: Entire article added, p. 434, § 1, effective April 18. **L. 94:** (2) amended, p. 719, § 27, effective July 1. **L. 2003:** (1) amended, p. 2267, § 187, effective July 1, 2004.

7-80-707. Meetings of members. (Repealed)

Source: L. 90: Entire article added, p. 434, § 1, effective April 18. **L. 94:** (3) amended, p. 719, § 28, effective July 1. **L. 2003:** (1) and (4)(b) amended, p. 2268, § 188, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 944, § 15, effective July 1; entire section repealed, p. 1461, § 188, effective July 1.

7-80-708. Quorum of members - vote required. (Repealed)

Source: L. 90: Entire article added, p. 435, § 1, effective April 18. **L. 94:** Entire section amended, p. 719, § 29, effective July 1. **L. 2004:** Entire section repealed, p. 944, § 16, effective July 1; entire section repealed, p. 1462, § 189, effective July 1.

7-80-709. Notice of members' meetings. (Repealed)

Source: L. 90: Entire article added, p. 435, § 1, effective April 18. **L. 94:** (3) amended, p. 719, § 30, effective July 1. **L. 2004:** Entire section repealed, p. 944, § 17, effective July 1; entire section repealed, p. 1462, § 190, effective July 1.

7-80-710. Waiver of notice. (Repealed)

Source: L. 90: Entire article added, p. 435, § 1, effective April 18. **L. 2004:** Entire section repealed, p. 945, § 18, effective July 1; entire section repealed, p. 1462, § 191, effective July 1.

7-80-711. Action by members without a meeting. (Repealed)

Source: L. 90: Entire article added, p. 435, § 1, effective April 18. **L. 94:** (1) amended, p. 719, § 31, effective July 1. **L. 2003:** (1) amended, p. 2268, § 189, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 945, § 19, effective July 1; entire section repealed, p. 1463, § 192, effective July 1.

7-80-712. Information and accounting. (Repealed)

Source: L. 90: Entire article added, p. 436, § 1, effective April 18. **L. 2003:** IP(1)(b) amended, p. 2268, § 190, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 946, § 20, effective July 1.

7-80-713. Derivative proceeding - standing.

(1) A member may commence or maintain a derivative proceeding pursuant to this part 7 only where:

(a) The member was a member of the limited liability company at the time of the act or omission complained of or the membership interest in such company thereafter devolved by operation of law; and

(b) It appears that the member fairly and adequately represents the interests of the members similarly situated in enforcing the right of the limited liability company.

(2) Repealed.

Source: L. 2002: Entire section added, p. 1725, § 160, effective October 1. **L. 2025:** (2) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

Editor's note: Subsection (2) was relocated to § 7-80-700.3 in 2025.

ANNOTATION

Law reviews. For article, "Business Entity Legislation 2002: Filing Procedures and LLC Changes", see 31 Colo. Law. 55 (Nov. 2002).

7-80-714. Derivative proceeding - demand.

(1) No member shall commence a derivative proceeding pursuant to this part 7 unless:

(a) A written demand has been made upon the limited liability company to take suitable action; and

(b) Thirty days have expired from the date the demand was made; except that the thirty-day limitation shall not be required where:

(I) The member has been notified prior to the expiration of the thirty-day period that the demand has been rejected by the limited liability company; or

(II) Irreparable injury to the limited liability company would result from waiting for the expiration of the thirty-day period.

Source: L. 2002: Entire section added, p. 1725, § 160, effective October 1.

7-80-715. Stay of derivative proceeding.

For the purpose of allowing the limited liability company time to undertake an inquiry into the allegations made in a demand or complaint commenced pursuant to this part 7, the court may stay any derivative proceeding for such period as the court deems appropriate.

Source: L. 2002: Entire section added, p. 1725, § 160, effective October 1.

7-80-716. Dismissal of derivative proceeding.

(1) A derivative proceeding commenced pursuant to this part 7 shall be dismissed by the court on motion by the limited liability company if any one of the groups specified in subsection (2) of this section has determined in good faith, after conducting an inquiry upon which the determination is based, that the maintenance of the derivative action is not in the best interests of the limited liability company.

(2) (a) Subject to the requirements of paragraph (b) of this subsection (2), the determination whether the maintenance of the derivative proceeding is in the best interests of the limited liability company shall be made by the independent manager of the limited liability company or, where there is more than one such manager, by a majority of said managers; except that, if there is no independent manager of the limited liability company or if the majority of such managers is unable to make the determination, the determination shall be made by a majority of the independent members of the limited liability company.

(b) If the determination is not made pursuant to paragraph (a) of this subsection (2), the determination shall be made by the person, or, in the case of more than one person, by a majority of such persons, sitting upon a panel of one or more persons appointed by a court upon motion filed with the court by the limited liability company for such purposes.

(3) The court shall appoint only independent persons to the panel described in paragraph (b) of subsection (2) of this section.

(4) None of the following shall by itself cause a person not to be considered independent for purposes of subsection (2) of this section:

(a) The naming of the person as a defendant in the derivative proceeding or as a person against whom action is demanded;

(b) The approval by such person of the act being challenged in the derivative proceeding or demand where the act did not result in personal benefit to such person;

(c) The making of the demand pursuant to section 7-80-714 or the commencement of the derivative proceeding pursuant to this section.

(5) Subject to section 7-80-717, a panel appointed by the court pursuant to paragraph (b) of subsection (2) of this section shall have such authority to continue, settle, or discontinue the derivative proceeding as the court may confer upon such panel.

(6) The plaintiff in the derivative proceeding shall have the burden of proving that any of the requirements of subsections (1) and (2) of this section have not been met.

Source: L. 2002: Entire section added, p. 1725, § 160, effective October 1.

ANNOTATION

A decision-maker is "independent" within the meaning of this section if he or she has neither a stake in the litigation nor a relationship with a defendant that would preclude making an unbiased judgment as to whether dismissal of a derivative action is in the limited liability company's (LLC's) best interests. Business, personal, or familial relationships with a defendant raise a question about whether the decision-maker is independent, but they are not dispositive. A court may find, under the facts before it in a given case, that the specific relationship at issue would not interfere with the decision-maker's independence. Young v. Bush, 2012 COA 47, 277 P.3d 916.

Trial court should have allowed the plaintiff discovery to establish whether business and family relationships interfered with the LLC members' ability to exercise independent, unbiased judgment regarding maintenance of a derivative action when the facts set forth in plaintiff's affidavit showed relationships sufficient to create a material question of fact as to the independence of the LLC members who made the best interests determination. Young v. Bush, 2012 COA 47, 277 P.3d 916.

An inquiry in a derivative proceeding under this section may be less searching and detailed than the investigations in corporate or limited partnership derivative action cases. The independence of the person making the determination regarding whether the derivative proceeding is in the best interests of the LLC is a matter of degree rather than an absolute. Young v. Bush, 2012 COA 47, 277 P.3d 916.

While subsection (1) does not appear to contemplate production of a written report or an investigation as wide-ranging as those required in corporate derivative actions, it nevertheless requires that there be an inquiry producing facts sufficient to

enable LLC members to make an informed and good-faith decision on whether maintenance of a derivative action is in the LLC's best interests. Young v. Bush, 2012 COA 47, 277 P.3d 916.

7-80-717. Discontinuance or settlement of derivative proceeding.

No derivative proceeding commenced pursuant to this part 7 shall be discontinued or settled without the approval of the court. Where the court determines that a proposed discontinuance or settlement will substantially affect the interests of the members of the limited liability company, the court shall direct that notice be given to the members affected.

Source: L. 2002: Entire section added, p. 1726, § 160, effective October 1.

7-80-718. Payment of expenses - derivative proceeding.

On the termination of a derivative proceeding commenced pursuant to this part 7, where the court finds that the proceeding has resulted in a substantial benefit to the limited liability company, the court may order the limited liability company to pay the plaintiff's reasonable expenses, including attorney fees, incurred by the plaintiff in connection with the maintenance of such proceeding. On the termination of a derivative proceeding commenced pursuant to this part 7, where the court finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose, the court may order the plaintiff to pay any of the defendant's reasonable expenses, including attorney fees, incurred by the defendant in connection with the defense of such proceeding.

Source: L. 2002: Entire section added, p. 1726, § 160, effective October 1.

7-80-719. Applicability of derivative proceeding to foreign limited liability companies.

In any derivative proceeding in the right of a foreign limited liability company, the right of a person to commence or maintain a derivative proceeding in the right of a foreign limited liability company and any matters raised in such proceeding covered by sections 7-80-713 to 7-80-718 shall be governed by the law of the jurisdiction under which the foreign limited liability company was formed; except that any matters raised in such proceeding covered by sections 7-80-715 and 7-80-717 shall be governed by the law of this state.

Source: L. 2002: Entire section added, p. 1727, § 160, effective October 1. **L. 2003:** Entire section amended, p. 2268, § 191, effective July 1, 2004.

PART 8

DISSOLUTION

Editor's note: This article was added in 1990, and this part 8 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 8 prior to 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

SUBPART 1

VOLUNTARY DISSOLUTION

7-80-801. Dissolution - time and notice of dissolution.

(1) A limited liability company formed under this article is dissolved:

(a) Upon the agreement of all members;

(b) At the time or upon the occurrence of the events stated in the operating agreement; or

(c) After the limited liability company ceases to have members, on the earlier of:

(I) The ninety-first day after the limited liability company ceases to have members unless, prior to that date, a person has been admitted as a member; or

(II) The date on which a statement of dissolution of the limited liability company becomes effective pursuant to section 7-90-304.

Source: L. 2003: Entire part R&RE, p. 2269, § 192, effective July 1, 2004. **L. 2004:** Entire section amended, p. 946, § 21, effective July 1. **L. 2006:** Entire section amended, p. 862, § 33, effective July 1.

Editor's note: This section is similar to former § 7-80-801 as it existed prior to 2004.

7-80-802. Statement of dissolution.

(1) Upon dissolution, the limited liability company shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of dissolution stating:

(a) The domestic entity name of the limited liability company; and

(b) The principal office address of the limited liability company's principal office.

(c) and (d) (Deleted by amendment, L. 2004, p. 1463, § 193, effective July 1, 2004.)

(2) A limited liability company is dissolved as provided in section 7-80-801.

(3) For purposes of sections 7-80-405 and 7-80-803.5, a person who is not a manager or member has notice of the dissolution of a limited liability company on the earlier of:

(a) The ninetieth day after the limited liability company's statement of dissolution is on file with the secretary of state; or

(b) The date on which such person first has actual knowledge of the dissolution.

Source: L. 2003: Entire part R&RE, p. 2269, § 192, effective July 1, 2004. **L. 2004:** (1) amended, p. 1463, § 193, effective July 1. **L. 2006:** (2) amended and (3) added, p. 863, § 34, effective July 1.

Editor's note: This section is similar to former § 7-80-806 as it existed prior to 2004.

7-80-803. Effect of dissolution.

(1) A dissolved limited liability company continues its existence as a limited liability company but shall not carry on any business except as is appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its members;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its members; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) A dissolved limited liability company may dispose of claims against it pursuant to sections 7-90-911 and 7-90-912.

Source: L. 2003: Entire part R&RE, p. 2269, § 192, effective July 1, 2004. **L. 2006:** (2) added, p. 863, § 35, effective July 1.

Editor's note: This section is similar to former § 8-80-807 as it existed prior to 2004.

ANNOTATION

A pending contingency fee agreement case is business of a dissolved LLC. LaFond v. Sweeney, 2015 CO 3, 343 P.3d 939.

7-80-803.3. Right to wind up business.

(1) After dissolution, the manager or, if there is no manager, any member may wind up the limited liability company's business, but on application of any member, member's legal representative, or member's assignee or transferee, the district court, for good cause shown, may order judicial supervision of the winding up.

(2) The legal representative, assignee, or transferee of the last remaining member may wind up the limited liability company's business if the limited liability company dissolves.

(3) A person winding up a limited liability company's business may preserve the business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle disputes, settle and close the limited liability company's business, dispose of and transfer the limited liability company's property, discharge or provide for obligations of the limited liability company, distribute the assets of the limited liability company pursuant to section 7-80-803 (1)(d), and perform other necessary acts.

Source: L. 2006: Entire section added, p. 863, § 36, effective July 1.

ANNOTATION

A pending contingency fee agreement case is business of a dissolved LLC. LaFond v. Sweeney, 2015 CO 3, 343 P.3d 939.

7-80-803.5. Manager's or member's power to bind limited liability company after dissolution.

(1) Subject to section 7-80-802 (3), a limited liability company is bound by a manager's act or, in the case of a limited liability company, the articles of organization of which provide that management is vested in members, a member's act after dissolution that:

(a) Is appropriate for winding up the limited liability company's business; or

(b) Would have bound the limited liability company under section 7-80-405 before dissolution, if the other party to the transaction did not have notice of the dissolution.

Source: L. 2006: Entire section added, p. 863, § 36, effective July 1.

7-80-804. Disposition of known claims by notification. (Repealed)

Source: L. 2003: Entire part R&RE, p. 2269, § 192, effective July 1, 2004. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-80-805. Disposition of claims by publication. (Repealed)

Source: L. 2003: Entire part R&RE, p. 2270, § 192, effective July 1, 2004. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-80-806. Enforcement of claims against dissolved limited liability company. (Repealed)

Source: L. 2003: Entire part R&RE, p. 2271, § 192, effective July 1, 2004. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

SUBPART 2

ADMINISTRATIVE DISSOLUTION

7-80-807. Grounds for administrative dissolution. (Repealed)

Source: L. 2003: Entire part R&RE, p. 2271, § 192, effective July 1, 2004. **L. 2004:** IP(1) amended, p. 1463, § 194, effective July 1. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-80-808. Procedure for and effect of administrative dissolution. (Repealed)

Source: L. 2003: Entire part R&RE, p. 2272, § 192, effective July 1, 2004. **L. 2004:** (1) and (2) amended, p. 946, § 22, effective July 1; (1) and (2) amended, p. 1463, § 195, effective July 1. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

SUBPART 3

JUDICIAL DISSOLUTION

7-80-809. Approval by judicial act. (Repealed)

Source: L. 2003: Entire part R&RE, p. 2272, § 192, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1464, § 196, effective July 1.

7-80-810. Judicial dissolution.

(1) A limited liability company may be dissolved in a proceeding by the attorney general if it is established that:

(a) The limited liability company obtained its articles of organization through fraud; or

(b) The limited liability company has continued to exceed or abuse the authority conferred upon it by law.

(2) A limited liability company may be dissolved in a proceeding by or for a member or manager of the limited liability company if it is established that it is not reasonably practicable to

carry on the business of the limited liability company in conformity with the operating agreement of said company.

(3) A limited liability company may be dissolved in a proceeding by a creditor of the limited liability company if it is established that:

(a) The creditor's claim has been reduced to judgment, execution upon such judgment has been returned unsatisfied, and the limited liability company is insolvent; or

(b) The limited liability company is insolvent and the limited liability company has admitted in writing that the creditor's claim is due and owing.

(4) (a) If a limited liability company has been dissolved by voluntary action taken under subpart 1 of this part 8:

(I) The limited liability company may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with section 7-80-803; and

(II) The attorney general, a member, a manager, or a creditor, as the case may be, may bring a proceeding to wind up and liquidate the business and affairs of the limited liability company under judicial supervision in accordance with section 7-80-803, upon establishing the grounds set forth for such person, respectively, in subsections (1) to (3) of this section.

(b) As used in sections 7-80-811 to 7-80-813, a "judicial proceeding brought to dissolve a limited liability company" 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 business and affairs of a limited liability company shall be wound up and liquidated under judicial supervision.

Source: L. 2003: Entire part R&RE, p. 2273, § 192, effective July 1, 2004. **L. 2004:** (4)(b) amended, p. 1464, § 197, effective July 1. **L. 2005:** IP(4)(a) amended, p. 1219, § 28, effective October 1.

Editor's note: This section is similar to former § 7-80-808 as it existed prior to 2004.

ANNOTATION

Law reviews. For article, "Business Entity Legislation 2002: Filing Procedures and LLC Changes", see 31 Colo. Law. 55 (Nov. 2002).

A limited liability company (LLC) may be dissolved if a party seeking a judicial dissolution shows that the managers and members of the company are unable to

pursue the purposes for which the company was formed in a reasonable, sensible, and feasible manner. Gagne v. Gagne, 2014 COA 127, 338 P.3d 1152.

"Not reasonably practicable", as used in subsection (2), is a standard that requires consideration of a number of factors, none of which is necessarily dispositive. Where there are genuine issues of material fact relating to these factors, summary judgment on a request for judicial dissolution of an LLC is not appropriate. Gagne v. Gagne, 2014 COA 127, 338 P.3d 1152.

Whether to order dissolution of a limited liability company under subsection (2) is ultimately a decision within the court's discretion. Gagne v. Gagne, 2019 COA 42, 459 P.3d 686.

7-80-811. Procedure for judicial dissolution.

(1) (a) A judicial proceeding by the attorney general to dissolve a limited liability company must be brought:

(I) In the district court for the county in this state in which the street address of the limited liability company's principal office or the street address of its registered agent is located;

(II) If the limited liability company 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 judicial proceeding brought by a party named in section 7-80-810 to dissolve a limited liability company must be brought:

(I) In the district court for the county in this state in which the street address of the limited liability company's principal office is located;

(II) If the limited liability company 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 limited liability company has no registered agent, in the district court for the city and county of Denver.

(2) It is not necessary to make managers or members parties to a judicial proceeding to dissolve a limited liability company unless relief is sought against them individually.

(3) A court in a judicial proceeding brought to dissolve a limited liability company 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 limited liability company's assets wherever located, and carry on the business of the limited liability company until a full hearing can be held.

Source: L. 2003: Entire part R&RE, p. 2274, § 192, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1464, § 198, effective July 1. **L. 2006:** (2) amended, p. 864, § 37, effective July 1. **L. 2026:** (1) amended, (HB 26-1088), ch. 226, p. 1314, § 4, 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.

7-80-812. Receivership or custodianship.

(1) A court in a judicial proceeding brought to dissolve a limited liability company may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the limited liability company. 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 limited liability company 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 as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(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:

(a) The receiver:

(I) May dispose of all or any part of the property of the limited liability company wherever located, at a public or private sale, if authorized by the court; and

(II) May sue and defend in the receiver's own name as receiver of the limited liability company in all courts; or

(b) The custodian, with the authority of a manager of a limited liability company, the articles of organization of which provide that it is to be managed by managers, may exercise all of the powers of the limited liability company, through or in place of its managers or members, to the extent necessary to manage the affairs of the limited liability company in the best interests of its members and creditors.

(4) 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 limited liability company and its members and creditors.

(5) 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 limited liability company or proceeds from the sale of the assets.

Source: L. 2003: Entire part R&RE, p. 2274, § 192, effective July 1, 2004. **L. 2006:** (3)(b) amended, p. 864, § 38, effective July 1.

7-80-813. Decree of dissolution.

(1) If, in a judicial proceeding brought to dissolve a limited liability company, after a hearing the court determines that one or more grounds for judicial dissolution described in section 7-80-810 exist, it may enter a decree dissolving the limited liability company 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 limited liability company's business and affairs in accordance with section 7-80-803 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. 2003: Entire part R&RE, p. 2275, § 192, effective July 1, 2004. **L. 2004:** (1) and (2) amended, p. 1465, § 199, effective July 1. **L. 2006:** (2) amended, p. 864, § 39, effective July 1.

PART 9

FOREIGN LIMITED LIABILITY COMPANIES

Editor's note: This article was added in 1990, and this part 9 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 9 prior to 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes

and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

7-80-901. Foreign limited liability companies.

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 limited liability companies.

Source: L. 2003: Entire part R&RE, p. 2275, § 193, effective July 1, 2004.

7-80-902. Registered agent - service of process.

Part 7 of article 90 of this title, providing for registered agents and service of process, applies to foreign limited liability companies.

Source: L. 2003: Entire part R&RE, p. 2275, § 193, effective July 1, 2004.

PART 10

MERGER AND CONVERSION

7-80-1001 to 7-80-1007. (Repealed)

Editor's note: (1) This part 10 was added in 1994. For amendments to this part 10 prior to its repeal in 2003, effective July 1, 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 7-80-1007 provided for the repeal of this part, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

PART 11

APPLICABILITY OF ARTICLE

7-80-1101. Application to limited liability companies formed prior to July 1, 1994.

(1) A limited liability company formed under this article prior to July 1, 1994, shall be governed by the provisions of this article.

(2) (Deleted by amendment, L. 2004, p. 1465, § 200, effective July 1, 2004.)

Source: L. 94: Entire part added, p. 725, § 34, effective July 1. **L. 2004:** Entire section amended, p. 1465, § 200, effective July 1.

PART 12

COLORADO ARTIST COMPANY ACT

7-80-1201. Short title.

The short title of this part 12 is the "Colorado Artist Company Act".

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1624, § 1, effective August 12.

7-80-1202. Definitions.

As used in this part 12, unless the context otherwise requires:

(1) "Artist" means an individual who creates any work of authorship or artistic expression comprising written, oral, visual, graphic, literary, musical, audiovisual, digital, or performing art in any medium, including painting, printing, drawing, sculpture, craft, photography, music, writing, film, performance, interactive media, or digital content.

(2) "Artist company" means a limited liability company organized under this part 12 that meets the requirements of section 7-80-1203 (1).

(3) "Artistic mission" means a specific creative or artistic or educational purpose, including the creation, development, production, distribution, exhibition, or performance of creative or artistic works, or operations conducted in furtherance of the arts and cultural contributions.

(4) "Artistic work" means creative or artistic works, projects, or activities created, developed, produced, distributed, exhibited, or performed pursuant to, or in furtherance of, an artistic mission.

(5) "Governing body" means the members, manager, or board of managers responsible for the management and governance of an artist company, as specified in the artist company's articles of organization or operating agreement.

(6) "Public benefit" means a positive effect or reduction of negative effects on one or more categories of persons, communities, or interests other than members in their capacities as members, including effects of an artistic, charitable, cultural, educational, literary, or technological nature.

(7) "Public benefit artist company" means an artist company that has elected to be subject to sections 7-80-1215 to 7-80-1217.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1624, § 1, effective August 12.

7-80-1203. Artist company - requirements.

(1) An artist company is a limited liability company that:

(a) Is organized under this part 12;

(b) Has a stated artistic mission set forth in its articles of organization or operating agreement; and

(c) Is formed and owned by one or more artists who, at the time of the artist company's formation or election to become an artist company, own not less than fifty-one percent of all voting securities of the artist company. Artists must at all times maintain an ownership percentage of not less than fifty-one percent of all voting securities of the artist company.

(2) An artist company may be organized for any lawful purpose permitted for limited liability companies under this article 80 if the purpose includes or materially furthers the artistic mission.

(3) An artist company may specify in its articles of organization or operating agreement:

(a) That the artistic mission has primacy over financial objectives;

(b) That the artistic mission and financial objectives are of equal priority; or

(c) Any other priority or balancing between the artistic mission and financial objectives.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1625, § 1, effective August 12.

7-80-1204. Election to become an artist company.

(1) A limited liability company that is not an artist company may elect to become an artist company by complying with this section. To elect to become an artist company, a limited liability company shall:

(a) Amend its articles of organization to:

(I) State the artistic mission of the limited liability company;

(II) State that the limited liability company elects to be governed by this part 12 as an artist company; and

(III) Include any other provisions required by sections 7-80-1203 and 7-80-1206;

(b) Ensure that, at the time of election, one or more artists own not less than fifty-one percent of the voting securities of the entity;

(c) Obtain approval for the election by the vote or consent required to amend the articles of organization pursuant to the limited liability company's operating agreement or, if the operating agreement does not specify the vote or consent required, by the unanimous consent of all members; and

(d) File the amended articles of organization with the secretary of state in accordance with section 7-90-301.

(2) Upon the filing of amended articles of organization pursuant to subsection (1)(d) of this section:

(a) The limited liability company continues to be the same entity that existed before the election;

(b) All rights, title, and interests to all real property and other property owned by the limited liability company remain vested in the artist company;

(c) All liabilities and obligations of the limited liability company remain liabilities and obligations of the artist company;

(d) All rights of creditors and all liens upon any property of the limited liability company are preserved unimpaired;

(e) Any action or proceeding pending against the limited liability company may be continued against the artist company as if the election had not occurred; and

(f) The artist company is subject to this part 12.

(3) An election conducted pursuant to this section does not constitute a dissolution, termination, or transfer of assets of the limited liability company.

(4) (a) The election to become an artist company pursuant to this section does not affect a member's liability for obligations of the limited liability company incurred prior to the election becoming effective.

(b) Unless otherwise agreed to by the members, election to become an artist company does not affect a member's existing rights under the operating agreement of the limited liability company, except to the extent the rights are under an operating agreement entered into on or after the effective date of this part 12 and are inconsistent with the requirements of this part 12.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1626, § 1, effective August 12.

7-80-1205. Application of article 80.

(1) Except as otherwise provided in this part 12, the provisions of this article 80 that are applicable to limited liability companies apply to artist companies.

(2) In the event of a conflict between this part 12 and other provisions of this article 80, this part 12 controls.

(3) Notwithstanding section 7-80-108 or another provision of this article 80, the requirements imposed by sections 7-80-1203 (1)(c) and 7-80-1214 (2) shall not be altered in an operating agreement. All other provisions of this part 12 may be modified by the operating agreement to the extent permitted by section 7-80-108 and this part 12.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1627, § 1, effective August 12.

7-80-1206. Formation of artist company - articles of organization - public benefit artist company requirements.

(1) A person may form an artist company by filing articles of organization with the secretary of state pursuant to section 7-90-301 that meet the requirements set forth in sections 7-80-204 and 7-80-1203 and subsection (7) of this section if the artist company will be a public benefit artist company, which articles of organization must include, in addition to the information required by subsection 7-80-204:

(a) A statement of the artistic mission of the artist company;

(b) A statement regarding the priority of the artistic mission and financial objectives as provided in section 7-80-1203 (3); and

(c) A statement as to whether the artist company elects to be a public benefit artist company subject to sections 7-80-1215 to 7-80-1217 and, if such election is made, one or more specific public benefits to be promoted by the artist company.

(2) The incorporators may also make elections in the articles of organization of an artist company regarding the following:

(a) The structure of equity ownership from the options provided in section 7-80-1207;

(b) The structure of the governing body from the options provided in section 7-80-1208;

(c) Whether fiduciary duties apply as provided in section 7-80-1211;

(d) Which existing artistic work should be assigned or exclusively licensed to the artist company as provided in section 7-80-1212;

(e) Whether artistic work created by members during their membership is assigned or exclusively licensed to the artist company as provided in section 7-80-1213 (1);

(f) The tax treatment of the artist company;

(g) Whether distributions are made based on ownership percentages or alternative mechanisms, with space to describe such alternative mechanisms;

(h) Basic provisions regarding termination of a member's membership interest upon withdrawal from the artist company, admission of new members, and rights to artistic work upon member withdrawal and termination of membership interest; and

(i) Whether certain decisions require artist supermajority or unanimous approval.

(3) If the election is made under subsection (2)(e) of this section, the articles of organization must also include a narrative description of the artistic work to be created by the artist company to set forth the scope of artistic work subject to the assignment or exclusive license.

(4) An election regarding whether selected terms in the articles of organization may be superseded by a subsequently adopted operating agreement:

(a) Without amendment to the articles of organization; or

(b) Only with concurrent amendment to the articles of organization.

(5) Articles of organization filed pursuant to subsection (1) of this section may include other provisions consistent with law as the incorporators elect to include.

(6) If an artist company elects to become a public benefit artist company pursuant to section 7-80-1215, the artist company shall state in the heading of its articles of organization that it is a

"public benefit artist company". A certificate of membership interest or other security issued by a public benefit artist company must note conspicuously that the public benefit artist company is a public benefit artist company formed pursuant to this part 12.

(7) An artist company's name may contain the words "artist company" or the abbreviations "ALLC", "A Corp", "AC", or "A.C." in lieu of or in addition to any term or abbreviation otherwise permitted by section 7-90-601 (3)(c).

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1627, § 1, effective August 12.

7-80-1207. Ownership of equity.

(1) Subject to the requirements set forth in section 7-80-1203 (1)(c), an artist company has the same options with respect to equity ownership provided to limited liability companies generally under this article 80.

(2) The incorporators of an artist company may elect in the articles of organization one of the following structures for equity ownership:

(a) Ownership based on the sale of units, including fractional units;

(b) Pro rata ownership based on the number of members;

(c) Pro rata ownership based on capital contributions, including in-kind contributions of cash, property, artistic work, royalty sharing, revenue participation rights, or other intangible assets; or

(d) Fixed ownership percentages by individual member.

(3) Unless otherwise specified in an operating agreement, allocations and distributions must be made based on ownership percentages; except that the operating agreement may establish alternative allocation or distribution mechanisms, including allocations or distributions based on revenue participation, royalty sharing, recoupment waterfalls, or other criteria independent of ownership percentages.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1629, § 1, effective August 12.

7-80-1208. Governing body.

(1) An artist company has the same governance options provided to limited liability companies generally under this article 80.

(2) The incorporators of an artist company may elect in the articles of organization one of the following governance structures:

(a) Governance by members, with voting based on ownership percentages;

(b) Governance by a single manager, with the manager elected by members; or

(c) Governance by a board of managers, with managers elected by members.

(3) More complex governance structures, including separate voting for artistic decisions versus business decisions, may be specified in an operating agreement.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1629, § 1, effective August 12.

7-80-1209. Governance principles.

(1) Unless otherwise provided in the articles of organization or operating agreement of an artist company:

(a) A quorum for a meeting of members or managers consists of a majority of the voting interests or managers, as applicable, entitled to vote at the meeting;

(b) Except as provided in subsection (1)(c) of this section, an act of the members or managers requires approval by a majority of those present at a meeting at which a quorum is present; except that the following actions require approval by a majority of all voting interests of the members:

(I) Amendment of the articles of organization;

(II) Adoption or amendment of an operating agreement;

(III) Merger, consolidation, conversion, change of control, or other business combination transaction;

(IV) Dissolution of the artist company;

(V) Election to become or cease to be a public benefit artist company; and

(VI) Other matters as may be specified in the articles of organization or operating agreement; and

(c) The following actions require approval by a majority of all voting interests of artist-members, even if the action is effectuated by an amendment to the articles of organization or operating agreement:

(I) An action materially affecting the ownership, licensing, transfer, or reversionary rights of artistic work of the artist company or artist-members;

(II) Changing the definition or scope of "public benefit" under the articles of organization or operating agreement of a public benefit artist company;

(III) Electing to become or ceasing to be a public benefit artist company;

(IV) Ceasing to be an artist company, including an action that causes the entity to no longer meet the requirements set forth in section 7-80-1203 (1);

(V) Modifying the governing control of the artist company, including with respect to management structure, voting rights, or decision-making authority; and

(VI) Approving the annual operating budget of the artist company.

(2) The following is not individually an indication of lack of good governance, grounds for piercing the limited liability veil, or evidence of improper corporate formalities:

(a) Failure to prepare written minutes of meetings of the governing body if there is adequate written evidence of formal approvals taken by the governing body;

(b) Failure to hold annual meetings of members of an artist company; or

(c) Failure of an artist company to observe other formalities customarily associated with Colorado limited liability companies or other entity forms.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1630, § 1, effective August 12.

7-80-1210. Acceptance of capital.

(1) An artist company may accept capital in any form, including:

(a) Grants;

(b) Refundable grants;

(c) First loss capital;

(d) Program-related investments;

(e) Mission-related investments;

(f) A financial agreement for impact returns investments;

(g) Debt instruments;

(h) Equity investments;

(i) Convertible investment instruments;

(j) Financial instruments, including revenue, cash flow, and profit participation rights;

(k) Royalty sharing rights; and

(l) In-kind contributions, including intellectual property such as artistic work.

(2) If and to the extent that a donor, with respect to grants or refundable grants, is required to exercise expenditure responsibility, the donor is entitled to the statements prepared for members as set forth in section 7-80-1217.

(3) If and to the extent that a donor requests that donations be tax deductible, unless and until the federal internal revenue service provides that artist companies are entitled to status as tax exempt organizations, donations to an artist company may be made through a separate tax exempt organization.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1631, § 1, effective August 12.

7-80-1211. Fiduciary duties.

(1) Except as otherwise provided in this section, the duties of members and managers of an artist company are governed by section 7-80-404.

(2) In addition to the duties specified in section 7-80-404, the articles of organization or operating agreement of an artist company may specify duties of members or managers with respect to the artistic mission of the artist company, including duties to:

(a) Preserve and promote the artistic mission of the artist company;

(b) Balance the artistic mission with the financial interests of the artist company and the pecuniary interests of the members; or

(c) Consult with or obtain approval from artist-members on decisions materially affecting the artistic direction or creative output of the artist company.

(3) The duties specified in subsections (1) and (2) of this section may be modified by the articles of organization or operating agreement of an artist company to the extent permitted by sections 7-80-108 and 7-80-204.

(4) For public benefit artist companies, the duties of members and managers are further specified in section 7-80-1216.

(5) The articles of organization may include elections allowing incorporators to accept the default duties described under this section or to modify specific duties as permitted by subsection (3) of this section.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1632, § 1, effective August 12.

7-80-1212. Intellectual property as a capital contribution - assignment or exclusive licensing to artist company.

(1) A member of an artist company may assign or exclusively license to the artist company intellectual property, including artistic work or any right or rights related to the artistic work, as in-kind capital contributions, including as the initial capital contribution of the member to become a member of the artist company.

(2) The articles of organization or operating agreement of an artist company may provide for the valuation of artistic work, or any right or rights related to the artistic work, assigned or exclusively licensed to the artist company pursuant to this section. If, prior to the time of assignment or exclusive licensing, the governing body of the artist company and the assigning or exclusive licensing member fail to agree on a valuation, the member may elect to either:

(a) Decline to assign or exclusively license the artistic work, or any right or rights related to the artistic work, to the artist company; or

(b) Have an independent professional valuator mutually agreed to by the parties determine the valuation of the artistic work at the artist company's cost, which determination is final and binding.

(3) Any assignment or exclusive licensing of artistic work to an artist company pursuant to this section may be limited in scope to include only the artistic work, or any right or rights related to the artistic work, required for the artistic mission of the artist company.

(4) Unless otherwise specified in the articles of organization or operating agreement of an artist company, artistic work assigned or exclusively licensed to the artist company pursuant to this section is assigned or exclusively licensed subject to the reversionary rights set forth in section 7-80-1221 (2)(a)(I), which reversionary rights constitute a retained interest that does not transfer to the artist company and is not available to creditors of the artist company. Intellectual property contributed to the artist company that does not constitute artistic work is not subject to the reversionary rights and is an asset of the artist company.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1633, § 1, effective August 12.

7-80-1213. Artistic work created during membership - restriction on transfer.

(1) The articles of organization or operating agreement of an artist company may require artist-members to assign or exclusively license to the artist company artistic work created by the artist-members during membership that relates to the artistic mission of the artist company. Artistic work assigned or exclusively licensed pursuant to this subsection (1) is subject to the reversionary rights set forth in section 7-80-1221 (2)(a)(I), which reversionary rights constitute a retained interest that does not transfer to the artist company and is not available to creditors of the artist company. Intellectual property created on behalf of the artist company that does not constitute artistic work is not subject to the reversionary rights and is an asset of the artist company.

(2) If the assignment or exclusive licensing terms described in subsection (1) of this section are included in an artist company's articles of organization or operating agreement, the articles of organization or operating agreement of the artist company must also include a narrative description of the artistic work to be created by the artist company to delineate the scope of artistic work subject to assignment or exclusive licensing.

(3) An artist-member may retain specified artistic work created by the artist-member during the artist-member's membership by providing written notice to the artist company describing the artistic work to be retained by the artist-member. The written notice may be provided at the time the artist-member joins the artist company or within thirty days after the generation of the artistic work. If a written notice is provided, the artist-member shall grant the artist company a nonexclusive, perpetual, irrevocable license to the artistic work to the extent that the artist-member uses the artistic work in the artist-member's work for the artist company.

(4) All artistic work assigned or exclusively licensed to or created by artist-members on behalf of the artist company must be owned by either the artist-members or the artist company and is subject to the reversionary rights described in section 7-80-1221 (2)(a)(I). The artistic work shall not be transferred to, owned by, assigned to, or exclusively licensed to nonartist members or investors or other nonartist third parties except through licenses or other contractual agreements entered into with unaffiliated third parties in the ordinary course of business for bona fide commercial purposes. Licenses and contractual agreements described in this subsection (4) are subject to the reversionary rights described in section 7-80-1221 (2)(a)(I). The articles of organization or operating agreement may address:

(a) Treatment of artistic work upon an artist-member's departure from the artist company, including whether the artistic work remains with the artist company or reverts to the departed artist-member in specified departure scenarios;

(b) Rights of departed artist-members to continue receiving royalties or revenues from artistic work created during their membership;

(c) Rights of remaining artist-members to continue using or exploiting artistic work created jointly with departed artist-members;

(d) Procedures and consent requirements for any sale or assignment of artistic work to nonartist third parties, which must include the consent of the artist-member who created the artistic work and provide for consideration to be paid to the artist-member for relinquishment of the artist-member's reversionary rights if the reversionary rights are to be included in the sale or assignment; and

(e) Upon dissolution of the artist company, reversionary rights as described in section 7-80-1221 (2)(a)(I).

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1633, § 1, effective August 12.

7-80-1214. Separation of economic rights from governance and control.

(1) The articles of organization or operating agreement of an artist company may provide for the separation of economic rights from governance and control rights.

(2) Any governance and control rights must at all times remain with artist-members in accordance with section 7-80-1203 (1)(c). Nonartist investors may hold economic rights, including rights to distributions, royalties, revenue participation, or other financial returns, without corresponding governance or control rights.

(3) An operating agreement may specify the extent and nature of economic rights held by nonartist investors, including priority of distributions, revenue participation arrangements, recoupment provisions, and other financial terms.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1635, § 1, effective August 12.

7-80-1215. Public benefit artist company - election.

(1) An artist company may elect at formation or by amending its articles of organization in accordance with this part 12 to be a public benefit artist company by:

(a) Stating in the heading of its articles of organization that it is a "public benefit artist company";

(b) Setting forth in its articles of organization and in its operating agreement, if any, one or more specific public benefits to be promoted by the artist company; and

(c) Stating in its operating agreement, if any, that it is a public benefit artist company.

(2) An artist company that is not formed as a public benefit artist company may become a public benefit artist company by:

(a) Amending its articles of organization and operating agreement to comply with the requirements of subsection (1) of this section; and

(b) Obtaining approval of the election by a majority of all voting interests of the members as required by section 7-80-1209 (1)(b)(V) and the majority of all voting interests of artist-members as required by section 7-80-1209 (1)(c)(III).

(3) A public benefit artist company may cease to be a public benefit artist company by:

(a) Amending its articles of organization to remove the designation as a public benefit artist company and the specific public benefits; and

(b) Obtaining approval of the amendment by a majority of all voting interests of the members as required by section 7-80-1209 (1)(b)(V) and the majority of all voting interests of artist-members as required by section 7-80-1209 (1)(c)(III).

(4) A public benefit artist company that elects to cease being a public benefit artist company remains subject to this part 12 as an artist company.

(5) In the event of any inconsistency between the public benefits to be promoted by a public benefit artist company as set forth in its operating agreement and in its articles of organization, the operating agreement controls among the members, the managers, and other persons that are party to or otherwise bound by the operating agreement.

(6) A manager of a public benefit artist company, or, if there is no manager, any member of a public benefit artist company, that becomes aware that the specific public benefits to be promoted by the public benefit artist company set forth in its operating agreement are inaccurately set forth in its articles of organization shall promptly amend the articles of organization in accordance with section 7-80-1209 (1)(c)(II).

(7) The election to adopt a public benefits provision may facilitate certification of an artist company under third-party standards applicable to public benefit artist companies.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1635, § 1, effective August 12.

7-80-1216. Public benefit artist company - duties of members and managers.

(1) The members or managers or other persons with authority to manage or direct the business and affairs of a public benefit artist company shall manage or direct the business and affairs of the public benefit artist company in a manner that balances:

(a) The pecuniary interests of the members;

(b) The best interests of those materially affected by its conduct;

(c) The specific public benefits set forth in its articles of organization and operating agreement, if any; and

(d) Its artistic mission.

(2) Unless otherwise provided in an operating agreement, a member, a manager, or other person with authority to manage or direct the business and affairs of a public benefit artist company does not have any liability for monetary damages for the failure to manage or direct the business and affairs of the public benefit artist company as provided in subsection (1) of this section.

(3) A member or manager of a public benefit artist company or another person with authority to manage or direct the business and affairs of a public benefit artist company shall not, by virtue of the public benefits provisions of this part 12 or subsection (1) of this section, have any duty to a person on account of any interest of the person in the public benefits set forth in its articles of organization and operating agreement, if any, or on account of any interest materially affected by the public benefit artist company's conduct.

(4) With respect to a decision implicating the balance requirement set forth in subsection (1) of this section, a member, a manager, or other person with authority to manage or direct the business and affairs of a public benefit artist company is deemed to satisfy the person's fiduciary duties to members and the public benefit artist company if the person's decision is both informed and disinterested and not a decision that a person of ordinary, sound judgment would not approve.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1636, § 1, effective August 12.

7-80-1217. Public benefit artist company - annual statements.

(1) A public benefit artist company shall at least annually provide its members and donors with a statement specifying:

(a) The public benefit artist company's promotion of the public benefits set forth in its articles of organization and operating agreement, if any;

(b) The public benefit artist company's fulfillment of its artistic mission; and

(c) The best interests of those materially affected by the public benefit artist company's conduct.

(2) The statement required by subsection (1) of this section must include:

(a) The objectives that have been established to promote the public benefit artist company's public benefits, artistic mission, and interests;

(b) The standards that have been adopted to measure the public benefit artist company's progress in promoting the public benefit artist company's public benefits, artistic mission, and interests;

(c) Objective factual information based on the standards described in subsection (2)(b) of this section regarding the public benefit artist company's success in meeting the objectives for promoting the public benefits, artistic mission, and interests; and

(d) An assessment of the public benefit artist company's success in meeting the objectives and promoting the public benefits, artistic mission, and interests.

(3) The statement required by this section may be included in or provided concurrently with any other report or statement provided to members.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1637, § 1, effective August 12.

7-80-1218. Member transition.

(1) An artist company's articles of organization or operating agreement may provide for:

(a) Procedures for admission of new members and departure, withdrawal, expulsion, or dissociation of existing members, so long as artists retain ownership in accordance with the requirements of section 7-80-1203 (1)(c);

(b) Rights to artistic work, royalty sharing rights, and revenue participation rights upon a member's departure, including:

(I) Whether artistic work assigned or exclusively licensed by the departing artist-member remains with the artist company or reverts to the member, in whole or in part;

(II) Whether artistic work created during the member's membership remains with the artist company or reverts to the artist-member in specified departure scenarios, in whole or in part;

(III) Whether and on what terms the departing artist-member retains rights to receive royalties or revenues from artistic work created during their membership in specified departure scenarios; and

(IV) Whether and on what terms the departing artist-member retains rights to use collective names, trademarks, or other identifiers associated with the artist company;

(c) Continuing economic rights of departed members, including distribution rights, royalty sharing, and revenue participation;

(d) Rights and obligations of remaining members, including rights to continue exploiting artistic work jointly created with departed artist-members;

(e) Valuation and buyout provisions for a departing member's interest; and

(f) Dispute resolution procedures.

(2) In the absence of provisions addressing member departure in the articles of organization or operating agreement of an artist company:

(a) A departing member's ownership interest is subject to the default provisions of this article 80;

(b) Artistic work assigned or exclusively licensed by the member, if an artist-member, to the artist company remains the property of the artist company, subject to any reversionary rights provided in section 7-80-1221 (2)(a)(I);

(c) Artistic work created by the member, if an artist-member, during their membership shall be treated in accordance with any assignment or exclusive licensing terms included in the articles of organization or operating agreement pursuant to section 7-80-1213 (1) or, in the absence of such terms, is governed by federal intellectual property law; and

(d) The departing member has no continuing rights to distributions, royalties, or revenues except as may be required by section 7-80-1213 (4) or 7-80-1221 (2)(a)(I).

(3) The admission of a new member must include the consent specified in the articles of organization or operating agreement of an artist company or, in the absence of such specification, the consent required by section 7-80-701.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1638, § 1, effective August 12.

7-80-1219. Reporting requirements.

An artist company shall file the periodic report required of limited liability companies under section 7-90-501.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1639, § 1, effective August 12.

7-80-1220. Limitation on liability - no private right of action.

(1) A person shall not have a private right of action against an artist company, its governing body, its manager, or its members based on:

(a) The artist company's failure to pursue or create a public benefit;

(b) The artist company's failure to fulfill its artistic mission; or

(c) Any alleged breach of duties described in section 7-80-1216.

(2) The limitation on private rights of action set forth in this section does not limit any other rights or remedies available under law.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1639, § 1, effective August 12.

7-80-1221. Dissolution and winding up - artistic work reversionary rights - distribution of assets.

(1) Dissolution of an artist company is governed by part 8 of this article 80, except as otherwise provided in this section.

(2) (a) (I) Except as is necessary to comply with applicable federal income tax law, including section 704 and other applicable provisions of subchapter K of the internal revenue code of 1986, as amended, upon dissolution of an artist company, all rights to artistic work assigned or exclusively licensed by artist-members to the artist company or created by artist-members of the artist company during the artist-member's membership revert to the artist-members that assigned, exclusively licensed, or created such artistic work and any applicable assignment or exclusive license automatically terminates. The operating agreement of any artist company treated as a partnership for federal income tax purposes must include allocation, distribution, valuation, capital account, and other economic provisions reasonably designed, to the extent permitted by applicable federal income tax law, to facilitate the reversion of artistic work to the artist-members under this subsection (2)(a)(I), including provisions governing the distribution of cash

and other property other than artistic work; the allocation of items of income, gain, loss, deduction, and credit; and the preservation or satisfaction of continuing economic rights with respect to reverted artistic work. For jointly created works, assigned or exclusively licensed rights revert to the applicable artists:

(A) As specified in the articles of organization or operating agreement of the artist company;

(B) If not specified in the articles of organization or operating agreement of the artist company, as mutually agreed upon by the applicable artists; or

(C) If mutual agreement cannot be reached by the applicable artists, as jointly owned artistic work in accordance with federal intellectual property law.

(II) Intellectual property that does not constitute artistic work is not subject to the reversionary rights described in this section and shall be distributed pursuant to subsection (3) of this section.

(III) Except as is necessary to comply with applicable federal income tax law, including section 704 and other applicable provisions of subchapter K of the internal revenue code of 1986, as amended, the reversionary rights described in subsection (2)(a)(I) of this section constitute retained interests that were never fully transferred to the artist company and therefore are not assets of the artist company available to creditors or nonartist investors.

(b) The reversionary rights described in subsection (2)(a)(I) of this section are subject to:

(I) Perfected security interests or liens granted by the artist company with the express written consent of the artist or artists holding the reversionary right;

(II) Existing licenses to third parties entered into in the ordinary course of business; and

(III) Continuing royalty sharing, revenue participation obligations, recoupment provisions, return of capital, or other economic obligations specified in the articles of organization or operating agreement of the artist company.

(c) The articles of organization or operating agreement of an artist company may specify the terms of a reversion, including:

(I) Priority among artists in claiming reversionary rights;

(II) Allocation of reversionary rights in joint works;

(III) Continuing obligations to share royalties or revenues from reverted artistic work; and

(IV) Rights to use collective names, trademarks, or other identifiers.

(3) Upon dissolution, after giving effect to any artistic work reversionary rights described in subsection (2)(a)(I) of this section, and after payment or provision for liabilities:

(a) Assets shall be distributed in accordance with priority and distribution provisions in the articles of organization or operating agreement of the artist company, including preferences for holders of revenue participation rights, royalty sharing rights, or other economic interests; or

(b) If not specified, assets shall be distributed pro rata to members based on ownership percentages.

(4) The articles of organization or operating agreement of an artist company may specify:

(a) Priority of distributions among different classes of economic interests;

(b) Treatment of unvested or contingent economic rights;

(c) Allocation of remaining intellectual property value; or

(d) Other dissolution and distribution terms.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1639, § 1, effective August 12.

7-80-1222. Effect on other limited liability companies.

This part 12 does not affect a statute or rule of law that is applicable to a limited liability company that is not an artist company.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1641, § 1, effective August 12.

7-80-1223. Jurisdiction - foreign artists.

(1) A person from a jurisdiction other than Colorado may form a limited liability company as an artist company pursuant to this part 12 or cause an existing limited liability company to become an artist company by amending its articles of organization in accordance with this part 12.

(2) The formation of an artist company under this part 12 is governed by the laws of the state, and an artist company formed under this part 12 is a domestic limited liability company for all purposes under this article 80, regardless of the residence or domicile of its artist-members.

(3) Nothing in this section affects the requirements for foreign limited liability companies under part 9 of this article 80.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1641, § 1, effective August 12.

7-80-1224. Timeline for implementation - repeal.

(1) No later than July 1, 2027, the secretary of state shall make any changes necessary to implement this part 12, including accepting articles of organization and amended articles of organization filed pursuant to this part 12.

(2) This section is repealed, effective July 1, 2028.

Source: L. 2026: Entire part added, (SB 26-133), ch. 297, p. 1642, § 1, effective August 12.

CORPORATIONS AND ASSOCIATIONS

ARTICLE 90

Colorado Corporations and Associations Act

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PART 1

DEFINITIONS AND APPLICATION - SPECIAL RULES

7-90-101. Short title.

This article shall be known and may be cited as the "Colorado Corporations and Associations Act".

Source: L. 97: Entire article added, p. 1506, § 21, effective June 3.

7-90-102. Definitions.

As used in this title 7, except as otherwise defined for the purpose of any section, subpart, part, or article of this title 7, or unless the context otherwise requires:

(1) "Address" means a mailing address, a street address, or an address for delivery of an electronic transmission.

(1.3) (Deleted by amendment, L. 2010, (HB 10-1403), ch. 404, p. 1995, § 12, effective August 11, 2010.)

(1.5) "Articles of association" means, with respect to a domestic limited partnership association, the articles of association as defined in the "Colorado Limited Partnership Association Act", article 63 of this title. With respect to a foreign limited partnership association

or partnership association, "articles of association" means the corresponding document filed with the jurisdiction under the law of which the limited partnership association is formed.

(2) "Articles of incorporation" means, with respect to:

(a) A domestic cooperative that is not a domestic limited cooperative association, a domestic corporation, or other domestic entity that is formed under or subject to the "Colorado Business Corporation Act", articles 101 to 117 of this title, articles of incorporation as that term is used in the "Colorado Business Corporation Act";

(b) A corporation formed under or subject to article 40 of this title, a certificate of incorporation as that term is used in article 40 of this title;

(c) A domestic cooperative, a domestic nonprofit corporation, or other domestic entity that is formed under or subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, articles of incorporation as that term is used in the "Colorado Revised Nonprofit Corporation Act"; and

(d) A foreign corporation or foreign nonprofit corporation, the corresponding document filed with the jurisdiction, under the law of which the corporation or nonprofit corporation is formed.

(3) "Articles of organization" means, with respect to:

(a) A domestic limited liability company, the articles of organization as defined in the "Colorado Limited Liability Company Act", article 80 of this title;

(b) A foreign limited liability company, the corresponding document filed with the filing officer of the jurisdiction under the law of which the foreign limited liability company is formed; and

(c) A domestic limited cooperative association, the articles of organization as defined in the "Colorado Uniform Limited Cooperative Association Act", article 58 of this title.

(3.3) "Assumed entity name" means an entity name assumed by a foreign entity pursuant to the provisions of section 7-90-603.

(3.5) Repealed.

(3.7) (Deleted by amendment, L. 2002, p. 1837, § 87, effective July 1, 2002; p. 1702, § 85, effective October 1, 2002.)

(3.8) **[*Editor's note: Subsection (3.8) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** "Commercial registered agent" means a registered agent who has filed the appropriate documentation with the secretary of state to become listed as a commercial registered agent pursuant to section 7-90-707.

(3.9) (Deleted by amendment, L. 2004, p. 1465, § 201, effective July 1, 2004.)

(4) "Constituent document" means a constituent filed document or a constituent operating document.

(5) "Constituent entity" means, with respect to a merger, each merging entity and the surviving entity; with respect to a conversion, the converting entity and the resulting entity; and, with respect to a share or equity capital exchange, each entity whose owner's interests will be acquired and each entity acquiring those interests.

(6) "Constituent filed document" means the articles of incorporation, articles of organization, certificate of limited partnership, articles of association, statement of registration, or other document of similar import filed or recorded by or for an entity in the jurisdiction under the law of which the entity is formed, by which it is formed, or by which the entity obtains its status as an entity or the entity or any or all of its owners obtain the attribute of limited liability. Where a constituent filed document has been amended or restated, "constituent filed document" means the constituent filed document as last amended or restated.

(7) "Constituent operating document" means articles of incorporation, operating agreement, or partnership agreement, and bylaws of a corporation, nonprofit corporation, cooperative, or limited partnership association.

(8) "Converting entity" means the entity that converts into a resulting entity pursuant to section 7-90-201.

(9) "Cooperative" means a domestic cooperative or a foreign cooperative.

(9.5) Repealed.

(10) "Corporation" means a domestic corporation or a foreign corporation.

(10.3) "Delinquent entity" means an entity that has been declared delinquent pursuant to section 7-90-902 and that has not cured its delinquency.

(10.5) (a) Except as specified in subsection (10.5)(b) of this section, "deliver" or "delivery" includes:

(I) Mail;

(II) Hand delivery by courier or otherwise; and

(III) Electronic transmission. Unless otherwise agreed between the sender and recipient, an electronic transmission shall be deemed delivered to a person for purposes of this title 7 and for the purposes of the constituent documents of any entity when the electronic transmission enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered if the electronic transmission is in a form capable of being processed by that system and the person is able to retrieve the electronic transmission. Whether a person has so designated an information processing system is determined by the

constituent documents or from the context and surrounding circumstances, including the parties' conduct. An electronic transmission is delivered under this subsection (10.5)(a)(III) even if no person is aware of its receipt. Receipt of an electronic acknowledgment from an information processing system establishes that an electronic transmission was received but does not, by itself, establish that the content sent corresponds to the content received.

(b) Delivery to the secretary of state means actual receipt by the secretary of state. Delivery to any person by the secretary of state includes delivery or mail to the registered agent address of the person's registered agent, or to the principal office address of the person, unless otherwise specified in section 7-90-902 or by an organic statute other than this article 90. Delivery by the secretary of state to a person that has neither a principal office address nor a registered agent address includes delivery to the address that the person may have provided to the secretary of state for that purpose unless otherwise specified by an organic statute other than this article 90.

(10.7) "Document" means:

(a) Any tangible medium on which information is inscribed and includes handwritten, typed, printed, or similar instruments and copies of such instruments; and

(b) An electronic record.

(11) "Domestic cooperative" means an entity formed under article 55 of this title; an entity formed under the "Colorado Cooperative Act", article 56 of this title; an entity formed under the "Colorado Uniform Limited Cooperative Association Act", article 58 of this title; or an entity formed under any other act of the state of Colorado that has elected to be subject to the "Colorado Cooperative Act".

(11.5) (Deleted by amendment, L. 2003, p. 2276, § 194, effective July 1, 2004.)

(12) "Domestic corporation" means a corporation formed under or subject to the "Colorado Business Corporation Act", articles 101 to 117 of this title.

(13) "Domestic entity" means a domestic corporation, a domestic general partnership, a domestic cooperative, a domestic limited liability company, a domestic limited partnership, a domestic limited partnership association, a domestic nonprofit association, a domestic nonprofit corporation, or any other organization or association that is formed under a statute or common law of this state or as to which the law of this state governs relations among the owners and between the owners and the organization or association and that is recognized under the law of this state as a separate legal entity.

(13.5) "Domestic entity name" means the name of a domestic entity as stated in the entity's constituent filed document or as changed pursuant to section 7-90-601.5 or 7-90-601.6.

(14) "Domestic general partnership" means a partnership as defined in the "Uniform Partnership Law", article 60 of this title, or as defined in the "Colorado Uniform Partnership Act

(1997)", article 64 of this title if, in either case, the law of this state governs relations among the partners and between the partners and the partnership. The term includes a limited liability partnership as defined in the "Uniform Partnership Law", article 60 of this title, or as defined in the "Colorado Uniform Partnership Act (1997)", article 64 of this title.

(14.5) "Domestic limited cooperative association" means a limited cooperative association formed under or subject to the "Colorado Uniform Limited Cooperative Association Act", article 58 of this title.

(15) "Domestic limited liability company" means a limited liability company formed under the "Colorado Limited Liability Company Act", article 80 of this title.

(15.3) "Domestic limited liability limited partnership" means a domestic limited partnership that is registered as a limited liability limited partnership under section 7-60-144 or 7-64-1002.

(15.5) "Domestic limited liability partnership" means a domestic general partnership that is a limited liability partnership as defined in the "Uniform Partnership Law", article 60 of this title, or as defined in the "Colorado Uniform Partnership Act (1997)", article 64 of this title.

(16) "Domestic limited partnership" means a limited partnership as defined in the "Uniform Limited Partnership Law of 1931", article 61 of this title, or as defined in the "Colorado Uniform Limited Partnership Act of 1981", article 62 of this title. The term includes a limited partnership that is a limited liability limited partnership.

(17) "Domestic limited partnership association" means a limited partnership association formed under the "Colorado Limited Partnership Association Act", article 63 of this title.

(18) "Domestic nonprofit association" means a nonprofit association as defined in the "Uniform Unincorporated Nonprofit Association Act", article 30 of this title.

(19) "Domestic nonprofit corporation" means a corporation formed under or subject to article 40 of this title or the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title.

(19.3) (Deleted by amendment, L. 2004, p. 1465, § 201, effective July 1, 2004.)

(19.5) "Effective date", when referring to a document filed by the secretary of state, means the time and date determined in accordance with section 7-90-304.

(19.6) "Effective date of dissolution" of an entity means, with respect to any domestic entity other than a general partnership that was a reporting entity before dissolution, the earlier of the effective date of the entity's articles of dissolution or statement of dissolution or the date as shown by the records of the secretary of state on which the entity was administratively or judicially dissolved.

(19.7) (a) "Electronic mail" or "email" means an electronic transmission directed to a unique electronic-mail address.

(b) As used in this subsection (19.7):

(I) "Electronic-mail address" means a destination, commonly expressed as a string of characters consisting of a unique username or mailbox, commonly referred to as the "local part" of the address, together with a second string of characters commonly referred to as the "domain name". The local part of the address and the domain name are usually, but not necessarily, separated by an "@" symbol.

(II) Electronic mail shall be deemed to include any files attached to the electronic mail and any information hyperlinked to a website if the electronic mail includes the contact information of an officer or agent of the entity that is available to assist with accessing the files and information.

(19.8) "Electronic record" means information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section 7-90-105.

(19.9) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium that:

(a) Is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section 7-90-105.

(20) "Entity" means a domestic entity or a foreign entity.

(20.5) "Entity name" means a domestic entity name or a foreign entity name.

(20.6) "Fee" means a fee determined and collected by the secretary of state as provided in section 24-21-104, C.R.S., and includes a fee imposed as a penalty for a late filing or otherwise.

(20.7) "Filed document" means any document filed by the secretary of state pursuant to this title, whether or not effective.

(21) "Foreign cooperative" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic cooperative.

(21.5) (Deleted by amendment, L. 2003, p. 2276, § 194, effective July 1, 2004.)

(22) "Foreign corporation" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic corporation.

(23) "Foreign entity" means a foreign corporation, a foreign cooperative, a foreign general partnership, a foreign limited liability partnership, a foreign limited liability company, a foreign limited partnership, a foreign limited liability limited partnership, a foreign limited partnership association, a foreign nonprofit association, a foreign nonprofit corporation, or any other organization or association that is formed under a statute or common law of a jurisdiction other than this state or as to which the law of a jurisdiction other than this state governs relations among the owners and between the owners and the organization or association and is recognized under the law of such jurisdiction as a separate legal entity.

(23.3) "Foreign entity name" means:

(a) The name of a foreign entity under which it is authorized to transact business or conduct activities in this state, whether such name is its true name or an assumed entity name, as such name may be changed pursuant to section 7-90-601.6; or

(b) As to a foreign entity that is not authorized to transact business or conduct activities in this state but that has registered its true name pursuant to section 7-90-604, that true name.

(23.5) "Foreign general partnership" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic general partnership.

(23.7) "Foreign limited cooperative association" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic limited cooperative association.

(24) "Foreign limited liability company" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic limited liability company.

(24.3) "Foreign limited liability limited partnership" means an entity that is functionally equivalent to a domestic limited liability limited partnership and is formed under the law of a jurisdiction other than this state or as to which the law of a jurisdiction other than this state governs relations among the owners and between the owners and the entity and is recognized under the law of this state as a separate legal entity.

(24.5) "Foreign limited liability partnership" means an entity that is functionally equivalent to a domestic limited liability partnership and is formed under the law of a jurisdiction other than this state or as to which the law of a jurisdiction other than this state governs relations among the owners and between the owners and the entity and is recognized under the law of this state as a separate legal entity.

(25) "Foreign limited partnership" means a partnership formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic limited partnership.

(26) "Foreign limited partnership association" means a limited partnership association formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic limited partnership association.

(27) (Deleted by amendment, L. 2000, p. 959, § 44, effective July 1, 2000.)

(28) "Foreign nonprofit association" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic nonprofit association.

(29) "Foreign nonprofit corporation" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic nonprofit corporation.

(29.3) (Deleted by amendment, L. 2004, p. 1465, § 201, effective July 1, 2004.)

(29.5) "Formed" includes incorporated, created, and organized, and each of the terms includes the others as the context may require. With respect to an entity that was initially formed under the law of one jurisdiction and, by merger, conversion, consolidation, redomestication, or other action, is treated, after such action, according to the law of the jurisdiction under which it was initially formed, as having been formed under the law of a second jurisdiction, the entity shall be considered to have been formed under the law of the second jurisdiction for purposes of this title.

(30) "General partner" means a partner in a general partnership and a general partner in a limited partnership.

(31) "General partnership" means a domestic general partnership or a foreign general partnership.

(31.1) "Health-care coverage cooperative" shall have the same meaning as set forth in section 10-16-1002 (2), C.R.S., or a successor statute.

(31.3) "Include" or its variants, when used in reference to any definition or list, indicates that the definition or list is partial and not exclusive.

(31.5) "Individual" means a natural person.

(31.7) "Jurisdiction" includes the United States, a state of the United States, a foreign country or other foreign governmental authority, and any agency, instrumentality, or subdivision thereof.

(32) "Limited liability company" means a domestic limited liability company or a foreign limited liability company.

(32.5) "Limited liability limited partnership" means a domestic limited liability limited partnership or a foreign limited liability limited partnership.

(32.7) "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.

(33) "Limited partner" means a limited partner in a limited partnership.

(34) "Limited partnership" means a domestic limited partnership or a foreign limited partnership.

(35) "Limited partnership association" means a domestic limited partnership association or a foreign limited partnership association.

(35.5) "Mail" means deposit in the United States mail, properly addressed, first-class postage prepaid, and includes registered, certified, express, or priority mail for which the proper fee has been paid.

(35.6) "Mailing address" means, with respect to any person, a physical location to which mail for such person may be delivered, which physical location shall be described by its street name and number or post office box number, city, state, and (if not the United States) country, and the postal code, if any, for delivery of mail to the location. If the person has no post office box and, by reason of rural location or otherwise, a street name and number, city, or town does not exist, "mailing address" shall mean an appropriate description fixing as nearly as possible the actual physical location to which mail for that person is delivered, but, for all locations in the United States, the county or parish and, if any, the rural free delivery route and the United States postal code shall be included.

(35.7) "Manager" means:

(a) A member of a limited liability company in which management is not vested in managers rather than members;

(b) A manager of a limited liability company in which management is vested in managers rather than members;

(c) A member of a limited partnership association in which management is not vested in managers rather than members;

(d) A manager of a limited partnership association in which management is vested in managers rather than members;

(e) A general partner;

(f) An officer or director of a corporation, a nonprofit corporation, a cooperative, or a limited partnership association; or

(g) Any person whose position with respect to an entity, as determined under the constituent documents and organic statutes of the entity, without regard to the person's title, is the functional equivalent of any of the positions described in paragraphs (a) to (f) of this subsection (35.7).

(35.9) "Means" denotes an exhaustive definition or list.

(36) "Member" means:

(a) A member of a cooperative;

(a.5) A member of a limited cooperative association as defined in section 7-58-102;

(b) A member of a nonprofit association;

(c) A member of a limited liability company;

(d) In the case of a nonprofit corporation with one or more classes of voting members, a voting member of a nonprofit corporation; or

(e) In the case of a nonprofit corporation with no voting members, a director of a nonprofit corporation.

(36.5) "Member-specific data" means any document, list, record, or compilation of one or more categories of "personal identifying information", as defined in section 18-5-901 (13), that identifies, in whole or in part, directly or indirectly, a person as a member, volunteer, or donor to any nonprofit entity.

(37) "Merging entity" means any entity that merges into a surviving entity pursuant to section 7-90-203 or pursuant to the organic statutes other than this article.

(38) "Nonprofit association" means a domestic nonprofit association or a foreign nonprofit association.

(39) "Nonprofit corporation" means a domestic nonprofit corporation or a foreign nonprofit corporation.

(40) "Nonprofit entity" means a nonprofit corporation or a nonprofit association.

(40.5) "Obligation" means any debt, obligation, duty, or liability whether sounding in tort, contract, or otherwise.

(40.7) "On file in the records of the secretary of state", "on file in the office of the secretary of state", and "on file with the secretary of state", with reference to a document, means that the document has been filed by the secretary of state and has become effective pursuant to section 7-90-304 or otherwise pursuant to law and that, subsequent to the commencement of the document's effectiveness, no action has been taken, or omission has occurred, that has caused the document to become ineffective or to be superseded in effect.

(41) "Operating agreement" means the operating agreement of a domestic limited liability company or the functionally equivalent document of a foreign limited liability company.

(42) "Organic statutes" means, with respect to any entity:

(a) This article;

(b) The statute, whether of this state or of another jurisdiction, under which the entity is formed; and

(c) All other statutes of this state or such other jurisdiction that govern the organization and internal affairs of the entity.

(43) "Owner" means a shareholder of a corporation, a member, a partner, or a person having an interest in any other entity that is functionally equivalent to an owner's interest.

(44) "Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

(45) "Partner" means a general partner and a limited partner.

(46) "Partnership" means a domestic general partnership, a foreign general partnership, a domestic limited partnership, or a foreign limited partnership.

(47) "Partnership agreement" means the partnership agreement of a domestic general partnership or a domestic limited partnership, or the functional equivalent for a foreign general partnership or a foreign limited partnership.

(47.1) (Deleted by amendment, L. 2000, p. 959, § 44, effective July 1, 2000.)

(48) (Deleted by amendment, L. 2003, p. 2276, § 194, effective July 1, 2004.)

(48.5) "Periodic report" means the report required by section 7-90-501.

(49) "Person" means an individual, an estate, a trust, an entity, or a state or other jurisdiction.

(50) "Primary constituent documents" means articles of incorporation with respect to a corporation and constituent documents with respect to other entities.

(50.5) (a) "Principal address" means principal office address or, for a person that has no principal office address, the street address of the person's usual place of business in this state if it has one, the street address of the person's residence in this state if it has one but has no principal place of business in this state, the street address of the person's usual place of business outside this state if it has one but has no usual place of business or residence in this state, or the street

address of the person's residence outside this state if it has one but has no principal place of business anywhere and no residence in this state.

(b) In each case enumerated in paragraph (a) of this subsection (50.5), for a person that has no principal office address, "principal address" means the mailing address of the person if it is different from the address determined pursuant to paragraph (a) of this subsection (50.5).

(51) "Principal office" means the office of an entity located at the principal office address of the entity.

(51.5) "Principal office address" means the street address and, if different, the mailing address inside or outside this state, that has been stated by or for an entity to be the principal office address of the entity in the first filed document, in which document the entity or another person has been required, by a provision of this title or by a form or cover sheet the use of which is required by the secretary of state, to state the entity's principal office address; or, if the entity's principal office address has been changed pursuant to section 7-90-705, the principal office address of the entity as last so changed.

(52) "Proceeding" includes a civil suit, arbitration, or mediation and a criminal, administrative, or investigatory action.

(53) "Provider network" means an entity created pursuant to part 3 of article 18 of title 6, C.R.S., or any functionally equivalent entity formed under any subsequently enacted statute of this state.

(53.5) "Public agency" means any state or local governmental unit, including:

(a) The state;

(b) Any department, agency, office, commission, board, division, or other agency of the state;

(c) Any institution, as defined in section 24-72-202 (1.5); and

(d) Any political subdivision, as defined in section 24-72-202 (5).

(54) "Receive", when used in reference to receipt of a writing or other document by an entity, means that the entity actually obtains the writing or other document.

(55) **[*Editor's note: This version of subsection (55) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** "Registered agent" means the registered agent required to be maintained by an entity pursuant to part 7 of this article or appointed pursuant to article 70 of this title.

(55) **[*Editor's note: This version of subsection (55) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** "Registered agent" means the registered agent required to be maintained by an entity pursuant to part 7 of this

article or appointed pursuant to article 70 of this title. "Registered agent" includes a commercial registered agent.

(56) (a) "Registered agent address" means the street address and, if different, the mailing address of the registered agent's primary residence in this state or usual place of business in this state if the registered agent is an individual, or of the registered agent's usual place of business in this state if the registered agent is an entity.

(b) As used in this subsection (56), "usual place of business" means a place in this state that is customarily open during normal business hours and where an individual who is authorized to perform the services of a registered agent, including accepting service of process and other notifications, is commonly present. "Usual place of business" does not include a United States or commercial post office box.

(56.5) "Registered agent name" means, with respect to a registered agent who is an individual or a domestic entity, the true name of the registered agent and, with respect to a registered agent that is a foreign entity, the foreign entity name of the foreign entity.

(57) (Deleted by amendment, L. 2004, p. 1465, § 201, effective July 1, 2004.)

(58) "Reporting entity" means any domestic entity as to which a constituent filed document is on file in the records of the secretary of state other than a domestic limited partnership that is not a reporting limited partnership and any foreign entity authorized to transact business or conduct activities in this state. An entity ceases to be a reporting entity upon the dissolution of the entity, the entity becoming delinquent, the relinquishment of the entity's authority to transact business or conduct activities in this state, or, if the entity is a limited liability partnership or a limited liability limited partnership that is not a reporting limited partnership, its withdrawal of its statement of registration. A dissolved entity that was a reporting entity before its dissolution again becomes a reporting entity upon its reinstatement under part 10 of this article, and a delinquent entity again becomes a reporting entity upon the curing of its delinquency pursuant to section 7-90-904.

(58.5) "Reporting limited partnership" means:

(a) A domestic limited partnership formed after July 26, 2009;

(b) A domestic limited partnership formed under article 61 of this title that elects after July 26, 2009, to be governed by article 62 of this title;

(c) A domestic limited partnership formed under or governed by article 62 of this title for which, after July 26, 2009, a statement of registration is delivered to the secretary of state, for filing pursuant to part 3 of this article, and which is subsequently on file in the records of the secretary of state; or

(d) Any other domestic limited partnership formed under or governed by article 62 of this title as to which a statement of election to be a reporting entity is on file in the records of the secretary of state after July 26, 2009.

(59) "Resulting entity" means the entity that results from the conversion of an entity pursuant to section 7-90-201.

(60) (Deleted by amendment, L. 2003, p. 2276, § 194, effective July 1, 2004.)

(60.5) "Sign" or "signature" means, with present intent, to authenticate or adopt a record by:

(a) Executing or adopting a tangible symbol; or

(b) Attaching to or logically associating with the record an electronic symbol, sound, or process.

(61) "State", when referring to a part of the United States, includes the following:

(a) A state;

(b) A commonwealth;

(c) The District of Columbia;

(d) All agencies, instrumentalities, and subdivisions of a state, a commonwealth, or the District of Columbia; or

(e) Any territory or insular possessions of the United States together with all agencies and governmental subdivisions thereof.

(61.1) "Statement of change" means a statement of change as described in section 7-90-305.5.

(61.3) "Statement of conversion" means a statement of conversion as described in section 7-90-201.7.

(61.4) "Statement of correction" means a statement of correction as described in section 7-90-305.

(61.5) "Statement of election to be a reporting entity" means a statement of election to be a reporting entity as described in section 7-90-501 (7.5).

(61.6) "Statement of merger" means a statement of merger as described in section 7-90-203.7.

(61.7) "Statement of registration" means, with respect to a domestic limited liability partnership or a domestic limited liability limited partnership, the statement of registration as described in section 7-60-144 or section 7-64-1002. With respect to a foreign limited liability partnership or a foreign limited liability limited partnership, "statement of registration" means

the corresponding document filed with the filing officer of the jurisdiction under the law of which the foreign limited liability partnership or the foreign limited liability limited partnership is formed.

(62) "Street address" means, with respect to a physical location, the street name and number, city, state, and (if not the United States) country, and the postal code, if any, that is required for delivery of mail to the location. If, by reason of rural location or otherwise, a street name and number, city, or town does not exist, "street address" shall mean an appropriate description fixing as nearly as possible the actual physical location, but, for all locations in the United States, the county or parish and, if any, the rural free delivery route and the United States postal code shall be included. With respect to the street address of a registered agent's usual place of business, as defined in subsection (56)(b) of this section, "street address" does not include a United States or commercial post office box.

(63) "Surviving entity" means the entity into which a merging entity or entities have merged pursuant to section 7-90-203 or pursuant to the organic statutes other than this article.

(63.3) "Trade name" means a name of a person other than the true name of the person, or, in the case of a general partnership that is not a limited liability partnership, other than the true name of each general partner of the general partnership, under which the person may transact business or conduct activities pursuant to the provisions of article 71 of this title.

(63.7) "True name" means, with respect to an individual, the first name and surname of the individual; with respect to a domestic entity, the domestic entity name, if any, of the domestic entity, or, if the domestic entity does not have a domestic entity name, the name under which the domestic entity most commonly transacts business or conducts activities in this state; and, with respect to a foreign entity, the functional equivalent of such a name.

(64) "United States" includes any district, authority, office, bureau, commission, department, and any other agency of the United States of America.

(65) "Unit owners' association" means an entity created pursuant to part 3 of article 33.3 of title 38, C.R.S., or any functionally equivalent entity formed under any subsequently enacted statute of this state.

(66) "Writing" or "written" means information in the form of a document.

Source: L. 97: Entire article added, p. 1506, § 21, effective June 3. **L. 98:** (2), (5), (11), (13), (14), (16), (18), (19), (20), (21), (24), (25), (26), (27), (28), (29), (41), (42), and (48) amended and (10.5), (19.5), (24.3), (24.5), (31.3), (31.7), (32.5), (32.7), (35.5), and (47.1) added, p. 613, § 9, effective July 1. **L. 2000:** (1), (6), (10), (11), (13), (16), (17), (18), (19), (19.5), (22), (23), (24.5), (27), (30), IP(36), (39), (45), (46), (47), (47.1), (48), and (49) amended and (1.5), (3.5), (3.7), (9.5), (11.5), (13.5), (15.3), (15.5), (20.5), (21.5), (23.3), (23.5), (31.1), (31.5), (35.7),

(35.9), (40.5), (50), (51), (52), (53), (54), (55), (56), (57), (58), (59), (60), (61), (62), (63), (64), and (65) added, p. 959, § 44, effective July 1. **L. 2002:** (3.7) and (19.5) amended, p. 1837, § 87, effective July 1; (3.7) and (19.5) amended, p. 1702, § 85, effective October 1. **L. 2003:** IP, (1), (1.5), (2), (3), (3.5), (5), (6), (7), (8), (9.5), (10), (10.5), (11), (11.5), (12), (13), (13.5), (14), (15), (15.3), (15.5), (16), (17), (18), (19), (21), (21.5), (22), (23), (23.3), (23.5), (24), (24.3), (24.5), (25), (26), (28), (29), (30), (31.1), (31.3), (31.5), (31.7), (35.5), (35.7)(f), IP(36), (39), (42), (43), (45), (46), (47), (48), (49), (51), (54), (55), (56), (58), (59), (60), (61)(d), and (62) amended and (1.3), (3.3), (3.9), (19.3), (20.7), (29.3), (29.5), (35.6), (51.5), (56.5), (61.1), (61.3), (61.7), (63.3), and (63.7) added, pp. 2276, 2355, §§ 194, 344, effective July 1, 2004. **L. 2004:** IP, (2), (3), (3.9), (6), (7), (10.5), (13), (13.5), (14), (15.3), (15.5), (16), (19.3), (23), (23.3)(b), (24.5), (26), (29.3), (31.7), (35.6), (35.7)(g), (36)(d), (36)(e), (42), (49), (57), (58), (63.3), and (63.7) amended and (40.7) added, p. 1465, § 201, effective July 1; (31.1) amended, p. 1010, § 19, effective August 4; (63.3) amended, p. 1544, § 4, effective May 30, 2006. **L. 2005:** (2), (10.5), (13.5), (15.3), (16), (17), (23.3), (32.5), (32.7), (37), (40.7), (49), and (58) amended, p. 1204, § 4, effective October 1. **L. 2006:** (8), (10.5), (20.7), (35.6), and (62) amended and (10.3) and (19.7) added, p. 864, § 40, effective July 1. **L. 2007:** (20.6), (50.5), (58.5), (61.4), (61.5), and (61.6) added and (35.7)(g), (51.5), (55), and (58) amended, p. 227, § 20, effective May 29. **L. 2008:** (63) amended, p. 19, § 5, effective August 5. **L. 2010:** (1.3) amended and (48.5) added, (HB 10-1403), ch. 404, p. 1995, § 12, effective August 11. **L. 2011:** (2), (3), (11), (36), and (44) amended and (14.5) and (23.7) added, (SB 11-191), ch. 197, p. 818, § 2, effective April 2, 2012. **L. 2012:** (3.8) added and (55) amended, (SB 12-123), ch. 171, p. 611, § 2, effective (see editor's note). **L. 2013:** (61.3) and (61.4) R&RE, (HB 13-1300), ch. 316, p. 1663, § 8, effective August 7. **L. 2015:** (60.5) and (66) added, (HB 15-1117), ch. 50, p. 120, § 1, effective August 5. **L. 2019:** IP amended, (SB 19-086), ch. 166, p. 1911, § 1, effective July 1, 2020; (3.5)(b) and (9.5)(b) added by revision, (SB 19-086), ch. 166, pp. 1911, 1966, §§ 1, 72. **L. 2021:** (1), (10.5), (19.7), (60.5), and (66) amended and (10.7), (19.6), (19.8), and (19.9) added, (HB 21-1124), ch. 41, p. 157, § 2, effective April 19. **L. 2024:** (36.5) and (53.5) added, (SB 24-129), ch. 272, p. 1774, § 1, effective August 7; (56) and (62) amended, (HB 24-1137), ch. 332, p. 2247, § 1, effective August 7.

Editor's note: (1) Amendments to subsection (58) by sections 194 and 344 of House Bill 03-1377 were harmonized.

(2) Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding subsection (3.8) and amending subsection (55) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said subsections. As of publication date, the revisor of statutes had not received certification from the secretary of state.

(3) Subsections (3.5)(b) and (9.5)(b) provided for the repeal of subsections (3.5) and (9.5), respectively, effective July 1, 2020. (See L. 2019, pp. 1911, 1966.)

ANNOTATION

Law reviews. For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part I", see 41 Colo. Law. 57 (Nov. 2012). For article, "Entity and Trade Name Filing Requirements and Customs in Colorado — Part II", see 41 Colo. Law. 25 (Dec. 2012). For article, "The Legality of Generative AI -- Part 2", see 52 Colo. Law. 30 (Sept. 2023).

7-90-102.5. Relationship between constituent documents and organic statutes.

For purposes of this article, the constituent documents of an entity shall govern to the extent not inconsistent with any provision of the organic statutes that may not be waived by the constituent documents of the entity.

Source: L. 2000: Entire section added, p. 966, § 45, effective July 1. **L. 2004:** Entire section amended, p. 1470, § 202, effective July 1.

7-90-103. Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of this article at any time, and all entities subject to said article shall be governed by the amendment or repeal.

Source: L. 97: Entire article added, p. 1510, § 21, effective June 3.

7-90-104. Nonapplication of uniform commercial code to owner's interest.

Subsections (d) to (f) of section 4-9-406 and section 4-9-408, C.R.S., do not apply to the assignment or the transfer of, or the creation of a security interest in, an owner's interest.

Source: L. 2006: Entire section added, p. 866, § 41, effective July 1; entire section amended, p. 1521, § 89, effective July 1. **L. 2016:** Entire section amended, (HB 16-1270), ch. 119, p. 340, § 3, effective August 10.

7-90-105. Notice.

(1) Except as otherwise provided in section 7-90-403 with respect to notice given by the secretary of state, notice given pursuant to this title 7 must be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be given in person or by telephone, electronic transmission, mail, or private carrier. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) The electronic transmission is otherwise retrievable in perceivable form; and

(b) The sender and the recipient have consented in writing to the use of that form of electronic transmission.

(3) Without limiting the manner by which notice otherwise may be given effectively to owners, any notice to an owner given by an entity under any provision of this title 7 or the constituent documents may be given in writing directed to the owner's mailing address or by electronic transmission directed to the owner's electronic-mail address, as applicable, as it appears on the records of the entity, and the notice is effective at the earliest of:

(a) The date received;

(b) Five days after mailing if the notice is deposited in the United States mail, postage prepaid; or

(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.

(4) When oral notice is reasonable in the circumstances as contemplated by subsection (1) of this section, the oral notice is effective when communicated if communicated in a comprehensible manner.

(5) Without limiting the manner by which notice otherwise may be given effectively to owners, notice given by electronic transmission is received when delivered if:

(a) Directed to an owner's electronic-mail address provided by the owner unless:

(I) The owner has notified the entity in writing or by electronic transmission of an objection to receiving notice by electronic mail; or

(II) The notice is prohibited by this title 7 or the constituent documents; and

(b) The notice by electronic mail includes a prominent legend that the communication is an important notice regarding the entity.

(6) If three successive notices that are sent to an owner pursuant to this section have been returned as undeliverable, no further notices to the owner are necessary until another address for the owner is made known to the entity; except that the failure to provide the notice pursuant to this subsection (6) does not invalidate any meeting or other action.

(7) An affidavit of the manager, transfer agent, or other agent of the entity that notice has been given is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

(8) Notice to a domestic entity or to a foreign entity authorized to transact business or conduct activities in this state may be mailed to:

(a) The registered agent address of the entity's registered agent; or

(b) The entity or its manager or secretary at its principal office.

(9) If this title 7 prescribes notice requirements for particular circumstances, those requirements govern. If the constituent documents of an entity prescribe notice requirements not inconsistent with this section or other provisions of this title 7, those requirements govern.

(10) (a) A domestic entity has given notice or has delivered any document under this title 7 or pursuant to the constituent documents to all owners who share a common address if:

(I) The domestic entity delivers one copy of the document to the common address;

(II) The domestic entity addresses the document to the owners either as a group, to each of the owners individually, or to the owners in a form to which each of the owners has consented; and

(III) Each of the owners consents to delivery of a single copy of the document to the owners' common address.

(b) The consent described in subsections (10)(a)(II) and (10)(a)(III) of this section is revocable by an owner who delivers notice of revocation to the domestic entity. If the notice of revocation is delivered, the domestic entity shall begin providing individual notices or documents to the revoking owner no later than thirty days after delivery of the notice of revocation.

(c) An owner who fails to object by notice to the domestic entity within sixty days after notice by the entity of its intention to deliver single copies of notices or documents to owners who share a common address as permitted by subsection (10)(a) of this section is deemed to have consented to receiving a single copy at the common address if the notice of intention explains that consent may be revoked and the method for revoking consent.

Source: L. 2021: Entire section added, (HB 21-1124), ch. 41, p. 160, § 3, effective April 19.

7-90-106. Relation to electronic signatures in global and national commerce act.

This article 90 modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Source: L. 2021: Entire section added, (HB 21-1124), ch. 41, p. 160, § 3, effective April 19.

7-90-107. Protection of member-specific data - nonprofit entities - rights and remedies - legislative declaration.

(1) The general assembly finds and declares that:

(a) Given the long-held protection of the fundamental rights of association and privacy under the constitutions of the United States and the state of Colorado, it is in the public interest to prohibit public agencies from collecting or disclosing member-specific data about members of, volunteers of, and financial and nonfinancial donors to nonprofit entities that are exempt from taxation under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (c), as amended, except as such collection or disclosure is permitted by law or rule or is necessary to enforce or ensure compliance with the law or rules of the state; and

(b) The provisions of this section concerning a public agency's access to or use of member-specific data are consistent with:

(I) Section 7-136-105, which prohibits any person from obtaining or using a nonprofit corporation's membership list for any purpose unrelated to a member's interest as a member; and

(II) Section 24-73-102, which requires governmental entities to protect access to certain types of personal identifying information.

(2) Except as provided in subsection (3) of this section or as otherwise permitted by law or as is necessary to enforce or ensure compliance with the state constitution or an applicable federal, state, or local statute, charter provision, resolution, ordinance, rule, or regulation, a public agency shall not:

(a) Require any person, including a nonprofit entity or an officer, director, employee, or agent of a nonprofit entity, to provide the public agency with member-specific data or otherwise compel the disclosure of member-specific data;

(b) Disclose to any person one or more items of member-specific data, including a complete or partial list of nonprofit entity members who are employed by a public agency or any information included in a nonprofit entity member's personnel files as defined in section 24-72-202 (4.5); or

(c) Request or require a current or prospective contractor or a current or prospective grantee of a grant program administered by the public agency to provide a list of nonprofit entities to which the current or prospective contractor or grantee has provided financial or nonfinancial support.

(3) This section does not preclude a public agency from requiring production of a nonprofit entity's member-specific data if:

(a) The member-specific data is specifically identified in a lawful subpoena or warrant that is:

(I) Issued by a court of competent jurisdiction or is issued under the agency's statutory or constitutional authority in an administrative, civil, or criminal matter or for an administrative proceeding before an administrative law judge, a hearing officer, or other duly authorized, quasi-judicial official, including the independent ethics commission as authorized by article XXIX of the state constitution; or

(II) Served upon a state or local agency for purposes of facilitating a lawful investigation, subject to the conditions of a protective order as directed by the court or agency that issued the subpoena;

(b) (I) The member-specific data is produced in discovery under the Colorado rules of civil procedure before a court of competent jurisdiction or as authorized by jurisdiction, an administrative law judge, a hearing officer, or other duly authorized, quasi-judicial official, including the independent ethics commission as authorized by article XXIX of the state constitution, so long as the presiding official enters a protective order prohibiting or limiting the disclosure of the member-specific data to the public.

(II) A protective order may be issued as described in this subsection (3)(b) at the court's discretion in discovery by state or local agencies engaged in securities and commodities enforcement, licensing, or examination procedures.

(c) The member-specific data is admitted into evidence as relevant to proving or disproving the claims or defenses at issue before a court of competent jurisdiction, an administrative law judge, a hearing officer, or other duly authorized, quasi-judicial official, including the independent ethics commission as authorized by article XXIX of the state constitution;

(d) The member-specific data is voluntarily and publicly disclosed by the person or the nonprofit entity to which it relates;

(e) The member-specific data is sought by a nonprofit entity that requests information concerning its own members from a public agency by which the members are employed;

(f) Information disclosing the identity of any director, officer, registered agent, or incorporator of a nonprofit entity in a report or disclosure is required by statute to be filed with the secretary of state or, for unincorporated associations, an agency that is designated by law; except that information that directly identifies a person solely because the person is a financial donor to a nonprofit entity shall not be disclosed unless disclosure is required by subsection (3)(g) of this section;

(g) The member-specific data is required to be made public because disclosure of a contribution or donation made by one or more members of a nonprofit entity is expressly required by federal, state, or local campaign finance laws;

(h) The member-specific data is required by statute or regulation in order for an applicant to qualify for or to operate a business activity in the state or in order for licensees or registrants to comply with ongoing regulatory requirements, so long as the member-specific data is used only in connection with lawful regulatory or enforcement activity to which the request relates and for any related proceedings;

(i) The member-specific data is necessary to determine compliance with federal or state antitrust statutes;

(j) The member-specific data is sought by a public agency investigating alleged violations of state or local civil or criminal laws as permitted or expressly required by law;

(k) The member-specific data is collected and used for the purpose of evaluating the suitability of applicants for, and any potential conflicts of interest resulting from, employment by a public agency or appointments to state or local boards, commissions, advisory committees, task forces, grant application review committees, or comparable entities, so long as the member-specific data is used only in connection with the specific application for an appointment to which the request relates and for any related proceedings;

(l) The member-specific data is collected and used in order to determine whether a person that is applying for or being evaluated for any grant, benefits, financing, or payments from or through, or any contract with, a public agency should be awarded the grant, benefits, financing, payments, or contract and includes information pertaining to persons related to or affiliated with the applicant, as well as persons conducting the evaluation, so long as the member-specific data is used only in connection with the specific application for, or evaluation for, a grant, benefits, financing, or payments to which the request relates and for any related proceedings;

(m) The member-specific data is collected and used by the office of the state auditor for the purpose of performing the functions of that office or in an audit, evaluation, or study conducted

by a public agency to perform its functions, so long as the member-specific data is used only for official state business;

(n) The member-specific data is collected and used by a public agency that is formed as a nonprofit entity where such member-specific data is used, either directly by the public agency or through its authorized agent, solely to contact, inform, or solicit its dues-paying members or donors, or to seek updates of their member-specific data;

(o) The member-specific data is sought by the department of revenue to determine a taxpayer's compliance with laws relating to the deduction or credits arising from contributions to a nonprofit entity from a person's taxable income;

(p) The member-specific data is produced for the purposes of enforcement, examination, or other securities and commodities regulatory matters, including collaboration with other securities and commodities enforcement and regulatory agencies, including, but not limited to, international, foreign, federal, state, and self-regulatory agencies, such as the financial industry regulatory authority;

(q) The member-specific data concerns a member who has been issued or is practicing under any class of license under section 44-20-108 or 44-20-408; or

(r) The member-specific data was voluntarily released to the public agency by the person or the nonprofit entity to which the data relates.

(4) (a) A nonprofit entity or any of its members affected adversely by a violation of this section may initiate a civil action in district court for injunctive relief, damages, or such other relief as is appropriate to address the violation. Such an action must be initiated against the public agency that sought and obtained, or improperly disclosed, member-specific data of the nonprofit entity in violation of this section.

(b) Notwithstanding the limitations of the "Colorado Governmental Immunity Act", article 10 of title 24, damages may be awarded to compensate a person for injury or loss caused by a public agency wrongfully requiring the production of, or wrongfully disclosing, member-specific data as follows:

(I) Except as described in subsection (4)(b)(II) of this section, not less than two thousand five hundred dollars for each reckless violation of this section; and

(II) Not less than seven thousand five hundred dollars for each intentional violation of this section.

(c) A court may award the costs of litigation, including reasonable attorney fees and witness fees, to a complainant that prevails in an action described in this subsection (4).

Source: L. 2024: Entire section added, (SB 24-129), ch. 272, p. 1775, § 2, effective August 7.

PART 2

MERGER AND CONVERSION OF ENTITIES

Editor's note: This article was added in 1997, and this part 2 was subsequently repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 2000, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

7-90-201. Conversion of an entity.

(1) Pursuant to a plan of conversion that complies with section 7-90-201.3 and is approved in accordance with section 7-90-201.4:

(a) A domestic entity of one form may convert into any other form of domestic entity.

(b) A domestic entity may convert into any form of foreign entity recognized in the jurisdiction under the law of which the entity will be considered to have been formed after the conversion.

(2) A foreign entity may convert into a domestic entity if the conversion is not prohibited by the constituent documents or organic statutes of the foreign entity and if the foreign entity complies with all of the requirements, if any, of its constituent documents and organic statutes in effecting the conversion.

Source: L. 2000: Entire part R&RE, p. 966, § 46, effective July 1. **L. 2002:** IP(5) amended, p. 1838, § 88, effective July 1; IP(5) amended, p. 1702, § 86, effective October 1. **L. 2003:** (1), (2), (3), (4)(a), (4)(c)(II), (5), and (6) amended, p. 2285, § 195, effective July 1, 2004. **L. 2004:** (2), (3), (4), (5), and (6) amended and (5.5) added, p. 1470, § 203, effective July 1. **L. 2005:** (1) and (5.5) amended, p. 1206, § 5, effective October 1. **L. 2006:** (2), (4)(b), (4)(c)(III), (4)(c)(IV), IP(5), (5)(b), and (5.5) amended and (4)(c)(III.3), (4)(c)(III.7), and (5.3) added, pp. 866, 868, §§ 42, 43, effective July 1. **L. 2007:** Entire section amended, p. 229, § 21, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1911, § 2, effective July 1, 2020.

Editor's note: This section is similar to former § 7-90-201 as it existed prior to 2000.

7-90-201.3. Plan of conversion.

(1) A plan of conversion must state:

(a) The entity name or, for an entity that has no entity name, the true name, the jurisdiction under the law of which the entity is formed, and the form of entity of the converting entity;

(b) The entity name or, for an entity that has no entity name, the true name, the jurisdiction under the law of which the entity is formed, and the form of the resulting entity;

(c) The terms and conditions of the conversion, including the manner and basis of changing the owner's interests of the converting entity into owner's interests or obligations of the resulting entity or into money or other property in whole or in part.

Source: L. 2007: Entire section added, p. 232, § 22, effective May 29. **L. 2019:** IP(1) and (1)(c) amended, (SB 19-086), ch. 166, p. 1912, § 3, effective July 1, 2020. **L. 2022:** (1)(c) amended, (HB 22-1250), ch. 80, p. 396, § 1, effective August 10.

7-90-201.4. Approval of plan of conversion.

(1) In the case of domestic entities described in this subsection (1), the plan of conversion must be approved:

(a) In the case of a corporation, as provided in section 7-111-103;

(b) In the case of a nonprofit corporation, as provided in section 7-131-102;

(c) In the case of a cooperative formed under, or subject to, article 56 of this title 7, as provided in section 7-56-602; and

(d) In the case of a cooperative formed under article 55 of this title 7, as provided in section 7-55-112.

(2) In the case of a domestic entity other than an entity described in subsection (1) of this section, the plan of conversion must be approved as follows:

(a) If the primary constituent documents expressly provide for the approval of the plan of conversion, it must be approved in accordance with those provisions.

(b) If subsection (2)(a) of this section does not apply, the plan of conversion must be approved in accordance with the provisions of the primary constituent documents that contain the most stringent terms for the approval of a plan of merger.

(c) If subsections (2)(a) and (2)(b) of this section do not apply, the plan of conversion must be approved in accordance with the provisions of the primary constituent documents that contain the most stringent terms for the approval of an amendment to the primary constituent documents or, if no such provisions exist, the provisions of the organic statutes that contain the most stringent terms for the approval of an amendment to the primary constituent documents.

(d) If subsections (2)(a), (2)(b), and (2)(c) of this section do not apply, the plan of conversion must be approved by all of the owners of the converting entity.

(3) For purposes of this section, the provisions of the organic statutes and constituent documents applicable to approval include provisions relating to any preliminary approval by managers for submission to the owners, notices, quorum, voting, and consent by owners or third parties. References in this section to the most stringent provisions of the primary constituent documents or organic statutes are references to those provisions of the documents or statutes that establish the highest voting requirements.

(4) Nothing in this section permits a primary constituent document to contain any provision proscribed by the organic statutes.

Source: L. 2007: Entire section added, p. 232, § 22, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1912, § 4, effective July 1, 2020.

7-90-201.7. Statement of conversion - when conversion effective.

(1) After the conversion of an entity is approved in accordance with section 7-90-201.4, the converting entity shall cause a statement of conversion to be delivered to the secretary of state, for filing pursuant to part 3 of this article, if the converting entity has a constituent filed document or a statement of foreign entity authority filed in the records of the secretary of state and the resulting entity will not be an entity for which a constituent filed document will be filed in the records of the secretary of state. The statement of conversion shall state:

(a) The entity name of the converting entity, its principal office address, the jurisdiction under the law of which it is formed, and its form of entity;

(b) The true name of the resulting entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(c) A statement that the converting entity has been converted into the resulting entity pursuant to this section; and

(d) Any other matters relating to the conversion that the converting entity determines to include therein.

(2) After the conversion of an entity is approved in accordance with section 7-90-201.4, if neither the resulting entity nor the converting entity is or will be an entity that will have a constituent filed document filed in the records of the secretary of state, either the resulting entity or the converting entity may deliver to the secretary of state, for filing pursuant to part 3 of this article 90, a statement of conversion stating:

(a) The true name of the converting entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(b) The true name of the resulting entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(c) That the converting entity has been converted into the resulting entity pursuant to this section; and

(d) Any other matters relating to the conversion that the entity filing the statement of conversion determines to include therein.

(3) (a) After the conversion of an entity is approved in accordance with section 7-90-201.4, if the resulting entity will be an entity for which a constituent filed document is to be filed in the records of the secretary of state, the converting entity shall deliver to the secretary of state, for filing pursuant to part 3 of this article 90, a combined statement of conversion and the constituent filed document that complies with the requirements of the organic statutes. In addition to complying with the requirements of the organic statutes for the constituent filed document, a combined statement of conversion and constituent filed document must state:

(I) The entity name or, for an entity that has no entity name, the true name of the converting entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(II) The entity name of the resulting entity;

(III) That the converting entity has been converted into the resulting entity pursuant to this section; and

(IV) Any other matters relating to the conversion that the entity filing the statement of conversion determines to include therein.

(b) Notwithstanding the requirement in paragraph (a) of this subsection (3), a combined statement of conversion and constituent filed document, once accepted for filing by the secretary of state, shall for all purposes be deemed to be two separate documents: The statement of conversion and the constituent filed document.

(4) The conversion shall become effective as specified by the organic statutes. If the organic statutes do not specify an effective date, the conversion shall become effective when the statement of conversion, if any, becomes effective as determined pursuant to section 7-90-304,

or, if no statement of conversion is filed, the conversion shall become effective at the time and on the date determined by the owners of the converting entity.

Source: L. 2007: Entire section added, p. 233, § 22, effective May 29. **L. 2019:** IP(2) and IP(3)(a) amended, (SB 19-086), ch. 166, p. 1913, § 5, effective July 1, 2020.

7-90-202. Effect of conversion - entity unchanged.

(1) When a conversion takes effect, the converting entity is converted into the resulting entity, and the resulting entity is thereafter subject to all of the provisions of the organic statutes.

(2) Unless otherwise agreed, the conversion of any converting entity into a resulting entity shall not be deemed to affect any obligations of the converting entity incurred prior to the conversion to the resulting entity or the personal liability of any person incurred prior to such conversion.

(3) Unless otherwise agreed or otherwise provided by the organic statutes, other than this article, the converting entity shall not be required to wind up the entity's affairs or pay obligations and distribute the entity's assets, and the conversion shall not be deemed to constitute a dissolution of the converting entity and shall constitute a continuation of the existence of the converting entity in the form of the resulting entity.

(4) The resulting entity is the same entity as the converting entity.

Source: L. 2000: Entire part R&RE, p. 967, § 46, effective July 1. **L. 2004:** (1) and (3) amended, p. 1472, § 204, effective July 1. **L. 2019:** (1) amended, (SB 19-086), ch. 166, p. 1913, § 6, effective July 1, 2020.

Editor's note: This section is similar to former § 7-90-202 as it existed prior to 2000.

7-90-203. Merger of entities.

(1) One or more domestic entities may merge into a domestic entity of a form the same as or different from any of the merging entities pursuant to a plan of merger complying with section 7-90-203.3 and approved pursuant to section 7-90-203.4.

(2) One or more domestic entities may merge into a foreign entity of a form the same as or different from that of any of the merging entities, or one or more foreign entities may merge into

a domestic entity of a form the same as or different from that of any of the merging entities, pursuant to a plan of merger complying with section 7-90-203.3 and approved, in the case of a domestic entity, pursuant to section 7-90-203.4, if:

(a) The merger is not prohibited by the constituent documents or organic statutes of each foreign entity;

(b) Each foreign entity complies with all of the requirements, if any, of its constituent documents and organic statutes in effecting the merger; and

(c) Any foreign entity that is the surviving entity of the merger complies with section 7-90-204.5.

(3) to (7) (Deleted by amendment, L. 2007, p. 235, § 23, effective May 29, 2007.)

Source: L. 2000: Entire part R&RE, p. 968, § 46, effective July 1. **L. 2002:** IP(5) amended, p. 1838, § 89, effective July 1; IP(5) amended, p. 1702, § 87, effective October 1. **L. 2003:** (1), (2), (3), (4)(c)(II), (5), and (6) amended and (4)(c)(III) and (4)(c)(IV) added, p. 2286, § 196, effective July 1, 2004. **L. 2004:** (2), (3)(a), (3)(b), (4)(c), (5), and (6) amended and (3)(f) added, p. 1472, § 205, effective July 1. **L. 2005:** (5)(c) amended, p. 1206, § 6, effective October 1. **L. 2006:** (3)(a), (3)(b), (4)(b), (4)(c)(II)(B), (4)(c)(II)(D), and (5) amended, p. 868, § 44, effective July 1. **L. 2007:** Entire section amended, p. 235, § 23, effective May 29. **L. 2019:** (1) and (2) amended, (SB 19-086), ch. 166, p. 1914, § 7, effective July 1, 2020.

Editor's note: This section is similar to former § 7-90-203 as it existed prior to 2000.

7-90-203.1. Exchange of owner's interest.

(1) One or more domestic entities may acquire all owner's interests of any other entity or all of one or more classes, series, or types, in exchange for owner's interests or other securities, obligations, rights to acquire owner's interests, or other securities, cash, property, or any combination pursuant to a plan of exchange complying with section 7-90-203.3 and approved pursuant to section 7-90-203.4.

(2) A foreign entity may be party to an exchange pursuant to a plan of exchange complying with section 7-90-203.3 and approved, in the case of a domestic entity, pursuant to section 7-90-203.4, if:

(a) The exchange is not prohibited by the constituent documents or organic statutes of the foreign entity;

(b) The foreign entity complies with all of the requirements, if any, of its constituent documents and organic statutes in effecting the exchange; and

(c) Any foreign entity that is the acquiring entity in the exchange complies with section 7-90-204.5.

(3) This section does not limit the power of a domestic entity to acquire the owner's interests of any other entity in a transaction other than an exchange.

Source: L. 2019: Entire section added, (SB 19-086), ch. 166, p. 1914, § 8, effective July 1, 2020. **L. 2022:** (1) and (3) amended, (HB 22-1250), ch. 80, p. 396, § 2, effective August 10.

ANNOTATION

Law reviews. For article, "2019 Colorado Business Law Updates: Revising the Colorado Business Corporation Act and the Colorado Corporations and Associations Act", see 48 Colo. Law. 26 (Nov. 2019).

7-90-203.3. Plan of merger - plan of exchange.

(1) A plan of merger must state:

(a) The entity name or, for an entity that has no entity name, the true name, the jurisdiction under the law of which the entity is formed, and the form of entity of each of the merging entities;

(b) The entity name or, for an entity that has no entity name, the true name, the jurisdiction under the law of which the entity is formed, and the form of the surviving entity into which the merging entities are to merge;

(c) The terms and conditions of the merger, including the manner and basis of changing the owner's interests of each merging entity into owner's interests or obligations of the surviving entity or into money or other property in whole or in part; and

(d) Any amendments to the constituent documents of the surviving entity to be effected by the merger.

(2) (a) A plan of exchange must state:

(I) The entity name of each party to the exchange;

(II) The terms and conditions of the exchange; and

(III) The manner and basis of exchanging the owner's interests to be acquired.

(b) The plan of exchange may state other provisions relating to the exchange.

Source: L. 2007: Entire section added, p. 238, § 24, effective May 29. **L. 2019:** (2) added, (SB 19-086), ch. 166, p. 1915, § 9, effective July 1, 2020. **L. 2022:** IP(1), (1)(c), and (2)(a)(III) amended, (HB 22-1250), ch. 80, p. 397, § 3, effective August 10.

7-90-203.4. Approval of plan of merger or exchange.

(1) In the case of domestic entities described in this subsection (1), the plan of merger or plan of exchange must, if required, be approved:

(a) In the case of a corporation, as provided in section 7-111-103;

(b) In the case of a nonprofit corporation, as provided in section 7-131-102 for merger; except that, if the transaction is an owner's interest exchange and the primary constituent documents expressly provide for the approval of a plan of exchange, the transaction must be approved in accordance with those provisions;

(c) In the case of a cooperative formed under, or subject to, article 56 of this title 7, as provided in section 7-56-602 for approval of a plan of merger, conversion, consolidation, or share or equity capital exchange;

(d) In the case of a cooperative formed under article 55 of this title 7, as provided in section 7-55-112 for merger; except that, if the transaction is an owner's interest exchange and the primary constituent documents expressly provide for the approval of a plan of exchange, the transaction must be approved in accordance with those provisions; and

(e) In the case of a cooperative formed under article 58 of this title 7, as provided in section 7-58-1606 for merger; except that, if the transaction is an owner's interest exchange and the primary constituent documents expressly provide for the approval of a plan of exchange, the transaction must be approved in accordance with those provisions.

(2) In the case of a domestic entity other than an entity described in subsection (1) of this section, the plan of merger or plan of exchange must be approved as follows:

(a) If the primary constituent documents expressly provide for the approval of the plan of merger or plan of exchange, in accordance with the respective provisions of the primary constituent documents;

(b) If the primary constituent documents do not expressly provide for approval:

(I) Of a plan of merger but do provide for approval of a plan of exchange, then a plan of merger is governed by the approval requirements for a plan of exchange; and

(II) Of a plan of exchange but do provide for approval of a plan of merger, then a plan of exchange is governed by the approval requirements for a plan of merger;

(c) If subsections (2)(a) and (2)(b) of this section do not apply because the primary constituent documents do not expressly provide for the approval of a plan of merger or a plan of exchange, in accordance with the provisions of the entity's organic statutes that contain the most stringent terms for approval of the other type of transaction in this section;

(d) If subsections (2)(a), (2)(b), and (2)(c) of this section do not apply, in accordance with the provisions of the entity's organic statutes that contain the most stringent terms for approval of an amendment to the primary constituent documents or, if no such provisions exist, the provisions of the organic statutes that contain the most stringent terms for the approval of an amendment to the primary constituent documents; or

(e) If subsections (2)(a), (2)(b), (2)(c), and (2)(d) of this section do not apply, by all of the owners of the merging entity.

(3) For purposes of this section, the provisions of the organic statutes and constituent documents applicable to approval include provisions relating to any preliminary approval by managers for submission to the owners, notices, quorum, voting, and consent by owners or third parties. References in this section to the most stringent provisions of the primary constituent documents or organic statutes are references to those provisions of the documents or statutes that establish the highest voting requirements.

(4) Nothing in this section shall be deemed to permit a primary constituent document to contain any provision that is proscribed by the organic statutes.

Source: L. 2007: Entire section added, p. 238, § 24, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1915, § 10, effective July 1, 2020.

7-90-203.7. Statement of merger - when merger effective.

(1) After a merger is approved in accordance with section 7-90-203, if any merging entity is an entity for which a constituent filed document has been filed by the secretary of state, the surviving entity shall deliver to the secretary of state, for filing pursuant to part 3 of this article 90, a statement of merger that states:

(a) The entity name or, for an entity that has no entity name, the true name of each merging entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(b) The entity name or, for an entity that has no entity name, the true name of the surviving entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(c) That each merging entity is merged into the surviving entity;

(d) That, if the plan of merger provides for amendments to any constituent filed document of the surviving entity, an appropriate statement of change or other document effecting the amendments shall be delivered to the secretary of state for filing pursuant to part 3 of this article; and

(e) Any other matters relating to the merger the surviving entity determines to include therein.

(2) After a merger is approved in accordance with section 7-90-203, if no merging entity is an entity for which a constituent filed document has been filed by the secretary of state, the surviving entity may deliver to the secretary of state, for filing pursuant to part 3 of this article 90, a statement of merger that states:

(a) The entity name or, for an entity that has no entity name, the true name of each merging entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(b) The entity name or, for an entity that has no entity name, the true name of the surviving entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(c) That each merging entity is merged into the surviving entity; and

(d) Any other matters relating to the merger that the surviving entity determines to include therein.

(3) The merger shall become effective as specified by the organic statutes. If the organic statutes do not specify an effective date, the merger takes effect at the time and on the date the statement of merger becomes effective as determined pursuant to section 7-90-304 or, if no statement of merger is required to be filed, at the time and on the date determined by the owners of the merging entity.

Source: L. 2007: Entire section added, p. 239, § 24, effective May 29. **L. 2013:** IP(1) and IP(2) amended, (HB 13-1300), ch. 316, p. 1663, § 9, effective August 7. **L. 2019:** IP(1) and IP(2) amended, (SB 19-086), ch. 166, p. 1917, § 11, effective July 1, 2020.

7-90-203.8. Statement of owner's interest exchange.

(1) After a plan of exchange is approved pursuant to section 7-90-203.4, the acquiring entity shall deliver to the secretary of state, for filing pursuant to part 3 of this article 90, a statement of owner's interest exchange stating:

(a) The entity name of each entity whose owner's interests will be acquired, and the principal office address of its principal office;

(b) The entity name of the acquiring entity and the principal office address of its principal office; and

(c) A statement that the acquiring entity acquires owner's interest of the other entity or entities.

Source: L. 2019: Entire section added with relocations, (SB 19-086), ch. 166, p. 1917, § 12, effective July 1, 2020. **L. 2020:** (1)(c) amended, (HB 20-1402), ch. 216, p. 1041, § 7, effective June 30. **L. 2022:** (1)(a) amended, (HB 22-1250), ch. 80, p. 397, § 4, effective August 10.

Editor's note: This section is similar to former § 7-111-105 (1) as it existed prior to July 1, 2020.

7-90-204. Effect of merger.

(1) When a merger takes effect:

(a) Every merging entity merges into the surviving entity and the separate existence of every merging entity ceases. All of the rights, privileges, including specifically the attorney-client privilege, and powers of each of the merging entities; all real, personal, and mixed property; and all obligations due to each of the merging entities, as well as all other things and causes of action of each of the merging entities, vest as a matter of law in the surviving entity and are thereafter the rights, privileges, powers, and property of, and obligations due to, the surviving entity. Title to any property vested in any of the merging entities does not revert and is not in any way impaired by reason of the merger; except that all rights of creditors in and all liens upon any property of any of the merging entities are preserved unimpaired in the same property, however held. All obligations of the merging entities attach as a matter of law to the surviving entity and may be fully enforced against the surviving entity. A merger does not constitute a conveyance, transfer, or assignment. Nothing in this section affects the validity of contract provisions or of reversions or other forms of title limitations that attach conditions or consequences specifically to mergers.

(b) Any owner who was liable for the obligation of any merging entity solely by reason of being an owner of the merging entity, but who will otherwise not be liable for the obligation of the surviving entity, remains liable for the obligations of the merging entity incurred before the merger unless a contract giving rise to the obligation provides otherwise.

(c) Unless otherwise provided in the constituent documents or required under the organic statutes, no merging entity shall be required to wind up its affairs or pay obligations and distribute assets, and the merger shall not be deemed to constitute a dissolution or liquidation of the merging entity. Unless otherwise provided in the constituent documents of a constituent entity or as required under the organic statutes, any payments in cash or in kind to owners of the constituent entity pursuant to the plan of merger shall not be deemed to constitute a dividend, liquidating distribution, or other distribution that gives rise to contractual distributional preference rights.

Source: L. 2000: Entire part R&RE, p. 969, § 46, effective July 1. **L. 2004:** (1)(c) amended, p. 1474, § 206, effective July 1. **L. 2005:** (1)(a) amended, p. 1207, § 7, effective October 1. **L. 2015:** (1)(a) amended, (HB 15-1071), ch. 28, p. 69, § 1, effective September 1. **L. 2019:** IP(1) and (1)(a) amended, (SB 19-086), ch. 166, p. 1917, § 13, effective July 1, 2020.

Editor's note: This section is similar to former § 7-90-204 as it existed prior to 2000.

7-90-204.3. Effect of an exchange.

When an exchange takes effect, the owner's interests of each acquired entity are exchanged as provided in the plan, and the former holders of the owner's interests are entitled only to the exchange rights provided in the statement of owner's interest exchange or to their rights under the organic statutes.

Source: L. 2019: Entire section added with relocations, (SB 19-086), ch. 166, p. 1918, § 14, effective July 1, 2020. **L. 2022:** Entire section amended, (HB 22-1250), ch. 80, p. 397, § 5, effective August 10.

Editor's note: This section is similar to former § 7-111-106 (2) as it existed prior to July 1, 2020.

7-90-204.5. Foreign entity resulting from conversion or surviving merger.

(1) Upon a conversion of a domestic entity into a foreign entity, a merger of a domestic entity and a foreign entity in which the foreign entity is the surviving entity, or an exchange between a domestic entity and a foreign entity in which the foreign entity is the acquiring entity, the foreign entity:

(a) Shall either:

(I) Appoint a registered agent if the foreign entity has no registered agent and maintain a registered agent pursuant to part 7 of this article 90, whether or not the foreign entity is otherwise required to do so, to accept service in any proceeding to enforce any obligation or rights of shareholders seeking appraisal rights in any domestic entity party to the conversion, merger, or exchange or in any proceeding based on a cause of action arising with respect to any domestic entity party to the conversion, merger, or exchange; or

(II) Be deemed to have authorized service of process on it in connection with such causes of action by mailing in accordance with section 7-90-704 (2);

(b) Shall promptly pay to shareholders seeking appraisal rights in each domestic entity party to the conversion, merger, or exchange the amount, if any, to which they are entitled under the organic statutes; and

(c) Shall comply with part 8 of this article 90 if it is to transact business or conduct activities in this state.

Source: L. 2004: Entire section added, p. 1474, § 207, effective July 1. **L. 2006:** (1)(a)(I) amended, p. 869, § 45, effective July 1. **L. 2007:** (1)(a)(I) amended, p. 240, § 25, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1918, § 15, effective July 1, 2020.

7-90-205. Scope of article - article not exclusive - repeal. (Repealed)

Source: L. 2000: Entire part R&RE, p. 970, § 46, effective July 1. **L. 2019:** (2) added by revision, (SB 19-086), ch. 166, pp. 1919, 1966, §§ 16, 72.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 2020. (See L. 2019, pp. 1919, 1966.)

7-90-205.5. Abandonment or amendment of plan of merger, plan of conversion, or plan of exchange.

(1) After a plan of merger, a plan of conversion, or a plan of exchange is authorized, and at any time before the merger, conversion, or exchange takes effect:

(a) The transaction may be abandoned, subject to any contractual rights, in accordance with the procedure stated in the plan of merger, plan of conversion, or plan of exchange. If a merger, conversion, or exchange is abandoned after a plan of merger has been filed by the secretary of state pursuant to section 7-90-203.7, a plan of conversion has been filed by the secretary of state pursuant to section 7-90-201.7, or a plan of exchange has been filed by the secretary of state pursuant to section 7-90-203.8 stating a delayed effective date, the transaction may be prevented from becoming effective by delivering to the secretary of state, for filing pursuant to part 3 of this article 90, before the date the transaction becomes effective pursuant to section 7-90-304, a statement of change that states that, by appropriate action, the transaction has been abandoned.

(b) The plan of merger, plan of conversion, or plan of exchange may be amended in accordance with the procedure stated in the plan, but the plan may not be amended to change:

(I) The amount or kind of owner's interests or other securities, eligible interests, obligations, rights to acquire owner's interests, other securities or eligible interests, cash, or other property to be received under the plan by the owners of eligible interests in any party to the merger, conversion, or exchange;

(II) The primary constituent documents of an entity that is party to the merger, conversion, or exchange, except for changes permitted by the organic statutes of the entity; or

(III) Any of the other terms or conditions of the plan if the change would adversely affect the owners in any material respect.

Source: L. 2019: Entire section added, (SB 19-086), ch. 166, p.1919, § 17, effective July 1, 2020. **L. 2022:** (1)(b)(I) amended, (HB 22-1250), ch. 80, p. 397, § 6, effective August 10.

7-90-206. Appraisal rights, prohibitions, restrictions, and requirements.

(1) To the extent that any organic statute or the common law expressly prohibits or restricts the right of any entity to convert into any other form of entity or merge with or be party to an exchange with any other entity, grants appraisal rights with respect to the merger, conversion, or exchange, or imposes any requirement on the conversion, merger, or exchange, any merger, conversion, or exchange of the entity under this part 2 is subject to the restriction, entitles its owners to the appraisal rights, and is subject to the requirement.

(2) If the primary constituent documents or organic statutes do not provide an owner of a converting entity, merging entity, or entity party to an exchange with appraisal rights or do not expressly deny an owner of a converting entity, merging entity, or entity party to an exchange with appraisal rights, but an owner would be entitled under the organic statutes or primary constituent documents to appraisal rights if the entity were merged into an entity of the same form as the converting or acquiring entity, were party to an exchange with an entity of the same form as the converting or surviving entity, or were converted into an entity of the same form as the acquiring or surviving entity, then the owner is entitled to appraisal rights with respect to the conversion, merger, or exchange:

(a) On the same basis as the owner would be so entitled under the organic statutes or primary constituent documents if the entity were being merged into an entity of the same form as the converting or acquiring entity;

(b) If no provisions specified in subsection (2)(a) of this section exist, on the same basis as the owner would be so entitled under the organic statutes or primary constituent documents if the entity were party to an exchange with an entity of the same form as the converting or acquiring entity; or

(c) If no provisions specified in subsections (2)(a) and (2)(b) of this section exist, on the same basis as the owner would be so entitled under the organic statutes or primary constituent documents if the entity were being converted into an entity of the same form as the surviving or acquiring entity.

(3) Unless otherwise provided in the plan of conversion, plan of merger, or plan of exchange, an owner of an entity that is converted into another form of entity or merged into any other entity, or whose owner's interest is exchanged with another entity pursuant to an owner's interest exchange who consents to the conversion, merger, or exchange, or, in a transaction in which appraisal rights are applicable, who does not consent to the conversion, merger, or exchange and who does not exercise appraisal rights becomes an owner of the resulting or surviving entity and shall be deemed to be a party to, and to be bound by, the constituent operating document of the resulting or surviving entity.

Source: L. 2000: Entire part R&RE, p. 970, § 46, effective July 1. **L. 2006:** Entire section amended, p. 870, § 46, effective July 1. **L. 2007:** (3) added, p. 241, § 26, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1919, § 18, effective July 1, 2020.

Editor's note: This section is similar to former § 7-90-206 as it existed prior to 2000.

PART 3

FILING DOCUMENTS

Law reviews: For article, "Business Entity Legislation 2002: Filing Procedures and LLC Changes", see 31 Colo. Law. 55 (Nov. 2002); for article, "Entity and Trade Name Filing Requirements and Customs in Colorado -- Part I", see 41 Colo. Law. 57 (Nov. 2012); for article, "Entity and Trade Name Filing Requirements and Customs in Colorado -- Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-90-301. Filing requirements.

(1) (a) Each document that is required or permitted to be filed in the records of the secretary of state pursuant to any provision of this title or any organic statute of this state shall be subject to this part 3.

(b) To be entitled to be filed pursuant to this part 3, a document shall be subject to this part 3 and shall comply with the requirements of this section and the requirements of any other law of this state that adds to or varies the requirements of this part 3.

(b.5) (Deleted by amendment, L. 2004, p. 1475, § 208, effective July 1, 2004.)

(c) Any provision in this title or any other organic statute of this state that provides for filing of a document with the secretary of state or with the office of the secretary of state or in the records of the secretary of state shall be deemed to mean delivery of the document to the secretary of state, for filing pursuant to this part 3.

(2) Notwithstanding the general recognition in paragraph (b) of subsection (1) of this section of requirements of other law of this state that may add to or vary the requirements of this part 3, and notwithstanding any other provision of this title or any other organic statute of this state requiring the signature of any person on, or execution by any person of, a document, no such signature or execution shall be required as a condition to its being filed pursuant to this part 3.

(3) The document shall contain all information required by the law of this state to be contained in the document but, unless otherwise provided by law, shall not contain other information.

(4) The document shall be on or in such medium as may be acceptable to the secretary of state and from which the secretary of state may create a document that contains all of the information stated in the document and that is typewritten or printed on paper. The secretary of state may require that the document be delivered by any one or more means or on or in any one or more media as may be acceptable to the secretary of state. The secretary of state is not required to file a document that is not delivered by a means and in a medium that complies with

the requirements then established by the secretary of state for the delivery and filing of documents. If the secretary of state permits a document to be delivered on paper, the document shall be typewritten or machine printed, and the secretary of state may impose reasonable requirements upon the dimensions, legibility, quality, and color of such paper and typewriting or printing and upon the format and other attributes of any document that is delivered electronically. The secretary of state shall ensure, at the earliest practicable time, that delivery of a document subject to this part 3 for filing may be accomplished electronically, without the necessity for the delivery of a physical original document or the image thereof, if all required information is delivered and is readily retrievable from the data delivered. If the delivery of a document subject to this part 3 for filing is required to be accomplished electronically, such document shall not be accompanied by any physical document unless the secretary of state permits such accompaniment.

(5) The document shall be in the English language. The entity name of any entity contained in the document need not be in English if expressed in English letters or arabic or roman numerals.

(6) The document shall state the section or sections of the organic statutes, other than this part 3, pursuant to which it is delivered to the secretary of state for filing pursuant to this part 3.

(6.5) to (7.7) (Deleted by amendment, L. 2002, p. 1838, § 90, effective July 1, 2002; p. 1702, § 88, effective October 1, 2002.)

(8) The document must state the true name or true names, and mailing address or mailing addresses, of any one or more of the individuals who cause the document to be delivered for filing, but the document need not state the true name and mailing address of more than one such individual.

(9) The document shall include any form or cover sheet, or both, required pursuant to section 7-90-302.

(10) The document shall be delivered to the secretary of state for filing and shall be accompanied by all required fees.

(11) (Deleted by amendment, L. 2004, p. 1475, § 208, effective July 1, 2004.)

(12) Notwithstanding section 2-4-108, C.R.S., section 24-11-110, C.R.S., or any other provision of law, if the last day of a period for filing a document that is authorized or required to be filed by electronic means falls on a Saturday, Sunday, legal holiday, or any day the secretary of state's physical office is closed, the period shall expire on such day.

Source: L. 97: Entire article added, p. 1517, § 21, effective June 3. **L. 98:** (1), (2), (3), (6), (8), and (10) amended and (6.5) and (7.7) added, p. 618, § 15, effective July 1. **L. 2002:** Entire

section amended, p. 1838, § 90, effective July 1; entire section amended, p. 1702, § 88, effective October 1. **L. 2003:** (1), (3), (4), (6), (8), and (9) amended and (11) added, p. 2288, § 197, effective July 1, 2004. **L. 2004:** (1)(a), (1)(b), (1)(b.5), (2), (3), (4), (5), (6), (8), (9), (10), and (11) amended, p. 1475, § 208, effective July 1. **L. 2005:** (4) amended, p. 1207, § 8, effective October 1. **L. 2007:** (10) amended, p. 241, § 27, effective May 29. **L. 2008:** (12) added, p. 24, § 21, effective August 5. **L. 2019:** (8) amended, (SB 19-086), ch. 166, p. 1920, § 19, effective July 1, 2020.

7-90-301.5. Act of causing document to be delivered for filing.

(1) By causing a document to be delivered to the secretary of state for filing pursuant to this part 3, an individual affirms, under penalty of perjury, that:

(a) The document is the individual's act and deed or that the individual in good faith believes that the document is the act and deed of the person on whose behalf the document is delivered for filing;

(b) The individual in good faith believes that the facts stated in the document are true; and

(c) The document complies with the requirements of this part 3, the constituent documents, and the organic statutes.

Source: L. 2004: Entire section added, p. 1477, § 209, effective July 1. **L. 2024:** Entire section amended, (HB 24-1137), ch. 332, p. 2248, § 2, effective August 7.

Editor's note: Subsections (1)(a), (1)(b), and (1)(c) were numbered as (1), (2), and (3) in HB 24-1137 but were renumbered on revision for ease of location.

7-90-302. Forms and cover sheets - secretary of state to furnish upon request.

(1) The secretary of state may prepare and furnish a form or cover sheet, or both, for any document that is subject to this part 3 and may require the use of any such form or cover sheet or both. The form or cover sheet may require the statement of any information the secretary of state deems appropriate to perform the duties of the secretary of state under the law of this state, including information as to the identity of any person to which the document relates, the mailing address of any such person, the registered agent name and registered agent address of the registered agent for any such person who is required or permitted by this title to have a registered agent, and the principal office address of the principal office of any such person who has a principal office. A form or cover sheet shall not preclude in any way the inclusion in any

document of any item the inclusion of which is not prohibited by the law of this state and shall not require the inclusion of any item the inclusion of which is not required or permitted by this article or any other law of this state.

(2) The form or cover sheet shall be deemed to be a part of the filed document that uses such form or cover sheet. Information that is contained in such form or cover sheet shall control over any contrary information contained elsewhere in the filed document.

(3) The secretary of state shall furnish, on request, any form or cover sheet that the secretary of state requires to be used pursuant to this section.

Source: L. 97: Entire article added, p. 1518, § 21, effective June 3. **L. 98:** Entire section amended, p. 620, § 16, effective July 1. **L. 2002:** Entire section amended, p. 1840, § 91, effective July 1; entire section amended, p. 1705, § 89, effective October 1. **L. 2003:** Entire section amended, p. 2290, § 198, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1477, § 210, effective July 1. **L. 2006:** (1) amended, p. 870, § 47, effective July 1. **L. 2007:** (1) amended, p. 241, § 28, effective May 29.

7-90-303. Filing, service, and copying fees - subpoenas.

(1) The secretary of state shall charge and collect fees and other charges, which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., for:

(a) Issuing any certificate;

(b) Furnishing any information;

(c) Furnishing a copy of any filed document; or

(d) (Deleted by amendment, L. 2004, p. 1477, § 211, effective July 1, 2004.)

(e) (Deleted by amendment, L. 2003, p. 2290, § 199, effective July 1, 2004.)

(f) Processing any document delivered to the secretary of state for filing as required or permitted under part 3 of article 18 of title 6 or part 10 of article 16 of title 10 or part 3 of article 33.3 of title 38, C.R.S., or this title.

(2) (a) The secretary of state shall charge and collect, at the time of service of any subpoena upon the secretary of state or any deputy or employee of the secretary of state's office, a fee of fifty dollars and an allowance of ten dollars for meals and a charge for mileage at the rate prescribed by section 24-9-104, C.R.S., for each mile from the state capitol building to the place named in the subpoena. The fee shall be paid to the secretary of state; the meal allowance and mileage charge shall be paid to the person named in the subpoena. If the person named in the

subpoena is required to appear at the place named in the subpoena for more than one day, the person shall be paid in advance a per diem allowance of forty-four dollars for each day of attendance in addition to any other fees, allowances, and charges.

(b) Notwithstanding the amount specified for any fee or allowance in paragraph (a) of this subsection (2), the secretary of state may reduce the amount of one or more of the fees or allowances if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees or allowances is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of one or more of the fees or allowances as provided in section 24-75-402 (4), C.R.S.

(3) The secretary of state shall charge and collect all other fees and penalties imposed by or assessed in accordance with the law of this state.

(4) In all cases where fees or charges are imposed under this article, the fee shall include indexing and filing of the document and providing all copies required to be provided by the secretary of state in connection with the filing and shall include affixing the seal of the secretary of state upon any certified copy.

(5) If payment for a document submitted to the secretary of state for filing is not successfully processed, including reversal of the electronic payment, the document has not been successfully filed, notwithstanding the time or date initially stamped on the document. The secretary of state may either:

(a) Mark the document as void and adjust the entity's resulting status; or

(b) Remove the document from the online filing system.

Source: L. 97: Entire article added, p. 1518, § 21, effective June 3. **L. 98:** (2) amended, p. 1323, § 20, effective June 1; (1)(f) and (3) amended, p. 620, § 17, effective July 1. **L. 2002:** (1)(b) to (1)(d) and (4) amended, p. 1841, § 92, effective July 1; (1)(b) to (1)(d) and (4) amended, p. 1705, § 90, effective October 1. **L. 2003:** (1)(e) and (3) amended, p. 2290, § 199, effective July 1, 2004. **L. 2004:** (1)(c), (1)(d), and (2) amended, p. 1477, § 211, effective July 1; (1)(f) amended, p. 1010, § 20, effective August 4. **L. 2006:** (1)(f) amended, p. 870, § 48, effective July 1. **L. 2026:** (5) added, (HB 26-1088), ch. 226, p. 1311, § 1, 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.

7-90-304. Effective time and date of filed document.

(1) Except as provided in subsection (2) or (4) of this section, a document that is filed by the secretary of state is effective:

(a) If no time is stated in the filed document as its effective time, then at the time of filing on the date it is filed, as evidenced by the records of the secretary of state; or

(b) If a time is stated in the filed document as its effective time, then at the later of the stated time on the date it is filed, as such date is stated in the records of the secretary of state, or the time the filed document is filed by the secretary of state, as such time is stated in the records of the secretary of state.

(2) A filed document may state a delayed effective time and date, and if it does so the filed document becomes effective at the later of the time and date so stated or the time and date the filed document is filed by the secretary of state, as such time and date are stated in the records of the secretary of state. If a filed document states a delayed effective date but not a time, the filed document is effective at the later of 11:59 p.m. on that date or the time and date the filed document is filed by the secretary of state, as such time and date are stated in the records of the secretary of state. If a filed document states a delayed effective date that is later than the ninetieth day after the date the filed document is filed, the filed document is effective at 11:59 p.m. on the ninetieth day after it is filed. A filed document may state the order in which the matters provided for in the filed document are deemed to have occurred. This subsection (2) may be limited by other provisions of this title. In the event of conflict between this subsection (2) and any other provision of this title, such other provision of this title controls.

(3) If a filed document states a delayed effective date pursuant to subsection (2) of this section, the filed document may be prevented from becoming effective if a person to which the filed document relates delivers to the secretary of state, for filing pursuant to this part 3, on or before the earlier of the stated effective date of the document or the ninetieth day after the filed document was filed, a statement of correction revoking the filed document.

(4) If two or more documents are simultaneously delivered to the secretary of state, each of the documents shall be deemed to have been filed simultaneously if each identifies, to the satisfaction of the secretary of state, all of the documents that are to be deemed to have been filed simultaneously and states that all of such documents are to be deemed to have been filed simultaneously. All of such documents shall be deemed to have been filed at the time and on the date of filing of the first of such documents to be filed, as such time and date are evidenced by the records of the secretary of state. If any of such documents is rejected by the secretary of state, all of such documents shall be deemed to have been rejected by the secretary of state.

Source: L. 97: Entire article added, p. 1519, § 21, effective June 3. **L. 98:** IP(3) amended, p. 620, § 18, effective July 1. **L. 2002:** (1), (2), and IP(3) amended, p. 1841, § 93, effective July 1; (1), (2), and IP(3) amended, p. 1705, § 91, effective October 1. **L. 2003:** Entire section amended, p. 2290, § 200, effective July 1, 2004. **L. 2004:** (1)(b), (2), (3), and (4) amended, p. 1478, § 212, effective July 1. **L. 2006:** (2) amended, p. 871, § 49, effective July 1. **L. 2009:** (2) amended, (HB 09-1248), ch. 252, p. 1132, § 13, effective May 14.

7-90-304.5. Restated constituent filed document.

(1) Unless the organic statutes expressly provide otherwise:

(a) A domestic entity may restate its constituent filed document at any time by action of its owners or of any other person authorized by the organic statutes to deliver, on behalf of the entity, articles of restatement to the secretary of state, for filing pursuant to this part 3, effecting such restatement.

(b) Articles of restatement of a constituent filed document may include one or more amendments to the constituent filed document if each amendment to the constituent filed document has been approved in the manner provided in the organic statutes. Such an amendment may:

(I) Delete the statement of the names and addresses of the incorporators or other persons forming the entity;

(II) Delete the statement of the names and addresses of the initial managers of the entity;

(III) Delete the statement of the names and addresses of any or all of the individuals named in the constituent filed document, pursuant to section 7-90-301 (6), as being individuals who caused the constituent filed document to be delivered for filing;

(IV) Delete the statement of the principal office address of the entity; and

(V) If a statement of change changing the registered agent name and registered agent address of the registered agent of the entity is on file in the records of the secretary of state, delete the statement of the registered agent name and registered agent address of the initial registered agent of the entity.

(c) An entity restating its constituent filed document shall deliver to the secretary of state, for filing pursuant to this part 3, articles of restatement stating:

(I) The entity name of the entity; and

(II) The text of the restated constituent filed document.

(III) (Deleted by amendment, L. 2004, p. 1479, § 213, effective July 1, 2004.)

(d) Upon filing of articles of restatement of a constituent filed document by the secretary of state or at any delayed effective date provided in the articles of restatement, determined pursuant to section 7-90-304, the constituent filed document as restated by the articles of restatement supersedes the original constituent filed document and all prior amendments to the original constituent filed document.

Source: L. 98: Entire section added, p. 620, § 19, effective July 1. **L. 2003:** IP(1), (1)(a), (1)(b), IP(1)(c), and (1)(c)(I) amended, p. 2291, § 201, effective July 1, 2004. **L. 2004:** IP(1), (1)(a), IP(1)(b), (1)(b)(V), IP(1)(c), (1)(c)(I), and (1)(c)(III) amended, p. 1479, § 213, effective July 1. **L. 2006:** (1)(a), IP(1)(b), IP(1)(c), and (1)(d) amended, p. 871, § 50, effective July 1.

7-90-305. Correcting filed document.

(1) A person may deliver to the secretary of state, for filing pursuant to this part 3, a statement of correction to:

(a) Correct a filed document if the filed document contains information that was incorrect at the time the document was delivered to the secretary of state for filing pursuant to this part 3; or

(b) Revoke a filed document pursuant to section 7-90-304 (3) or revoke a filed document that was delivered to the secretary of state for filing in error.

(2) A statement of correction:

(a) **[*Editor's note: This version of paragraph (a) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** Shall state the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, shall state the true name of the entity, or, in the case of a trade name, shall state the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any other document relating to a statement of trademark registration, shall identify the statement of trademark registration in a manner satisfactory to the secretary of state;

(a) **[*Editor's note: This version of paragraph (a) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** Shall state the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, shall state the true name of the entity, or, in the case of a trade name, shall state the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any other document relating to a statement of trademark registration, shall identify the statement of trademark registration in a manner satisfactory to the secretary of state, or, in the

case of a commercial registered agent, shall state the name of the commercial registered agent as reflected in the records of the secretary of state;

(b) Shall identify the filed document to the satisfaction of the secretary of state;

(c) Shall state the information, if any, contained in the filed document to be corrected;

(d) Shall state each such correction;

(d.5) Shall state each addition or deletion of information, if any; and

(e) Must, if it revokes a filed document, state that the filed document is revoked either pursuant to section 7-90-304 (3) or because the filed document was delivered to the secretary of state for filing in error, whichever is applicable.

(3) (Deleted by amendment, L. 2003, p. 2292, § 202, effective July 1, 2004.)

(4) Except as otherwise provided in this subsection (4), a statement of correction is effective on the effective date of the filed document it corrects or revokes as such date is stated in the records of the secretary of state. As to persons relying on the filed document before it is corrected or revoked and adversely affected by the correction or revocation, a statement of correction is effective when filed. A statement of correction that corrects the effective date of a filed document to an earlier date is effective on such earlier date or on the date the filed document was filed in the records of the secretary of state as such date is stated in the records of the secretary of state, whichever is later. A statement of correction may not state a delayed effective date for the effectiveness of the statement of correction itself.

Source: L. 97: Entire article added, p. 1519, § 21, effective June 3. **L. 98:** (2), (3), and (4) amended, p. 621, § 20, effective July 1. **L. 2002:** (1), (2)(b), (2)(c), and (3) amended, p. 1841, § 94, effective July 1; (1), (2)(b), (2)(c), and (3) amended, p. 1706, § 92, effective October 1. **L. 2003:** Entire section amended, p. 2292, § 202, effective July 1, 2004. **L. 2004:** (1), (2), and (4) amended, p. 1480, § 214, effective July 1. **L. 2005:** (2) amended, p. 1207, § 9, effective October 1. **L. 2006:** (2)(a) amended, p. 872, § 51, effective May 30; (2)(a) amended, p. 118, § 2, effective May 29, 2007. **L. 2007:** (1)(a), (2)(c), and (2)(d) amended and (2)(d.5) added, p. 241, § 29, effective May 29. **L. 2012:** (2)(a) amended, (SB 12-123), ch. 171, p. 611, § 3, effective (see editor's note). **L. 2016:** (1)(b), (2)(e), and (4) amended, (HB 16-1330), ch. 240, p. 984, § 1, effective August 10.

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act amending subsection (2)(a) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the

necessary computer system changes to implement said subsection. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-305.5. Statement of change.

(1) A person may amend, cancel, revoke, or otherwise change a filed document if circumstances occur after the filing of the filed document by the secretary of state that make it appropriate that the filed document be changed.

(2) A filed document is changed by causing to be delivered to the secretary of state, for filing pursuant to this part 3, a statement of change that:

(a) **[*Editor's note: This version of paragraph (a) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** States the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, states the true name of the entity, or, in the case of a trade name, states the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any document relating to a statement of trademark registration, identifies the statement of trademark registration in a manner satisfactory to the secretary of state;

(a) **[*Editor's note: This version of paragraph (a) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** States the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, states the true name of the entity, or, in the case of a trade name, states the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any document relating to a statement of trademark registration, identifies the statement of trademark registration in a manner satisfactory to the secretary of state, or, in the case of a commercial registered agent, states the name of the commercial registered agent as reflected in the records of the secretary of state;

(b) Identifies the filed document to the satisfaction of the secretary of state;

(c) States the information, if any, contained in the filed document that is to be changed;

(d) States each such change;

(d.5) States each addition or deletion of information, if any; and

(e) Complies with all other requirements of this title applicable to the statement of change.

(3) If a person is specifically permitted or required by an organic statute other than this article to amend, cancel, revoke, or otherwise change a filed document, it may amend, cancel,

revoke, or otherwise change such filed document only in accordance with such organic statute unless that organic statute or another organic statute other than this article also permits the amendment, cancellation, revocation, or other change to be effected by a statement of change pursuant to this section.

(4) A statement of change and the change it effects in a filed document become effective as provided in section 7-90-304.

Source: L. 2003: Entire section added, p. 2293, § 203, effective July 1, 2004. **L. 2004:** (2) and (3) amended, p. 1481, § 215, effective July 1. **L. 2006:** (2)(a) amended, p. 872, § 52, effective May 30; (2)(a) amended, p. 118, § 3, effective May 29, 2007. **L. 2012:** (2)(a) amended, (SB 12-123), ch. 171, p. 612, § 4, effective (see editor's note).

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act amending subsection (2)(a) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said subsection. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-306. Filing duty of secretary of state - manner of filing - definition.

(1) If a document delivered to the secretary of state for filing pursuant to this part 3 complies with the requirements of section 7-90-301, the secretary of state shall file it. The secretary of state has no duty to determine whether the document complies with any or all requirements of any law.

(2) The secretary of state files a document by marking or otherwise associating the words "secretary of state" and the time and date of filing on or with the document and by placing the document in records that the secretary of state shall maintain to contain all filed documents. The records of filed documents that the secretary of state maintains shall be such that any filed document may be retrieved by the secretary of state in perceivable form and with the time and date of its filing.

(3) If the secretary of state permits a document to be delivered in a physical medium and the secretary of state refuses to file the document, the secretary of state shall return it to any individual who has been identified, pursuant to section 7-90-301 (8), as having caused the document to be delivered for filing at the address provided for that individual, together with a notice providing a brief explanation of the reason for the refusal, within ten days after the

document was delivered to the secretary of state; except that no return or notice is required with respect to a periodic report that the secretary of state has refused to file.

(4) The secretary of state's duty to file documents under this title is ministerial. The filing of or refusal to file a document does not:

(a) Affect the validity or invalidity of the document in whole or in part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) (a) Notwithstanding the foregoing or any other provision of law, the secretary of state may, upon receipt of a written request from and a showing of good cause by an authorized person supported by such validating, verifying, and authenticating documents as the secretary of state may require, remove personal identifying information from the publicly accessible documents and other records of the secretary of state maintained pursuant to this section where such information is not required by law to be included in such documents and records.

(b) A document or record from which the secretary of state removes personal identifying information pursuant to paragraph (a) of this subsection (5) shall not be rendered insufficient or ineffective by such removal notwithstanding any other provision of law.

(c) The secretary of state may retain the original or a copy of a document or record that contains personal identifying information, but such a document or record shall be open for inspection, and copies or printouts of the document or record or information from the document or record shall be furnished only upon application to the secretary of state and only for good cause shown notwithstanding any provision of part 2 of article 72 of title 24, C.R.S., or any other provision of law.

(6) For the purposes of this section, "personal identifying information" means information about an individual that could reasonably be used to identify such individual, including, but not limited to:

(a) A social security number;

(b) A personal identification number;

(c) A password; or

(d) A pass code.

Source: L. 97: Entire article added, p. 1520, § 21, effective June 3. **L. 98:** (2) amended, p. 622, § 21, effective July 1. **L. 2002:** (1), (2), and IP(4) amended, p. 1842, § 95, effective July 1;

(1), (2), and IP(4) amended, p. 1706, § 93, effective October 1. **L. 2003:** (1), (2), and (3) amended, p. 2294, § 204, effective July 1, 2004. **L. 2004:** (1), (2), and (3) amended, p. 1481, § 216, effective July 1. **L. 2005:** (5) and (6) added, p. 847, § 5, effective June 1; (3) amended, p. 1208, § 10, effective October 1. **L. 2010:** (3) amended, (HB 10-1403), ch. 404, p. 1996, § 13, effective August 11. **L. 2021:** (3) amended, (HB 21-1124), ch. 41, p. 162, § 4, effective April 19.

7-90-307. Appeal from secretary of state's refusal to file document.

(1) If the secretary of state refuses to file a document delivered to the secretary of state for filing, the person causing the document to be delivered to the secretary of state for filing may, within forty-five days after the effective date of the notice of the refusal given by the secretary of state pursuant to section 7-90-306 (3), appeal to the district court for the county in this state in which the street address of the entity's principal office is located, or, if the entity has no principal office in this state, to the district court for the county in which the street address of its registered agent is located or, if the entity has no registered agent, to the district court for the city and county of Denver. The appeal is commenced by petitioning the court to compel the filing of the document by the secretary of state and by attaching to the petition a copy of the document and a copy of the secretary of state's notice of refusal.

(2) The court may order the secretary of state to file the document or to take such other action as the court considers appropriate.

(3) The court's order or decision may be appealed as in other civil proceedings.

Source: L. 97: Entire article added, p. 1521, § 21, effective June 3. **L. 2003:** (1) amended, p. 2294, § 205, effective July 1, 2004. **L. 2004:** (1) amended, p. 1482, § 217, effective July 1.

7-90-308. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document, bearing the secretary of state's manual or facsimile signature and the seal of this state and stating to the effect that the document is filed in the records of the secretary of state, is prima facie evidence that the document is on file in the records of the secretary of state.

Source: L. 97: Entire article added, p. 1521, § 21, effective June 3. **L. 2002:** Entire section amended, p. 1842, § 96, effective July 1; entire section amended, p. 1707, § 94, effective October 1. **L. 2003:** Entire section amended, p. 2295, § 206, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1482, § 218, effective July 1.

7-90-309. Certificates issued by secretary of state.

(1) The secretary of state shall issue to any person, upon request, a copy of any document filed by the secretary of state pursuant to this title, a certificate endorsed on or accompanying a copy of any filed document identifying the filed document and certifying that the copy is a true copy of the filed document, and, if appropriate, a certificate of good standing concerning any entity. The secretary of state may issue to any person, upon request, any other certificate as to the records of the secretary of state that the secretary of state deems appropriate.

(2) A certificate issued by the secretary of state may be relied upon, subject to any qualification stated in the certificate, as prima facie evidence of the facts stated therein.

Source: L. 97: Entire article added, p. 1521, § 21, effective June 3. **L. 2002:** (1) amended, p. 1843, § 97, effective July 1; (1) amended, p. 1707, § 95, effective October 1. **L. 2003:** Entire section amended, p. 2295, § 207, effective July 1, 2004. **L. 2004:** (1) amended, p. 1482, § 219, effective July 1.

7-90-310. Proof of delivery for filing.

(1) The secretary of state may consider a document to have been received for filing upon proof of such receipt as evidenced by a signed return receipt, an entry in records maintained by the secretary of state of electronic or facsimile transmissions received by the secretary of state, or such other or additional proof of receipt of the documents received as the secretary of state may require. Such proof must be satisfactory to the secretary of state before the document will be considered received.

(2) The secretary of state may require that the receipt of a document by facsimile transmission on or after February 11, 1994, be shown in the records of the secretary of state of facsimile transmissions received by the secretary of state. The secretary of state may condition relief under this section upon fulfillment of such other requirements or conditions that the secretary of state determines appropriate, including, without limitation, the making of a change of entity name of the entity involved and payment of fees for the filing.

(3) Application for relief under this section shall be made in writing and delivered to the secretary of state within sixty days after the purported date of receipt of such document by the secretary of state. The application shall contain information satisfactory to the secretary of state to enable the secretary of state to identify the transaction.

Source: L. 97: Entire article added, p. 1521, § 21, effective June 3. **L. 98:** Entire section amended, p. 622, § 22, effective July 1. **L. 2004:** Entire section amended, p. 1483, § 220, effective July 1.

7-90-311. Powers. (Repealed)

Source: L. 97: Entire article added, p. 1522, § 21, effective June 3. **L. 98:** Entire section repealed, p. 622, § 23, effective July 1.

7-90-312. Restated constituent filed documents. (Repealed)

Source: L. 97: Entire article added, p. 1522, § 21, effective June 3. **L. 99:** Entire section repealed, p. 617, § 3, effective August 4.

7-90-313. Remedy for failure or refusal to file - presumptions.

Any person who is adversely affected by a failure or refusal of any other person to deliver any document to the secretary of state, for filing pursuant to this part 3, with respect to any entity may petition the district court for the county in this state in which the street address of the entity's principal office is located or, if the entity 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, if the entity has no registered agent, in the city and county of Denver, to approve the document and direct the appropriate person to deliver the document to the secretary of state, for filing pursuant to this part 3. If the court finds that it is proper for the document to be filed and that there has been a failure or refusal to approve the document and deliver the document to the secretary of state for filing pursuant to this part 3, it shall order the secretary of state to file the document in the form it has approved.

Source: L. 2003: Entire section added, p. 2295, § 208, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1483, § 221, effective July 1.

7-90-314. Fraudulent filings - complaint - review - referral to attorney general - referral to administrative law judge - marking filing as fraudulent - deceptive trade practice - definition.

(1) **Fraudulent filings.** The following actions are prohibited:

(a) Including the name of a person on a document filed in the secretary of state's office under this part 3 without the named person's written consent if the person is included in the filing as:

(I) The registered agent;

(II) The individual causing the document to be delivered to the secretary of state's office for filing;

(III) The person incorporating, forming, or organizing an entity; or

(IV) Any other person required under this title 7 to be identified in a document filed in the secretary of state's office;

(b) Including an address in a document filed in the secretary of state's office under this part 3 without the consent of the owner of or occupant of the included address;

(c) Delivering a document regarding an entity to the secretary of state's office if the individual who makes the delivery lacks the necessary written consent or authority to do so; and

(d) Using a fraudulent entity, including an entity that is held to be fraudulent under subsection (4)(g)(V) of this section, as a registered agent.

(2) **Complaint.** A law enforcement agency or a person named in or otherwise affected by the filing of a document under this part 3 may submit a complaint to the secretary of state, on a form prescribed by the secretary of state, alleging that the filing was made in violation of subsection (1) of this section. The complaint must include at least the following information:

(a) A description of the alleged violation;

(b) The name; street address; telephone number; email address, if available; and any additional contact information of the person making the complaint;

(c) The name; street address; telephone number; email address, if available; and any additional contact information of any third party authorized to submit the complaint by and on behalf of the person that is named in or affected by the filing;

(d) The unique identification number assigned by the secretary of state to each filed document that is alleged to have been filed in violation of subsection (1) of this section;

(e) The unique identification number assigned by the secretary of state to each entity associated with both the complaint and the filing;

(f) Information, if known to the person making the complaint, identifying each person involved in the filing, including names, street addresses, telephone numbers, websites, and email addresses;

(g) Information, if known, identifying the nature of any business or personal relationship between the person submitting the complaint and each person involved in the alleged violation;

(h) A statement by the person submitting the complaint, under penalty of perjury pursuant to section 7-90-301.5, that the person believes in good faith that the facts stated in the complaint are true and that the complaint complies with the requirements of this part 3, the constituent documents, and the organic statutes; and

(i) Any additional information that the person believes may assist in an investigation of the complaint.

(3) **Review - secretary of state.**

(a) Upon receipt of a complaint submitted pursuant to subsection (2) of this section, the secretary of state shall review the complaint and evaluate whether the complaint indicates a violation of subsection (1) of this section and satisfies the requirements of subsection (2) of this section. If so, the secretary of state, using electronic means:

(I) Shall refer the complaint to the attorney general for review and investigation under the "Colorado Consumer Protection Act", article 1 of title 6; and

(II) May mark the business record with a notice that the entity has received a complaint or is under investigation.

(b) If the secretary of state determines that the information provided in a complaint does not indicate a violation of subsection (1) of this section or does not satisfy the requirements of subsection (2) of this section, the secretary of state shall notify the person that submitted the complaint of the fact and provide an explanation of any deficiencies in the complaint.

(c) The secretary of state may ask a person who submits a complaint to submit additional information concerning:

(I) The alleged violation of subsection (1) of this section; or

(II) The person's failure to submit the information required by subsection (2) of this section.

(d) The secretary of state shall notify the person who submitted a complaint of the outcome of the secretary of state's review of the complaint.

(e) If the secretary of state rejects a complaint for failure to comply with subsection (1) or (2) of this section, the complaint may be resubmitted.

(4) **Review - attorney general - hearing and findings - administrative law judge - definition.**

(a) Upon receipt of a complaint referred by the secretary of state in accordance with subsection (3)(a) of this section, the attorney general shall review the complaint and determine whether the complaint should be investigated. If the attorney general determines that the complaint should be investigated, the attorney general:

(I) Shall mail a written notice and demand to the street address or mailing address, if different from the street address, as well as to the email address, if available, of the registered agent of record listed in the secretary of state's online filing system for the entity at issue; except that, if the address of the registered agent is the same as the address of the complainant, the attorney general may provide written notice to any other point of contact that the attorney general determines through investigation to be a means to reach the entity at issue;

(I.5) May contact the registered agent by telephone if a telephone number is available; and

(II) May provide written or verbal notice and demand to any other point of contact that the attorney general determines through investigation to be a means by which to reach the entity at issue.

(b) The attorney general's notice and demand must notify the entity at issue of the allegations in the complaint and demand that the entity respond to the complaint by a date certain, which response must include the information described in subsection (4)(c) of this section.

(c) A person to whom the attorney general sends a notice and demand, or the person's agent, shall respond to the notice and demand within twenty-one days after the written notice and demand is mailed. The response must include the following information:

(I) The name; street address; telephone number; email address, if available; and any additional contact information of the person responding to the notice and demand and, if the responding person is an agent of the person to whom the notice and demand is sent, any supporting documents, including any registered agent information, that establish the agent's authority to act on the person's behalf;

(II) The name of the entity at issue;

(III) Information, if known, identifying each person involved in the alleged violation of subsection (1) of this section, including names, street addresses, telephone numbers, websites, and email addresses;

(IV) Information identifying the nature of any business or personal relationship between the person that submitted the complaint and each person involved in the alleged violation of subsection (1) of this section; except that this subsection (4)(c)(IV) does not require the disclosure of privileged information;

(V) A statement by the entity at issue responding to the notice and demand that affirms or denies having knowledge of or information about the alleged violation of subsection (1) of this section;

(VI) Material evidence of written consent to use the name or address in the filing at issue;

(VII) A statement by the person responding to the notice and demand, under penalty of perjury pursuant to section 7-90-301.5, that the person believes in good faith that the facts stated in the response are true and that the response complies with the requirements of this part 3, the constituent documents, and the organic statutes; and

(VIII) Any additional information that the person responding to the notice and demand believes may be useful in an investigation of the complaint.

(d) All information received by the attorney general under this section is governed by section 6-1-111 (2).

(e) Repealed.

(f) (I) If the attorney general does not receive a response within twenty-one days after mailing a notice and demand in accordance with subsection (4)(c) of this section, each allegation in the notice and demand is deemed conceded by the person that did not respond, and the attorney general may certify that fact to the secretary of state. Upon receiving the certification, the secretary of state shall take the appropriate remedial action under subsections (4)(g)(V) and (4)(g)(VI) of this section based on the conceded notice and demand.

(II) As used in this subsection (4)(f), "conceded notice and demand" means a notice and demand described in subsection (4)(c) of this section sent by the attorney general to which the attorney general did not receive a response and in which, pursuant to subsection (4)(f)(I) of this section, each allegation is deemed conceded by the person that did not respond.

(g) (I) A request is timely if receipt of a response and a request for a hearing on any issue raised by the notice and demand is made within twenty-one days after the notice and demand is mailed. If a person timely requests a hearing, the attorney general may refer the complaint to an administrative law judge.

(II) If the attorney general refers the complaint to an administrative law judge, the attorney general shall prosecute the matter before the administrative law judge. If the attorney general does not refer the complaint to an administrative law judge within one hundred eighty days after the attorney general receives the response to the notice and demand, the attorney general is deemed to have determined to not proceed with prosecuting the complaint.

(III) The administrative law judge shall hold a hearing within sixty days after the attorney general refers a complaint and shall render a decision within fifteen days after the hearing. The administrative law judge may grant the attorney general or the person requesting a hearing an

extension of up to thirty days upon a motion. The administrative law judge may grant the attorney general or the person requesting a hearing an extension of longer than thirty days upon a showing of good cause.

(IV) If the administrative law judge finds that subsection (1) of this section has been violated, the administrative law judge shall make an additional finding as to whether:

(A) An entity was created or registered without authorization or for fraudulent purposes; or

(B) An unauthorized filing was made.

(V) If the administrative law judge finds that, or if a conceded notice and demand sets forth that, an entity was created or registered without authorization or for fraudulent purposes, the attorney general shall notify the secretary of state, who shall:

(A) Mark the business record with a notice that the entity is unauthorized or fraudulent and is declared delinquent pursuant to sections 7-90-901 and 7-90-902;

(B) Redact each address and name that was used without authorization from the entity's filing and from any other relevant filings; and

(C) Disable additional filing functionality on the entity's records.

(VI) If the administrative law judge finds that, or if a conceded notice and demand sets forth that, an unauthorized filing was made for a legitimate entity, the attorney general shall notify the secretary of state, who shall:

(A) Mark each unauthorized filing for the entity to notify the public that the filing is unauthorized;

(B) Redact each address and name that was used without authorization from the entity's filing and from the relevant filings; and

(C) Mark the business record to notify the public that the entity has been the victim of fraudulent or unauthorized acts.

(VII) The decision of the administrative law judge is final and subject to review by the court of appeals under section 24-4-106 (11). The secretary of state and the administrative law judge are not necessary parties to the review.

(VIII) In the situation described in the introductory portion of subsection (4)(g)(V) of this section, the secretary of state may take any of the actions described in subsections (4)(g)(V)(A) to (4)(g)(V)(C) of this section against any other entity that uses an entity as the registered agent that has been conceded or has been found to be fraudulent or unauthorized as the registered agent.

(IX) If a document submitted to the secretary of state for filing includes a reference to the secretary of state, the secretary of state's address or variations of either the name or address, the secretary of state may, without the need for a filed complaint, take any of the actions described in subsections (4)(g)(V)(A) to (4)(g)(V)(C) of this section concerning the entity or filing.

(h) The attorney general shall communicate the finding made by the administrative law judge in accordance with subsection (4)(g)(IV) of this section to:

(I) The person who submitted the complaint, using the email address provided on the complaint form or, if an email address was not provided, using the mailing address provided on the complaint form; and

(II) Each entity at issue, using registered mail addressed to the street address or mailing address, if different, of the registered agent of record for the entity listed in the secretary of state's online filing system and to the email address listed, if provided; and

(III) The secretary of state.

(5) **Enforcement - deceptive trade practice - private right of action.**

(a) A violation of subsection (1) of this section is a deceptive trade practice under section 6-1-105 (1)(ppp) and is subject to enforcement by the department of law in addition to the enforcement described in this section. A determination by the administrative law judge as provided by subsection (4)(g)(IV) of this section or a failure to timely respond to a notice and demand as provided by subsection (4)(f) of this section constitutes a prima facie showing that subsection (1) of this section was violated.

(b) A person that is injured by an entity that has violated subsection (1) of this section may bring an action to dissolve the entity in accordance with part 7 of article 56 of this title 7, part 8 of article 80 of this title 7, part 3 of article 114 of this title 7, part 3 of article 134 of this title 7, or the common law of Colorado, as applicable. The court may dissolve the entity if the court finds that:

(I) The entity obtained its articles of incorporation or organization through fraud; or

(II) The entity has continued to exceed or abuse the authority conferred upon it by law.

Source: L. 2022: Entire section added, (SB 22-034), ch. 326, p. 2299, § 1, effective February 1, 2023. **L. 2024:** IP(2), (4)(f), (4)(g)(IV)(A), IP(4)(g)(V), and (4)(g)(V)(A) amended, (HB 24-1137), ch. 332, p. 2248, § 3, effective August 7. **L. 2026:** (1)(b), (1)(c), (3)(a), (4)(a), (4)(f), and (5) amended, (1)(d), (4)(g)(VIII), and (4)(g)(IX) added, and (4)(e) repealed, (HB 26-1088), ch. 226, p. 1311, § 2, 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.

7-90-315. Working group - report - repeal. (Repealed)

Source: L. 2022: Entire section added, (SB 22-034), ch. 326, p. 2299, § 1, effective February 1, 2023.

Editor's note: Subsection (5) provided for the repeal of this section, effective July 1, 2023. (See L. 2022, p. 2299.)

PART 4

SECRETARY OF STATE

7-90-401. Powers.

The secretary of state has all powers reasonably necessary to perform the duties required by law.

Source: L. 2000: Entire part added, p. 971, § 47, effective July 1. **L. 2003:** Entire section amended, p. 2295, § 209, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1484, § 222, effective July 1.

7-90-402. Interrogatories by secretary of state - fraudulent business records - definition.

(1) The secretary of state may propound to any domestic entity that has a constituent filed document filed in the records of the secretary of state, to any foreign entity that is authorized to transact business or conduct activities in this state, and to any manager thereof, such interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether the entity has complied with all the provisions of the organic statutes. The interrogatories shall be answered within thirty days after the mailing thereof or within such additional time as fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to an entity, they shall be answered by a

manager of the entity or by any other person authorized to answer the interrogatories as its agent. The secretary of state need not file any document to which such interrogatories relate until the interrogatories are answered as provided in this section, and not then if the answers thereto disclose that the document is not in conformity with the provisions of the organic statutes. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto that disclose a violation of any of the provisions of the organic statutes.

(2) Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection, nor shall the secretary of state disclose any facts or information obtained therefrom, except insofar as the official duty of the secretary of state may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state.

(3) Each entity that fails or refuses to answer truthfully and fully, within the time prescribed by subsection (1) of this section, interrogatories propounded to the entity by the secretary of state in accordance with the provisions of said subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars.

(4) Each manager of an entity who fails or refuses to answer truthfully and fully, within the time prescribed by subsection (1) of this section, interrogatories propounded to the manager by the secretary of state in accordance with the provisions of said subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars.

(5) The attorney general may enforce this section in an action brought in the district court for the county in this state in which the street address of the entity's principal office or the street address of its registered agent is located or, if the entity has no principal office in this state and no registered agent, in the district court in and for the city and county of Denver.

(6) (a) If the secretary of state has a reasonable basis to believe that a record is fraudulent or unauthorized based on the response or failure to respond to an interrogatory, the secretary of state may:

(I) Mark the record with a notice that the record is unauthorized or fraudulent and declare the entity delinquent pursuant to sections 7-90-901 and 7-90-902;

(II) Redact the unauthorized address or name from the record and from any other relevant records;

(III) Disable additional filing functionality on the entity's records; and

(IV) Take actions authorized in section 7-90-314 (4)(g)(VIII).

(b) As used in this section, "reasonable basis" means the secretary of state has information reasonably demonstrating that a filing has violated section 7-90-314 (1). This information includes a record having the following with respect to a record determined to be fraudulent or unauthorized under section 7-90-314:

(I) A match or close similarity in an entity or contact name or address with the fraudulent or unauthorized record;

(II) Patterns of activity consistent with the fraudulent or unauthorized record; or

(III) Electronic identifiers associated with the fraudulent or unauthorized record.

(c) A person aggrieved by an action taken by the secretary of state under subsection (6)(a) of this section may request the secretary of state to reverse the actions taken. The request must be submitted in a form prescribed by the secretary of state and include evidence showing that the action was an error. If the secretary of state denies the request, the aggrieved person may seek judicial review by bringing an action in the district court in and for the city and county of Denver.

Source: L. 2006: Entire section added, p. 872, § 53, effective July 1. **L. 2026:** (6) added, (HB 26-1088), ch. 226, p. 1315, § 5, 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.

7-90-403. Notices by the secretary of state.

(1) (a) The secretary of state may give notice, in such manner as the secretary of state may determine, to any person about any matter arising under or with respect to this title, including notice regarding:

(I) The due date of a periodic report;

(II) The existence of grounds for delinquency;

(III) The pendency of dissolution upon expiration of period of duration;

(IV) The dissolution upon expiration of period of duration;

(V) The due date of a trade name renewal; and

(VI) The due date of a trademark renewal.

(b) The secretary of state may use a phase-in period or any other method to mitigate hardship on the reporting entity caused by electronic notification and may provide exceptions from such electronic notification where hardship or other good cause is shown.

(c) This subsection (1) does not affect a requirement that the secretary of state give notice under another provision of law.

(2) Neither the determination of the secretary of state to give, or not to give, any notice under the authority of subsection (1) of this section nor the failure of any person to receive any notice so given affects any obligation under or requirement of any provision of this title or excuses any noncompliance by any person of any obligation under or requirement of any provision of this title.

Source: L. 2010: Entire section added, (HB 10-1403), ch. 404, p. 1996, § 14, effective August 11.

7-90-404. Distribution of information - student loan repayment and loan forgiveness programs.

(1) The secretary of state shall annually disseminate for the benefit of employees of nonprofit public service organizations, as defined in 34 CFR 685.219, informational materials relating to federal student loan repayment programs and student loan forgiveness programs, including updated materials, received from the department of personnel pursuant to section 24-5-102. The secretary of state may disseminate the informational materials by posting the materials on the secretary of state's website.

(2) The secretary of state shall encourage each nonprofit public service organization to annually distribute the informational materials, including any updated materials, to each employee of the nonprofit public service organization and to include the informational materials as part of the nonprofit public service organization's new employee orientation process.

Source: L. 2019: Entire section added, (SB 19-057), ch. 35, p. 115, § 11, effective August 2.

PART 5

ANNUAL REPORTS - STATEMENT OF PERSON NAMED IN FILED DOCUMENT

7-90-501. Periodic reports - definitions.

(1) Each reporting entity shall deliver to the secretary of state, for filing pursuant to part 3 of this article 90, a periodic report that states the entity name of the reporting entity, the jurisdiction under the law of which the reporting entity is formed, and:

(a) and (b) (Deleted by amendment, L. 2003, p. 2296, § 210, effective July 1, 2004.)

(c) The registered agent name and registered agent address of the reporting entity's registered agent;

(d) The principal office address of the reporting entity's principal office.

(e) (Deleted by amendment, L. 2003, p. 2296, § 210, effective July 1, 2004.)

(f) Beginning July 1, 2027, if the reporting entity is an employer, EEO-1 data.

(1.5) An employer shall provide the EEO-1 data required by subsection (1)(f) of this section in the employer's periodic report to the secretary of state even if the federal government repeals or discontinues the federal requirement to submit the EEO-1 data to the United States equal employment opportunity commission.

(2) and (3) (Deleted by amendment, L. 2003, p. 2296, § 210, effective July 1, 2004.)

(4) (a) The annual report shall be made in a manner prescribed by the secretary of state.

(b) Repealed.

(c) (I) Unless otherwise elected as provided in subparagraph (II) of this paragraph (c), a reporting entity shall deliver its first periodic report to the secretary of state, for filing pursuant to part 3 of this article, no later than the last day of the second calendar month following the first anniversary of the calendar month in which the reporting entity's constituent filed document or statement of foreign entity authority, as the case may be, became effective or, in the case of a reporting entity that has been reinstated or that has cured its delinquency, no later than the last day of the second calendar month following the first anniversary of the calendar month in which the reinstatement or curing of delinquency occurred. Unless otherwise elected as provided in subparagraph (II) or (III) of this paragraph (c), thereafter, the periodic report shall be delivered to the secretary of state by each reporting entity annually.

(II) **[*Editor's note: This version of subparagraph (II) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** The secretary of state may permit, on such conditions as the secretary of state may determine, a

reporting entity to select an anniversary month different than the anniversary month as established in subparagraph (I) of this paragraph (c) by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of election of alternative anniversary month.

(II) **[*Editor's note: This version of subparagraph (II) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** A reporting entity may, at the time of filing the constituent filed document or the periodic report, select an anniversary month different than the anniversary month as established in subparagraph (I) of this paragraph (c). If an entity elects to change its anniversary month pursuant to this subparagraph (II), that entity may not subsequently change its anniversary month for a period of at least one year.

(III) The secretary of state may permit, on such conditions as the secretary of state may determine, a reporting entity to elect to file the periodic report required by this section biennially by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of election of biennial reporting.

(d) Information in the periodic report shall be current as of the date the periodic report is delivered to the secretary of state, for filing pursuant to part 3 of this article, on behalf of the reporting entity. No periodic report shall state a delayed effective date.

(e) (Deleted by amendment, L. 2002, p. 1843, § 98, effective July 1, 2002; p. 1707, § 96, effective October 1, 2002.)

(f) (Deleted by amendment, L. 2005, p. 1208, § 11, effective October 1, 2005.)

(5) (Deleted by amendment, L. 2005, p. 1208, § 11, effective October 1, 2005.)

(5.5) (Deleted by amendment, L. 2010, (HB 10-1403), ch. 404, p. 1997, § 15, effective August 11, 2010.)

(6) (Deleted by amendment, L. 2004, p. 1484, § 223, effective July 1, 2004.)

(7) Each reporting entity that fails or refuses to deliver to the secretary of state a periodic report for filing on or before the due date prescribed by subsection (4) of this section and pay the prescribed processing fee is subject to a penalty, which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(7.5) Beginning July 27, 2009, a domestic limited partnership formed under or governed by article 62 of this title that is not a reporting limited partnership may deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of election to be a reporting entity stating:

(a) The domestic entity name of the domestic limited partnership;

(b) The principal office address of its principal office;

(c) The registered agent name and registered agent address of its registered agent; and

(d) That the domestic limited partnership elects to become a reporting limited partnership.

(8) (Deleted by amendment, L. 2003, p. 2296, § 210, effective July 1, 2004.)

(9) As used in this section:

(a) "EEO-1 data" means demographic workforce data collected through the United States equal employment opportunity commission's "Employer Information Report", federal form EEO-1, as that form existed on March 1, 2026, that categorizes employees by race, ethnicity, gender, and job category.

(b) (I) "Employer" means a private sector entity conducting business in the state that employs one hundred or more workers and that, as of March 1, 2026, is required to submit EEO-1 data to the United States equal employment opportunity commission.

(II) "Employer" does not include the state, a local government, the federal government, a school district, a state institution of higher education, or a quasi-governmental entity or political subdivision of the state.

(c) "Worker" means employee as defined in section 8-4-101 (5).

Source: L. 2000: Entire part added, p. 971, § 47, effective July 1. **L. 2002:** IP(1), (4)(d), (4)(e), (5), and (6) amended, p. 1843, § 98, effective July 1; IP(1), (4)(d), (4)(e), (5), and (6) amended, p. 1707, § 96, effective October 1. **L. 2003:** Entire section amended, p. 2296, § 210, effective July 1, 2004. **L. 2004:** (4)(c), (4)(f), (6), and (7) amended, p. 1484, § 223, effective July 1. **L. 2005:** (4), (5), (5.5), and (7) amended, p. 1208, § 11, effective October 1. **L. 2006:** (4)(d), (5.5), and (7) amended, p. 873, § 54, effective July 1. **L. 2007:** (7.5) added, p. 242, § 30, effective May 29. **L. 2009:** IP(1) amended, (HB 09-1248), ch. 252, p. 1133, § 14, effective May 14. **L. 2010:** IP(1), (4)(c), (4)(d), (5.5), and (7) amended, (HB 10-1403), ch. 404, p. 1997, § 15, effective August 11. **L. 2012:** (4)(c)(II) amended, (SB 12-123), ch. 171, p. 614, § 7, effective (see editor's note). **L. 2026:** IP(1) amended and (1)(f), (1.5), and (9) added, (HB 26-1207), ch. 378, p. 2346, § 1, effective August 12.

Editor's note: (1) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective January 1, 2002. (See L. 2000, p. 971.)

(2) Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act amending subsection (4)(c)(II) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer

system changes to implement said subsection. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-502. Statement of person named in filed document. (Repealed)

Source: L. 2000: Entire part added, p. 973, § 47, effective July 1. **L. 2002:** IP(1) amended, p. 1843, § 99, effective July 1; IP(1) amended, p. 1708, § 97, effective October 1. **L. 2003:** IP(1), (1)(b), and (1)(d) amended, p. 2297, § 211, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1484, § 224, effective July 1.

PART 6

ENTITY NAMES

Law reviews: For article, "Entity and Trade Name Filing Requirements and Customs in Colorado -- Part I", see 41 Colo. Law. 57 (Nov. 2012); for article, "Entity and Trade Name Filing Requirements and Customs in Colorado -- Part II", see 41 Colo. Law. 25 (Dec. 2012).

7-90-601. Entity name.

(1) An entity name shall not contain any term the inclusion of which would violate any statute of this state.

(2) Except as provided in section 7-90-604 (4.5), each entity name shall be distinguishable on the records of the secretary of state from every:

(a) Other entity name; and

(b) Name that is reserved with the secretary of state for another person as an entity name pursuant to section 7-90-602.

(c) (Deleted by amendment, L. 2004, p. 1544, § 5, effective May 30, 2006.)

(d) (Deleted by amendment, L. 2003, p. 2298, § 212, effective July 1, 2004.)

(3) In addition to the requirements of subsection (2) of this section:

(a) The entity name of a corporation shall contain the term or abbreviation "corporation", "incorporated", "company", "limited", "corp.", "inc.", "co.", or "ltd."; except that this paragraph (a) shall not apply to any of the following:

(I) A domestic corporation incorporated before January 1, 1959, whose domestic entity name has not been changed by amendment to its articles of incorporation effective after December 31, 1958;

(II) A domestic corporation incorporated under a statute of this state that permits the use of other names; or

(III) Savings and loan associations covered by section 11-41-102, C.R.S.

(b) The entity name of a nonprofit corporation may, but need not, contain the term or abbreviation "corporation", "incorporated", "company", "limited", "corp.", "inc.", "co.", or "ltd.".

(c) The entity name of a limited liability company shall contain the term or abbreviation "limited liability company", "ltd. liability company", "limited liability co.", "ltd. liability co.", "limited", "l.l.c.", "llc", or "ltd.".

(d) The entity name of a limited liability partnership shall contain the term or abbreviation "limited liability partnership", "registered limited liability partnership", "limited", "llp", "l.l.p.", "rllp", "r.l.l.p.", or "ltd.".

(e) (I) The entity name of a limited partnership, that is not a limited liability limited partnership, shall contain the term or abbreviation "limited partnership", "limited", "company", "l.p.", "lp", "ltd.", or "co.".

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (e), any limited partnership in existence on October 31, 1981, shall be entitled to elect to be governed by the provisions of article 62 of this title with the true name it had on October 31, 1981.

(f) (I) The entity name of a limited liability limited partnership shall contain the term or abbreviation "limited partnership", "limited", "company", "limited liability limited partnership" or "registered limited liability limited partnership", "l.p.", "lp","co.", "l.l.l.p.", "lllp", "LTD.", "r.l.l.l.p.", or "rlllp"; or

(II) When the name of a limited partnership that is registered as a limited liability limited partnership in the records of the office of the secretary of state is the same as that stated in a certificate of limited partnership, amended certificate of limited partnership, or statement of registration delivered on or after May 24, 1995, for filing by the secretary of state with respect to the limited partnership and if, upon filing of such certificate or statement, the name was modified by the addition of any word or initial to indicate that the limited partnership is a limited liability limited partnership, then the limited partnership may acquire, convey, and encumber title to real and personal property and otherwise deal in such name with or without the addition of such word or initial. The fact of the filing of such certificate or statement and the modification of the name of the limited partnership by such additional word or initial may be stated in an affidavit executed by a general partner of the limited partnership or a statement of authority executed pursuant to section 38-30-172, C.R.S., and shall be prima facie evidence of such facts and of the

authority of the person executing the same to do so on behalf of the limited partnership. The affidavit may be recorded with the county clerk and recorder of any county.

(g) An entity name must meet the requirements of section 7-90-301 (5).

(h) The words or abbreviations "public benefit corporation", "P.B.C.", "PBC", and "Pub. Ben. Corp." may be used in an entity name only by corporations and cooperatives that are organized as public benefit corporations under part 5 of article 101 of this title 7.

(4) The entity name of a cooperative may, but need not, contain the term or abbreviation "cooperative", "association", "incorporated", "company", "limited", "coop", "ass'n", "assn", "assoc.", "inc.", "co.", or "ltd.".

(4.5) The entity name of a limited cooperative association shall contain the words "limited cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd.". "Cooperative" may be abbreviated as "Co-op" or "Coop". "Association" may be abbreviated as "Assoc." or "Assn.".

(5) For an entity that is specifically permitted by C.R.C.P. 265 or title 12, C.R.S., to use the words "professional company", "professional corporation", or abbreviations thereof in its name:

(a) "P.c." or "pc" shall be a permitted abbreviation for such an entity that is a corporation;

(b) "P.l.l.c." or "pllc" shall be a permitted abbreviation for such an entity that is a limited liability company;

(c) "P.l.l.p." or "pllp" shall be a permitted abbreviation for such an entity that is a limited liability partnership.

(6) The abbreviations stated in subsection (5) of this section are in addition to all others that may be permitted by law.

(7) (a) A person shall not use the word "cooperative" or an abbreviation or derivation of it as a part of its business or domestic entity name or as a trade name, trademark, service mark, brand, or designation except:

(I) An entity incorporated under or subject to article 55, 56, or 58 of this title 7, part 10 of article 16 of title 10, article 33.5 of title 38, or a similar law of another jurisdiction;

(II) An entity operated on a cooperative basis;

(III) An entity described in section 501 (c)(6) of the "Internal Revenue Code of 1986", as amended;

(IV) An association of two or more of the entities described in subparagraphs (I) to (III) of this paragraph (a); or

(V) As authorized by section 7-56-205 or as otherwise required or authorized by any other statute.

(b) An entity described in this subsection (7), or one or more members of such an entity, may, without the necessity of posting a bond, bring an action for an injunction or for actual damages incurred as a result of a violation of this subsection (7) or to enforce this subsection (7). Upon proof that the word "cooperative" or an abbreviation or derivation of that word is used in violation of this section, the court shall enter an order permanently enjoining such use of the word. The prevailing party in the action shall be awarded judgment against the other party for the attorney fees and costs of litigation incurred by the prevailing party in the action. This section shall not apply to any person that has been continuously using the word "cooperative" or an abbreviation or derivation of that word in the person's business on or before July 5, 1973, as part of its trade name, business name, trademark, service mark, brand, true name, or designation.

Source: L. 2000: Entire part added, p. 973, § 47, effective July 1. **L. 2002:** (3)(f)(II) amended, p. 1844, § 100, effective July 1; (3)(f)(II) amended, p. 1708, § 98, effective October 1. **L. 2003:** (2) and (3) amended and (4) added, p. 2298, §212, effective July 1, 2004. **L. 2004:** (3)(c), (3)(e)(II), and (3)(f)(I) amended and (5) and (6) added, p. 1485, § 225, effective July 1; (2) amended, p. 1544, § 5, effective May 30, 2006. **L. 2006:** IP(5) amended, p. 874, § 55, effective July 1. **L. 2007:** IP(2) amended, p. 242, § 31, effective May 29. **L. 2008:** (7) added, p. 20, § 6, effective August 5. **L. 2011:** (4.5) added, (SB 11-191), ch. 197, p. 820, § 3, effective April 2, 2012. **L. 2017:** (3)(h) added, (HB 17-1200), ch. 386, p. 2001, § 6, effective August 9. **L. 2019:** (3)(g), IP(7)(a), and (7)(a)(I) amended, (SB 19-086), ch. 166, p. 1921, § 20, effective July 1, 2020.

7-90-601.5. Domestic entity name and trade name of dissolved domestic entity.

(1) If a domestic entity that has a constituent filed document dissolves, the domestic entity name of the dissolved entity shall include the word "dissolved" followed by the month, day, and year of the effective date of dissolution of the entity.

(2) (Deleted by amendment, L. 2007, p. 242, § 32, effective May 29, 2007.)

Source: L. 2003: Entire section added, p. 2300, § 213, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1486, § 226, effective July 1. **L. 2005:** Entire section amended, p. 1209, § 12, effective October 1. **L. 2006:** Entire section amended, p. 874, § 56, effective May 30. **L. 2007:** Entire section amended, p. 242, § 32, effective May 29.

7-90-601.6. Entity name of delinquent entity.

(1) The entity name of a delinquent entity shall include the word "delinquent", followed by the month, day, and year of the effective date of the entity's delinquency, after the four-hundredth day after the effective date of its delinquency under section 7-90-902 (1).

(2) (Deleted by amendment, L. 2007, p. 242, § 33, effective May 29, 2007.)

Source: L. 2005: Entire section added, p. 1210, § 13, effective October 1. **L. 2006:** Entire section amended, p. 874, § 57, effective May 30. **L. 2007:** Entire section amended, p. 242, § 33, effective May 29. **L. 2010:** (1) amended, (HB 10-1403), ch. 404, p. 1998, § 16, effective August 11.

7-90-601.7. Foreign entity name and trade name of withdrawn foreign entity.

(1) If a foreign entity has a statement of foreign entity authority on file in the records of the secretary of state, but such authority has been relinquished, the foreign entity name of the foreign entity shall include the words "Colorado authority relinquished" followed by the effective date of the statement of foreign entity withdrawal by which the foreign entity relinquished its authority.

(2) (Deleted by amendment, L. 2007, p. 243, § 34, effective May 29, 2007.)

Source: L. 2004: Entire section added, p. 1486, § 227, effective July 1. **L. 2005:** Entire section amended, p. 1210, § 14, effective October 1. **L. 2006:** Entire section amended, p. 874, § 58, effective May 30. **L. 2007:** Entire section amended, p. 243, § 34, effective May 29.

7-90-602. Reserved entity name.

(1) Any person may apply for the reservation of the exclusive use of a name as an entity name by delivering a statement of reservation of a name to the secretary of state, for filing pursuant to part 3 of this article, stating the name and mailing address of the person, that the person is applying under this section to reserve a name for use as an entity name, and the name proposed to be reserved. If the secretary of state determines that the name applied for would be available for use as an entity name under section 7-90-601, the secretary of state shall reserve the name for the person's exclusive use for a one-hundred-twenty-day period, which reservation may be renewed successively for one-hundred-twenty-day periods. No statement of reservation of name shall state a delayed effective date.

(2) The holder of a reserved name may transfer the reservation to any other person by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of transfer of reserved name that states the reserved name, the name of the holder, and the name and mailing address of the transferee.

(3) If a constituent filed document stating a delayed effective date and stating a new domestic entity name is filed in the records of the secretary of state, such domestic entity name shall be deemed to be a reserved name until the constituent filed document becomes effective.

Source: L. 2000: Entire part added, p. 975, § 47, effective July 1. **L. 2002:** (1) and (2) amended, p. 1844, § 101, effective July 1; (1) and (2) amended, p. 1708, § 99, effective October 1. **L. 2003:** Entire section amended, p. 2300, § 214, effective July 1, 2004. **L. 2004:** (1) and (3) amended, p. 1486, § 228, effective July 1; (1) amended, p. 1544, § 6, effective May 30, 2006. **L. 2005:** (2) amended, p. 1210, § 15, effective October 1. **L. 2006:** (1) amended, p. 875, § 59, effective July 1.

7-90-603. Assumed entity name of foreign entity.

If the name that a foreign entity would use as its foreign entity name is not permitted to be used by the foreign entity under section 7-90-601, the foreign entity, in order to obtain authority to transact business or conduct activities in this state, shall assume for use in this state as its foreign entity name a foreign entity name that would comply with section 7-90-601.

Source: L. 2000: Entire part added, p. 975, § 47, effective July 1. **L. 2003:** Entire section amended, p. 2300, § 215, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1487, § 229, effective July 1.

7-90-604. Registered true name of a foreign entity.

(1) A foreign entity that is not authorized to transact business or conduct activities in this state may register its true name, if that true name is a name that could be the entity name of the foreign entity if the foreign entity were authorized to transact business or conduct activities in this state. Such registration shall be effective through December 31 of the year in which the filing becomes effective.

(2) A foreign entity may register a true name pursuant to this section by delivering to the secretary of state, for filing pursuant to part 3 of this article 90, a statement of registration of true name that complies with the requirements of this subsection (2). When filed, the statement of

registration of true name registers the true name. The statement of registration of true name must state:

(a) The foreign entity's true name;

(b) The jurisdiction under the law of which the foreign entity is formed;

(c) The form of the foreign entity as that form is recognized by the jurisdiction under the law of which the entity is formed; and

(d) The principal office address of the foreign entity's principal office.

(3) A foreign entity that has in effect a registration of its true name pursuant to this section may renew the registration by delivering to the secretary of state, for filing pursuant to part 3 of this article 90, on or before December 31 of the year of registration, a statement of renewal of registration of true name that complies with this subsection (3). When filed, the statement of renewal of registration renews the registration for the following year. The statement of renewal of registration of true name must state:

(a) The foreign entity's true name, the registration of which is to be renewed;

(b) The form of entity and the jurisdiction under the law of which the foreign entity is formed; and

(c) The principal office address of the foreign entity's principal office.

(3.5) No statement of renewal of registration of true name shall state a delayed effective date.

(4) (a) A foreign entity that has in effect a registration of its true name may transfer such registration to another foreign entity, if the transferee is not then authorized to transact business or conduct activities in Colorado, if that name is also the true name of the transferee and if, concurrently with the delivery of the foreign entity's statement of transfer of registration of true name to the secretary of state, for filing pursuant to part 3 of this article, the transferee delivers to the secretary of state a statement of registration of true name pursuant to this section.

(b) A foreign entity that has in effect a registration of its true name may transfer the registration to another foreign entity, whether or not that name is the true name of the transferee, if the transferee is then authorized to transact business or conduct activities in Colorado and if, concurrently with the delivery of the foreign entity's statement of transfer of registration of true name to the secretary of state pursuant to paragraph (a) of this subsection (4), the transferee delivers to the secretary of state, for filing pursuant to part 3 of this article, either:

(I) A statement of trade name stating the transferred name as a trade name of the transferee pursuant to section 7-71-101;

(II) A statement of reservation of name reserving the transferred name as an entity name of the transferee pursuant to section 7-90-602; or

(III) A statement of change to the transferee's statement of foreign entity authority changing the assumed entity name of the transferee to the transferred name or stating that the transferee has acquired rights to use the transferred name as its true name in Colorado, as the case may be.

(c) A foreign entity that has in effect a registration of its true name may transfer such registration to another foreign entity, although that name is not the true name of the transferee, if, concurrently with the delivery of the foreign entity's statement of transfer of registration of true name to the secretary of state pursuant to paragraph (a) of this subsection (4), the transferee delivers to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity authority stating the transferred name as its assumed entity name under section 7-90-803 (1)(a).

(d) A foreign entity that has in effect a registration of its true name may transfer such registration to a person other than a foreign entity, although that name is not the true name of the transferee, if, concurrently with the delivery of the foreign entity's statement of transfer of registration of true name to the secretary of state pursuant to paragraph (a) of this subsection (4), the transferee delivers to the secretary of state, for filing pursuant to part 3 of this article, either:

(I) A statement of trade name stating the transferred name as a trade name pursuant to section 7-71-101;

(II) A statement of reservation of name reserving the transferred name as an entity name pursuant to section 7-90-602; or

(III) An amendment or statement of change to the transferee's constituent filed document changing the entity's domestic entity name to the transferred name.

(e) (Deleted by amendment, L. 2007, p. 243, § 36, effective May 29, 2007.)

(f) The transfer of the registration of the true name shall be effected by the current registrant's delivery to the secretary of state, for filing pursuant to part 3 of this article, of a statement of transfer of registered name that states:

(I) The true name of the foreign entity;

(II) The name of the jurisdiction under the law of which it is formed;

(III) The entity name of the transferee or, if the transferee does not have an entity name, the true name of the transferee;

(IV) The name of the jurisdiction under the law of which the transferee is formed; and

(V) That the registration of the true name is transferred by the entity to the transferee pursuant to this section.

(g) When the statement of transfer of registered name and each other document, if any, required by this subsection (4) to be delivered concurrently to the secretary of state with the

statement of transfer of registered name is filed, the transfer of the registration of true name is transferred.

(4.5) A foreign entity that has in effect a registration of its true name may deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity authority stating that name as its true name.

(5) A foreign entity that has in effect a registration of its true name may relinquish the registration at any time by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of change stating the foreign entity's true name and stating that the registration is relinquished. When filed, the statement of change withdraws the registration of true name.

Source: L. 2000: Entire part added, p. 975, § 47, effective July 1. **L. 2002:** IP(2) and (3) to (5) amended, p. 1844, § 102, effective July 1; IP(2) and (3) to (5) amended, p. 1709, § 100, effective October 1. **L. 2003:** Entire section amended, p. 2301, § 216, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1487, § 230, effective July 1; (4)(b)(II), (4)(d)(II), and (4)(e) amended, p. 1545, § 7, effective May 30, 2006. **L. 2006:** (2)(b), (2)(e), and (3)(b) amended, p. 875, § 60, effective July 1. **L. 2007:** (3.5) and (4.5) added and IP(4)(d) and (4)(e) amended, p. 243, §§ 35, 36, effective May 29. **L. 2009:** IP(3), (3)(b), and (3)(c) amended and (3)(d) added, (HB 09-1248), ch. 252, p. 1133, § 15, effective December 1. **L. 2019:** (2) and (3) amended, (SB 19-086), ch. 166, p. 1921, § 21, effective July 1, 2020.

PART 7

REGISTERED AGENT - SERVICE OF PROCESS - CHANGE OF PRINCIPAL OFFICE

7-90-701. Registered agent - definition.

(1) Every domestic entity for which a constituent filed document is on file in the records of the secretary of state and every foreign entity authorized to transact business or conduct activities in this state shall continuously maintain in this state a registered agent that is:

(a) (I) An individual who is eighteen years of age or older and whose primary residence or usual place of business is in this state.

(II) To establish eligibility pursuant to this subsection (1)(a), an individual must either:

(A) Hold a current, valid driver's license issued by this state or an identification card issued by this state; or

(B) Otherwise verify the individual's residency status with the secretary of state consistent with the secretary of state's policies, which must be developed before January 1, 2025, in coordination with key community partners and impacted communities.

(b) A domestic entity in good standing as listed in the secretary of state's records and having a usual place of business in this state; or

(c) A foreign entity authorized to transact business or conduct activities in this state that is in good standing as listed in the secretary of state's records and that has a usual place of business in this state.

(2) An entity in good standing as listed in the secretary of state's records and having a usual place of business in this state may serve as its own registered agent.

(3) Any document delivered to the secretary of state for filing on behalf of an entity that appoints a person as the registered agent for the entity shall contain a statement that the person has consented to being so appointed.

(4) As used in this section, "usual place of business" has the same meaning as set forth in section 7-90-102 (56)(b).

Source: L. 2003: Entire part added, p. 2302, § 217, effective July 1, 2004. **L. 2004:** IP(1) amended, p. 1490, § 231, effective July 1. **L. 2024:** (1) and (2) amended and (4) added, (HB 24-1137), ch. 332, p. 2249, § 4, effective August 7.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For note, "Service of Process on Foreign Corporations Outside the Forum", see 34 Rocky Mt. L. Rev. 359 (1962).

Annotator's note. Since § 7-90-701 is similar to § 7-115-108 as it existed prior to the 2003 repeal and reenactment of article 115 of title 7 and former § 7-115-108 is similar to § 7-9-117 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing those provisions and their predecessors have been included in the annotations to this section.

Designation of "general manager" and not a named individual suffices. The requirement of this section is met by the designation of the "general manager" of a corporation, residing at its principal place of business, as agent to receive service of process. It is not necessary to give the name of the particular person who happens at the date of the certificate to fill this position, inasmuch as the object of the statute can be best subserved by a certificate of the character filed, for the obvious reason that

the death or resignation of the incumbent would not long interfere with the bringing of suits against the corporations. Goodwin v. Colo. Mtg. Inv. Co., 110 U.S. 1 (1884).

Similarly, the president and vice-president of a corporation are agents of the corporation within the meaning of this section and it is not necessary that an officer serving process should specify in his return that he had served either of these officials in the capacity of agent when it appears that service was upon a specified official of the corporation, which carries with it the information by implication that service was upon an agent thereof. Comet Consol. Mining Co. v. Frost, 15 Colo. 310, 25 P. 506 (1890); Venner v. Denver Union Water Co., 40 Colo. 212, 90 P. 623 (1907).

A foreign corporation's failure to comply with this section must be pleaded in the first instance; if one answers to the merits, the omission is waived. Watson v. Empire Cream Separator Co., 66 Colo. 284, 180 P. 685 (1919).

7-90-702. Change or resignation of registered agent.

(1) An entity that maintains a registered agent pursuant to this part 7 may change its registered agent, the registered agent address, or the registered agent name of its registered agent only by stating a different registered agent, different registered agent address, or different registered agent name for its registered agent, as the case may be, in one of the following:

(a) A statement of change filed pursuant to section 7-90-305.5;

(b) A periodic report filed pursuant to section 7-90-501; or

(c) Any form or cover sheet filed by the secretary of state pursuant to part 3 of this article, which form or cover sheet has been prescribed by the secretary of state for effecting such change.

(2) If the registered agent address or the registered agent name of the registered agent of an entity that is required to maintain a registered agent pursuant to this part 7 changes, the registered agent shall deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of change that, in addition to the information required to be stated in the statement of change pursuant to section 7-90-305.5, states that the person appointed as registered agent has delivered notice of the change to the entity.

(3) (Deleted by amendment, L. 2004, p. 1490, § 232, effective July 1, 2004.)

(4) If a person appointed as the registered agent for an entity in a filed document has resigned or otherwise is no longer the registered agent, the person, or if such person is deceased or a court of competent jurisdiction has appointed a guardian or general conservator for the person, the person's executor, administrator, guardian, conservator, or other legal representative, may deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of

change that, in addition to the information required to be stated in the statement of change pursuant to section 7-90-305.5, states:

(a) The registered agent name and registered agent address as contained in the records of the secretary of state;

(b) The date on which the person resigned or otherwise ceased to be the registered agent for the entity; and

(c) That notice of the change has been delivered to the entity.

(5) Notwithstanding the provisions of section 7-90-304, a statement of change delivered by a person pursuant to subsection (4) of this section is effective on the thirty-first day after the date that the statement of change is filed in the records of the secretary of state or on a delayed effective date stated in the statement of change effecting the resignation that is not earlier than the thirty-first day, and not later than the ninetieth day, after the date the statement of change effecting the resignation is filed in the records of the secretary of state or on the effective date of a statement of change appointing a different person as registered agent, whichever occurs first.

(6) A statement of change pursuant to this section shall not be required to comply with section 7-90-305.5 (2)(b).

Source: L. 2003: Entire part added, p. 2302, § 217, effective July 1, 2004. **L. 2004:** IP(1), (2), (3), IP(4), and (4)(c) amended and (6) added, p. 1490, § 232, effective July 1. **L. 2005:** IP(1) amended, p. 1210, § 16, effective October 1. **L. 2007:** (5) amended, p. 244, § 37, effective May 29. **L. 2008:** IP(4) and (4)(c) amended, p. 20, § 7, effective August 5. **L. 2010:** (1)(b) amended, (HB 10-1403), ch. 404, p. 1998, § 17, effective August 11.

7-90-703. Correction of registered agent.

(1) **[*Editor's note: This version of subsection (1) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** A registered agent may correct either or both its registered agent address and registered agent name as contained in a document on file in the office of the secretary of state, if such information was incorrect when that document was delivered for filing, by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of correction that, in addition to the information required to be stated in the statement of correction pursuant to section 7-90-305, states that notice of the correction has been delivered to the entity.

(1) **[*Editor's note: This version of subsection (1) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]** A registered agent may correct either or both its registered agent address and registered agent name

as contained in a document on file in the office of the secretary of state, if such information was incorrect when that document was delivered for filing, by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of correction that, in addition to the information required to be stated in the statement of correction pursuant to section 7-90-305, states that notice of the correction has been delivered to:

(a) The entity; or

(b) If the statement of correction is delivered for filing on behalf of a commercial registered agent, each entity and trademark registrant that the commercial registered agent represents. The filing of a statement of correction delivered on behalf of a commercial registered agent pursuant to this subsection (1) is effective to correct the information regarding the commercial registered agent with respect to each entity and trademark registrant represented by the commercial registered agent.

(2) Any person appointed as the registered agent for an entity in a document on file in the office of the secretary of state may, if the person has not consented to be appointed as the registered agent or is otherwise not the registered agent for the entity, cause to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of correction that, in addition to the information required to be stated in the statement of correction pursuant to section 7-90-305 (2)(a) and (2)(b), states:

(a) That the person is not the registered agent for the entity; and

(b) That the person has delivered notice of the correction to the entity.

Source: L. 2003: Entire part added, p. 2303, § 217, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1491, § 233, effective July 1. **L. 2012:** (1) amended, (SB 12-123), ch. 171, p. 612, § 5, effective (see editor's note).

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act amending subsection (1) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said subsection. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-704. Service on entities.

(1) The registered agent of an entity is an agent of the entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The

registered agent of an entity is an agent of the entity to whom the secretary of state may deliver any form, notice, or other document with respect to the entity under this title, unless otherwise specified by an organic statute.

(2) If an entity that is required to maintain a registered agent pursuant to this part 7 has no registered agent, or if the registered agent is not located under its registered agent name at its registered agent address, or if the registered agent cannot with reasonable diligence be served, the entity may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (2) at the earliest of:

(a) The date the entity receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed on behalf of the entity; or

(c) Five days after mailing.

(3) This section does not prescribe the only means, or necessarily the required means, of serving an entity in this state.

Source: L. 2003: Entire part added, p. 2304, § 217, effective July 1, 2004. **L. 2004:** (1) amended, p. 1491, § 234, effective July 1. **L. 2007:** IP(2) amended, p. 244, § 38, effective May 29.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For note, "Service of Process on Foreign Corporations Outside the Forum", see 34 Rocky Mt. L. Rev. 359 (1962). For comment on Bay Aviation Serv. Co. v. District Court (149 Colo. 542, 370 P.2d 752 (1962)), see 34 Rocky Mt. L. Rev. 544 (1962). For note, "One Year Review of Colorado Law 1964", see 42 Den. L. Ctr. J. 140 (1965). For comment on White-Rodgers Co. v. District Court (160 Colo. 491, 418 P.2d 527 (1966)), see 39 U. Colo. L. Rev. 443 (1967). For note, "Doing Business in Colorado for Foreign Corporations: Service of Process, Qualification, Taxation", see 49 Den. L.J. 529 (1973).

Annotator's note. Since § 7-90-704 is similar to § 7-115-111 as it existed prior to the 2003 repeal and reenactment of article 115 of title 7 and former § 7-115-111 is similar to § 7-9-119 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Where party did not serve process on a foreign corporation as required by the "long arm" statute, its provisions concerning contacts sufficient to establish doing business were inapplicable under this section. Geer Co. v. District Court, 172 Colo. 48, 469 P.2d 734 (1970).

But it is not necessary to rely on the "long arm" statute to sustain jurisdiction of a court over a foreign corporation where service of process is not made outside of Colorado, but is made upon the agent of the foreign corporation in the state. White-Rodgers Co. v. District Court, 160 Colo. 491, 418 P.2d 527 (1966).

Service of process may be made on agent or secretary of state. When a foreign corporation has filed the necessary documents with the secretary of state as required by this article, it voluntarily subjects itself to process in Colorado either by service on an agent or on the secretary of state. Bardahl Mfg. Corp. v. District Court, 150 Colo. 312, 372 P.2d 447 (1962).

Fact that corporation's employee did not make known to corporation that service had been made upon it constitutes neither mistake, inadvertence, surprise, nor excusable neglect. Stroh v. Am. Recreation & Mobile Home Corp., 35 Colo. App. 196, 530 P.2d 989 (1975).

In addition to service on the secretary of state, service under this section must be completed by mail or by personal service within or without the state on the person over whom jurisdiction is sought. Leach v. Farnsworth & Chambers Co., 231 F. Supp. 157 (D. Colo. 1964); Geer Co. v. District Court, 172 Colo. 48, 469 P.2d 734 (1970).

Determination of "doing business" is matter for court. The absence of exact measures for the determination of what constitutes doing business in a state for the purpose of becoming amenable to the processes of the courts of the state and the lack of uniformity, taken together with the opportunity of the trial court to observe the witnesses and to weigh their testimony, all lend strength to the wisdom of leaving the matter to the trial court. Am. Type Founders Co. v. District Court, 154 Colo. 156, 389 P.2d 85 (1964).

But each case must be decided ad hoc so to not violate due process. The question of what constitutes sufficient minimal contact within the state so as to hold that a foreign corporation has subjected itself to in personam jurisdiction without violating due process clause under the fourteenth amendment of federal constitution is resolved on an ad hoc basis, namely, each case rests upon its own facts. Bolger v. Dial-A-Style Leasing Corp., 159 Colo. 44, 409 P.2d 517 (1966).

The question of what constitutes doing business is a fact to be determined as any other fact. Am. Type Founders Co. v. District Court, 154 Colo. 156, 389 P.2d 85 (1964).

And the burden of proving necessary "presence" in Colorado of foreign corporations for jurisdictional purposes is upon plaintiff. Bolger v. Dial-A-Style Leasing Corp., 159 Colo. 44, 409 P.2d 517

(1966); Geer Co. v. District Court, 172 Colo. 48, 469 P.2d 734 (1970).

Purchaser failed to establish seller's status as an agent for a foreign manufacturer where seller conducted an independent business, purchasing mobile homes outright and selling them in its own business. Hence a motion for substituted service should have been quashed. Geer Co. v. District Court, 172 Colo. 48, 469 P.2d 734 (1970).

Establishing beachhead for business activity and retaining open lines of communication as well as strings of ownership is "doing business" within the state. Bolger v. Dial-A-Style Leasing Corp., 159 Colo. 44, 409 P.2d 517 (1966).

And since a foreign manufacturer maintained a local distributor in Colorado, its sales activity was found to constitute doing business to the extent that service on secretary of state was valid service on the manufacturer, such determination resting largely in the sound discretion of the trial court. Am. Type Founders Co. v. District Court, 154 Colo. 156, 389 P.2d 85 (1964).

But not a nonpresent parent corporation because of mere presence of subsidiary. Although a corporation is totally owned by another corporation, the mere presence in Colorado of the wholly-owned subsidiary, standing alone, does not in and of itself subject the nonpresent parent corporation to the state's jurisdiction where the two companies are operated as distinct entities. Bolger v. Dial-A-Style Leasing Corp., 159 Colo. 44, 409 P.2d 517 (1966).

Presence in the state has never been doubted when the activities of a foreign corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. Am. Type Founders Co. v. District Court, 154 Colo. 156, 389 P.2d 85 (1964).

As where regular trips are made into the state to accept delivery. A nonresident corporation is subject to substituted service by reason of its doing business within the state of Colorado where it conducts regular and continuous trips to the state for the purpose of accepting delivery of all the merchandise which it sells in another state and its entire operation depends on these regular and frequent trips into the state. Jones v. Wood, 208 F. Supp. 750 (D. Colo. 1962).

But where a foreign corporation is in Colorado for one instance, and that was for a demonstration, this presence in not sufficient to constitute doing business in the state so as to subject the corporation to process of service of summons in Colorado. Bay Aviation Servs. Co. v. District Court, 149 Colo. 542, 370 P.2d 752 (1962).

Applied in Adolph Coors Co. v. A. Genderson & Sons, 486 F. Supp. 131 (D. Colo. 1980).

7-90-705. Change of principal office address.

(1) An entity that has stated a principal office address in a document filed by the secretary of state may change its principal office address only by stating a different principal office address in one of the following:

(a) A statement of change filed pursuant to section 7-90-305.5, which statement of change shall not be required to comply with section 7-90-305.5 (2)(b);

(b) A periodic report filed pursuant to section 7-90-501;

(c) Any form or cover sheet filed by the secretary of state pursuant to part 3 of this article, which form or cover sheet has been prescribed by the secretary of state for effecting such change; or

(d) A statement of dissolution or articles of dissolution.

Source: L. 2003: Entire part added, p. 2304, § 217, effective July 1, 2004. **L. 2004:** (1)(a) amended and (1)(d) added, p. 1492, § 235, effective July 1. **L. 2010:** (1)(b) amended, (HB 10-1403), ch. 404, p. 1998, § 18, effective August 11.

7-90-706. Application to dissolved or delinquent entities. (Repealed)

Source: L. 2003: Entire part added, p. 2304, § 217, effective July 1, 2004. **L. 2005:** Entire section amended, p. 1210, § 17, effective October 1. **L. 2009:** Entire section repealed, (HB 09-1248), ch. 252, p. 1133, § 16, effective May 14.

7-90-707. Commercial registered agent.

[*Editor's note: This section is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]

(1) A registered agent may become listed as a commercial registered agent by delivering a commercial registered agent listing statement to the secretary of state for filing pursuant to part 3 of this article. The statement must include the registered agent name and registered agent address of the registered agent and the email address of the registered agent that will be used to receive notifications from the secretary of state.

(2) The statement must be accompanied by a list of the entities represented by the registered agent at the time the statement is filed. If the registered agent is appointed as an agent for a

trademark registrant who is an individual who is not a resident of this state, the registered agent shall identify the statement of trademark registration to the satisfaction of the secretary of state.

(3) A commercial registered agent listing statement must not state a delayed effective date.

Source: L. 2012: Entire section added, (SB 12-123), ch. 171, p. 612, § 6, effective (see editor's note).

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding this section is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement this section. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-708. Termination of commercial registered agent listing.

[*Editor's note: This section is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]

(1) A commercial registered agent may terminate its listing as a commercial registered agent by delivering a commercial registered agent termination statement to the secretary of state for filing pursuant to part 3 of this article. The statement must include:

(a) The name of the registered agent as reflected in the records of the secretary of state at the time the statement is filed;

(b) A statement indicating that the commercial registered agent no longer serves as a commercial registered agent in this state; and

(c) A statement indicating that notice of the termination has been delivered to each entity and trademark registrant that the commercial registered agent represents.

(2) Notwithstanding section 7-90-304, a commercial registered agent termination statement is effective on the thirty-first day following the day that the commercial registered agent termination statement is filed in the records of the secretary of state or on a delayed effective date stated in the commercial registered agent termination statement that is not earlier than the thirty-first day and not later than the ninetieth day following the day the commercial registered agent termination statement is filed in the records of the secretary of state.

(3) A commercial registered agent ceases to be the agent for service of process for an entity and trademark registrant formerly represented by the commercial registered agent when the

termination statement becomes effective. If an entity or trademark registrant represented by the person that is resigning as a commercial registered agent appoints a registered agent before the effective date of the termination statement, the commercial registered agent ceases to be the agent for that entity or trademark registrant on the effective date of the appointment of the new registered agent.

Source: L. 2012: Entire section added, (SB 12-123), ch. 171, p. 613, § 6, effective (see editor's note).

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding this section is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement this section. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-709. Change of commercial registered agent name or address.

[*Editor's note: This section is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*]

(1) If a commercial registered agent changes its registered agent name or its registered agent address, the commercial registered agent shall deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of change that states, in addition to the information required by section 7-90-305.5, that the commercial registered agent has delivered notice of the change to each entity and trademark registrant represented by the commercial registered agent.

(2) The filing of a statement of change pursuant to this section is effective to change the information regarding the commercial registered agent with respect to each entity and trademark registrant represented by the commercial registered agent.

Source: L. 2012: Entire section added, (SB 12-123), ch. 171, p. 613, § 6, effective (see editor's note).

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding this section is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary

computer system changes to implement this section. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-710. Listing of entities represented by commercial registered agents.

[*Editor's note: This section is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*] The secretary of state shall make available upon request a list of filings made during the previous month that contain the name of a commercial registered agent. The secretary of state may assess a fee for the requested lists.

Source: L. 2012: Entire section added, (SB 12-123), ch. 171, p. 614, § 6, effective (see editor's note).

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding this section is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement this section. As of publication date, the revisor of statutes had not received certification from the secretary of state.

PART 8

FOREIGN ENTITIES

7-90-801. Authority to transact business or conduct activities required.

(1) A foreign entity shall not transact business or conduct activities in this state except in compliance with this part 8 and not until its statement of foreign entity authority is filed in the records of the secretary of state. Notwithstanding the foregoing, this part 8 shall not apply to foreign general partnerships that are not foreign limited liability partnerships and shall not apply to foreign unincorporated nonprofit associations. To the extent that a provision of this part 8 is inconsistent with another statute of this state in its application to a foreign entity, such other statute, and not such provision of this part 8, shall apply.

(2) A foreign entity shall not be considered to be transacting business or conducting activities in this state within the meaning of subsection (1) of this section by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining, defending, or settling in its own behalf any proceeding or dispute;

(b) Holding meetings of its owners or managers or carrying on other activities concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of its own securities or owner's interests, or maintaining trustees or depositories with respect to those securities or owner's interests;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or electronic transmission, through employees or agents, or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating, as borrower or lender, or acquiring, indebtedness;

(h) Creating, as borrower or lender, or acquiring, mortgages or other security interests in real or personal property;

(i) Securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing such debts;

(j) Owning, without more, real or personal property;

(k) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(l) Transacting business or conducting activities in interstate commerce; and

(m) In the case of a foreign nonprofit corporation:

(I) Granting funds; or

(II) Distributing information to its members.

(3) The list of activities in subsection (2) of this section is not exhaustive.

(4) Nothing in this section shall limit or affect the right to subject a foreign entity that does not, or is not required to, have authority to transact business or conduct activities in this state to the jurisdiction of the courts of this state or to serve upon any foreign entity any process, notice, or demand required or permitted by law to be served upon an entity pursuant to part 7 of this article or sections 13-1-124 and 13-1-125, C.R.S., or any other provision of law or pursuant to the applicable rules of civil procedure.

(5) A foreign nonprofit entity shall be considered to be transacting business or conducting activities in this state if it is required to file a registration statement with the secretary of state pursuant to section 6-16-104, C.R.S.

Source: L. 2003: Entire part added, p. 2305, § 217, effective July 1, 2004. **L. 2004:** (1) amended, p. 1492, § 236, effective July 1. **L. 2007:** (5) added, p. 244, § 39, effective May 29. **L. 2021:** (2)(f) amended, (HB 21-1124), ch. 41, p. 157, § 1, effective April 19.

ANNOTATION

Law reviews. For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For note, "Service of Process on Foreign Corporations Outside the Forum", see 34 Rocky Mt. L. Rev. 359 (1962). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "Piercing the Corporate Veil: Limited Liability", see 15 Colo. Law. 795 (1986). For article, "Significant Improvements to Colorado's Limited Partnership Act Adopted", see 15 Colo. Law. 1635 (1986). For article, "Trade Name Registration Requirements and Customs in Colorado — Parts I and II", see 16 Colo. Law. 238 and 454 (1987).

Annotator's note. Since § 7-90-801 is similar to § 7-115-101 as it existed prior to the 2003 repeal and reenactment of article 115 of title 7 and former § 7-115-101 is similar to § 7-9-101 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Restrictions on interstate commerce may not be imposed. The legislature in prescribing conditions on which a foreign corporation may do business within the state may not impose any restrictions or burdens on interstate commerce. Int'l Trust Co. v. A. Leschen & Sons Rope Co., 41 Colo. 299, 92 P. 727 (1907).

Thus this section cannot be construed to impose upon foreign corporations limitations on making contracts for carrying on commerce between the states, for that would make the act an invasion of the exclusive right of Congress to regulate commerce among the several states. Cooper Mfg. Co. v. Ferguson, 113 U.S. 727 (1885).

And so foreign corporations engaged solely in interstate commerce are impliedly excepted from this section imposing duties and obligations upon foreign corporations generally; otherwise the section must necessarily be held unconstitutional as invading the exclusive power of Congress. Herman Bros. Co. v. Nasiacos, 46 Colo. 208, 103 P. 301 (1909).

This section and § 10 of art. XV, Colo. Const., do not forbid, the doing of a single act of business in the state, but the carrying on of business by a foreign corporation without the filing of the certificate and the appointment of an agent as required by the statute. Cooper Mfg. Co. v. Ferguson, 113 U.S. 727 (1885).

For to "transact business" within the meaning of this section is to maintain an office, have capital invested, and carry on a regular business in the state. Cockburn v. Kinsley, 25 Colo. App. 89, 135 P. 1112 (1913); Colo. Iron-Works v. Sierra Grande Mining Co., 15 Colo. 499, 25 P. 325 (1890).

And so a single transaction is not "transacting business". Cockburn v. Kinsley, 25 Colo. App. 89, 135 P. 1112 (1913).

Nor does "transacting business" include the mere sale of shares, measures taken for promoting the affairs of the corporation, or meetings of the directors for such purposes only. Cockburn v. Kinsley, 25 Colo. App. 89, 135 P. 1112 (1913).

Corporation without certificate must defend lawsuits. Although a foreign corporation which does not obtain a certificate of authority has no right to transact business in Colorado, such corporation maintains its corporate identity with respect to its contracts and other acts, and it cannot refuse to defend lawsuits in Colorado courts. Nat'l Ass'n of Credit Mgt. v. Burke, 645 P.2d 1323 (Colo. App. 1982).

Civil suits. A foreign corporation not properly qualified to transact business in Colorado can remove the statutory prohibition against maintaining a civil action by taking steps necessary for qualification at any time. Noldan Corp. v. District Court, 716 P.2d 120 (Colo. 1986).

Neither this section nor § 7-90-805 expressly informs foreign entities that by registering to do business in the state, or by designating a state registered agent, they are consenting to the personal jurisdiction of state courts. Lumen Techs. Serv. Grp., LLC v. CEC Grp., LLC, 691 F. Supp. 3d 1282 (D. Colo. 2023).

Applied in Tabor v. Gross Mfg. Co., 11 Colo. 419, 18 P. 537 (1888); Miller v. Williams, 27 Colo. 34, 59 P. 740 (1899); Butler Bros. Shoe Co. v. United States Rubber Co., 156 F. 1 (8th Cir. 1907); Great W. Producers Coop. v. Great W. United Corp., 200 Colo. 180, 613 P.2d 873 (1980).

7-90-802. Consequences of transacting business or conducting activities without authority.

(1) (a) No foreign entity transacting business or conducting activities in this state without authority, nor anyone on its behalf, shall be permitted to maintain a proceeding in any court in this state for the collection of its debts until a statement of foreign entity authority for the foreign entity is filed in the records of the secretary of state.

(b) A court may stay a proceeding commenced by a foreign entity until it determines whether the foreign entity should have a statement of foreign entity authority on file with the secretary of state. If the court determines that the foreign entity should have a statement of foreign entity authority on file with the secretary of state, the court may further stay the proceeding until there is a statement of foreign entity authority on file with the secretary of state with respect to the

foreign entity. If a foreign entity has a statement of foreign entity authority on file with the secretary of state, no proceeding in any court in this state to which the foreign entity is a party shall, after the effective date of such statement of foreign entity authority, be dismissed by reason of a statement of foreign entity authority not being on file with the secretary of state with respect to the foreign entity.

(2) A foreign entity that transacts business or conducts activities in this state without being authorized to do so shall be liable to this state in an amount equal to the fee as prescribed by the secretary of state from time to time, not to exceed one hundred dollars for each calendar year or part of a calendar year during which it transacted business or conducted activities in this state without being authorized to do so, plus all penalties imposed by this state pursuant to subsection (3) of this section for failure to pay such fees. No statement of foreign entity authority shall be filed until payment of the amounts due under this subsection (2) and subsection (3) of this section is made.

(3) A foreign entity that transacts business or conducts activities in this state without having a statement of foreign entity authority on file in the records of the secretary of state shall be subject to a civil penalty, payable to this state, not to exceed five thousand dollars.

(4) The amounts due to this state under the provisions of subsection (2) of this section and the civil penalties set forth in subsection (3) of this section may be recovered in an action brought by the attorney general in the district court in and for the city and county of Denver. Upon a finding by the court that a foreign entity or any of its managers or agents on its behalf has transacted business or conducted activities in this state in violation of this part 8, the court may issue, in addition to or in lieu of the imposition of a civil penalty, an injunction restraining the further transaction of business or conducting of activities by the foreign entity and the managers and agents, and the further exercise of any rights and privileges of an entity in this state until all amounts plus any interest and court costs that the court may assess have been paid, and until the foreign entity has otherwise complied with this part 8.

(5) Notwithstanding subsection (1) of this section, the transaction of business or conducting of activities in this state by a foreign entity without having a statement of foreign entity authority on file in the records of the secretary of state does not impair the validity of the acts of the foreign entity or prevent it from defending any proceeding in this state.

Source: L. 2003: Entire part added, p. 2306, § 217, effective July 1, 2004. **L. 2004:** (1), (2), and (4) amended, p. 1492, § 237, effective July 1. **L. 2005:** (1) amended, p. 1211, § 18, effective October 1.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "One Year Review of Corporations, Partnership and Agency", see 37 Dicta 11 (1960).

Annotator's note. Since § 7-90-802 is similar to § 7-115-102 as it existed prior the 2003 repeal and reenactment of article 115 of title 7 and former § 7-115-102 is similar to § 7-9-103 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing those provisions and their predecessors have been included in the annotations to this section.

The general assembly has power to prescribe the terms and conditions upon which foreign corporations may do business within the state and require a compliance with such terms and conditions such as this section as a condition precedent to their invoking the jurisdiction of its courts. Int'l Trust Co. v. A. Leschen & Sons Rope Co., 41 Colo. 299, 92 P. 727 (1907).

Civil suits. A foreign corporation not properly qualified to transact business in Colorado can remove the statutory prohibition against maintaining a civil action by taking steps necessary for qualification at any time. Roldan Corp. v. District Court, 716 P.2d 120 (Colo. 1986).

Until a foreign corporation complies with this section, it has no capacity to sue. King Copper Co. v. Dreher, 68 Colo. 554, 191 P. 98 (1920).

And failure to comply can be invoked as defense. Officer of a foreign corporation, being sued by the corporation, was not estopped from invoking the defense that the corporation had not complied with this section. King Copper Co. v. Dreher, 68 Colo. 554, 191 P. 98 (1920).

The failure of a foreign corporation to comply with this section goes to its capacity to sue, and is a matter of defense to be pleaded by the defendant in bar of the action. Ill. Sewing Mach. Co. v. Harrison, 43 Colo. 362, 96 P. 177 (1908); Zelinger v. Uvalde Rock Asphalt Co., 316 F.2d 47 (10th Cir. 1963).

However, this section prohibits the prosecution of an action until the prescribed certificate has been obtained by a foreign corporation. The prohibition is, therefore, only provisional and may be removed at any time under the terms of the section itself. Int'l Trust Co. v. A. Leschen & Sons Rope Co., 41 Colo. 299, 92 P. 727 (1907).

And so the purpose of this section is fully accomplished by actual compliance with its requirements subsequent to the commencement of an action. Int'l Trust Co. v. A. Leschen & Sons Rope Co., 41 Colo. 299, 92 P. 727 (1907).

If an application under § 7-115-101 is filed before trial, the failure to file until after the six-year deadline for filing application for finding of reasonable diligence pursuant to § 37-92-301 does not divest the water court of jurisdiction. Municipal Subdist., N. Colo. Water Conservancy Dist. v. Getty Oil Exploration Co., 997 P.2d 557 (Colo. 2000).

Corporation must defend lawsuits. Although a foreign corporation which does not obtain a certificate of authority has no right to transact business in Colorado, such corporation maintains its corporate identity with respect to its contracts and other acts, and it cannot refuse to defend lawsuits in Colorado courts. Nat'l Ass'n of Credit Mgt. v. Burke, 645 P.2d 1323 (Colo. App. 1982).

A foreign corporation's omission to allege in its complaint that it has complied with this section can relate only to its capacity to sue and is not one of the facts necessary to constitute its cause of action. Page Woven Wire Fence Co. v. Joslin, 38 Colo. 162, 88 P. 142 (1906).

And a foreign corporation which has never done any business in Colorado may sue without paying any fees to the state pursuant to this section. Desserich v. Merle & Heaney Mfg. Co. 48 Colo. 370, 109 P. 949 (1910).

As this section is intended to govern intrastate commerce and does not apply to interstate commerce or to the right of a foreign corporation to institute and defend suits in the federal courts. Butler Bros. Shoe Co. v. United States Rubber Co., 156 F. 1 (8th Cir. 1907); Herman Bros. Co. v. Nasiacos, 46 Colo. 208, 103 P. 301 (1909).

Business not sufficiently intrastate to bring corporation within the scope of this section. Cement Asbestos Prods. Co. v. Hartford Accident & Indem. Co., 592 F.2d 1144 (10th Cir. 1979).

Question of transaction of business involves factual matters. The question whether the plaintiff is transacting business in Colorado for the purposes of this section involves factual matters. Viva, Ltd. v. United States, 490 F. Supp. 1002 (D. Colo. 1980).

But no compulsion if solely in interstate commerce. A foreign corporation may not be compelled to qualify in this state if it is engaged solely in interstate commerce. Cement Asbestos Prods. Co. v. Hartford Accident & Indem. Co., 592 F.2d 1144 (10th Cir. 1979); Viva, Ltd. v. United States, 490 F. Supp. 1002 (D. Colo. 1980).

Also, there is nothing in this section which prohibits foreign corporations from acquiring personal property in Colorado. And having acquired it, they have the right to protect it from unlawful interference; if this were not true, persons might appropriate such property to their own use without fear of punishment. Craig v. A. Leschen & Sons Rope Co., 38 Colo. 115, 87 P. 1143 (1906).

Limitation on right of foreign corporations to bring lawsuits held inapplicable. Where foreign corporation sued in the Colorado federal court to quiet title to property against which a federal tax lien had been imposed based upon assessments against an individual taxpayer claimed to have an interest in the corporation and its property, the state limitation on right of foreign corporations to bring lawsuits did not apply. Viva, Ltd. v. United States, 490 F. Supp. 1002 (D. Colo. 1980).

Liability not extended to corporation's officers, stockholders, or incorporators. In the absence of definite statutory authority therefor, officers, stockholders,

incorporators, or other persons contracting for or on behalf of a noncomplying foreign corporation cannot be held liable on its contracts as partners. Nat'l Ass'n of Credit Mgt. v. Burke, 645 P.2d 1323 (Colo. App. 1982).

Liens. The assertion and filing of a lien is not a "proceeding in court" within the meaning of this statute. Filing a lien qualifies as a "corporate act" within the meaning of the statute. Bob Blake Builders, Inc. v. Gramling, 18 P.3d 859 (Colo. App. 2001).

Applied in Miller v. Williams, 27 Colo. 34, 59 P. 740 (1899); Kephart v. People ex rel. Am. Sav. Bank, 28 Colo. 73, 62 P. 946 (1900).

7-90-803. Statement of foreign entity authority to transact business or conduct activities.

(1) A foreign entity may cause to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity authority stating:

(a) Its true name and its assumed entity name, if any;

(b) The jurisdiction under the law of which it is formed;

(c) The form of the entity as that form is recognized by the jurisdiction under the law of which the entity is formed;

(d) (Deleted by amendment, L. 2004, p. 1493, § 238, effective July 1, 2004.)

(e) The principal office address of its principal office;

(f) The registered agent name and registered agent address of its registered agent; and

(g) The date it commenced or expects to commence transacting business or conducting activities in this state.

(h) (Deleted by amendment, L. 2004, p. 1493, § 238, effective July 1, 2004.)

Source: L. 2003: Entire part added, p. 2307, § 217, effective July 1, 2004. **L. 2004:** (1)(c), (1)(d), and (1)(h) amended, p. 1493, § 238, effective July 1. **L. 2006:** (1)(b) amended, p. 876, § 61, effective July 1.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "1984 Revisions to the Colorado

Corporation Code: Effective March 1984", which discusses elimination of filing requirements for foreign corporations, see 13 Colo. Law. 993 (1984).

Annotator's note. Since § 7-90-803 is similar to § 7-115-103 as it existed prior to the 2003 repeal and reenactment of article 115 of title 7, to § 7-9-108 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, and to laws antecedent thereto, a case construing a predecessor provision has been included in the annotations to this section.

The secretary of state has the right to treat a report as not filed and refuse to file it until the fee is paid and until then it would not be filed, notwithstanding its delivery into his possession. Sherman v. Credit Fin. Corp., 78 Colo. 330, 241 P. 722 (1925).

And the secretary of state is not obliged to treat a check, as payment of the fee, even if properly endorsed. Sherman v. Credit Fin. Corp., 78 Colo. 330, 241 P. 722 (1925).

7-90-804. Change of statement of foreign entity authority to transact business or conduct activities.

Upon any change in circumstances that makes any statement contained in its filed statement of foreign entity authority no longer true, a foreign entity authorized to transact business or conduct activities in this state shall deliver to the secretary of state, for filing pursuant to part 3 of this article, an appropriate statement of change so that its statement of foreign entity authority is in all respects true.

Source: L. 2003: Entire part added, p. 2307, § 217, effective July 1, 2004.

7-90-805. Effect of statement of foreign entity authority.

(1) A foreign entity is authorized to transact business or conduct activities in this state from the effective date of its statement of foreign entity authority until the effective date of its statement of foreign entity withdrawal.

(2) A foreign entity that has authority to transact business or conduct activities in this state has the same rights and privileges as, but no greater rights or privileges than, and, except as otherwise provided by this title, is subject to the same duties, restrictions, penalties, and liabilities imposed upon, a functionally equivalent domestic entity.

(3) Nothing in this part 8 authorizes this state to regulate the organization, formation, existence, or internal activities of a foreign entity authorized to transact business or conduct activities in this state.

(4) As to any foreign entity transacting business or conducting activities in this state, the law of the jurisdiction under the law of which the foreign entity is formed shall govern the organization and internal affairs of the foreign entity and the liability of its owners and managers.

Source: L. 2003: Entire part added, p. 2308, § 217, effective July 1, 2004. **L. 2004:** (4) amended, p. 1493, § 239, effective July 1. **L. 2005:** (1) amended, p. 1211, § 19, effective October 1.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For note, "Doing Business in Colorado for Foreign Corporations: Service of Process, Qualification, Taxation", see 49 Den. L.J. 529 (1973). For article, "Signatures on Documents Affecting Title to Colorado Real Property — Part III", see 12 Colo. Law. 447 (1983).

Annotator's note. Since § 7-90-805 is similar to § 7-115-105 as it existed prior to the 2003 repeal and reenactment of article 115 of title 7 and former § 7-115-105 is similar to § 7-9-104 as it existed prior to the 1993 recodification of the Colorado Business Corporation Act, articles 101 to 117 of title 7, cases construing those provisions and their predecessors have been included in the annotations to this section.

This section recognizes that a foreign corporation has a corporate existence in Colorado if it complies with the provisions of this article. Admiral Corp. v. Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958).

But a foreign corporation cannot legally carry on business in Colorado until it complies with § 7-9-101 regulating the admission of foreign corporations to do business in this state; after such compliance, it becomes a corporation existing under the law of this state. Admiral Corp. v. Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958).

Foreign corporation qualified to do business may use assumed name. A foreign corporation, having qualified to do business in Colorado, is a corporation existing under the laws of this state within the meaning of § 7-71-101 providing for filing of assumed names. The right of a foreign corporation to transact business under an assumed name relates only to the remedies available to it in the enforcement of its contracts, and where it is provided as in this section that a foreign corporation shall have the same power as a domestic corporation, and domestic corporations are given the power to conduct their business under an assumed name upon compliance with the statute, foreign corporations may exercise the same power upon compliance with the applicable statute. Admiral Corp. v.

Television Sales & Serv., Inc., 138 Colo. 157, 330 P.2d 1106 (1958).

Neither this section nor § 7-90-801 expressly informs foreign entities that by registering to do business in the state, or by designating a state registered agent, they are consenting to the personal jurisdiction of state courts. Lumen Techs. Serv. Grp., LLC v. CEC Grp., LLC, 691 F. Supp. 3d 1282 (D. Colo. 2023).

Whether the term "corporation" when used in this code applies to foreign corporations as well as domestic corporations depends upon the subject matter of the statute, its policy, and the context in which the term is employed. Jefferson Indus. Bank v. First Golden Bancorp., 762 P.2d 768 (Colo. App. 1988).

A foreign corporation transacting business in Colorado is subject to the same rules, regulations, and restrictions applicable to domestic corporations by virtue of this section. Holmes v. Jewett, 55 Colo. 187, 134 P. 665 (1913).

Since nothing in the language of § 7-5-117 indicates an intent by the general assembly to limit its effect to domestic corporations, it also applies to foreign corporations as contemplated by this section. Jefferson Indus. Bank v. First Golden Bancorp., 762 P.2d 768 (Colo. App. 1988).

Foreign corporation transacting business in this state may obtain a prejudgment writ of attachment under rule allowing a "resident of this state" to do so. Old Republic Nat'l Title Ins. v. Kornegay, 2012 COA 140, 292 P.3d 1111.

Accordingly, this section subjects a foreign corporation to all the liabilities of a domestic corporation of like character which means that it shall not be subjected to any greater liabilities than are imposed upon a domestic corporation. Am. Smelting & Ref. Co. v. Colo., 204 U.S. 103 (1907).

Extent of liabilities imposed. It is a necessary corollary to the rule in this section that a foreign corporation shall not be subjected to any greater liabilities than are imposed upon a domestic corporation. Casselman v. Denver Tramway Corp., 39 Colo. App. 306, 568 P.2d 84 (1977), rev'd on other grounds, 195 Colo. 241, 577 P.2d 293 (1978).

Applied in Nat'l Ass'n of Credit Mgt. v. Burke, 645 P.2d 1323 (Colo. App. 1982).

7-90-806. Withdrawal of foreign entity.

(1) A foreign entity authorized to transact business or conduct activities in this state may relinquish that authority by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity withdrawal stating:

(a) Its true name and its assumed entity name, if any;

(b) The registered agent name and registered agent address of its registered agent or, if a registered agent is no longer to be maintained, a statement that the entity will not maintain a

registered agent, and the mailing address to which service of process may be mailed pursuant to section 7-90-807;

(c) The principal office address of its principal office;

(d) The jurisdiction under the law of which it was formed;

(e) That it will no longer transact business or conduct activities in this state and that it relinquishes its authority to transact business or conduct activities in this state; and

(f) That any statement of trade name it has on file in the records of the secretary of state pursuant to article 71 of this title, and any assumed entity name pursuant to section 7-90-603, are withdrawn upon the effective date of the statement of foreign entity withdrawal.

(g) (Deleted by amendment, L. 2004, p. 1494, § 240, effective July 1, 2004.)

(2) If a foreign entity causes a statement of foreign entity withdrawal to be delivered to the secretary of state for filing pursuant to part 3 of this article before the date on which a periodic report for the foreign entity is due pursuant to part 5 of this article, the foreign entity is relieved of its obligation to file such annual report or pay the fee therefor.

Source: L. 2003: Entire part added, p. 2308, § 217, effective July 1, 2004. **L. 2004:** (1)(c) and (1)(g) amended, p. 1494, § 240, effective July 1; (1)(f) amended, p. 1545, § 8, effective May 30, 2006. **L. 2006:** (1)(b), (1)(d), and (1)(f) amended, p. 876, § 62, effective July 1. **L. 2010:** (2) amended, (HB 10-1403), ch. 404, p. 1998, § 19, effective August 11.

7-90-807. Service on withdrawn foreign entity.

(1) A foreign entity with respect to which a statement of foreign entity withdrawal has been filed pursuant to section 7-90-806 shall either:

(a) Maintain a registered agent to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business or conduct activities in this state; or

(b) Be deemed to have authorized service of process on it in connection with such causes of action by mailing in accordance with section 7-90-704 (2).

(2) Subsection (1) of this section does not prescribe the only means, or necessarily the required means, of serving a foreign entity with respect to which a statement of foreign entity withdrawal has been filed.

Source: L. 2003: Entire part added, p. 2309, § 217, effective July 1, 2004.

7-90-808. Grounds for revocation. (Repealed)

Source: L. 2003: Entire part added, p. 2309, § 217, effective July 1, 2004. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-90-809. Procedure for and effect of revocation. (Repealed)

Source: L. 2003: Entire part added, p. 2310, § 217, effective July 1, 2004. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-90-810. Appeal from revocation. (Repealed)

Source: L. 2003: Entire part added, p. 2310, § 217, effective July 1, 2004. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-90-811. Application to existing foreign entities.

A foreign entity authorized to transact business or conduct activities in this state in accordance with law as in effect on June 30, 2004, is subject to this part 8 and the filed document pursuant to which it has such authority shall be deemed to be a filed statement of foreign entity authority for purposes of this part 8.

Source: L. 2003: Entire part added, p. 2311, § 217, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1494, § 241, effective July 1.

7-90-812. Foreign general partnerships.

This part 8 shall not apply to a foreign general partnership that is not a foreign limited liability partnership.

Source: L. 2003: Entire part added, p. 2311, § 217, effective July 1, 2004.

7-90-813. Title 12 limitations.

Nothing in this part 8 shall be construed to permit a foreign entity to engage in a profession or occupation as described in title 12, C.R.S., for which there is a specific statutory provision applicable to the practice of such profession or occupation by a corporation or professional corporation in this state unless authorized under applicable provisions of title 12, C.R.S., or section 25-3-103.7, C.R.S.

Source: L. 2003: Entire part added, p. 2311, § 217, effective July 1, 2004. **L. 2011:** Entire section amended, (SB 11-084), ch. 112, p. 346, § 1, effective August 10.

PART 9

DELINQUENCY - DISSOLUTION UPON EXPIRATION OF TERM - NOTICE TO CREDITORS BY ENFORCEMENT OF CLAIMS AGAINST DISSOLVED ENTITIES

SUBPART 1

DELINQUENCY

7-90-901. Grounds for delinquency.

(1) A domestic entity that is a reporting entity may be declared delinquent under section 7-90-902 if:

(a) The domestic entity does not pay any fee or penalty imposed by this title when it is due;

(b) The domestic entity does not comply with part 5 of this article, providing for reports from reporting entities;

(c) The domestic entity does not comply with part 7 of this article, providing for registered agents and service of process; or

(d) An administrative law judge finds, or a conceded notice and demand sets forth, pursuant to section 7-90-314 (4)(g)(V), that the domestic entity was created without authorization or for fraudulent purposes.

(2) A foreign entity that is a reporting entity may be declared delinquent under section 7-90-902 if:

(a) The foreign entity does not pay any fee or penalty imposed by this title when it is due;

(b) The foreign entity does not comply with part 5 of this article, providing for reports from reporting entities;

(c) The foreign entity does not comply with part 7 of this article, providing for registered agents and service of process;

(d) The foreign entity does not deliver for filing an appropriate statement of change when necessary to make its statement of foreign entity authority true in all respects;

(e) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of entity records in the jurisdiction under the law of which the foreign entity was formed to the effect that it no longer exists as the result of a dissolution or merger or otherwise; or

(f) An administrative law judge finds, or a conceded notice and demand sets forth, pursuant to section 7-90-314 (4)(g)(V), that the foreign entity was registered without authorization or for fraudulent purposes.

Source: L. 2005: Entire part added, p. 1211, § 20, effective October 1. **L. 2024:** (1)(b), (1)(c), (2)(d), and (2)(e) amended and (1)(d) and (2)(f) added, (HB 24-1137), ch. 332, p. 2250, § 5, effective August 7.

7-90-902. Declaration of delinquency.

(1) (a) If the secretary of state determines that one or more grounds exist under section 7-90-901 for declaring an entity delinquent and the entity does not correct each ground for declaring it delinquent or demonstrate to the reasonable satisfaction of the secretary of state that such ground does not exist within sixty days after the secretary of state makes such determination, the entity becomes delinquent following the expiration of such sixty days.

(b) If the secretary of state determines that grounds exist under section 7-90-901 (1)(d) or (2)(f) for declaring an entity delinquent, the entity becomes delinquent immediately upon such determination and is not subject to the sixty-day period set forth in subsection (1)(a) of this section.

(2) (Deleted by amendment, L. 2010, (HB 10-1403), ch. 404, p. 1998, § 20, effective August 11, 2010.)

Source: L. 2005: Entire part added, p. 1212, § 20, effective October 1. **L. 2009:** (2) amended, (HB 09-1248), ch. 252, p. 1133, § 17, effective December 1. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 1998, § 20, effective August 11. **L. 2024:** (1) amended, (HB 24-1137), ch. 332, p. 2250, § 6, effective August 7.

7-90-903. Effect of delinquency.

(1) A delinquent entity may not maintain a proceeding in any court in this state for the collection of its debts until it has cured its delinquency pursuant to section 7-90-904 (1), (2), or (3).

(2) A court may stay a proceeding commenced by an entity until it determines whether the entity is delinquent. If the court determines that the entity is delinquent, it may further stay the proceeding until the entity cures its delinquency pursuant to section 7-90-904. If a delinquent entity cures its delinquency in accordance with section 7-90-904, no proceeding in any court in this state to which such entity is a party shall thereafter be dismissed by reason of that instance of delinquency.

(3) The delinquency of an entity does not terminate the authority of the registered agent of the entity.

(4) The existence of a domestic entity continues notwithstanding its delinquency.

(5) A delinquent domestic entity may be dissolved at any time and by any manner as may be provided or permitted by its constituent documents and organic statutes and, if it has failed to cure its delinquency for three years or more, the delinquent domestic entity may be dissolved pursuant to section 7-90-908.

Source: L. 2005: Entire part added, p. 1213, § 20, effective October 1.

7-90-904. Cure of delinquency.

(1) (a) An entity that has been delinquent for fewer than five years may cure its delinquency by delivering to the secretary of state, for filing pursuant to part 3 of this article 90, a statement curing delinquency that is signed by an individual under penalty of perjury and that states:

(I) The entity's principal office address; and

(II) The entity's registered agent's name and address.

(b) (Deleted by amendment, L. 2008, p. 23, § 17, effective August 5, 2008.)

(c) An entity that has been delinquent for five years or longer may cure its delinquency by delivering to the secretary of state, for filing pursuant to part 3 of this article 90, the following documents:

(I) A statement curing delinquency that is signed by an individual under penalty of perjury and that states:

(A) The entity's principal office address; and

(B) The entity's registered agent's name and address;

(II) An affidavit attesting that the individual who signed the statement has the authority of the entity to sign for and act on behalf of the entity; and

(III) A copy of a government-issued personal photographic identification for the individual who signed the statement and affidavit.

(2) In lieu of curing its delinquency pursuant to subsection (1) of this section, a delinquent foreign entity may cure its delinquency by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity withdrawal.

(3) A delinquent domestic entity may cure its delinquency by dissolving.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection (4), the entity name of an entity following the curing of its delinquency shall be the same as the entity name, determined without regard to section 7-90-601.6, of the entity at the time the entity cures its delinquency if such entity name complies with section 7-90-601 at the time the entity cures its delinquency. If such entity name would not be distinguishable on the records of the secretary of state as contemplated in section 7-90-601, the entity name of the entity following curing of its delinquency shall be such entity name followed by the words "delinquency cured" and the month, day, and year of the effective date of the statement curing delinquency.

(b) In the case of a foreign entity that cures its delinquency pursuant to subsection (2) of this section, the foreign entity name of the foreign entity shall be its foreign entity name at the time it cures its delinquency, determined without regard to section 7-90-601.6, as changed by section 7-90-601.7.

(c) In the case of a domestic entity that cures its delinquency pursuant to subsection (3) of this section, the domestic entity name of the domestic entity shall be its domestic entity name at the time it cures its delinquency, determined without regard to section 7-90-601.6, as changed by section 7-90-601.5.

Source: L. 2005: Entire part added, p. 1213, § 20, effective October 1. **L. 2006:** (4)(a) amended, p. 876, § 63, effective July 1. **L. 2008:** (1) amended, p. 23, § 17, effective August 5. **L. 2009:** (4)(a) amended, (HB 09-1248), ch. 252, p. 1134, § 18, effective May 14. **L. 2024:** (1) amended, (HB 24-1137), ch. 332, p. 2251, § 7, effective August 7.

7-90-905. Appeal from declaration of delinquency.

(1) An entity may appeal a declaration under section 7-90-902 (1) that it is delinquent to the district court for the county in this state in which the street address of the entity's principal office is located, or, if the entity has no principal office in this state, to the district court for the county in which the street address of its registered agent is located or, if the entity has no registered agent, to the district court for the city and county of Denver within thirty days after the effective date of its delinquency. The entity shall commence such appeal by petitioning the court to set aside the declaration of its delinquency or to determine that the entity has cured its delinquency and attaching to the petition copies of such documents in the secretary of state's records as may be relevant.

(2) The court may summarily order the secretary of state to take whatever action the court considers appropriate or may take any other action the court considers appropriate.

(3) The court's order or decision may be appealed as in other civil proceedings.

Source: L. 2005: Entire part added, p. 1214, § 20, effective October 1. **L. 2010:** (1) amended, (HB 10-1403), ch. 404, p. 1999, § 21, effective August 11.

7-90-906. Limited liability partnerships and limited liability limited partnerships.

Each limited liability partnership and limited liability limited partnership to which section 7-60-152 or section 7-64-1008 was applicable on September 30, 2005, shall be deemed delinquent pursuant to section 7-90-902 (1), effective October 1, 2005.

Source: L. 2005: Entire part added, p. 1214, § 20, effective October 1. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 1999, § 22, effective August 11.

SUBPART 2

DISSOLUTION UPON EXPIRATION OF TERM OR OF DELINQUENT ENTITY

7-90-907. Dissolution upon expiration of term - repeal. (Repealed)

Source: L. 2005: Entire part added, p. 1214, § 20, effective October 1. **L. 2010:** (1) repealed, (HB 10-1403), ch. 404, p. 1999, § 23, effective August 11. **L. 2019:** (2)(b) added by revision, (SB 19-086), ch. 166, pp. 1922, 1966, §§ 22, 72.

7-90-908. Dissolution of delinquent entity.

(1) If a delinquent domestic entity has failed to cure its delinquency for three years or more, any manager of the domestic entity may cause it to dissolve by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of dissolution of delinquent entity stating:

(a) The domestic entity name of the delinquent entity;

(b) The principal office address of the delinquent entity's principal office;

(c) That the entity is delinquent and has failed to cure its delinquency for three years or more; and

(d) That, at least thirty days prior to the delivery of the statement of dissolution of delinquent entity to the secretary of state, the delinquent entity has delivered written notice of the delinquent entity's plan to file a statement of dissolution of delinquent entity to all owners and other persons having authority under the organic statutes and under its constituent operating document to bring about or prevent dissolution of the entity and the delinquent entity has not received, as of the date the statement of dissolution of delinquent entity is delivered for filing to the secretary of state, written objections to dissolution from such number of such owners and other persons as would be sufficient to prevent voluntary dissolution of the delinquent entity under the organic statutes and its constituent operating document.

(2) A delinquent domestic entity is dissolved upon the effective date of its statement of dissolution of delinquent entity.

Source: L. 2005: Entire part added, p. 1215, § 20, effective October 1.

7-90-909. Notice of dissolution upon expiration of term. (Repealed)

Source: L. 2005: Entire part added, p. 1215, § 20, effective October 1. **L. 2010:** Entire section repealed, (HB 10-1403), ch. 404, p. 2000, § 24, effective August 11.

7-90-910. Effect of dissolution under section 7-90-908.

A domestic entity that is dissolved pursuant to section 7-90-908 continues its existence but may not carry on any business except as is appropriate to wind up and liquidate its business and affairs, and to give notice to claimants, in accordance with the organic statutes.

Source: L. 2005: Entire part added, p. 1215, § 20, effective October 1. **L. 2007:** Entire section amended, p. 244, § 40, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1922, § 23, effective July 1, 2020.

SUBPART 3

NOTICE TO CREDITORS BY DISSOLVED ENTITIES - ENFORCEMENT OF CLAIMS AGAINST DISSOLVED ENTITIES

7-90-911. Disposition of known claims by notification - definitions.

(1) A dissolved domestic entity may dispose of claims against it by following the procedures described in this section.

(2) A dissolved domestic entity may deliver notice under this subsection (2) to any person at any time on or after the effective date of the dissolution. The notice contemplated in this subsection (2) must state that, unless sooner barred by any other statute limiting actions, any claim of that person against the dissolved domestic entity will be barred if an action to enforce the claim is not commenced by a deadline that is stated in the notice, which deadline shall not be less than two years after the delivery of notice. The notice may contain such other information as the dissolved entity determines to include, including information regarding procedures facilitating the processing of claims against the dissolved entity; except that no obligations on persons having claims against the dissolved entity shall be imposed or implied that do not exist at law.

(3) Unless sooner barred by any other statute limiting actions, a person's claim against the dissolved domestic entity is barred if the dissolved entity delivers a notice of dissolution as

contemplated by subsection (2) of this section and an action to enforce the claim is not commenced by the deadline stated in the notice.

(4) (a) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. For purposes of this section, an action to enforce a claim includes an arbitration under any agreement for binding arbitration between the dissolved domestic entity and the person making the claim and includes a civil action.

(b) For purposes of this section and sections 7-90-912 and 7-90-913, "dissolved domestic entity" means a dissolved domestic cooperative other than a domestic cooperative formed under article 55 of this title, a dissolved domestic corporation, a dissolved domestic limited liability company, or a dissolved domestic nonprofit corporation.

Source: L. 2006: Entire section added, p. 876, § 64, effective July 1. **L. 2021:** (2) amended, (HB 21-1124), ch. 41, p. 162, § 5, effective April 19.

7-90-912. Disposition of claims by publication.

(1) A dissolved domestic entity may publish notice of its dissolution and request that persons with claims against the dissolved domestic entity present them in accordance with the notice.

(2) The notice contemplated in subsection (1) of this section shall:

(a) Be published one time in a newspaper of general circulation in the county in this state in which the street address of the dissolved domestic entity's principal office is or was last located or, if the dissolved domestic entity has not had a principal office in this state, in the county in which the street address of its registered agent is or was last located; and

(b) State that, unless sooner barred by any other statute limiting actions, any claim against the dissolved entity will be barred if an action to enforce the claim is not commenced within five years after the publication of the notice or within four months after the claim arises, whichever is later. The notice may contain such other information as the dissolved entity determines to include, including information regarding procedures facilitating the processing of claims against the dissolved entity; except that no obligations on persons having claims against the dissolved entity shall be imposed or implied that do not exist at law.

(3) If the dissolved domestic entity publishes a notice in accordance with subsection (2) of this section, then, unless sooner barred under section 7-90-911 or under any other statute limiting actions, the claim of any person against the dissolved domestic entity is barred unless the person commences an action to enforce the claim within five years after the publication date of the notice or within four months after the claim arises, whichever is later.

(4) For purposes of this section and except where permitted to be disposed of under section 7-90-911, "claim" means any claim, excluding claims of this state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise. For purposes of this section, an action to enforce a claim includes an arbitration under any agreement for binding arbitration between the dissolved domestic entity and the person making the claim and includes a civil action.

(5) This section shall not apply to a claim with respect to which notice has been delivered by a dissolved domestic entity under section 7-90-911.

Source: L. 2006: Entire section added, p. 876, § 64, effective July 1. **L. 2007:** (4) amended, p. 245, § 41, effective May 29.

7-90-913. Enforcement of claims against a dissolved domestic entity.

(1) A claim may be enforced under section 7-90-911 or 7-90-912:

(a) Against the dissolved domestic entity to the extent of its undistributed assets; and

(b) If assets have been distributed in liquidation, against an owner of the dissolved domestic entity; except that an owner's total liability for all claims under this section shall not exceed the total value of assets distributed to the owner, as such value is determined at the time of distribution. Any owner required to return any portion of the value of assets received by the owner in liquidation shall be entitled to contribution from all other owners. Each such contribution shall be in accordance with the contributing owner's rights and interests and shall not exceed the value of the assets received by the contributing owner in liquidation.

Source: L. 2006: Entire section added, p. 876, § 64, effective July 1.

7-90-914. Court proceedings.

(1) (a) A dissolved domestic entity that has published a notice under section 7-90-912 may file an application with the court for the county in this state in which the street address of the domestic entity's principal office or the street address of its registered agent is located for a determination of the amount and form of security to be provided for payment of claims that:

(I) Are contingent;

(II) Have not been made known to the dissolved domestic entity; or

(III) Arise from an event that had not occurred as of the effective date of dissolution but, based on the facts known to the dissolved domestic entity, is reasonably anticipated to occur after the effective date of dissolution.

(b) Provision need not be made for any claim that is, or is reasonably anticipated to be, barred under section 7-90-912 (3).

(2) Within ten days after the filing of the application, the dissolved domestic entity shall give notice of the proceeding to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved domestic entity.

(3) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The dissolved entity shall pay the reasonable fees and expenses of the guardian ad litem, including all reasonable expert witness fees.

(4) Provision by the dissolved entity for security in the amount and the form ordered by the court under subsection (1) of this section satisfies the dissolved entity's obligations with respect to claims that are contingent, have not been made known to the dissolved entity, or arise from an event occurring after the effective date of dissolution, and the claims may not be enforced against an owner who received assets in liquidation.

Source: L. 2019: Entire section added, (SB 19-086), ch. 166, p. 1922, § 24, effective July 1, 2020.

7-90-915. Manager duties.

(1) A manager shall cause the dissolved domestic entity to discharge or make reasonable provision for the payment of claims and make distributions of assets to owners after payment or provision for claims.

(2) A manager of a dissolved domestic entity that has disposed of claims under section 7-90-911, 7-90-912, or 7-90-914 is not liable for breach of subsection (1) of this section with respect to claims against the dissolved domestic entity that are barred or satisfied under section 7-90-911, 7-90-912, or 7-90-914.

Source: L. 2019: Entire section added, (SB 19-086), ch. 166, p. 1923, § 24, effective July 1, 2020.

PART 10

REINSTATEMENT OF DISSOLVED ENTITIES

7-90-1001. Reinstatement after dissolution.

Any 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 may be reinstated under this part 10; except that this part 10 shall not apply to domestic general partnerships or to limited partnerships formed under article 61 of this title that have not elected to be governed by article 62 of this title.

Source: L. 2003: Entire part added, p. 2311, § 217, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1494, § 242, effective July 1.

7-90-1002. Vote or consent required - effect of opposition.

(1) An entity eligible for reinstatement under section 7-90-1001 may be reinstated upon compliance with the following conditions:

(a) The affirmative vote or consent shall have been obtained from owners and other persons entitled to vote or consent at that time that is:

(I) Required for reinstatement under its constituent operating document; or

(II) If its constituent operating document does not state the vote or consent required for reinstatement, sufficient for dissolution under the organic statutes, or such greater or lesser vote or consent as is required for dissolution under its constituent operating document;

(b) Except as otherwise provided in the constituent operating document, the owners and other persons having authority under the entity's organic statutes and under its constituent operating document to bring about or prevent dissolution of the entity shall not have, before or at the time of the vote or consent required by paragraph (a) of this subsection (1), voted against reinstatement or delivered to the entity their written objection to reinstatement;

(c) In the case of an entity dissolved in an involuntary or judicial proceeding initiated by one or more of the owners, the affirmative vote or consent of each such owner shall have been obtained and shall be included in the vote or consent required by paragraph (a) of this subsection (1);

(d) In the case of an entity dissolved in a proceeding initiated by one or more creditors of the entity, the obligations of the entity to each such creditor shall have been satisfied or discharged in full; and

(e) In the case of an entity dissolved in a proceeding initiated by the attorney general, all grounds for the dissolution asserted by the attorney general shall have been remedied, and the attorney general shall have consented to the reinstatement.

(2) To the extent that an entity's constituent operating document or the organic statutes provide for the voting rights of owners or other persons, for the calling of meetings, for notices of meetings, for consents and actions of owners and other persons without a meeting, for establishing a record date for meetings, or for other matters concerning the voting or consent of owners and other persons, such provisions shall govern the vote or consent required by paragraph (a) of subsection (1) of this section with respect to the entity and the vote or objection of owners and other persons provided for in paragraph (b) of subsection (1) of this section with respect to the entity.

(3) Repealed.

Source: L. 2003: Entire part added, p. 2311, § 217, effective July 1, 2004. **L. 2004:** IP(1), (1)(a)(II), (1)(b), (1)(c), and (2) amended, p. 1494, § 243, effective July 1. **L. 2005:** (1)(b) and (2) amended and (3) added, p. 1216, § 21, effective October 1. **L. 2022:** (3) repealed, (HB 22-1250), ch. 80, p. 398, § 8, effective August 10.

7-90-1003. Articles of reinstatement.

(1) To reinstate under this part 10 an entity that has been dissolved for fewer than two years, an individual named in the articles of reinstatement shall deliver articles of reinstatement to the secretary of state for filing pursuant to part 3 of this article 90 stating:

(a) The domestic entity name of the entity;

(a.5) The domestic entity name of the entity following reinstatement, which entity name shall comply with section 7-90-1004;

(b) The date of formation of the entity;

(c) The Colorado statute under which the entity existed immediately prior to its dissolution;

(d) Repealed.

(e) (Deleted by amendment, L. 2006, p. 878, § 65, effective July 1, 2006.)

(f) A statement that all applicable conditions of section 7-90-1002 have been satisfied;

(g) The principal office address of the entity's principal office; and

(h) The registered agent name and registered agent address of the entity's registered agent.

(1.5) To reinstate under this part 10 an entity that has been dissolved for two years or longer or for which the period of dissolution is not known based on the records of the secretary of state, an individual named in the articles of reinstatement shall deliver to the secretary of state for filing pursuant to part 3 of this article 90 the following documents:

(a) Articles of reinstatement stating:

(I) The domestic entity name of the entity;

(II) The domestic entity name of the entity following reinstatement, which entity name shall comply with section 7-90-1004;

(III) The date of formation of the entity;

(IV) The Colorado statute under which the entity existed immediately prior to its dissolution;

(V) The date of dissolution of the entity, if known;

(VI) A statement that all applicable conditions of section 7-90-1002 have been satisfied;

(VII) The address of the entity's principal office; and

(VIII) The name and address of the entity's registered agent;

(b) An affidavit attesting that the individual who delivered the articles of reinstatement has the authority of the entity to sign for and act on behalf of the entity; and

(c) A copy of a government-issued personal photographic identification for the individual who delivered the articles of reinstatement and signed the affidavit.

(2) If the constituent-filed document referred to in section 7-90-1001 is no longer in the publicly-accessible electronic records of the secretary of state at the time articles of reinstatement are delivered to the secretary of state for filing, the entity shall cause a true and complete copy of its constituent filed document to be attached to its articles of reinstatement.

Source: L. 2003: Entire part added, p. 2312, § 217, effective July 1, 2004. **L. 2005:** (1)(a) and (1)(e) amended, p. 1217, § 22, effective October 1. **L. 2006:** (1)(a.5) added and (1)(e) amended, p. 878, § 65, effective July 1. **L. 2024:** IP(1) amended, (1)(d) repealed, and (1.5) added, (HB 24-1137), ch. 332, p. 2251, § 8, effective August 7. **L. 2025:** IP(1) and IP(1.5) amended, (SB 25-300), ch. 428, p. 2536, § 2, effective August 6.

7-90-1004. Entity name upon reinstatement.

The domestic entity name of a domestic entity following reinstatement shall be the domestic entity name, determined without regard to section 7-90-601.5, of the domestic entity at the time

of reinstatement if such domestic entity name complies with section 7-90-601 at the time of reinstatement. If that domestic entity name does not comply with section 7-90-601, the domestic entity name of the domestic entity following reinstatement shall be that domestic entity name followed by the word "reinstated" and the month, day, and year of the effective date of the articles of reinstatement.

Source: L. 2003: Entire part added, p. 2313, § 217, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1495, § 244, effective July 1. **L. 2005:** Entire section amended, p. 1217, § 23, effective October 1. **L. 2006:** Entire section amended, p. 879, § 66, effective July 1. **L. 2009:** Entire section amended, (HB 09-1248), ch. 252, p. 1134, § 19, effective May 14.

7-90-1005. Effect of reinstatement.

(1) Subject to subsection (2) of this section, upon reinstatement, the existence of the entity shall be deemed for all purposes to have continued without interruption; the entity resumes carrying on its business or conducting its activities as if dissolution had never occurred; any debt, obligation, or liability incurred by the entity or an owner or manager of the entity before or after the dissolution shall be determined as if dissolution had never occurred; and, if the entity was, at the time of its dissolution, a limited liability limited partnership, it continues, upon reinstatement, to be a limited liability limited partnership.

(2) The rights of owners and other persons arising by reason of reliance on the dissolution before those persons had notice of the reinstatement shall not be adversely affected by the reinstatement.

Source: L. 2003: Entire part added, p. 2313, § 217, effective July 1, 2004. **L. 2004:** (1) amended, p. 1495, § 245, effective July 1.

CORPORATIONS - Continued

Colorado Business Corporations

Cross references: For the "Uniform Records Retention Act", see article 17 of title 6.

Law reviews: For article, "Commercial and Corporate Law", which discusses Tenth Circuit decisions dealing with corporate law, see 64 Den. U. L. Rev. 165 (1987); for article, "Recent

Judicial Developments in Delaware Takeover Law", see 19 Colo. Law. 47 (1990); for article, "Choice of Entities in Colorado", see 23 Colo. Law. 293 (1994); for article, "Choice of Entity in Colorado: An Update", see 25 Colo. Law. 3 (Oct. 1996); for article, "Colorado Choice of Entity 1998", see 27 Colo. Law. 5 (June 1998); for article, "Colorado Choice of Form of Organization and Structure 2001", see 30 Colo. Law. 11 (Oct. 2001); for article, "Entity and Trade Name Registration: 2001 Update", see 30 Colo. Law. 81 (Oct. 2001); for article, "No Paper Required: Business Entity Legislation Makes Life Easier for Business Lawyers", see 33 Colo. Law. 6 (June 2004); for article, "Buying, Selling, and Combining Businesses Under the Colorado Business Corporation Act", see 33 Colo. Law. 73 (Nov. 2004); for article, "Dissenters' Rights: The Colorado Supreme Court Finally Speaks", see 34 Colo. Law. 53 (April 2005); for article, "Piercing the Veil of an LLC or a Corporation", see 39 Colo. Law. 71 (Aug. 2010); for article, "The Long and Winding Road to Public Benefit Corporations in Colorado", see 43 Colo. Law. 39 (Jan. 2014); for article, "2021 Amendments to Statutes Governing Colorado Entities: Expanding the Ability to Conduct Business Activities Electronically", see 50 Colo. Law. 24 (Aug.-Sept. 2021).

ARTICLE 101

General Provisions - Business Corporations

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7-101-509. No effect on other corporations.

PART 1

SHORT TITLE AND RESERVATION OF POWER

7-101-101. Short title.

Articles 101 to 117 of this title shall be known and may be cited as the "Colorado Business Corporation Act".

Source: L. 93: Entire article added, p. 732, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "Corporate Organization: A Revised Manual of Colorado Procedure", see 20 Rocky Mt. L. Rev. 329 (1948). For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For note, "Corporations-Investment Clubs", see 31 Rocky Mt. L. Rev. 358 (1959). For article, "One Year Review of Corporations, Partnership and Agency", see 37 Dicta 11 (1960). For article,

"The Close Corporation and the Colorado Lawyer", see 39 U. Colo. L. Rev. 299 (1967). For article, "2019 Colorado Business Law Updates: Revising the Colorado Business Corporation Act and the Colorado Corporations and Associations Act", see 48 Colo. Law. 26 (Nov. 2019).

7-101-102. Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of articles 101 to 117 of this title at any time, and all domestic and foreign corporations subject to said articles shall be governed by the amendment or repeal.

Source: L. 93: Entire article added, p. 732, § 1, effective July 1, 1994.

PART 2

FILING DOCUMENTS

7-101-201. Filing requirements.

(1) 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 101 to 117 of this title.

(2) to (11) (Deleted by amendment, L. 2002, p. 1845, § 103, effective July 1, 2002; p. 1709, § 101, effective October 1, 2002.)

Source: L. 93: Entire article added, p. 732, § 1, effective July 1, 1994. **L. 96:** (6)(c) and (11) amended, p. 1310, § 1, effective June 1. **L. 2000:** (5) and (11) amended, p. 976, § 48, effective July 1. **L. 2002:** Entire section amended, p. 1845, § 103, effective July 1; entire section amended, p. 1709, § 101, effective October 1. **L. 2003:** (1) amended, p. 2313, § 218, effective July 1, 2004.

7-101-202. Forms - secretary of state to furnish upon request - repeal. (Repealed)

Source: L. 93: Entire article added, p. 734, § 1, effective July 1, 1994. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-101-203. Filing, service, and copying fees - subpoenas. (Repealed)

Source: L. 93: Entire article added, p. 734, § 1, effective July 1, 1994. **L. 98:** (2) amended, p. 1324, § 21, effective June 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-101-204. Effective time and date of document. (Repealed)

Source: L. 93: Entire article added, p. 735, § 1, effective July 1, 1994. **L. 96:** IP(3) amended, p. 1310, § 2, effective June 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-101-205. Correcting filed document. (Repealed)

Source: L. 93: Entire article added, p. 736, § 1, effective July 1, 1994. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-101-206. Filing duty of secretary of state - manner of filing. (Repealed)

Source: L. 93: Entire article added, p. 736, § 1, effective July 1, 1994. **L. 96:** (2) amended, p. 1311, § 3, effective June 1. **L. 2000:** (2) amended, p. 977, § 49, effective July 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-101-207. Appeal from secretary of state's refusal to file document. (Repealed)

Source: L. 93: Entire article added, p. 737, § 1, effective July 1, 1994. **L. 96:** (1) amended, p. 1311, § 4, effective June 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-101-208. Evidentiary effect of copy of filed document. (Repealed)

Source: L. 93: Entire article added, p. 737, § 1, effective July 1, 1994. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-101-209. Certificates issued by secretary of state. (Repealed)

Source: L. 93: Entire article added, p. 737, § 1, effective July 1, 1994. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

7-101-210. Proof of delivery for filing. (Repealed)

Source: L. 94: Entire section added, p. 91, § 17, effective July 1. **L. 96:** (2) amended, p. 1311, § 5, effective June 1. **L. 2002:** Entire section repealed, p. 1861, § 163, effective July 1; entire section repealed, p. 1728, § 163, effective October 1.

PART 3

SECRETARY OF STATE

7-101-301 to 7-101-302. (Repealed)

Editor's note: (1) This article was added in 1993. 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) Section 7-101-302 provided for the repeal of this part 3, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

PART 4

DEFINITIONS

7-101-401. General definitions.

As used in articles 101 to 117 of this title 7, unless the context otherwise requires:

(1) Repealed.

(2) "Affiliate" means any person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "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, which have the effect of amending or supplementing in some respect the original or amended articles of incorporation.

(4) Repealed.

(5) "Authorized shares" means the shares of all classes which a domestic or foreign corporation is authorized to issue.

(5.5) "Beneficial owner" means a person that owns the beneficial interest in shares. The beneficial owner may be a shareholder included in the records of the corporation or a person on whose behalf shares are registered in the name of an intermediary, a nominee, or a voting trust of which the person is a beneficiary.

(6) "Bylaws" includes amended bylaws and restated bylaws.

(7) "Cash" and "money" are used interchangeably in articles 101 to 117 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.

(8) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing or typing in contrasting italics, boldface, color, capitals, or underlining is conspicuous.

(9) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

(10) (Deleted by amendment, L. 2000, p. 977, § 50, effective July 1, 2000.)

(11) "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.

(12) Repealed.

(13) "Distribution" means a direct or indirect transfer by a corporation of money or other property, except its own shares, or incurrence of indebtedness by a corporation, to or for the benefit of any of its shareholders in respect of any of its shares. A distribution may be in any form, including a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; or distribution of indebtedness.

(14) and (15) Repealed.

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

(17) and (18) Repealed.

(19) "Governmental subdivision" includes an authority, county, district, subdistrict, municipality, and any other political subdivision.

(20) to (26) Repealed.

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

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

(b) By the secretary of the 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.

(28) "Record date" means the date, established under article 106 or 107 of this title, on which a corporation determines the identity of its shareholders and their shareholdings. 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.

(28.3) and (28.5) Repealed.

(28.6) "Related person" means, with respect to an individual:

(a) The individual's spouse;

(b) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half-sibling, aunt, uncle, niece, or nephew, or spouse of any of them, of the individual or of the individual's spouse;

(c) An individual living in the same home as the individual;

(d) An entity, other than a corporation or an entity controlled by the corporation, controlled by the individual or any person specified in this subsection (28.6);

(e) A domestic or foreign:

(I) Business or nonprofit corporation, other than a corporation or an entity controlled by the corporation, of which the individual is a director;

(II) Unincorporated entity of which the individual is a general partner or a member of the governing body; or

(III) Individual, trust, or estate for whom or of which the individual is a trustee, guardian, personal representative, or similar fiduciary; or

(f) A person that is, or an entity that is controlled by, an employer of the individual.

(29) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under section 7-108-301 (3) for the preparation and maintenance of minutes of the meetings of the board of directors and of the shareholders and of the other records and information required to be kept by the corporation under section 7-116-101 and for authenticating records of the corporation.

(30) "Shareholder" means either the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a beneficial ownership certificate that meets the requirements of section 7-107-204 and is on file with the corporation.

(31) "Shares" means the units into which the proprietary interests in a corporation are divided.

(32) to (33) Repealed.

(34) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(35) Repealed.

(36) "Voting group" means all the shares of one or more classes or series that, under articles 101 to 117 of this title or under the articles of incorporation, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by articles 101

to 117 of this title or the articles of incorporation to vote generally on the matter are for that purpose a single voting group.

Source: L. 93: Entire article added, p. 738, § 1, effective July 1, 1994. **L. 96:** (27)(a) and (36) amended and (28.3) and (28.5) added, p. 1311, § 6, effective June 1. **L. 97:** (4) amended, p. 760, § 25, effective July 1, 1998. **L. 2000:** (4) and (10) amended, p. 977, § 50, effective July 1. **L. 2002:** (14) amended, p. 1859, § 156, effective July 1; (14) amended, p. 1711, § 102, effective October 1. **L. 2003:** (1)(b), (4)(b), (12)(b), (14)(b), (17)(b), (18)(b), (20)(b), (21)(b), (22)(b), (23)(b), (24)(b), (25)(b), (26)(b), (28.3)(b), (28.5)(b), (32.1), (33)(b), and (35)(b) added by revision, pp. 2356, 2357, §§ 347, 348. **L. 2004:** (3) and (28) amended, p. 1495, § 246, effective July 1. **L. 2005:** (30) and (31) amended, p. 760, § 10, effective June 1. **L. 2006:** (3) amended, p. 879, § 67, effective July 1. **L. 2019:** IP and (30) amended and (5.5) and (28.6) added, (SB 19-086), ch. 166, p. 1923, § 25, effective July 1, 2020. **L. 2021:** (15) repealed, (HB 21-1124), ch. 41, p. 162, § 6, effective April 19.

Editor's note: Subsections (1)(b), (4)(b), (12)(b), (14)(b), (17)(b), (18)(b), (20)(b), (21)(b), (22)(b), (23)(b), (24)(b), (25)(b), (26)(b), (28.3)(b), (28.5)(b), (32.1), (33)(b), and (35)(b) provided for the repeal of subsections (1), (4), (12), (14), (17), (18), (20), (21), (22), (23), (24), (25), (26), (28.3), (28.5), (32), (32.1), (33), and (35), respectively, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

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

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "1984 Revisions to the Colorado Corporation Code: Effective March 1984", which discusses certification requirements, see 13 Colo. Law. 993 (1984). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985).

Annotator's note. Since § 7-101-401 is similar to § 7-1-102 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Companies were "affiliates" when they were under common control of another company. Nat'l Propane Corp. v. Miller, 18 P.3d 782 (Colo. App. 2000).

Mutual ditch companies are outside the Colorado Corporation Code, because a literal reading of subsection (11) limits the Code's applicability to "for profit" corporations and because court decisions make it clear that the application of the Code to such companies is not appropriate because they are not "true" corporations. Left Hand Ditch Co. v. Hill, 933 P.2d 1 (Colo. 1997).

Corporation cannot rely on definition of "receive" as a basis for requiring actual receipt at its corporate office when corporation designated a post office box as place where corporation would receive payment demands and other communications. M Life Ins. Co. v. S & W, 962 P.2d 335 (Colo. App. 1998).

Applied in Nat'l Ass'n of Credit Mgt. v. Burke, 645 P.2d 1323 (Colo. App. 1982).

7-101-402. Notice. (Repealed)

Source: L. 93: Entire article added, p. 741, § 1, effective July 1, 1994. **L. 96:** (7) repealed, p. 1312, § 7, effective June 1. **L. 2003:** (4) amended, p. 2314, § 219, effective July 1, 2004. **L. 2019:** (2) amended and (9) added, (SB 19-086), ch. 166, p. 1924, § 26, effective July 1, 2020. **L. 2021:** Entire section repealed, (HB 21-1124), ch. 41, p. 162, § 7, effective April 19.

PART 5

PUBLIC BENEFIT CORPORATIONS

Law reviews: For article, "The Long and Winding Road to Public Benefit Corporations in Colorado", see 43 Colo. Law. 39 (Jan. 2014).

7-101-501. Short title.

This part 5 shall be known and may be cited as the "Public Benefit Corporation Act of Colorado".

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1099, § 1, effective April 1, 2014.

7-101-502. Law applicable to public benefit corporations - how formed.

This part 5 applies to all public benefit corporations. If a corporation elects to become a public benefit corporation under this part 5 in the manner prescribed in this part 5, it is subject in all respects to the "Colorado Business Corporation Act", articles 101 to 117 of this title, and the "Colorado Corporations and Associations Act", article 90 of this title, except to the extent this part 5 imposes additional or different requirements, in which case such additional or different requirements apply.

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1099, § 1, effective April 1, 2014.

7-101-503. Public benefit corporation - definitions - contents of articles of incorporation.

(1) A public benefit corporation is a for-profit corporation organized under and subject to the requirements of the "Colorado Business Corporation Act", articles 101 to 117 of this title 7, or a domestic cooperative organized under article 55, 56, or 58 of this title 7 that is subject to the "Colorado Business Corporation Act", that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a public benefit corporation shall be managed in a manner that balances the shareholders' pecuniary interests, the best interest of those materially affected by the corporation's conduct, and the public benefit identified in its articles of incorporation. In its articles of incorporation, a public benefit corporation shall:

(a) Identify within its statement of business or purpose pursuant to section 7-103-101 (1) one or more specific public benefits to be promoted by the public benefit corporation; and

(b) State at the beginning of the articles of incorporation that it is a public benefit corporation.

(2) "Public benefit" means one or more positive effects or reduction of negative effects on one or more categories of persons, entities, communities, or interests other than shareholders in their capacities as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature.

(3) "Public benefit provisions" means the provisions of articles of incorporation contemplated by this part 5.

(4) The domestic entity name of a public benefit corporation may contain the words "public benefit corporation", the abbreviation "P.B.C." or "Pub. Ben. Corp.", or the designation "PBC", which shall be deemed to satisfy the requirements of section 7-90-601 (3)(a), and must otherwise

satisfy the requirements of section 7-102-102 (1)(a). If the name does not contain the language specified in this subsection (4), the public benefit corporation shall, before issuing unissued shares of stock or disposing of treasury shares, provide notice to any person to whom the stock is issued or who acquires the treasury shares that it is a public benefit corporation; except that the notice need not be provided if the issuance or disposal is pursuant to an offering registered under the federal "Securities Act of 1933", 15 U.S.C. sec. 77a et seq., as amended, or if, at the time of issuance or disposal, the public benefit corporation has a class of securities that is registered under the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 78b et seq., as amended.

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1099, § 1, effective April 1, 2014. **L. 2017:** IP(1), (1)(a), and 4 amended, (HB 17-1200), ch. 386, p. 1999, § 1, effective August 9.

7-101-504. Nonprofit corporations.

A nonprofit corporation cannot be a constituent entity in connection with any merger with or conversion into a public benefit corporation.

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1100, § 1, effective April 1, 2014. **L. 2017:** (2), (4)(b), and (4)(c) amended and (4)(d) added, (HB 17-1200), ch. 386, p. 2000, § 2, effective August 9. **L. 2019:** (3) amended, (SB 19-086), ch. 166, p. 1925, § 27, effective July 1, 2020. **L. 2022:** Entire section amended, (SB 22-045), ch. 33, p. 182, § 1, effective August 10.

7-101-505. Share certificates - notices regarding uncertificated shares.

A share certificate issued by a public benefit corporation must note conspicuously that the corporation is a public benefit corporation formed pursuant to this part 5. A statement sent by a public benefit corporation pursuant to section 7-106-207 must state conspicuously that the corporation is a public benefit corporation formed pursuant to this part 5.

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1102, § 1, effective April 1, 2014.

7-101-506. Duties of directors.

(1) The board of directors shall manage or direct the business and affairs of a public benefit corporation in a manner that balances the pecuniary interests of the shareholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit identified in its articles of incorporation.

(2) A director of a public benefit corporation:

(a) Does not, by virtue of the public benefit provisions of section 7-101-503 (1), have a duty to any person on account of an interest of the person in the public benefit identified in the articles of incorporation or on account of an interest materially affected by the corporation's conduct; and

(b) With respect to a decision implicating the balance requirement in subsection (1) of this section, will be deemed to satisfy the director's fiduciary duties to shareholders and the corporation if the director's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

(3) For the purposes of this section, a director's ownership of or other interest in the stock of a public benefit corporation does not, alone, create a conflict of interest on the part of the director with respect to the director's decision implicating the balancing requirement in subsection (1) of this section, except to the extent that the ownership or interest would create a conflict of interest if the corporation was not a public benefit corporation. In the absence of a conflict of interest, a failure to satisfy the balancing requirement specified in subsection (1) of this section does not, for the purposes of section 7-108-401 or 7-108-403 or article 109 of this title 7, constitute an act or omission that is not in good faith or a breach of the duty of loyalty.

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1102, § 1, effective April 1, 2014. **L. 2017:** (3) amended, (HB 17-1200), ch. 386, p. 2001, § 3, effective August 9. **L. 2019:** (3) amended, (SB 19-086), ch. 166, p.1965, § 66, effective July 1, 2020. **L. 2022:** (3) amended, (SB 22-045), ch. 33, p. 184, § 2, effective August 10.

7-101-507. Benefit report - definition.

(1) A public benefit corporation shall prepare an annual report that includes:

(a) A narrative description of:

(I) The ways in which the public benefit corporation promoted the public benefit identified in the articles of incorporation and the best interests of those materially affected by the public benefit corporation's conduct;

(II) Any circumstances that have hindered the public benefit corporation's promotion of the identified public benefit and the best interests of those materially affected by the public benefit corporation's conduct; and

(III) The process and rationale for selecting or changing the third-party standard used to complete the assessment pursuant to subsection (1)(b) of this section; and

(b) An assessment of the overall social and environmental performance of the public benefit corporation against a third-party standard:

(I) Applied consistently with any application of that standard in prior benefit reports; or

(II) Accompanied by an explanation of the reasons for any inconsistent application. The assessment does not need to be performed, audited, or certified by a third party.

(2) For purposes of subsection (1) of this section, "third-party standard" means a standard for defining, reporting, and assessing the overall corporate social and environmental performance, which standard is developed by an organization that is not controlled by the public benefit corporation or any of its affiliates and that makes publicly available the following information:

(a) The criteria considered when measuring the social and environmental performance of a business, the relative weightings of those criteria, if any, and the process for development and revision of the standard; and

(b) Any material owners of the organization that developed the third-party standard, the members of its governing body and how they are selected, and the sources of financial support for the organization, in sufficient detail to disclose any relationships that could reasonably be considered to compromise its independence.

(3) A public benefit corporation that prepares a report pursuant to this section shall send it to each shareholder.

(4) A public benefit corporation shall post all of its reports prepared pursuant to this section on the public portion of its website, if any, but the public benefit corporation may omit from the posted reports any financial or proprietary information included in the reports.

(5) If a public benefit corporation does not have a website, the public benefit corporation shall provide a copy of its most recent report, without charge, to a person that requests a copy, but the public benefit corporation may omit any financial or proprietary information from the copy of the benefit report so provided.

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1102, § 1, effective April 1, 2014. **L. 2014:** IP(1) amended, (SB 14-156), ch. 192, p. 713, § 1, effective May 15. **L. 2017:** (1)(a) amended, (HB 17-1200), ch. 386, p. 2001, § 4, effective August 9.

7-101-508. Actions to enforce requirements of section 7-101-506 (1).

(1) Any action to enforce the requirements of section 7-101-506 (1), including any individual, derivative, or other type of action, may not be brought unless the parties bringing the action own, individually or collectively, as of the date of instituting the action, either:

(a) At least two percent of the corporation's outstanding shares; or

(b) In the case of a corporation with shares listed on a national securities exchange:

(I) Two percent of the corporation's outstanding shares; or

(II) Shares of the corporation with a market value of at least two million dollars.

(2) This section does not relieve the parties bringing an action described in subsection (1) of this section from complying with other conditions applicable to a derivative action, including any rules of the court in which the action is filed.

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1103, § 1, effective April 1, 2014. **L. 2022:** Entire section amended, (SB 22-045), ch. 33, p. 184, § 3, effective August 10.

7-101-509. No effect on other corporations.

(1) The existence of a provision of this part 5 does not of itself create an implication that a contrary or different rule of law is or would be applicable to a corporation or other entity that is not a public benefit corporation.

(2) Except as provided in section 7-101-504, this part 5 does not affect a statute or rule of law that applies to a corporation that is not a public benefit corporation.

Source: L. 2013: Entire part added, (HB 13-1138), ch. 230, p. 1103, § 1, effective April 1, 2014. **L. 2017:** Entire section amended, (HB 17-1200), ch. 386, p. 2001, § 5, effective August 9. **L. 2022:** Entire section amended, (SB 22-045), ch. 33, p. 184, § 4, effective August 10.

ARTICLE 102

Incorporation

7-102-101. Incorporators. 7-102-102. Articles of incorporation.

7-102-103. Incorporation.
7-102-104. Unauthorized assumption of corporate powers.
7-102-105. Organization of corporation.
7-102-106. Bylaws.
7-102-107. Emergency bylaws.
7-102-108. Forum selection - definition.

7-102-101. Incorporators.

One or more persons may act as the incorporator or incorporators of a 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 of the age of eighteen years or older.

Source: L. 93: Entire article added, p. 742, § 1, effective July 1, 1994. **L. 2002:** Entire section amended, p. 1846, § 104, effective July 1; entire section amended, p. 1711, § 103, effective October 1. **L. 2004:** Entire section amended, p. 1496, § 247, effective July 1.

7-102-102. Articles of incorporation.

(1) The articles of incorporation shall state:

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

(b) The information regarding shares required by section 7-106-101;

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

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

(e) The true name and mailing address of each incorporator.

(f) Repealed.

(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 corporation is incorporated;

(II) Managing the business of the corporation and regulating its affairs;

(III) Defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(IV) A par value for authorized shares or classes of shares;

(V) The imposition of personal liability on shareholders for the debts of the corporation to a stated extent and upon stated conditions;

(c) Any provision that under articles 101 to 117 of this title is required or permitted to be stated in the bylaws;

(d) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(I) The amount of a financial benefit received by a director to which the director is not entitled;

(II) An intentional infliction of harm on the corporation or the shareholders;

(III) A violation of section 7-108-405; or

(IV) An intentional violation of criminal law; and

(e) A provision limiting or eliminating a duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, before the pursuit or taking of the opportunity by the director or other person if any application of the provision to an officer or a related person of that officer:

(I) Requires a determination by the board of directors by action of the disinterested directors taken in compliance with the procedures set forth in section 7-108-402 after the effective date of the provision applying the provision to a particular officer or any related person of that officer; and

(II) May be limited by the authorizing action of the board.

(3) For corporations incorporated after December 31, 1958, if cumulative voting is not desired in the election of directors, a statement to that effect shall be made in the articles of incorporation. If no such statement is made, cumulative voting shall be mandatory in the election of directors, subject to the provisions of section 7-107-209. For corporations incorporated before January 1, 1959, the articles of incorporation shall state whether cumulative voting shall be allowed in the election of directors; and, if the articles of incorporation allow cumulative voting, shareholders shall be permitted to cumulate their shares in the election of directors as provided in section 7-107-209.

(4) The articles of incorporation need not state any of the corporate powers enumerated in articles 101 to 117 of this title.

(5) If articles 101 to 117 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 101 to 117 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. 93: Entire article added, p. 743, § 1, effective July 1, 1994. **L. 2000:** (1)(a) amended, p. 977, § 51, effective July 1. **L. 2002:** (1)(f) repealed, p. 1846, § 105, effective July 1; (1)(f) repealed, p. 1711, § 104, effective October 1. **L. 2003:** IP(1), (1)(a), (1)(c), (1)(d), IP(2), (2)(b)(V), (2)(c), and (4) amended, p. 2314, § 220, effective July 1, 2004. **L. 2004:** (1)(e) and (2)(a) amended, p. 1496, § 248, effective July 1. **L. 2006:** (2)(a) amended, p. 879, § 68, effective July 1. **L. 2008:** (1)(e) amended, p. 24, § 18, effective August 5. **L. 2019:** (2)(b)(V) amended and (2)(d) and (2)(e) added, (SB 19-086), ch. 166, p. 1925, § 28, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950). For note, "Blank Stock Provisions — An Unlimited Delegation of Authority to the Board of Directors", see 22 Rocky Mt. L. Rev. 312 (1950). For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). 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). For article, "2019 Colorado Business Law Updates: Revising the Colorado Business Corporation Act and the Colorado Corporations and Associations Act", see 48 Colo. Law. 26 (Nov. 2019).

Annotator's note. Since § 7-102-102 is similar to § 7-2-102 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

The essential prerequisite to the formation of a corporation is articles of incorporation in form and substance as prescribed by statute. Humphreys v. Mooney, 5 Colo. 282 (1880).

But none of the statements which the articles of incorporation are directed to contain are required to be made as condition precedent to the commencement or continuance of

business by the corporation. There is a broad and obvious distinction between such acts as are declared to be necessary steps in the process of incorporation and such as are required of the individuals seeking to become incorporated, but which are not made prerequisite to the assumption of corporate powers. In respect to the former, any material omission will be fatal to the existence of the corporation, and may be taken advantage of collaterally in any form in which the fact of incorporation can be called in question. In respect to the latter, the incorporation is responsible only to the government in a direct proceeding to forfeit the charter. The right to be considered a corporation and the exercise of corporate powers depends upon the fact of the performance of the particular acts named in the statute as essential to its corporate existence. Humphreys v. Mooney, 5 Colo. 282 (1880).

However, without a certificate of renewal or a bona fide attempt thereto, there is no corporation de facto, where the company does not make any attempt by certificate or otherwise to renew its life. Bonfils v. Hayes, 70 Colo. 336, 201 P. 677 (1921).

Prior to issuance of certificate of incorporation no de facto corporate status regardless of substantial attempt to comply with laws creating corporations. Bowers Bldg. Co. v. Altura Glass Co., 694 P.2d 876 (Colo. App. 1984).

No penalty for omission to comply strictly with this section. Although this section prescribes the mode of organization and what the articles of incorporation shall contain, it annexes no penalty or liability for the neglect or omission to comply strictly with it. Humphreys v. Mooney, 5 Colo. 282 (1880).

But if any one of these statutory requirements is omitted, such omission is a fatal defect and confers no de jure right to exercise corporate franchises. Bates v. Wilson, 14 Colo. 140, 24 P. 99 (1890).

This section does not require the articles of incorporation to be executed within the limits of the state. Humphreys v. Mooney, 5 Colo. 282 (1880).

Nor does this section require a meeting of the incorporators prior to the execution of the articles. Humphreys v. Mooney, 5 Colo. 282 (1880).

Notice of promoters or stockholders is not notice to corporation. Franklin Mining Co. v. O'Brien, 22 Colo. 129, 43 P. 1016 (1896).

Reasonable restrictions on the sale of corporation stock are neither against public policy nor void, as Colorado has judicially and legislatively approved restrictions on the sale of stock. Irwin v. W. End Dev. Co., 342 F. Supp. 687 (D. Colo. 1972).

Furthermore, all voting restrictions in the articles of incorporation not contrary to the statutes are valid. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

But those portions of the articles of incorporation which purport to exceed statutory authority are void. Hampton v.

Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

Entitlement of preference stock limited upon corporate dissolution. When the articles of incorporation are silent as to whether preferred stock participates in a company's equity growth, the general rule is that upon corporate dissolution, preferred shareholders are entitled to no more than the liquidation preference stated in the articles, with the holders of common stock entitled to the rest of the corporate assets. Hackbart v. Holmes, 675 F.2d 1114 (10th Cir. 1982).

Applied in Virginia Canon Toll Rd. Co. v. People ex rel. Vivian, 22 Colo. 429, 45 P. 398 (1896); Age Publ'g Co. v. Becker, 110 Colo. 319, 134 P.2d 205 (1943).

7-102-103. Incorporation.

(1) A 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. 93: Entire article added, p. 744, § 1, effective July 1, 1994. **L. 96:** (2) amended, p. 1312, § 8, effective June 1. **L. 2002:** (1) amended, p. 1859, § 157, effective July 1; (1) amended, p. 1711, § 105, effective October 1. **L. 2003:** (1) amended, p. 2314, § 221, effective July 1, 2004. **L. 2004:** (1) amended, p. 1496, § 249, effective July 1.

ANNOTATION

Annotator's note. Since § 7-102-103 is similar to § 7-2-104 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Any attempt to pierce the corporate veil after corporate existence was established is equitable in nature and therefore may not be heard by a jury. Straub v. Mtn. Trails Resort, Inc., 770 P.2d 1321 (Colo. App. 1988).

7-102-104. Unauthorized assumption of corporate powers.

All persons purporting to act as or on behalf of a 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. 93: Entire article added, p. 744, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985).

Annotator's note. Since § 7-102-104 is similar to § 7-3-104 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Purpose of section is to impose personal liability upon those persons who act as a corporation without having undertaken any bona fide effort to achieve corporate status by complying with the statutory requirements for incorporation. Micciche v. Billings, 727 P.2d 367 (Colo. 1986).

If no steps to incorporate have been initiated, and, therefore, no corporation exists, an individual is personally liable for his acts regardless of his good faith belief in the existence of a corporation. Jean Claude Boisset Wines U.S.A. v. Newton, 830 P.2d 1134 (Colo. App. 1992).

The statute is intended to impose personal liability upon those persons who take it upon themselves to hold themselves out and improperly act as a corporation without having undertaken any bona fide effort to achieve corporate status. Jean Claude Boisset Wines U.S.A. v. Newton, 830 P.2d 1134 (Colo. App. 1992).

The statute is not intended to exempt an individual from liability for his personal acts where no corporate documents such as the articles of incorporation were ever prepared. Jean Claude Boisset Wines U.S.A. v. Newton, 830 P.2d 1134 (Colo. App. 1992).

Even if an individual has a good faith belief in the existence of a corporation, where no steps have been taken to initiate incorporation, an individual is personally liable for such individual's acts purportedly carried out on behalf of the corporation. This section was not intended to exempt an individual from liability for his personal acts where no corporation documents were ever prepared. Jean Claude Boisset Wines U.S.A., Inc. v. Newton, 830 P.2d 1134 (Colo. App. 1992).

This section applies only to representatives of domestic corporations, and not to agents of foreign corporations.

Nat'l Ass'n of Credit Mgt. v. Burke, 645 P.2d 1323 (Colo. App. 1982).

Applied in Billings v. Micciche, 691 P.2d 1155 (Colo. App. 1984).

7-102-105. Organization of corporation.

(1) After incorporation:

(a) If initial directors are not elected in the articles of incorporation, the incorporators may 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) The initial directors may 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 101 to 117 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 7-108-202 for action by directors without a meeting.

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

Source: L. 93: Entire article added, p. 744, § 1, effective July 1, 1994.

7-102-106. Bylaws.

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

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

Source: L. 93: Entire article added, p. 745, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950).

Annotator's note. Since § 7-102-106 is similar to § 7-5-109 as it existed prior to the 1993 recodification of the "Colorado

Business Corporation Act", articles 101 to 117 of this title, cases construing that provision and its predecessors have been included in the annotations to this section.

Directors may make bylaws if certificate so provides. This section expressly authorizes the directors, if the certificate of incorporation so provides, to make such prudential bylaws as they deem proper for the management of the affairs of the company not inconsistent with the laws of the state. Mitchell v. Colo. Fuel & Iron Co., 117 F. 723 (D. Colo. 1902).

And courts will interfere only in case of abuse. The matter of adopting bylaws for the government of corporations, and the manner in which their business shall be transacted, is a matter so much of discretion that a court should interfere only in a plain case of abuse. Mitchell v. Colo. Fuel & Iron Co., 117 F. 723 (D. Colo. 1902).

Where bylaws conflict with the articles of incorporation, the articles of incorporation control and the bylaws in conflict are void. Paulek v. Isgar, 38 Colo. App. 29, 551 P.2d 213 (1976).

7-102-107. 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 shareholders, may include all provisions necessary for managing the 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 corporation; and

(b) May not be the basis for imposition of liability on any director, officer, employee, or agent of the 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. 93: Entire article added, p. 745, § 1, effective July 1, 1994.

7-102-108. Forum selection - definition.

(1) The articles of incorporation or the bylaws may require that any or all internal corporate claims must be brought exclusively in any specified court of this state and, if so specified, in any additional courts in this state or in any other jurisdiction with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws specified in subsection (1) of this section does not confer jurisdiction on any court or over any person or claim and does not apply if none of the courts specified by the provision has the requisite personal and subject-matter jurisdiction. If a court specified in a provision specified in subsection (1) of this section does not have the requisite personal and subject-matter jurisdiction and another court of this state does have that jurisdiction, the internal corporate claim may be brought:

(a) In the other court of this state, notwithstanding that the other court is not specified in the provision; and

(b) In any other court specified in the provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require the claims to be determined by arbitration.

(4) "Internal corporate claim" means:

(a) Any claim that is based upon a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in that capacity;

(b) A derivative action or proceeding brought on behalf of the corporation;

(c) An action asserting a claim arising pursuant to any provision of articles 101 to 117 of this title 7, the articles of incorporation, or bylaws; or

(d) An action asserting a claim governed by the internal affairs doctrine that is not included in subsections (4)(a) to (4)(c) of this section.

Source: L. 2019: Entire section added, (SB 19-086), ch. 166, p. 1926, § 29, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "2019 Colorado Business Law Updates: Revising the Colorado Business Corporation Act and the Colorado Corporations and Associations Act", see 48 Colo. Law. 26 (Nov. 2019).

ARTICLE 103

Purposes and Powers

7-103-101. Purposes and applicability.
7-103-102. General powers.
7-103-103. Emergency powers.
7-103-104. Ultra vires.
7-103-105. Agent may convey real estate - repeal. (Repealed)
7-103-106. Ratification of defective corporate actions - definitions.

7-103-101. Purposes and applicability.

(1) Every corporation incorporated under articles 101 to 117 of this title has the purpose of engaging in any lawful business 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 shall be formed or incorporated exclusively thereunder, corporations of that class shall be formed or incorporated under such other statute.

(3) Where another statute of this state requires corporations of a particular class to be formed or incorporated under that other statute and also under general corporation law, such corporations shall be formed or incorporated under such other law and, in addition thereto, under articles 101 to 117 of this title to the extent general corporation law is applicable.

(4) Where another statute of this state permits corporations of a particular class to be formed or incorporated either under such statute or under the general corporation law, a corporation of that class may at the election of its incorporators be formed or incorporated under articles 101 to 117 of this title. Unless the articles of incorporation of such corporation indicate that it is formed or incorporated under such other alternate statute, the corporation shall for all purposes be considered as formed and incorporated under articles 101 to 117 of this title.

(5) Articles 101 to 117 of this title shall apply to corporations of every class, whether or not included in the term "corporation" as defined in section 7-101-401 (11), 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. Notwithstanding the foregoing, except as permitted by section 7-123-101 (8), articles 101 to 117 of this title shall not apply to nonprofit corporations:

(a) Formed under articles 121 to 137 of this title;

(b) Governed by articles 121 to 137 of this title pursuant to section 7-137-101 (2); or

(c) Governed by articles 121 to 137 of this title by reason of an election pursuant to section 7-137-201.

Source: L. 93: Entire article added, p. 745, § 1, effective July 1, 1994. **L. 96:** (5) amended, p. 1312, § 9, effective June 1. **L. 97:** (5) amended, p. 761, § 26, effective July 1, 1998. **L. 2003:** Entire section amended, p. 2314, § 222, effective July 1, 2004. **L. 2006:** (5) amended, p. 879, § 69, effective July 1.

ANNOTATION

Annotator's note. Since § 7-103-101 is similar to § 7-1-103 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Business corporation statutes requiring more than majority vote to achieve corporate action are not applicable to nonprofit corporations. Morris Alpert & Sons v. Kahler, 31 Colo. App. 345, 502 P.2d 98 (1972).

The phrase "corporations of every class" in subsection (4) refers to all corporations, nonprofit or for profit. Hill v. Behrmann, 911 P.2d 679 (Colo. App. 1995) (decided under former law), aff'd on other grounds, 933 P.2d 1 (Colo. 1997).

7-103-102. General powers.

(1) Unless otherwise provided in the articles of incorporation, every 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 business and affairs, including the power:

(a) To sue and be sued, complain, and defend in its entity 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 (which may be convertible into or include the option to purchase other securities of the corporation), 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;

(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 business, locate offices, and exercise the powers granted by articles 101 to 117 of this title within or without this state;

(k) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(l) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share options and rights plans, and 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, scientific, or educational purposes;

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

(o) To indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in article 109 of this title;

(p) To limit the liability of its directors as provided in section 7-102-102 (2)(d);

(q) To cease its corporate activities and dissolve;

(r) To impose restrictions on the transfer of its shares; and

(s) To renounce in its articles of incorporation or by action of its board of directors any specified corporate opportunities or specified classes or categories of corporate opportunities that may be presented to the corporation or one or more of its officers, directors, or shareholders as provided in section 7-102-102 (2)(e).

Source: L. 93: Entire article added, p. 746, § 1, effective July 1, 1994. **L. 96:** (1)(i) amended, p. 1313, § 10, effective June 1. **L. 2000:** IP(1) and (1)(a) amended, p. 977, § 52, effective July 1. **L. 2003:** IP(1) amended, p. 2315, § 223, effective July 1, 2004. **L. 2019:** (1)(p), (1)(q), and (1)(r) amended and (1)(s) added, (SB 19-086), ch. 166, p. 1927, § 30, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950). For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For article, "The Colorado Corporation Act of 1959: Some Aspects of Private Industrial Incentive Plans", see 32 Rocky Mt. L. Rev. 164 (1960). For comment on Herald Co. v. Seawell (472 F.2d 1081 (10th Cir. 1972)), see 45 U. Colo. L. Rev. 131 (1973). For article, "Corporate Indemnification: Parts I and II", see 13 Colo. Law. 1404 and 1634 (1984). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985). For article, "Colorado Expands Protections For Corporate Directors", see 16 Colo. Law. 1387 (1987). 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). For article, "Conflicts of Interest and the Director's Duty of Loyalty", see 17 Colo. Law. 1969 (1988).

Annotator's note. Since § 7-103-102 is similar to § 7-3-101 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

The statutory powers of a corporation are specifically enumerated. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Corporations may be formed for any lawful purpose, and when so formed, they become bodies corporate and politic. Crystal Park Co. v. Morton, 27 Colo. App. 74, 146 P. 566 (1915).

And of natural persons. A private corporation formed under the provisions of this section for the purpose of carrying on a lawful business has all the rights, powers, and privileges of a natural person engaged in the same business. Crystal Park Co. v. Morton, 27 Colo. App. 74, 146 P. 566 (1915).

Thus corporations may acquire fee simple title. Where a corporation is empowered to acquire real estate without limitation in point of estate, it has the right to acquire a title in fee simple. Radetsky v. Jorgensen, 70 Colo. 423, 202 P. 175 (1921).

So also a corporation may condemn land for a private way of necessity where the nature of its business and the situation of its property require the way and where, under like conditions, other persons not corporate may condemn. Crystal Park Co. v. Morton, 27 Colo. App. 74, 146 P. 566 (1915).

And a corporation is entirely competent to transfer its property through such agency as it may designate. Bliss v. Harris, 38 Colo. 72, 87 P. 1076 (1906).

May bring action benefitting parent corporation. Even though the contract involved was entered into for the ultimate benefit of plaintiff's parent corporation, plaintiff is a real party in interest entitled to bring the action without joining its parent corporation. P & M Vending Co. v. Half Shell of Boston, Inc., 41 Colo. App. 78, 579 P.2d 93 (1978).

Moreover, a right-of-way granted by a company does not cease with the expiration of its charter, but, having previously been conveyed, its grantee may thereafter continue the use of the same. Bailey v. Platte & Denver Canal Milling Co., 12 Colo. 230, 21 P. 35 (1888).

Ultra vires no defense to notes where corporation has general power to incur indebtedness. Where a water users' association was granted the general power to borrow money, to incur and promise to pay indebtedness, and to perform any other necessary or appropriate acts to acquire, maintain, and operate irrigation works, it had the general power to borrow money and to make its notes to repay it. Hence it was no defense to such notes that the money borrowed was used in furtherance of an ultra vires contract. Grand Valley Water Users' Ass'n v. Zumbrunn, 272 F. 943 (8th Cir. 1921).

Adoption and implementation of an employees stock trust plan is clearly within the power and authority granted by this section to a corporation. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

And the fact that a corporation has a substantial financial loss in its transfer of treasury stock to an employee's stock trust is of no consequence, for subsection (1)(p) anticipates and authorizes a corporation to create such plans "wholly or partly at the expense of the corporation". Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Moreover, corporations through their directors may pay employees extra compensation in the way of a bonus; and if properly authorized, it is neither a fraud upon dissenting stockholders nor against public policy, for the stage has long since been passed in which stockholders, who merely invest capital and leave it wholly to management to make it fruitful, can make absolutely exclusive claim to all profits against those whose labor, skill, ability, judgment, and effort have made profits available. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

However, it is not a legitimate corporate activity to give away the resources of the corporation, no matter how worthy or needy the donee may be, nor is it permissible by payment of excessive salaries or allowances to divert funds from stockholders to officers or directors without lawful reason. There is a distinction between using one's own resources for charitable projects or for proxy or control contests and using the resources of the corporation for those purposes. The law does not permit the use or diversion of corporate funds for purely personal purposes, no matter what form that diversion may take. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

But subsection (1)(o) permits a corporation to indemnify its officers and directors as against expenses incurred by them in connection with the defense of an action to which they are made parties by reason of having been such officer or director except in relation to matters as to which they shall be adjudged in such action to be liable for negligence or misconduct in the performance of duty; the statute permits a division of fees where a director or officer is not completely vindicated. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

No attorneys fees for officer attacking corporate acts. Subsection (1)(o) does not permit an award of attorneys fees to an officer who attacks corporate acts. Breniman v. Agricultural Consultants, Inc., 648 P.2d 165 (Colo. App. 1982).

7-103-103. 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 additional offices or regional offices, or authorize the 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 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 corporation:

(a) Binds the corporation; and

(b) May not be the basis for the imposition of liability on any director, officer, employee, or agent of the 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. 93: Entire article added, p. 747, § 1, effective July 1, 1994. **L. 2003:** (1)(b) amended, p. 2315, § 224, effective July 1, 2004.

7-103-104. 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 corporation lacks or lacked power to act.

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

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by or in the right of the 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 corporation; or

(c) In a proceeding by the attorney general under section 7-114-301.

(3) In a shareholder's 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, other than anticipated profits, suffered by the corporation or another party because of the injunction.

Source: L. 93: Entire article added, p. 748, § 1, effective July 1, 1994. **L. 96:** (3) amended, p. 1313, § 11, effective June 1.

ANNOTATION

This section prohibits an individual's claim that a corporation is acting beyond the scope of its power. This section does not bar a claim that an individual lacked power to act for a corporation, and the law of agency governed such a claim. Mortgage Invs. Corp. v. Battle Mtn. Corp., 70 P.3d 1176 (Colo. 2003).

7-103-105. Agent may convey real estate - repeal. (Repealed)

Source: L. 93: Entire article added, p. 749, § 1, effective July 1, 1994. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-103-106. Ratification of defective corporate actions - definitions.

(1) **Defective corporate actions.**

(a) A defective corporate action is not void or voidable if ratified in accordance with subsection (2) of this section or validated in accordance with subsection (7) of this section.

(b) Ratification under subsection (2) of this section or validation under subsection (7) of this section is not the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification or validation in accordance with this section does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor does it create a presumption that any such corporate action is or was a defective corporate action or void or voidable.

(c) In the case of an overissue, putative shares are valid shares effective as of the date originally issued or purportedly issued upon:

(I) The effectiveness under this section and under article 110 of this title 7 of an amendment to the articles of incorporation authorizing, designating, or creating the shares; or

(II) The effectiveness of any other corporate action under this section ratifying the authorization, designation, or creation of the shares.

(2) **Ratification of defective corporate actions.**

(a) To ratify a defective corporate action under this section other than the ratification of an election of the initial board of directors under subsection (2)(b) of this section, the board of

directors must take action ratifying the action in accordance with subsection (3) of this section, stating:

(I) The defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(II) The date of the defective corporate action;

(III) The nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(IV) That the board of directors approves the ratification of the defective corporate action.

(b) If a defective corporate action to be ratified relates to the election of the initial board of directors under section 7-102-105 (1)(a), a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(I) The name of the person or persons who first took action in the name of the corporation as the initial board of directors;

(II) The earlier of the date on which the persons first took the action or were purported to have been elected as the initial board of directors; and

(III) That the ratification of the election of the person or persons as the initial board of directors is approved.

(c) If any provision of articles 101 to 117 of this title 7, the articles of incorporation or bylaws, or a corporate resolution or any plan or agreement to which the corporation is a party in effect at the time action under subsection (2)(a) of this section is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the board of directors under subsection (2)(a) of this section must be submitted to the shareholders for approval in accordance with subsection (3) of this section.

(d) Unless otherwise provided in the action taken by the board of directors under subsection (2)(a) of this section, after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

(3) **Action on ratification.**

(a) The quorum and voting requirements applicable to a ratifying action by the board of directors under subsection (2) of this section are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(b) If the ratification of the defective corporate action requires approval by the shareholders under subsection (2)(c) of this section and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting. The notice must state that the purpose, or one of the purposes, of the meeting is to consider ratification of a defective corporate action and must be accompanied by:

(I) Either a copy of the written action taken by the board of directors in accordance with subsection (2)(a) of this section or the information required by subsections (2)(a)(I) to (2)(a)(IV) of this section; and

(II) A statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective, or should be effective only on certain conditions, must be brought within one hundred twenty days after the applicable validation effective time.

(c) Except as provided in subsection (3)(d) of this section with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by subsection (2)(c) of this section are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the shareholder approval, not the requirements for shareholder approval existing at the time that the defective corporate action requiring the ratification was originally taken.

(d) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring the ratification exceed the votes cast opposing the ratification of the election at a meeting at which a quorum is present.

(e) Holders of putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under subsection (2)(c) of this section, and without giving effect to any ratification of putative shares that becomes effective as a result of such vote, are not entitled to vote and shall not be counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

(f) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by subsection (2) of this section, approval of an amendment to the articles of incorporation under article 110 of this title 7 to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares as necessary to preclude an overissue is also required.

(4) **Notice requirements.**

(a) (I) Except as set forth in subsection (4)(a)(II) of this section and unless shareholder approval is required under subsection (2)(c) of this section, prompt notice of an action taken

under subsection (2) of this section shall be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of:

(A) The date of the action by the board of directors; and

(B) The date of the defective corporate action ratified.

(II) Notice is not required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice must contain:

(I) Either a copy of the written action taken by the board of directors in accordance with subsection (2)(a) or (2)(b) of this section or the information required by subsections (2)(a)(I) to (2)(a)(IV) or (2)(b)(I) to (2)(b)(III) of this section, as applicable; and

(II) A statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective, or should be effective only on certain conditions, must be brought within one hundred twenty days after the applicable validation effective time.

(c) Notice under this section is not required with respect to any action required to be submitted to shareholders for approval under subsection (2)(c) of this section if notice is given in accordance with subsection (4)(b) of this section.

(d) A notice required by this section may be given in any manner permitted by section 7-90-105 and, for any corporation subject to the reporting requirements of section 13 or 15 (d) of the federal "Securities Exchange Act of 1934", as amended, 15 U.S.C. sec. 78m and 15 U.S.C. sec. 78m (d), may be given by means of a filing or furnishing of the notice with the United States securities and exchange commission.

(e) The failure to give the notice does not invalidate the ratification of the defective corporate action.

(5) **Effect of ratification.** From and after the validation effective time, and without regard to the one-hundred-twenty-day period during which a claim may be brought under subsection (7) of this section:

(a) Each defective corporate action ratified in accordance with subsection (2) of this section is not void or voidable as a result of the failure of authorization identified in the action taken under subsection (2)(a) or (2)(b) of this section and shall be deemed a valid corporate action effective as of the date of the defective corporate action;

(b) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under subsection (2) of this section is not void or voidable, and each such putative share or fraction of a putative share shall

be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued; and

(c) Any corporate action taken after the defective corporate action ratified in accordance with this section in reliance on the defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from the original defective corporate action is valid as of the time taken.

(6) **Filings.**

(a) If the defective corporate action ratified under this section would have required under any other section of articles 101 to 117 of this title 7 a filing in accordance with articles 101 to 117 of this title 7, then, regardless of whether a filing was previously made with respect to the defective corporate action and in lieu of a filing otherwise required by articles 101 to 117 of this title 7, the corporation shall file articles of amendment in accordance with this section, and the articles of amendment amend or substitute for any other filing with respect to the defective corporate action required by articles 101 to 117 of this title 7.

(b) The articles of amendment must set forth in an attachment to the articles:

(I) The defective corporate action that is the subject of the articles of amendment including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which the putative shares were purported to have been issued;

(II) The date of the defective corporate action;

(III) The nature of the failure of authorization with respect to the defective corporate action;

(IV) A statement that the defective corporate action was ratified in accordance with subsection (2) of this section, including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action; and

(V) The information required by subsection (6)(c) of this section.

(c) The articles of amendment must also contain the following information in an attachment to the articles:

(I) If a filing was previously made with respect to the defective corporate action and no changes to the filing are required to give effect to the ratification of the defective corporate action in accordance with subsection (2) of this section, the articles of amendment must set forth:

(A) The name, title, and filing date of the filing previously made and any articles of correction to that filing; and

(B) A statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of amendment;

(II) If a filing was previously made with respect to the defective corporate action and the filing requires any change to give effect to the ratification of the defective corporate action in accordance with this subsection (6)(c), the articles of amendment must set forth:

(A) The name, title, document number, and filing date of the filing previously made and any articles of correction to that filing;

(B) A statement that a filing containing all of the information required to be included under the applicable section or sections of articles 101 to 117 of this title 7 to give effect to the defective corporate action is attached as an exhibit to the articles of amendment; and

(C) The date and time that the filing is deemed to have become effective; or

(III) If a filing was not previously made with respect to the defective corporate action and the defective corporate action ratified under subsection (2) of this section would have required a filing under any other section of articles 101 to 117 of this title 7, the articles of amendment must set forth:

(A) A statement that a filing containing all of the information required to be included under the applicable section or sections of articles 101 to 117 of this title 7 to give effect to the defective corporate action is attached as an exhibit to the articles of amendment; and

(B) The date and time that the filing is deemed to have become effective.

(7) **Judicial proceedings regarding validity of corporate actions.**

(a) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any beneficial owner of the corporation, including any such beneficial owner as of the date of the defective corporate action ratified under subsection (2) of this section, or any other person claiming to be substantially and adversely affected by a ratification under subsection (2) of this section, the court authorized to act under section 7-107-103 may:

(I) Determine the validity and effectiveness of any corporate action or defective corporate action;

(II) Determine the validity and effectiveness of any ratification under subsection (2) of this section;

(III) Determine the validity of any putative shares; and

(IV) Modify or waive any of the procedures specified in subsection (2) or (3) of this section to ratify a defective corporate action.

(b) In connection with an action under this section, the court may make such findings or orders, and take into account any factors or considerations, regarding such matters as it deems proper under the circumstances.

(c) Service of process of the application under subsection (7)(a) of this section on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(d) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of a defective corporate action and any putative shares issued as a result of the defective corporate action should not be effective, or should be effective only on certain conditions, must be brought within one hundred twenty days after the validation effective time.

(8) **Definitions.** As used in this section:

(a) "Corporate action" means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation, or the shareholders.

(b) "Date of the defective corporate action" means the date, or the approximate date if the exact date is unknown, on which the defective corporate action was purported to have been taken.

(c) "Defective corporate action" means:

(I) Any corporate action purportedly taken that is, and at the time the corporate action was purportedly taken would have been, within the power of the corporation, without regard to the failure of authorization identified in subsection (2)(a) of this section, but is void or voidable due to a failure of authorization; and

(II) An overissue.

(d) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with any of the following, if and to the extent the failure would render the corporate action void or voidable:

(I) Articles 101 to 117 of this title 7;

(II) The articles of incorporation or bylaws;

(III) A corporate resolution or any plan or agreement to which the corporation is a party; or

(IV) The disclosure set forth in any proxy or consent solicitation statement.

(e) "Overissue" means the purported issuance of:

(I) Shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under section 7-106-101 at the time of the issuance; or

(II) Shares of any class or series that are not then authorized for issuance by the articles of incorporation.

(f) "Putative shares" means the shares of any class or series, including shares issued upon the exercise of rights, options, warrants, or other securities convertible into shares of the corporation, or interests with respect to the shares, that were created or issued as a result of a defective corporate action, that:

(I) But for any failure of authorization, would constitute valid shares; or

(II) Cannot be determined by the board of directors to be valid shares.

(g) (I) "Validation effective time", with respect to any defective corporate action ratified under this section, means the later of:

(A) The time at which the ratification of the defective corporate action is approved by the shareholders or, if approval of shareholders is not required, the time at which the notice required by subsection (4) of this section takes effect in accordance with section 7-90-105; and

(B) The time at which any articles of amendment filed in accordance with subsection (6) of this section become effective.

(II) The validation effective time is not affected by the filing or pendency of a judicial proceeding under subsection (7) of this section or otherwise, unless otherwise ordered by the court.

(h) "Valid shares" means the shares of any class or series that have been duly authorized and validly issued in accordance with articles 101 to 117 of this title 7, including as a result of ratification or validation under this section.

Source: L. 2020: Entire section added, (HB 20-1013), ch. 39, p. 126, § 1, effective September 14. **L. 2021:** (4)(d) and (8)(g)(I)(A) amended, (HB 21-1124), ch. 41, p. 164, § 8, effective April 19. **L. 2022:** (4)(a) amended, (HB 22-1250), ch. 80, p. 398, § 9, effective August 10.

ARTICLE 104

Name

7-104-101. Corporate name. (Repealed)

Source: L. 93: Entire article added, p. 749, § 1, effective July 1, 1994. **L. 94:** (2)(i) added, p. 87, § 13, effective July 1. **L. 96:** (2) amended, p. 1313, § 12, effective June 1. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-104-102. Reserved name. (Repealed)

Source: L. 93: Entire article added, p. 750, § 1, effective July 1, 1994. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

ARTICLE 105

Office and Agent

7-105-101. Registered office and registered agent.
7-105-102. Change of registered office or registered agent - repeal. (Repealed)
7-105-103. Resignation of registered agent - repeal. (Repealed)
7-105-104. Service on corporation - repeal. (Repealed)

7-105-101. Registered office and registered agent.

(1) Part 7 of article 90 of this title, providing for registered agents and service of process, applies to corporations incorporated under or subject to articles 101 to 117 of this title.

(2) (Deleted by amendment, L. 2003, p. 2315, § 225, effective July 1, 2004.)

Source: L. 93: Entire article added, p. 751, § 1, effective July 1, 1994. **L. 2003:** Entire section amended, p. 2315, § 225, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959).

Annotator's note. Since § 7-105-101 is similar to § 7-3-110 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Applied in Cooper Drilling Inc. v. San Luis Valley Land Company, 743 P.2d 448 (Colo. App. 1987).

7-105-102. Change of registered office or registered agent - repeal. (Repealed)

Source: L. 93: Entire article added, p. 751, § 1, effective July 1, 1994. **L. 2000:** (1)(a) amended, p. 978, § 54, effective July 1. **L. 2002:** IP(1), (1)(e), and (2) amended, p. 1847, § 106, effective July 1; IP(1), (1)(e), and (2) amended, p. 1711, § 106, effective October 1. **L. 2003:** (3) added by revision, pp. 2356, 2357, §§ 347, 348.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 2356, 2357.)

7-105-103. Resignation of registered agent - repeal. (Repealed)

Source: L. 93: Entire article added, p. 752, § 1, effective July 1, 1994. **L. 96:** (2) amended, p. 1314, § 13, effective June 1. **L. 2002:** (1) and (2) amended, p. 1847, § 107, effective July 1; (1) and (2) amended, p. 1712, § 107, effective October 1. **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.)

7-105-104. Service on corporation - repeal. (Repealed)

Source: L. 93: Entire article added, p. 752, § 1, effective July 1, 1994. **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.)

ARTICLE 106

Shares and Distributions

PART 1
SHARES

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7-106-102. Terms of class or series determined by board of directors.

7-106-103. Issued and outstanding shares.

7-106-104. Fractional shares.

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ISSUANCE OF SHARES

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DISTRIBUTIONS

7-106-401. Distributions to shareholders.

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PART 1

SHARES

7-106-101. Authorized shares.

(1) The articles of incorporation shall state the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall state a distinguishing designation for each class, and, before the issuance of shares of any class, the preferences, limitations, and relative rights of that class shall be stated in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 7-106-102.

(2) The articles of incorporation shall authorize:

(a) One or more classes of shares that together have unlimited voting rights; and

(b) One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote; except that no condition, limitation, or prohibition on voting shall eliminate any right to vote provided by section 7-110-104;

(b) Are redeemable or convertible as stated in the articles of incorporation:

(I) At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(II) For money, indebtedness, securities, or other property; or

(III) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic facts or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the preferences, limitations, and relative rights of classes of shares in subsection (3) of this section is not exhaustive.

Source: L. 93: Entire article added, p. 753, § 1, effective July 1, 1994. **L. 2003:** IP(3)(b) amended, p. 2316, § 226, effective July 1, 2004. **L. 2006:** (1) amended, p. 880, § 70, effective July 1.

ANNOTATION

Law reviews. For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985).

Annotator's note. Since § 7-106-101 is similar to § 7-4-101 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

The corporation, by statute, has the power to create and issue the number of shares stated in its articles. Paulek v. Isgar, 38 Colo. App. 29, 551 P.2d 213 (1976).

Redemption of common stock authorized in articles of incorporation is a valid "limitation" under subsection (1). Hamel v. White Wave, Inc., 689 P.2d 709 (Colo. App. 1984).

7-106-102. Terms of class or series determined by board of directors.

(1) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in section 7-106-101, of:

(a) Any class of shares before the issuance of any shares of that class; or

(b) One or more series within a class before the issuance of any shares of that series.

(2) Each series of a class shall be given a distinguishing designation.

(3) All shares of a series shall have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series, the preferences, limitations, and relative rights of which are determined by the board of directors under this section, the corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment to the articles of incorporation, which are effective without shareholder action, that state:

(a) The domestic entity name of the corporation;

(b) The text of the amendment determining the designations, preferences, limitations, and relative rights of the class or series of shares;

(c) The date the amendment was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors.

Source: L. 93: Entire article added, p. 754, § 1, effective July 1, 1994. **L. 2002:** IP(4) amended, p. 1847, § 108, effective July 1; IP(4) amended, p. 1712, § 108, effective October 1. **L. 2003:** IP(4) and (4)(a) amended, p. 2316, § 227, effective July 1, 2004.

7-106-103. Issued and outstanding shares.

(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations contained in subsection (3) of this section and is subject to section 7-106-401.

(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution shall be outstanding.

Source: L. 93: Entire article added, p. 754, § 1, effective July 1, 1994.

7-106-104. Fractional shares.

(1) A corporation may:

(a) Issue fractions of a share or pay in cash the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders; or

(c) Issue scrip in registered form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required to be included in a share certificate by sections 7-106-206 (2)(a), (2)(c), and (4) and 7-106-208 (2).

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a stated date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Source: L. 93: Entire article added, p. 755, § 1, effective July 1, 1994. **L. 2003:** (4)(a) amended, p. 2316, § 228, effective July 1, 2004. **L. 2023:** (1)(c) amended, (HB 23-1297), ch. 441, p. 2582, § 1, effective August 7.

ANNOTATION

Law reviews. For note, "Discount, Bonus and Watered Stock in Colorado", see 33 Rocky Mt. L. Rev. 197 (1961).

Annotator's note. Since § 7-106-104 is similar to § 7-4-109 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Section held constitutional. No impairment of contractual rights, no denial of due process, and no non-consensual taking of private property of minority stockholders exists where corporate reverse stock split and fractional buyout followed enactment of this section which was embodied in corporation's articles of incorporation. Goldman v. Union Bank and Trust, 765 P.2d 638 (Colo. App. 1988).

7-106-105. Reverse split.

(1) Unless otherwise provided in the articles of incorporation, the outstanding shares of a class or series may be reduced to a lesser number of shares by a reverse split made on the terms set forth in this section.

(2) To effect the reverse split, each outstanding share of the class or series shall be divided by the same divisor as is every other such share.

(3) Each share of the class or series shall have, after the reverse split, such par value, if any, as may be stated in the articles of incorporation.

(4) If the articles of incorporation are to be amended in connection with the reverse split, whether to change the number of authorized shares of such class or series or the par value, if any, of the shares of such class or series or for any other reason, such amendment shall be effected pursuant to article 110 of this title.

(5) In lieu of issuing fractional shares upon such reverse split, the corporation may take any of the actions provided for in section 7-106-104.

(6) For the reverse split to be effected:

(a) The board of directors shall recommend the reverse split to the holders of shares of the class or series that is to be reverse split and to each other voting group that is entitled, by reason of any provision in the articles of incorporation, to vote on the reverse split, 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 shareholders with the submission of the reverse split; and

(b) The holders of shares of the class or series that is to be reverse split, and each other voting group that is entitled, by reason of any provision in the articles of incorporation, to vote on the reverse split, shall approve the reverse split.

(7) The board of directors may condition the effectiveness of the reverse split on any basis.

(8) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the reverse split, of the shareholders' meeting at which the reverse split 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 reverse split, and the notice shall contain or be accompanied by a copy or a summary of the reverse split.

(9) Unless articles 101 to 117 of this title, the articles of incorporation, bylaws adopted by the shareholders, or the proposing board of directors require a greater vote, the reverse split shall be approved by the votes required by sections 7-107-206 and 7-107-207 by every voting group entitled to vote on the reverse split.

Source: L. 96: Entire section added, p. 1314, § 14, effective June 1.

PART 2

ISSUANCE OF SHARES

7-106-201. Subscription for shares.

(1) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation before the time the corporation is incorporated and accepts the subscription.

(2) The acceptance by the corporation of a subscription entered into before incorporation and the authorization of the issuance of shares pursuant thereto are subject to section 7-106-202.

(3) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement states them. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement states otherwise.

(4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration stated in the subscription agreement.

(5) If a subscriber defaults in payment of money or other property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as it might collect any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

(6) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 7-106-202.

Source: L. 93: Entire article added, p. 755, § 1, effective July 1, 1994. **L. 2003:** (3) and (4) amended, p. 2316, § 229, effective July 1, 2004.

ANNOTATION

Law reviews. For comment on Burch v. Exploration Data Consultants, Inc. (cited below), see 46 U. Colo. L. Rev. 125 (1974).

Annotator's note. Since § 7-106-201 is similar to § 7-4-103 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

An accepted subscriber to the capital stock of a corporation becomes a

stockholder by the mere act of subscription, regardless of whether the subscription is paid or not. Mtn. Water Works Constr. Co. v. Holme, 49 Colo. 412, 113 P. 501 (1911).

And is entitled to vote the shares held by him at all meetings of the stockholders even though the stock is not full paid and the corporation retains the certificates to secure payment. Lilylands Canal & Reservoir Co. v. Wood, 56 Colo. 130, 136 P. 1026 (1913).

Thus a bylaw allowing only full paid stock to vote is void. A corporation cannot declare, through a bylaw, that only such stock as has been full paid shall be represented and allowed to vote at stockholders' meetings. Lilylands Canal & Reservoir Co. v. Wood, 56 Colo. 130, 136 P. 1026 (1913).

Subscription agreements are enforceable and subscription rights are legally transferable. Burch v. Exploration Data Consultants, Inc., 33 Colo. App. 155, 518 P.2d 288 (1973).

Subscribers may receive many rights as shareholders before full payment. Subscribers may, and often do, receive many rights as shareholders, including voting rights, rights to dividends, right to inspection of corporate books and records, etc., before full payment is made. Burch v. Exploration Data Consultants, Inc., 33 Colo. App. 155, 518 P.2d 288 (1973).

The unpaid balance upon a stockholder's subscription is not in and of itself a legal debt due the corporation, and until demand is made as provided and the period mentioned has expired, no cause of action accrues in favor of the corporation and no action can be maintained in its name. Universal Fire Ins. Co. v. Tabor, 16 Colo. 531, 27 P. 890 (1891).

However judgment creditors of corporations may reach the unpaid balance of the stockholder's subscription and apply it to the discharge of their judgments. Universal Fire Ins. Co. v. Tabor, 16 Colo. 531, 27 P. 890 (1891).

The six-year statute of limitations under § 13-80-111 is applicable for the recovery of stock under this section. Dunne v. Stotesbury, 16 Colo. 89, 26 P. 333 (1891) (decided prior to 1986 repeal and reenactment of article 80 of title 13).

7-106-202. Issuance of shares.

(1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) Subject to the limitations set forth in subsection (5) of this section, the board of directors may authorize the issuance of shares for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, and other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for the shares to be issued is adequate. In the absence of

fraud in the transaction, that determination by the board of directors is conclusive insofar as the adequacy of such consideration relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors has authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(5) The promissory note of a subscriber or an affiliate of the subscriber for shares shall not constitute consideration for the shares unless the note is negotiable and is secured by collateral, other than the shares, having a fair market value at least equal to the principal amount of the note. For the purposes of this subsection (5), "promissory note" means a negotiable instrument on which there is an obligation to pay independent of collateral and does not include a nonrecourse note.

(6) Unless otherwise expressly provided in the articles of incorporation or bylaws, shares having a par value may be issued for less than the par value.

Source: L. 93: Entire article added, p. 756, § 1, effective July 1, 1994.

ANNOTATION

I. General Consideration.

II. Consideration for Issuance of Shares.

III. Promissory Notes and Future Services.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Consideration for Stock Under the Colorado Constitution and Cases", see 29 Rocky Mt. L. Rev. 112 (1956). For comment on Burch v. Exploration Data Consultants, Inc. (33 Colo. App. 155, 518 P.2d 288 (1973)), see 46 U. Colo. L. Rev. 125 (1974). For article, "Counseling the Corporation In Financial Crisis", see 17 Colo. Law. 631 (1988).

Annotator's note. Since § 7-106-202 is similar to §§ 7-4-104 and 7-4-105 as they existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing those provisions and their predecessors have been included in the annotations to this section.

II. CONSIDERATION FOR ISSUANCE OF SHARES.

Under this section capital stock of a corporation is regarded as money or its equivalent. Robinson v. Dolores No. Two Land & Canal Co., 2 Colo. App. 17, 29 P. 750 (1892); Fulton Inv. Co. v. Smith, 27 Colo. App. 279, 149 P. 444 (1915).

And services and property to the value of the stock at par are a good consideration for its issue. Barnard v. Sweet, 74 Colo. 302, 221 P. 1093 (1923).

Designated water rights are a valid consideration for the payment of shares. Paulek v. Isgar, 38 Colo. App. 29, 551 P.2d 213 (1976).

The consideration must be reasonably worth the par value of the stock which is issued for it. Frink v. Carman Distrib. Co., 97 Colo. 211, 48 P.2d 805 (1935).

And it is presumed that in its original issue the stock of a corporation is paid in full, where nothing to the contrary appears. Henry v. Semonian, 27 Colo. App. 487, 150 P. 818 (1915).

Thus in a transaction whereby property is conveyed in consideration of the issuance of capital stock, such property is a valuable consideration. Fulton Inv. Co. v. Smith, 27 Colo. App. 279, 149 P. 444 (1915).

And an action lies for value of stock issued. The fact that the purchaser from a stockholder is without notice that the stock is issued for an insufficient consideration does not prevent an action for the value of corporate stock issued. Barnard v. Sweet, 74 Colo. 302, 221 P. 1093 (1923).

This section authorizes the directors of a corporation to sell or dispose of treasury stock for a consideration fixed by the board of directors. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

And the fact that a corporation has a substantial financial loss in its transfer of the treasury stock to an employees stock trust is of no consequence, for § 7-3-101 (1)(p) anticipates and authorizes a corporation to create such plans "wholly or partly at the expense of the corporation". Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

A stock purchase warrant is purely an option to purchase stock that does not vest in the prospective purchaser an equitable title to, or any interest or right in, the stock. The value of such an option is speculative - any number of corporate or collateral events may change its value - and the burden of such risk falls on the holder of the warrant. Anderson v. Somatogen, Inc., 940 P.2d 1079 (Colo. App. 1996).

Unless the contract provides otherwise, a warrant holder may not complain, for example, when a corporation issues new capital stock, although such issue may lessen or destroy the value of the option. Therefore, whatever rights a stock purchase warrant holder may have to require the obligor corporation to maintain the integrity of the shares are purely contractual. Anderson v. Somatogen, Inc., 940 P.2d 1079 (Colo. App. 1996).

The precise protection afforded by an "antidilution" clause to a warrant holder will depend on the express terms of the contract itself. Anderson v. Somatogen, Inc., 940 P.2d 1079 (Colo. App. 1996).

Applied in Homestead Mining Co. v. Reynolds, 30 Colo. 330, 70 P. 422 (1902).

III. PROMISSORY NOTES AND FUTURE SERVICES.

Stocks and bonds issued except as provided in this section are in direct violation of Colo. Const., art. XV, § 9 and § 7-4-105 and are, thus, ipso facto invalid.

Ark. River Land Co. v. Farmers' Loan Co., 13 Colo. 587, 22 P. 954 (1889); In re Dreiling, 233 B.R. 848 (Bankr. D. Colo. 1999).

Both § 9 of art. XV, Colo. Const. and this section are aimed at preventing the watering of corporate stock; their purpose is to prevent corporations from issuing stock without receiving full value, and so to prevent the diluting of the holdings of innocent stockholders and the reliance by creditors on false or nonexistent capital resulting from the issuance of "watered" stock. Haselbush v. Alsco of Colo., Inc., 161 Colo. 138, 421 P.2d 113 (1966).

The policy behind § 7-4-105 (2) and § 9 of art. XV, Colo. Const., is to protect other stockholders of the corporation, creditors, and good faith future stockholders from the dilution of their investment by "watered" stock. Burch v. Exploration Data Consultants, Inc., 33 Colo. App. 155, 518 P.2d 288 (1973).

But this purpose would not be served by holding that these provisions may be used to defeat an action by a corporation seeking to enforce payment on a promissory note given for the issuance of stock when the transaction has been made in good faith. Haselbush v. Alsco of Colo., Inc., 161 Colo. 138, 421 P.2d 113 (1966).

The fact that the stock the plaintiff had contracted to purchase became worthless prior to his having made final payment on the note does not entitle plaintiff to recover amounts paid, nor does it furnish a justification for a refusal to pay the remainder due under the terms of the note. Moneys paid and to be paid belong to the creditors of the defendant corporation. Jacobs v. Frontier Tractor & Equip., Inc., 712 P.2d 493 (Colo. App. 1985).

As this section does not forbid a corporation from taking a note or obligation from a perspective stockholder; on the contrary, it impliedly recognizes the right to do so, but declares that no such note shall be considered as payment and no certificate shall issue until the note is paid. Haselbush v. Alsco of Colo., Inc., 161 Colo. 138, 421 P.2d 113 (1966); Jacobs v. Frontier Tractor & Equip., Inc., 712 P.2d 493 (Colo. App. 1985).

Moreover, the issuance of the certificate does not affect the enforceability of the note. Haselbush v. Alsco of Colo., Inc., 161 Colo. 138, 421 P.2d 113 (1966).

Shares not rendered void. The fact that § 9 of art. XV, Colo. Const., and subsection (2) of this section may prohibit execution and delivery of share certificates in exchange for promissory notes does not render the shares void. Burch v. Exploration Data Consultants, Inc., 33 Colo. App. 155, 518 P.2d 288 (1973).

7-106-203. Liability of shareholders.

(1) A purchaser from a corporation of shares issued by the corporation is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which

the shares were authorized to be issued under section 7-106-202 or stated in a subscription agreement under section 7-106-201.

(2) Unless otherwise provided in the articles of incorporation, a shareholder or a subscriber for shares of a corporation is not personally liable for the acts or debts of the corporation; except that such person may become personally liable by reason of the person's own acts or conduct.

(3) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

Source: L. 93: Entire article added, p. 757, § 1, effective July 1, 1994. **L. 2003:** (1) amended, p. 2317, § 230, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "Some Observations on Living Trusts", see 7 Dicta 3 (1930).

Annotator's note. Since § 7-106-203 is similar to § 7-4-120 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

This section recognizes a subscriber who has not paid his subscription as a stockholder. See Mtn. Water Works Constr. Co. v. Holme, 49 Colo. 412, 113 P. 501 (1911); Lilylands Canal & Reservoir Co. v. Wood, 56 Colo. 130, 136 P. 1026 (1913).

The intention of this section is that stock issued by a corporation shall represent value. Buck v. Jones, 18 Colo. App. 250, 70 P. 951 (1902).

By virtue of this section a corporate creditor may maintain an action against an individual stockholder and recover to the amount of unpaid stock held by him. Smith v. Londoner, 5 Colo. 365 (1880).

Although the creditor who sues is also a stockholder in the corporation, this fact does not make any difference, provided he has paid in full for the stock held by him and consequently is not individually liable for the debts of the corporation. Smith v. Londoner, 5 Colo. 365 (1880).

But a stockholder is not liable for the acts of the corporation beyond his statutory liability, and a majority stockholder, in the absence of a showing that he used his interest for fraudulent purposes, is governed by the same rule. Liebhardt v. Wilson, 38 Colo. 1, 88 P. 173 (1906).

And proof that stock is not full paid is essential to maintenance of an action against

stockholders under this section, and the burden is on plaintiff to make such proof. Speer v. Bordeleau, 20 Colo. App. 413, 79 P. 332 (1905); Henry v. Semonian, 27 Colo. App. 487, 150 P. 818 (1915).

A complaint joining the company and stockholders as defendants does not misjoin the parties, and a separate judgment may be rendered against a stockholder in the same suit for unpaid debts of the corporation. Smith v. Colo. Fire Ins. Co., 14 F. 399 (D. Colo. 1882); Tabor v. Goss & Phillips Mfg. Co., 11 Colo. 419, 18 P. 537 (1889).

To protect fiduciaries from personal liability, it must appear on the books of the corporation that the holding is in such capacity. Adams v. Clark, 36 Colo. 65, 85 P. 642 (1906).

Entry of personal judgment against stockholder was proper. Where stockholder, who owned practically all of the outstanding stock of the debtor corporation and was their principal officer, transferred corporate property to himself and then resold and leased the property, the interests of third parties would not be voided and thus, entry of personal judgment against the stockholder in favor of the creditor of the corporation was proper. Epcon Co. v. Bar B Que Baron Int'l, Inc., 32 Colo. App. 393, 512 P.2d 646 (1973).

Corporate veil pierced by application of the alter ego doctrine. Where the corporate entity has been used to defeat public convenience, or to justify or protect wrong, fraud, or crime, or in other situations where equity requires, stockholders may be held personally liable for corporate obligations. Reader v. Dertina & Associates Marketing, 693 P.2d 398 (Colo. App. 1984).

Outside reverse piercing is appropriate when a claimant demonstrates that a controlling insider and a corporation are alter egos of each other and justice requires recognizing the substance of that relationship over the form to achieve an equitable result. Outside reverse piercing claims occur when a corporate outsider pressing an action against a corporate insider seeks to disregard the corporate entity and to subject corporate assets to the claim or when an outsider with a claim against a corporate insider seeks to assert that claim against the corporation in an action between the claimant and the corporation. Outside reverse piercing actions involve a corporate outsider seeking to obligate a corporation for the debts of a dominant shareholder or other corporate insider. In re Phillips, 139 P.3d 639 (Colo. 2006).

This section is not limited by § 12-2-131 (2)(d). Magnuson v. Smith and Saetveit, P.C., 722 P.2d 1020 (Colo. App. 1986).

Failure of corporation to provide legally required workmen's compensation insurance does not per se meet test for piercing of the corporate veil. Matter of Death of Smithour, 778 P.2d 303 (Colo. App. 1989).

Applied in Colo. Fuel Co. v. Sedalia Smelting Co., 13 Colo. App. 474, 59 P. 222 (1899).

7-106-204. Share dividends.

(1) Unless otherwise provided in the articles of incorporation, shares may be issued pro rata and without consideration to the shareholders or to the shareholders of one or more classes or series of its shares. An issuance of shares pursuant to this subsection (1) is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) The articles of incorporation so authorize;

(b) Such issuance is approved by a majority of the votes entitled to be cast by the class or series to be issued; or

(c) There are no outstanding shares of the class or series to be issued.

(3) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a share dividend. If no future record date is so fixed, the record date is the date the board of directors authorizes the share dividend.

Source: L. 93: Entire article added, p. 757, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "Corporate Dividend Limitations", see 27 Dicta 99 (1950). For note, "Surpluses Which May Be Used For Paying Dividends under the New Colorado Corporation Act", see 31 Rocky Mt. L. Rev. 49 (1958). For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "Depreciation Policy and Its Effect in Determining Earnings Available for Dividends", see 36 U. Colo. L. Rev. 143 (1963). For article, "Counseling the Corporation In Financial Crisis", see 17 Colo. Law. 631 (1988). For article, "Counseling the Corporation In Financial Crisis", see 17 Colo. Law. 631 (1988). For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988).

Annotator's note. Since § 7-106-204 is similar to § 7-5-110 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

This section does not impose a fiduciary duty within the meaning of 11 U.S.C.A. § 523 (a)(4) of the bankruptcy code. In re Anzman, 73 B.R. 156 (Bankr. D. Colo. 1986).

Directors expressly made personally liable to corporation. This section and §§ 7-3-102 and 7-5-114 (1)(d) expressly make directors personally liable to the corporation. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Absolute liability. Liability under this section and §§ 7-3-102 and 7-5-114 (1)(d) is absolute. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

A showing of fraud is not required to impose liability under this section and §§ 7-3-102 and 7-5-114 (1)(d). Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

7-106-205. Share options and other rights - definitions.

(1) For purposes of this section:

(a) "Rights" means rights, options, warrants, or convertible securities entitling the holders thereof to purchase, receive, or acquire shares or fractions of shares of the corporation or assets or debts or other obligations of the corporation.

(b) "Significant shareholder" means any person owning, or offering to acquire, directly or indirectly, a number or percentage, as stated by the board of directors, of the outstanding voting shares of a corporation, or any transferee of such person.

(2) A corporation may create and issue rights, except as precluded or limited by provisions contained in the articles of incorporation at the time of such creation or issuance. The board of directors shall determine the terms upon which the rights are issued, their form and content, and the consideration, if any, for which shares or fractions of shares, assets, or debts or other obligations of the corporation are to be issued pursuant to the rights. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of consideration received for such rights shall be conclusive.

(3) Notwithstanding any other provision of articles 101 to 117 of this title, the terms determined by the board of directors pursuant to subsection (2) of this section for rights issued before, on, or after January 1, 1994, to any shareholders, by way of distribution or otherwise, may, without limitation:

(a) Preclude or limit any significant shareholder from exercising, converting, transferring, or receiving rights;

(b) Impose conditions upon the exercise, conversion, transfer, or receipt of rights by any significant shareholder that differ from those imposed on other holders of the same class of rights; or

(c) Provide that, upon exercise or conversion, any significant shareholder shall be entitled to receive securities, obligations, or assets, the terms or nature of which may differ from the securities, obligations, or assets to be received by the other holders of the same class of rights.

(4) Nothing contained in this section shall be construed to effect a change in the fiduciary duties of directors.

Source: L. 93: Entire article added, p. 757, § 1, effective July 1, 1994. **L. 2003:** (1)(b) amended, p. 2317, § 231, effective July 1, 2004.

7-106-206. Form and content of certificates.

(1) Shares may, but need not, be represented by certificates. Unless articles 101 to 117 of this title or another statute expressly provide otherwise, the rights and obligations of shareholders are not affected by the fact that their shares are not represented by certificates.

(2) Each share certificate shall state on its face:

(a) The domestic entity name of the issuing corporation and that the corporation is incorporated under the law of this state;

(b) The name of the person to whom the certificate is issued; and

(c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) Each share certificate:

(a) Shall be signed, either manually or in facsimile, by one or more officers designated in the bylaws or by the board of directors;

(b) May bear the corporate seal or its facsimile; and

(c) May contain such other information as the corporation deems necessary or appropriate.

(4) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the share certificate shall contain a summary, on the front or the back, of the designations, preferences, limitations, and relative rights applicable to each class, the variations in preferences, limitations, and rights determined for each series, and the authority of the board of directors to determine variations for future classes or series. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish to the shareholder this information on request in writing and without charge.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Source: L. 93: Entire article added, p. 758, § 1, effective July 1, 1994. **L. 2003:** (2)(a) amended, p. 2317, § 232, effective July 1, 2004.

ANNOTATION

I. General Consideration.

II. Signatures of Officers.

III. Notice of Restrictions and Variations in Shares.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Discount, Bonus and Watered Stock in Colorado", see 33 Rocky Mt. L. Rev. 197 (1961). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985).

Annotator's note. Since § 7-106-206 is similar to § 7-4-108 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

II. SIGNATURES OF OFFICERS.

Stock certificates which have been issued without authority and are not manually signed are nonetheless genuine, and the statutory requirement of a transfer agent's countersignature on stock certificates bearing facsimile signatures does not render them invalid or preclude bona fide purchase. Dempsey-Tegeler & Co. v. Otis Oil & Gas Corp., 293 F. Supp. 1383 (D. Colo. 1968).

For noncompliance with this section does not render certificates nongenuine or constitute an absolute defense effective against a purchaser for value and without notice under § 4-8-202 (3) of the commercial code, as certificates signed in facsimile are genuine under the uniform commercial code, "genuine" meaning free of forgery or counterfeiting. Thus even though certificates are issued without authority, it cannot be said that the signatures are either forged or counterfeit, and so in this sense they are effective against the issuer. Dempsey-Tegeler & Co. v. Otis Oil & Gas Corp., 293 F. Supp. 1383 (D. Colo. 1968).

III. NOTICE OF RESTRICTIONS AND VARIATIONS IN SHARES.

The purpose of this section is to ensure that a purchaser of stock has notice of voting restrictions at the time of purchase. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

The requirement of subsection (2) is aimed at avoiding shareholder misunderstandings. Hackbart v. Holmes, 675 F.2d 1114 (10th Cir. 1982).

However, this section does not require that the certificate carry the exact restrictions on the certificate, but only that the shareholder be informed by the certificate that upon request the corporation will furnish him with information as to classes of stock and their various restrictions. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

Yet this section makes no provision as to the consequences of a violation. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

But the stock contract is voidable. Absent a showing of actual knowledge at the time of purchase, failure to follow the statute renders the stock contract voidable on the part of the stockholder. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

And rescission is the most appropriate remedy. Where notice has not been given pursuant to the statute and where actual knowledge cannot be shown by the corporation, then, in the absence of fraud, rescission is the most appropriate remedy. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

7-106-207. Shares without certificates.

(1) Unless otherwise provided by the bylaws, the board of directors may authorize the issuance by the corporation of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send to the shareholder a written statement of the information required on certificates by subsections (2) and (4) of section 7-106-206 and section 7-106-208.

Source: L. 93: Entire article added, p. 759, § 1, effective July 1, 1994.

7-106-208. Restriction on transfer of shares and other securities.

(1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement among shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction became effective unless the holder of such shares acquired such shares with knowledge of the restriction, is a party to the agreement containing the restriction, or voted in favor of the restriction or otherwise consented to the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 7-106-207 (2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve entitlements, benefits, or exemptions under federal, state, or local laws; and

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer to the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) Require, as a condition to such a transfer or registration, that any one or more persons, including the corporation or the holders of any of its shares, approve the transfer or registration, if the requirement is not manifestly unreasonable; or

(d) Prohibit the transfer or the registration of a transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source: L. 93: Entire article added, p. 759, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "A First Refusal Paradigm for Buy-Sell Agreements", see 24 Colo. Law. 1289 (1995).

7-106-209. Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of incorporating, organizing, or reorganizing the corporation, from the consideration received for shares.

Source: L. 93: Entire article added, p. 760, § 1, effective July 1, 1994.

PART 3

SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

7-106-301. Shareholders' preemptive rights.

(1) The shareholders of a corporation do not have a preemptive right to acquire unissued shares except to the extent provided by subsections (3) to (6) of section 7-117-101 or the articles of incorporation.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar import, means that the following principles apply, except to the extent otherwise provided by subsections (3) to (6) of section 7-117-101 or the articles of incorporation:

(a) The shareholders have a preemptive right, subject to any uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the unissued shares upon the decision of the board of directors to issue them.

(b) A shareholder may waive the shareholder's preemptive right, and such waiver, if evidenced by a writing, is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(I) Shares issued as compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates;

(II) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates;

(III) Shares that are issued within six months after the effective date of incorporation; or

(IV) Shares sold otherwise than for cash.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person, for a period of one year after being offered to shareholders pursuant to such preemptive rights, at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of such one-year period is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source: L. 93: Entire article added, p. 761, § 1, effective July 1, 1994.

7-106-302. Corporation's acquisition of its own shares.

(1) A corporation may acquire its own shares, and, except as provided by section 7-117-101 (6), shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissuance of acquired shares:

(a) The number of authorized shares is reduced by the number of shares acquired by the corporation, effective upon amendment to the articles of incorporation; and

(b) The corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment to the articles of incorporation, which are effective without shareholder action, that state:

(I) The domestic entity name of the corporation;

(II) The reduction in the number of authorized shares, itemized by class and series; and

(III) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Source: L. 93: Entire article added, p. 762, § 1, effective July 1, 1994. **L. 2002:** IP(2)(b) amended, p. 1847, § 109, effective July 1; IP(2)(b) amended, p. 1712, § 109, effective October 1. **L. 2003:** IP(2)(b) and (2)(b)(I) amended, p. 2317, § 233, effective July 1, 2004.

ANNOTATION

Law reviews. For note, "Impairment of Capital by the Purchase of a Corporation's Own Stock", see 24 Rocky Mt. L. Rev. 89 (1951). For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For comment on Herald Co. v. Seawell (472 F.2d 1081 (10th Cir. 1972)), see 45 U. Colo. L. Rev. 131 (1973). For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988).

Annotator's note. Since § 7-106-302 is similar to §§ 7-3-102 and 7-6-103 as they existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing those provisions and their predecessors have been included in the annotations to this section.

No redemption unless articles grant right. Generally neither a shareholder nor the corporation has the right to force redemption unless the articles of incorporation specifically grant that right. Hackbart v. Holmes, 675 F.2d 1114 (10th Cir. 1982).

Stockholder control through use of corporate resources not a legitimate corporate purpose. Neither the achievement or perpetuation of control by a majority or any group of stockholders nor the freezing out or imposition upon minority stockholders is within legitimate corporate purposes to the extent of authorizing utilization of corporate resources and powers for that purpose. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Similarly, it is not proper for management to use corporate resources to retain control and eliminate the possibility of a control antagonistic to that of incumbents. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

However, preventing others from obtaining control of corporation by corporation's purchase of its own stock is not improper. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Unless it would impair capital. It is not lawful for a corporation to use any of its funds for the purpose of buying its own stock if it will cause an impairment of capital. Colo. Indus. Loan & Inv. Co. v. Clem, 82 Colo. 399, 260 P. 1019 (1927) (decided under C.L. 1921, § 2260).

When a corporation purchases its own stock, it shall be held as treasury stock by the corporation until disposed of in some manner. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

The validity of a corporate stock repurchase may be attacked only by persons who are injured or prejudiced thereby, and not by the corporation itself. Minnelusa Co. v. Andrikopoulos, 929 P.2d 1321 (Colo. 1996).

Evidence held not to show price paid by corporation for its stock was exorbitant. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Directors expressly made personally liable to corporation. This section and §§ 7-5-114 (4) and 7-5-110 expressly make directors personally liable to the corporation. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Absolute liability. Liability under this section and §§ 7-5-114 (4) and 7-5-110 is absolute save for the statutory defenses set forth in § 7-5-114 (6). Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

A showing of fraud is not required to impose liability under this section and §§ 7-5-114 (4) and 7-5-110. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

When liability for violating § 7-5-114 (4) attaches. A cause of action accrues at the time an improper purchase of treasury shares is made, and any liability imposed on directors for violating § 7-5-114 (4) would therefore attach at the time of the purchase. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

A corporation may "freeze out" minority shareholders by a reverse stock split and fractional share buyout. Goldman v. Union Bank & Trust, 765 P.2d 638 (Colo. App. 1988).

PART 4

DISTRIBUTIONS

7-106-401. Distributions to shareholders.

(1) A board of directors may authorize, and the corporation may make, distributions to its shareholders subject to any restriction in the articles of incorporation and subject to the limitations set forth in subsection (3) of this section.

(2) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares. If a record date is necessary but no future record date is so fixed, the record date is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(5) Except as provided in subsection (6) of this section, the time for measuring the effect of a distribution under subsection (3) of this section is:

(a) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(I) The date money or other property is transferred or debt is incurred by the corporation; or

(II) The date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) In all other cases, as of either:

(I) The date the distribution is authorized, if the payment occurs within one hundred twenty days after the date of authorization; or

(II) The date the payment is made, if it occurs more than one hundred twenty days after the date of authorization.

(6) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) of this section if its terms provide that payment of principal and interest thereon are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest thereon is treated as a distribution the effect of which is measured on the date the payment is actually made.

(7) Unless otherwise expressly provided in the articles of incorporation or bylaws, a statement of par value for shares shall not impose any limitation on distributions and shall not require any separate designation, restriction, reservation, or other segregation of any capital account of a corporation.

Source: L. 93: Entire article added, p. 762, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "Corporate Dividend Limitations", see 27 Dicta 99 (1950). For note, "Surpluses Which May Be Used For Paying Dividends under the New Colorado Corporation Act", see 31 Rocky Mt. L. Rev. 49 (1958). For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "Depreciation Policy and Its Effect in Determining Earnings Available for Dividends", see 36 U. Colo. L. Rev. 143 (1963). For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988). For article, "Counseling the Corporation In Financial Crisis", see 17 Colo. Law. 631 (1988). For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988).

Annotator's note. Since § 7-106-401 is similar to § 7-5-110 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Directors expressly made personally liable to corporation. This section and §§ 7-3-102 and 7-5-114 (1)(d) expressly make directors personally liable to the corporation. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Absolute liability. Liability under this section and §§ 7-3-102 and 7-5-114 (1)(d) is absolute. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

A showing of fraud is not required to impose liability under this section and §§ 7-3-102 and 7-5-114 (1)(d). Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Payments made to sole shareholder by sole shareholder that renders business unable to pay debts violates this section. Paratransit Risk Retention Group Ins. Co. v. Kamins, 160 P.3d 307 (Colo. App. 2007).

A corporation may "freeze out" minority shareholders by a reverse stock split and fractional share buyout. Goldman v. Union Bank & Trust, 765 P.2d 638 (Colo. App. 1988).

This section does not impose a fiduciary duty within the meaning of 11 U.S.C.A. § 523 (a)(4) of the bankruptcy code. In re Anzman, 73 B.R. 156 (Bankr. D. Colo. 1986).

Two tests applicable in determining whether corporation may make valid distribution to shareholder. The first test, the "equity insolvency test", considers whether a distribution will impair the corporation's ability to pay its debts as they become due in the usual course of business. The second test is the "balance sheet test". Paratransit Risk

Retention Group Ins. Co. v. Kamins, 160 P.3d 307 (Colo. App. 2007).

The court must consider whether the business can continue as a going concern and can maintain or replace financing necessary to pay debts as they come due and what the business can do in the future, including whether it will or will not be able pay its debts in the future. Paratransit Risk Retention Group Ins. Co. v. Kamins, 160 P.3d 307 (Colo. App. 2007).

The court shall make its findings and conclusions by comparing the number of debts unpaid, taking into account that the payments of smaller debts did not necessarily mean the company was solvent; determining the amount of the company's delinquency and considering any contingent liabilities as an element of the total debt; determining the materiality of the nonpayments, taking into account any unpaid premiums and future dates when payments will have to be paid on the outstanding claims; evaluating the company's conduct of its financial affairs, including whether the company is still operational and any sources of income; and limiting its measure of the effect of the distributions to the date each distribution was authorized. Paratransit Risk Retention Group Ins. Co. v. Kamins, 160 P.3d 307 (Colo. App. 2007).

Although it is a question of fact, taking profit from a corporation without paying shareholders may be considered theft. When majority shareholder used profits for personal uses, the majority shareholder, in essence, declared a distribution. Although a distribution was not formally announced, the trier of fact may find that this is theft from the minority shareholders, who are entitled to their share. Tisch v. Tisch, 2019 COA 41, 439 P.3d 89.

7-106-402. Unclaimed distributions.

If a corporation has mailed three successive distributions to a shareholder addressed to the shareholder's address shown on the corporation's current record of shareholders and the distributions have been returned as undeliverable, no further attempt to deliver distributions to the shareholder need be made until another address for the shareholder is made known to the corporation, at which time all distributions accumulated by reason of this section shall, except as otherwise provided by law, be mailed to the shareholder at such other address.

Source: L. 93: Entire article added, p. 764, § 1, effective July 1, 1994.

ARTICLE 107

Shareholders

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PART 1

MEETINGS

7-107-101. Annual meeting.

(1) A corporation shall hold a meeting of shareholders annually at a time and date stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(2) Unless the board of directors determines to hold the meeting solely by means of remote communication in accordance with section 7-107-108:

(a) Annual shareholders' 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 stated in or fixed in accordance with the bylaws, at a place stated in or fixed in accordance with a resolution of the board of directors.

(b) If no place is stated in or fixed pursuant to subsection (2)(a) of this section, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time 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 corporation.

Source: L. 93: Entire article added, p. 764, § 1, effective July 1, 1994. **L. 96:** Entire section amended, p. 1315, § 15, effective June 1. **L. 2021:** (2) amended, (HB 21-1124), ch. 41, p. 164, § 9, effective April 19.

7-107-102. Special meeting.

(1) A corporation shall hold a special meeting of shareholders:

(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) If the 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 the holders of shares representing at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the meeting.

(2) If not otherwise fixed under section 7-107-103 or 7-107-107, the record date for determining shareholders 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 corporation, whichever is later.

(3) Unless the board of directors determines to hold the meeting solely by means of remote communication in accordance with section 7-107-108:

(a) Special shareholders' 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 stated in or fixed in accordance with the bylaws, at a place stated in or fixed in accordance with a resolution of the board of directors.

(b) If no place is stated in or fixed pursuant to subsection (3)(a) of this section, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the notice of the meeting required by section 7-107-105 (3) may be conducted at a special shareholders' meeting.

Source: L. 93: Entire article added, p. 764, § 1, effective July 1, 1994. **L. 96:** (1)(a), (2), and (3) amended, p. 1316, § 16, effective June 1. **L. 2021:** (3) amended, (HB 21-1124), ch. 41, p. 165, § 10, effective April 19.

7-107-103. Court-ordered meeting.

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

(a) On application of any shareholder entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the close of the 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 7-107-102 (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 corporation pursuant to section 7-107-102 (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 shares entitled to participate in the meeting, fix a record date for determining shareholders 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. 93: Entire article added, p. 765, § 1, effective July 1, 1994. **L. 96:** IP(1) amended, p. 1316, § 17, effective June 1. **L. 2003:** IP(1) and (2) amended, p. 2317, § 234, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985).

Annotator's note. Since § 7-107-103 is similar to § 7-4-111 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Where there is conflict between the bylaws and this section as to who shall call special meetings, the statute is controlling. Grant v. Elder, 64 Colo. 104, 170 P. 198 (1918).

Otherwise a special meeting has no legal capacity. Where the time designated by the bylaws for holding the annual stockholders' meeting has passed, unless a special meeting is called by the persons designated by this section, the special meeting has no legal capacity. Grant v. Elder, 64 Colo. 104, 170 P. 198 (1918).

7-107-104. Action without meeting.

(1) Unless the articles of incorporation require that such action be taken at a shareholders' meeting, any action required or permitted by articles 101 to 117 of this title to be taken at a shareholders' meeting may be taken without a meeting if:

(a) All of the shareholders entitled to vote thereon consent to such action in writing; or

(b) Except as otherwise provided in subsection (1.5) of this section and if expressly provided for in the articles of incorporation, the shareholders holding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the shares entitled to vote thereon were present and voted consent to such action in writing.

(1.5) If shares are entitled to be voted cumulatively in the election of directors, shareholders may take action under this section to elect or remove directors only if:

(a) The articles of incorporation do not require that such action be taken at a shareholders' meeting; and

(b) All of the shareholders entitled to vote in the election or removal sign writings describing and consenting to the election or removal of the same directors and the writings are received by the corporation in accordance with subsection (2) of this section.

(2) (a) No action taken pursuant to this section is effective unless, within sixty days after the date the corporation first receives a document describing and consenting to the action and signed by a shareholder, the corporation has received documents that describe and consent to the action,

signed by shareholders holding at least the number of shares entitled to vote on the action as required by subsection (1) or (1.5) of this section, as the case may be, disregarding any such document that has been revoked pursuant to subsection (3) of this section.

(b) (I) Action taken pursuant to this section is effective as of the date the corporation receives the last document necessary to effect the action unless all of the documents necessary to effect the action state another date as the effective date of the action, in which case the stated date is the effective date of the action.

(II) A consent given by electronic transmission is delivered to the corporation upon the earliest of:

(A) When the consent enters an information processing system, if any, designated by the corporation for receiving consents if the electronic transmission is in a form capable of being processed by that system and the corporation is able to retrieve that electronic transmission. Whether the corporation has designated an information processing system to receive consents is determined by the articles of incorporation, by the bylaws, or from the context and surrounding circumstances, including the conduct of the corporation.

(B) When a paper reproduction of the consent is delivered to the corporation's principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders or members are recorded;

(C) When a paper reproduction of the consent is delivered to the corporation's registered office in this state by hand or by certified or registered mail, return receipt requested; or

(D) When delivered in such other manner, if any, provided by resolution of the board of directors or governing body of the corporation.

(III) A consent given by electronic transmission is delivered under this section even if no person is aware of its receipt. Receipt of an electronic acknowledgment from an information processing system establishes that a consent given by electronic transmission was received but does not, by itself, establish that the content sent corresponds to the content received.

(3) Any shareholder who has signed a document describing and consenting to action taken pursuant to this section may revoke the consent by a document signed and dated by the shareholder describing the action and stating that the shareholder's prior consent thereto is revoked, if the document is received by the corporation prior to the effectiveness of the action.

(4) If not otherwise fixed under subsection (7) of this section or section 7-107-107, the record date for determining shareholders entitled to take action pursuant to this section or entitled to be given notice under subsection (5.5) of this section of action taken pursuant to this section is the date the corporation first receives a document upon which the action is taken pursuant to this section.

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

(5.5) If action is taken under subsection (1) of this section with less than unanimous consent of all shareholders entitled to vote upon the action, the corporation or shareholders taking the action shall, upon receipt by the corporation of all documents necessary to effect the action, give notice of the action to all shareholders who were entitled to vote upon the action but who have not consented to the action in the manner provided in subsection (1) of this section. The notice must contain or be accompanied by the same material, if any, that would have been required under articles 101 to 117 of this title 7 to be given to shareholders in or with a notice of the meeting at which the action would have been submitted to the shareholders.

(6) (Deleted by amendment, L. 96, p. 1316, § 18, effective June 1, 1996.)

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

Source: L. 93: Entire article added, p. 766, § 1, effective July 1, 1994. **L. 96:** (2), (3), and (6) amended, p. 1316, § 18, effective June 1. **L. 2003:** (2) and (7) amended, p. 2318, § 235, effective July 1, 2004. **L. 2005:** (1), (2), (3), (4), and (7) amended and (1.5) and (5.5) added, p. 369, § 1, effective April 22. **L. 2021:** (2), (3), (4), (5.5), and (7) amended, (HB 21-1124), ch. 41, p. 165, § 11, effective April 19.

7-107-105. Notice of meeting.

(1) A corporation shall give notice to shareholders of the date, time, and place, if any, of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the date of the meeting; except that, if the number of authorized shares is to be increased, the corporation shall give at least thirty days' notice. Unless articles 101 to 117 of this title 7 or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless articles 101 to 117 of this title or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under section 7-107-103 or 7-107-107, the record date for determining shareholders entitled to be given notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is given to shareholders.

(5) (a) Subject to subsection (5)(b) of this section and unless otherwise required by the bylaws, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, if any, notice need not be given of the new date, time, or place, if any, if the new date, time, or place, if any, is announced at the meeting before adjournment.

(b) If a new record date for the adjourned meeting is or must be fixed under section 7-107-107, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

Source: L. 93: Entire article added, p. 767, § 1, effective July 1, 1994. **L. 2021:** (1) and (5) amended, (HB 21-1124), ch. 41, p. 166, § 12, effective April 19.

ANNOTATION

Annotator's note. Since § 7-107-105 is similar to § 7-4-112 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

A minority stockholder has the right to the statutory notice in order that he may attend and present his views in regard to the corporate management. Jones v. Pearl Mining Co., 20 Colo. 417, 38 P. 700 (1894) (decided under repealed Mills Ann. Stat. § 481).

But no additional notice is needed for an adjourned shareholders' meeting which is but continuation of meeting described in original notice. Morris Alpert & Sons v. Kahler, 31 Colo. App. 345, 502 P.2d 98 (1972).

Amended offer held not to constitute new business requiring new notice. Where original notice for shareholders' meeting provided that meeting was called to consider and act upon proposals for sale of assets of association and to transact such other business as may properly come before the meeting or any adjournment thereof and an amended proposal for sale of assets was discussed at the meeting and then at an adjourned meeting the amended proposal was accepted, the second meeting was not unlawfully called on theory that consideration of an amended offer constituted new business and that therefore meeting was not adjourned meeting but new meeting which under corporation's bylaws

required new notice. Morris Alpert & Sons v. Kahler, 31 Colo. App. 345, 502 P.2d 98 (1972).

7-107-106. Waiver of notice.

(1) A shareholder may waive any notice required by articles 101 to 117 of this title or by the articles of incorporation or 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 shareholder entitled to the notice, and be delivered to the 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 shareholder's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder 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 shareholder objects to considering the matter when it is presented.

Source: L. 93: Entire article added, p. 767, § 1, effective July 1, 1994.

7-107-107. Record date.

(1) The bylaws may fix or provide the manner of fixing a future date as the record date for one or more voting groups in order to determine the shareholders entitled to be given notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action, and if the bylaws do not fix or provide for fixing a record date, the board of directors may fix a future date as the record date; except that the record date for determining the shareholders entitled to take action without a meeting or entitled to be given notice of action so taken shall be determined as provided in section 7-107-104 (4).

(2) A record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to be given notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(4) 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 continues in effect or it may fix a new record date.

Source: L. 93: Entire article added, p. 768, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959).

Annotator's note. Since § 7-107-107 is similar to § 7-4-113 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Corporation elections cannot be stopped to settle questions of legal title, and it is important to the interests of the corporation that their elections should proceed under their own rules and with their own officers. Fehr v. Hadden, 134 Colo. 102, 300 P.2d 533 (1956) (decided under repealed § 31-2-7, CRS 53).

7-107-108. Remote participation in shareholders' meetings - meetings held solely by remote participation.

(1) Shareholders of any class or series of shares may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes participation for that class or series. Participation as a shareholder by means of remote communication is subject to such guidelines and procedures as the board of directors adopts and must be in conformity with subsection (2) of this section.

(2) Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to:

(a) Verify that each person participating remotely as a shareholder is a shareholder; and

(b) Provide the shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting, substantially concurrently with the proceedings.

(3) Unless the bylaws require the meeting of shareholders to be held at a place, the board of directors may determine that a meeting of shareholders will not be held at any place and instead

will be held solely by means of remote communication, but only if the corporation implements the measures specified in subsection (2) of this section.

Source: L. 93: Entire article added, p. 768, § 1, effective July 1, 1994. **L. 2021:** Entire section R&RE, (HB 21-1124), ch. 41, p. 167, § 13, effective April 19.

PART 2

VOTING

7-107-201. Shareholders' list for meeting.

(1) After fixing a record date for a shareholders' meeting, the corporation shall prepare a list of the names of all its shareholders who are entitled to be given notice of the meeting. The list shall be arranged by voting groups and within each voting group by class or series of shares, shall be alphabetical within each class or series, and shall show the address of, and the number of shares of each such class and series that are held by, each shareholder.

(2) (a) The shareholders' list must be available for inspection by any shareholder, 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:

(I) At the corporation's principal office or at a place identified in the notice of the meeting in the city in which the meeting will be held; or

(II) On a reasonably accessible electronic network if the information required to gain access to the list is provided with the notice of the meeting. If the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that the list is available only to shareholders of the corporation.

(b) A shareholder or an agent or attorney of the shareholder is entitled, on written demand, to inspect and, subject to sections 7-116-102 (3) and 7-116-103 (2) and (3), to copy the list during regular business hours and during the period it is available for inspection.

(3) If the meeting is to be held at a place, the corporation shall make the shareholders' list available at the meeting, and any shareholder or an agent or attorney of the shareholder is entitled to inspect the list at any time during the meeting or any adjournment. If the meeting is to be held solely by means of remote communication, the list must also be open to inspection during the meeting on a reasonably accessible electronic network, and the corporation shall provide, with the notice of the meeting, all information required to access the list.

(4) If the corporation refuses to allow a shareholder or an agent or attorney of the shareholder to inspect the shareholders' list before or at the meeting or to copy the list, as permitted by subsection (2) or (3) of this section, the district court for the county in this state in which the street address of the corporation's principal office is located or, if the 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 corporation has no registered agent, the district court for the city and county of Denver may, on application of the shareholder, summarily order the inspection or copying of the list at the corporation's expense and may postpone or adjourn the meeting for which the list was prepared until the inspection or copying is complete.

(5) If a court orders inspection or copying of the shareholders' list pursuant to subsection (4) of this section, unless the 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 shareholder or the agent or attorney of the shareholder to inspect or copy the shareholders' list:

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

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

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

(6) If a court orders inspection or copying of the shareholders' list pursuant to subsection (4) of this section, the court may impose reasonable restrictions on the use or distribution of the list by the shareholder.

(7) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Source: L. 93: Entire article added, p. 769, § 1, effective July 1, 1994. **L. 96:** (2), (3), and (4) amended, p. 1317, § 19, effective June 1. **L. 2003:** (2) and (4) amended, p. 2318, § 236, effective July 1, 2004. **L. 2021:** (2), (3), and (7) amended, (HB 21-1124), ch. 41, p. 167, § 14, effective April 19.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959).

Annotator's note. Since § 7-107-201 is similar to § 7-4-113 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision

and its predecessors have been included in the annotations to this section.

Corporation elections cannot be stopped to settle questions of legal title, and it is important to the interests of the corporation that their elections should proceed under their own rules and with their own officers. Fehr v. Hadden, 134 Colo. 102, 300 P.2d 533 (1956) (decided under repealed § 31-2-7, CRS 53).

7-107-202. Voting entitlement of shares.

(1) Except as otherwise provided in subsections (2) and (4) of this section or in the articles of incorporation, each outstanding share, regardless of class, is entitled to one vote, and each fractional share is entitled to a corresponding fractional vote, on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Except as otherwise ordered by a court of competent jurisdiction upon a finding that the purpose of this subsection (2) would not be violated in the circumstances presented to the court, the shares of a corporation are not entitled to be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to be voted after notice of redemption is delivered to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Source: L. 93: Entire article added, p. 770, § 1, effective July 1, 1994. **L. 2021:** (4) amended, (HB 21-1124), ch. 41, p. 168, § 15, effective April 19.

ANNOTATION

Law reviews. For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950). For article, "One Year Review of Corporations, Partnerships, and Agency", see 34 Dicta 129 (1957).

Annotator's note. Since § 7-107-202 is similar to § 7-4-116 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Shareholder has right to vote one vote for every share. Under this section, unless otherwise provided in the articles of incorporation, every shareholder of record of a corporation shall have the right at every shareholders' meeting to vote one vote for every share standing in his name on the books of the corporation, even though at some time in the future he intends to dispose of his stock. Fehr v. Hadden, 134 Colo. 102, 300 P.2d 533 (1956) (decided under repealed § 31-2-7, CRS 53).

But denial of voting rights to one class of common stock in an election for directors of a corporation does not violate public policy. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

The term "trustee" means a person who holds the legal title to stock for the benefit of some third party who is the stock's equitable owner and entitled to the dividends thereon and whose property, whether held in trust or otherwise, is chargeable with whatever liability may result from the ownership of the stock. Persons holding stock in trust for married women, minors, insane persons, spendthrifts, and the like would be included by the term "trustee". Nat'l Bank of Commerce v. Allen, 90 F. 545 (8th Cir. 1898).

Pledgor has right to vote his stock. Where stock is placed in the hands of a person by the real owner to be held merely as collateral security for a debt due from himself to a third person, the stock involved is really held in pledge, and the right to vote the same, in the absence of an express agreement to the contrary, remains with the pledgor. Miller v. Murray, 17 Colo. 408, 30 P. 46 (1892); Nat'l Bank of Commerce v. Allen, 90 F. 545 (8th Cir. 1898).

7-107-203. Proxies.

(1) A shareholder may vote the shareholder's shares in person or by proxy.

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

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

(b) A shareholder may appoint a proxy by an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent duly authorized by the person who will be the holder of the proxy to receive the transmission. The transmission must set forth or be submitted with information from which it can be determined that the shareholder authorized the electronic transmission. If it is determined that an electronic transmission is valid, the person making that determination shall specify the information upon which the person relied.

(3) An appointment of a proxy is effective against the corporation when received by the corporation, including receipt by the corporation of an appointment transmitted pursuant to subsection (2)(b) of this section. An appointment is valid for the term specified in the appointment form and, if no term is specified, is valid for eleven months unless the appointment is irrevocable under subsection (5) of this section.

(4) A copy, facsimile, telecommunication, or other reliable reproduction of the document, including any electronic transmission, created pursuant to subsection (2) of this section may be substituted or used in lieu of the original document for any and all purposes for which the original document could be used if the copy, facsimile, telecommunication, or other reproduction is a complete reproduction of the entire original document.

(5) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following persons or their designees:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended credit to the corporation under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 7-107-302.

(6) The death or incapacity of the shareholder appointing a proxy does not affect the right of the 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.

(7) An appointment made irrevocable under subsection (5) of this section is revoked when the interest with which it is coupled is extinguished, but such revocation does not affect the right of the corporation to accept the proxy's authority unless:

(a) The corporation had notice that the appointment was coupled with that interest and notice that the interest is extinguished 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; or

(b) Other notice of the revocation of the appointment 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) The corporation shall not be required to recognize an appointment made irrevocable under subsection (5) of this section if it has received a writing revoking the appointment signed by the shareholder either personally or by the shareholder's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to revoke the appointment. This provision shall not affect any claim such other person may have against the shareholder with respect to the revocation.

(9) Unless an appointment otherwise provides, an appointment made irrevocable under subsection (5) of this section continues in effect after a transfer of the shares and a transferee takes the shares subject to the appointment; except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if:

(a) The transferee did not know of its existence when the transferee acquired the shares; and

(b) The existence of the irrevocable appointment was not noted on the certificate representing the shares or on the information statement for shares without certificates.

(10) Subject to section 7-107-205 and to any express limitation on the proxy's authority appearing on the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source: L. 93: Entire article added, p. 770, § 1, effective July 1, 1994. **L. 96:** (3) amended, p. 1318, § 20, effective June 1. **L. 2004:** (6), (7)(a), (7)(b), and (9) amended, p. 1496, § 250, effective July 1. **L. 2019:** (3) and (9) amended, (SB 19-086), ch. 166, p. 1927, § 31, effective July 1, 2020. **L. 2021:** IP(2) and (2)(b) amended and (4) R&RE, (HB 21-1124), ch. 41, p. 168, § 16, effective April 19.

ANNOTATION

Law reviews. For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950). For article, "One Year Review of Corporations, Partnerships, and Agency", see 34 Dicta 129 (1957).

Annotator's note. Since § 7-107-203 is similar to § 7-4-116 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Shareholder has right to vote one vote for every share. Under this section, unless otherwise provided in the articles of incorporation, every shareholder of record of a corporation shall have the right at every shareholders' meeting to vote one vote for every share standing in his name on the books of the corporation, even though at some time in the future he intends to dispose

of his stock. Fehr v. Hadden, 134 Colo. 102, 300 P.2d 533 (1956) (decided under repealed § 31-2-7, CRS 53).

But denial of voting rights to one class of common stock in an election for directors of a corporation does not violate public policy. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

The term "trustee" means a person who holds the legal title to stock for the benefit of some third party who is the stock's equitable owner and entitled to the dividends thereon and whose property, whether held in trust or otherwise, is chargeable with whatever liability may result from the ownership of the stock. Persons holding stock in trust for married women, minors, insane persons, spendthrifts, and the like would be included by the term "trustee". Nat'l Bank of Commerce v. Allen, 90 F. 545 (8th Cir. 1898).

Pledgor has right to vote his stock. Where stock is placed in the hands of a person by the real owner to be held merely as collateral security for a debt due from himself to a third person, the stock involved is really held in pledge, and the right to vote the same, in the absence of an express agreement to the contrary, remains with the pledgor. Miller v. Murray, 17 Colo. 408, 30 P. 46 (1892); Nat'l Bank of Commerce v. Allen, 90 F. 545 (8th Cir. 1898).

7-107-204. Shares held by intermediaries and nominees.

(1) A corporation's board of directors may establish a procedure by which a beneficial owner is recognized by the corporation in its records as the shareholder. The extent, terms, conditions, and limitations of this treatment must be specified in the procedure so established. To the extent that the beneficial owner is treated under the procedure as having rights or privileges that the shareholder otherwise would have, the shareholder does not have those rights or privileges.

(2) The procedure described in subsection (1) of this section must specify:

(a) The types of intermediaries or nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner, which may include rights or privileges other than voting;

(c) The manner in which the procedure may be used by the intermediary or nominee;

(d) The information that shall be provided by the intermediary or nominee when the procedure is used;

(e) The period for which the intermediary's or nominee's use of the procedure is effective;

(f) Requirements for notice to the corporation with respect to the arrangement, including any requirements for the deposit with the corporation of the beneficial ownership certificate;

(g) The form and contents of the beneficial ownership certificate; and

(h) Other aspects of the rights and duties thereby created.

Source: L. 93: Entire article added, p. 772, § 1, effective July 1, 1994. **L. 2003:** IP(2) amended, p. 2319, § 237, effective July 1, 2004. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1928, § 32, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "1984 Revisions to the Colorado Corporation Code: Effective March 1984", see 13 Colo. Law. 993 (1984).

7-107-205. Corporation's acceptance of votes.

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

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

(a) The shareholder 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 shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, proxy appointment, or proxy appointment revocation;

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

(e) Two or more persons are the shareholder 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, ballot, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the corporation that are not inconsistent with the provisions of this subsection (2).

(3) The corporation is entitled to reject a vote, ballot, consent, 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 shareholder.

(4) Neither the corporation nor the person authorized to count votes that accepts or rejects a vote, ballot, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section is liable in damages for the consequences of the acceptance or rejection.

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

Source: L. 93: Entire article added, p. 773, § 1, effective July 1, 1994. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1928, § 33, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950). For article, "One Year Review of Corporations, Partnerships, and Agency", see 34 Dicta 129 (1957).

Annotator's note. Since § 7-107-205 is similar to § 7-4-116 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Shareholder has right to vote one vote for every share. Under this section, unless otherwise provided in the articles of incorporation, every shareholder of record of a corporation shall have the right at every shareholders' meeting to vote one vote for every share standing in his name on the books of the corporation, even though at some time in the future he intends to dispose of his stock. Fehr v. Hadden, 134 Colo. 102, 300 P.2d 533 (1956) (decided under repealed § 31-2-7, CRS 53).

But denial of voting rights to one class of common stock in an election for directors of a corporation does not violate public policy. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

The term "trustee" means a person who holds the legal title to stock for the benefit of some third party who is the stock's equitable owner and entitled to the dividends thereon and whose property, whether held in trust or otherwise, is chargeable with whatever liability may result from the ownership of the stock. Persons holding stock in trust for married women, minors, insane persons, spendthrifts, and the like would be included by the term "trustee". Nat'l Bank of Commerce v. Allen, 90 F. 545 (8th Cir. 1898).

Pledgor has right to vote his stock. Where stock is placed in the hands of a person by the real owner to be held merely as collateral security for a debt due from himself to a third person, the stock involved is really held in pledge, and the right to vote the same, in the absence of an express agreement to the contrary, remains with the pledgor. Miller v. Murray, 17 Colo. 408, 30 P. 46 (1892); Nat'l Bank of Commerce v. Allen, 90 F. 545 (8th Cir. 1898).

7-107-206. Quorum and voting requirements for voting groups.

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless otherwise provided in articles 101 to 117 of this title or in the articles of incorporation, a majority 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, but a quorum shall not consist of fewer than one-third of the votes entitled to be cast on the matter by the voting group.

(2) Once a share is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless otherwise provided in the articles of incorporation 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 101 to 117 of this title or the articles of incorporation.

(4) An amendment to the articles of incorporation 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 7-107-208 (2).

(5) The election of directors is governed by section 7-107-209.

Source: L. 93: Entire article added, p. 774, § 1, effective July 1, 1994.

7-107-207. Action by single and multiple voting groups.

(1) If articles 101 to 117 of this title or the articles of incorporation 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 7-107-206.

(2) If articles 101 to 117 of this title or the articles of incorporation 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 7-107-206. 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. 93: Entire article added, p. 774, § 1, effective July 1, 1994.

7-107-208. Greater quorum or voting requirements.

(1) The articles of incorporation or, if authorized by the articles of incorporation, bylaws adopted by the shareholders may provide for a greater quorum or voting requirement for shareholders or voting groups than is provided for by articles 101 to 117 of this title.

(2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or 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. 93: Entire article added, p. 775, § 1, effective July 1, 1994.

7-107-209. Voting for directors - cumulative voting.

(1) At each election for directors, every shareholder entitled to vote at such election has the right:

(a) To vote, in person or by proxy, all of the shareholder's votes for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote unless the articles of incorporation provide otherwise; or

(b) To the extent that the privilege of cumulative voting in the election of directors is in effect pursuant to the provisions of section 7-102-102 (3), to cumulate votes by multiplying the number of votes the shareholder is entitled to cast by the number of directors for whom the shareholder is entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

(2) The articles of incorporation may provide that shares otherwise entitled to vote cumulatively may not be voted cumulatively at a meeting unless:

(a) The notice of the meeting or the proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(b) A shareholder who has the right to cumulate votes gives notice to the corporation not less than forty-eight hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting. If one shareholder gives the notice provided for in this paragraph (b), all other shareholders in the same voting group participating in the election shall be entitled to cumulate their votes without giving further notice.

(3) If, before a meeting of shareholders at which directors are to be elected, the corporation receives notice pursuant to paragraph (b) of subsection (2) of this section with respect to that meeting, then:

(a) If such notice is received sufficiently early that the information required by paragraph (a) of subsection (2) of this section can be included, without significant additional expense, in the notice of the meeting or in a proxy statement accompanying the notice, the corporation shall include such information in that notice or proxy statement; or

(b) If such notice is received later than contemplated in paragraph (a) of this subsection (3), the corporation may take such other action as it may deem appropriate to provide notice, to the voting group or groups that are affected by the shareholder's notice, that cumulative voting is authorized at the meeting for such voting group or groups; and, in any event, the corporation shall cause an announcement to be made at the meeting, before the taking of any vote with respect to which cumulative voting is in effect, that cumulative voting is authorized at the meeting.

(4) In an election of 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.

Source: L. 93: Entire article added, p. 775, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950). For article, "One Year Review of Corporations, Partnerships, and Agency", see 34 Dicta 129 (1957).

Annotator's note. Since § 7-107-209 is similar to § 7-4-116 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Shareholder has right to vote one vote for every share. Under this section, unless otherwise provided in the articles of incorporation, every shareholder of record of a corporation shall have the right at every shareholders' meeting to vote one vote for every share standing in his name on the books of the corporation, even though at some time in the future he intends to dispose of his stock. Fehr v. Hadden, 134 Colo. 102, 300 P.2d 533 (1956) (decided under repealed § 31-2-7, CRS 53).

But denial of voting rights to one class of common stock in an election for directors of a corporation does not violate public policy. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

The term "trustee" means a person who holds the legal title to stock for the benefit of some third party who is the stock's equitable owner and entitled to the dividends thereon and whose property, whether held in trust or otherwise, is chargeable with whatever liability may result from the ownership of the stock. Persons holding stock in trust for married women, minors, insane persons, spendthrifts, and the like would be included by the term "trustee". Nat'l Bank of Commerce v. Allen, 90 F. 545 (8th Cir. 1898).

Pledgor has right to vote his stock. Where stock is placed in the hands of a person by the real owner to be held merely as collateral security for a debt due from himself to a third person, the stock involved is really held in pledge, and the right to vote the same, in the absence of an express agreement to the contrary, remains with the pledgor. Miller v. Murray, 17 Colo. 408, 30 P. 46 (1892); Nat'l Bank of Commerce v. Allen, 90 F. 545 (8th Cir. 1898).

PART 3

VOTING TRUSTS AND AGREEMENTS

7-107-301. Voting trusts.

(1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and by transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and promptly cause the

corporation to receive copies of the list and agreement. Thereafter, the trustee shall cause the corporation to receive changes to the list promptly as they occur and amendments to the agreement promptly as they are made.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the trustee's written consent to the extension. An extension is valid for not more than ten years after the date the first shareholder signs the extension agreement, unless such signing occurs within two years before the expiration date of the voting trust as originally fixed or as last extended, in which case the extension is valid for not more than ten years after the expiration date of the voting trust as originally fixed or last extended. The trustee shall cause the corporation to receive copies of the extension agreement. An extension agreement binds only those parties signing it.

Source: L. 93: Entire article added, p. 776, § 1, effective July 1, 1994.

7-107-302. Voting agreements.

(1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 7-107-301.

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

Source: L. 93: Entire article added, p. 777, § 1, effective July 1, 1994.

PART 4

ACTIONS BY SHAREHOLDERS

7-107-401. Definition of "shareholder" - repeal. (Repealed)

Source: L. 93: Entire article added, p. 777, § 1, effective July 1, 1994. **L. 2019:** (2) added by revision, (SB 19-086), ch. 166, pp. 1930, 1966, §§ 34, 72.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 2020. (See L. 2019, pp. 1930, 1966.)

7-107-402. Actions by shareholders.

(1) No action shall be commenced by a shareholder in the right of a domestic corporation, and no action shall be commenced in this state by a shareholder in the right of a foreign corporation, unless the plaintiff was a shareholder of the corporation at the time of the transaction of which the plaintiff complains or the plaintiff is a person upon whom shares or voting trust certificates thereafter devolved by operation of law from a person who was a shareholder at such time.

(2) In any action instituted on or after January 1, 1959, in the right of any domestic or foreign corporation by a shareholder, the court having jurisdiction, upon final judgment and a finding that the action was commenced without reasonable cause, shall require the plaintiff to pay to the parties named as defendants the costs and reasonable expenses directly attributable to the defense of such action, but not including fees of attorneys.

(3) In any action pending, instituted, or maintained on or after January 1, 1959, in the right of any domestic or foreign corporation by a shareholder holding less than five percent of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is commenced shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by it in the defense of such action or may be incurred by other parties named as defendant for which it may become legally liable, but not including fees of attorneys. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that the plaintiff becomes a party to the action. 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 corporation shall have recourse to such security in such amount as the court shall determine upon the termination of such action.

Source: L. 93: Entire article added, p. 777, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "The Long and Winding Road to Public Benefit Corporations in Colorado", see 43 Colo. Law. 39 (Jan. 2014).

Annotator's note. Since § 7-107-402 is similar to § 7-4-121 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Use of the term "holder of shares" instead of "holder of record of shares" (as used in § 7-1-102) suggests that a plaintiff in a derivative claim based on state law need not be a record owner of shares throughout the pendency of the lawsuit. Mullen v. Sweetwater Development Corp., 619 F. Supp. 809 (D. Colo. 1985).

A stockholder with knowledge of material facts who has acquiesced in a transaction ordinarily cannot attack the transaction on behalf of the corporation, nor may that stockholder bring such an action unless he acts promptly. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

But affirmative defenses may not be asserted against corporation in derivative suit. The affirmative defenses of laches, acquiescence, waiver, ratification, estoppel, and unclean hands on the part of a plaintiff stockholder ordinarily may not be asserted against the corporation in a stockholder's derivative suit. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Similarly, the corporation itself has no standing to urge that plaintiff is guilty of laches. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

ARTICLE 108

Directors and Officers

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PART 1

BOARD OF DIRECTORS

7-108-101. Requirement for board of directors.

(1) Except as otherwise provided in its articles of incorporation, each corporation shall have a board of directors.

(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 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.

Source: L. 93: Entire article added, p. 778, § 1, effective July 1, 1994. **L. 2003:** (2) amended, p. 2319, § 238, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "Corporate Organization: A Manual of Colorado Procedure", see 1 Rocky Mt. L. Rev. 3 (1928). For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For article, "Liabilities of Directors of Closely Held Corporations", see 36 U. Colo. L. Rev. 95 (1963). For article, "Conflict of Interest Transactions: Fiduciary Duties of Corporate Directors Who Are Also Controlling Shareholders", see 57 Den. L. J. 609 (1980). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "Colorado Expands Protections For Corporate Directors", see 16 Colo. Law. 1387 (1987).

Annotator's note. Since § 7-108-101 is similar to § 7-5-101 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

This section vests in the board of directors of a corporation all corporate powers. People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke, 72 Colo. 486, 212 P. 837 (1923); Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

Power to issue series of stock. Directors, acting for the corporation, as they are empowered to do by the articles, have the power to issue series of stock as authorized by the articles. Paulek v. Isgar, 38 Colo. App. 29, 551 P.2d 213 (1976).

Where power to transact corporate business is lodged in the directors, stockholders cannot contract either individually or while acting together at stockholders' meetings unless all of the stockholders are in attendance at such meetings. Colo. Springs Co. v. Am. Publ'g Co., 97 F. 843 (D. Colo. 1899).

Or exercise statutory waivers. It does not lie within the power of stockholders to exercise a statutory waiver in a matter concerning the corporation; rather the discretion to waive the protection afforded by such a statute can only be exercised by the governing officials of the corporation, namely the officers or the board of directors. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

In bankruptcy the trustee acts for the directors. Since the United States bankruptcy act confers broad powers upon a trustee in bankruptcy, such a trustee takes the place and exercises the office of the directors of a corporation in bankruptcy. Weck v. District Court, 161 Colo. 384, 422 P.2d 46 (1967).

Directors occupy quasi-fiduciary relation to corporation. In addition to their statutory powers and duties, directors of a corporation are in a broad sense agents of

the corporation in that they occupy a quasi-fiduciary relation to the corporation and to its stockholders. Hence they must manage the corporate affairs in good faith within the limits of the law applicable and give the corporate entity the benefit of their best judgment and care. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Fiduciary duty to minority stockholder was not breached when the directors interfered with shareholder's management contract with the corporation since the shareholder was acting in his capacity as an independent contractor under the management contract with the corporation rather than as a stockholder. Bithell v. W. Care Corp., 762 P.2d 708 (Colo. App. 1988).

Discretionary powers, if honestly exercised, are not subject to control. Within the limits of their legal authority, directors of a corporation possess by necessity a large amount of discretionary power, and that power, if exercised honestly and with reason, is not subject to control by either the stockholders or the courts. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Courts will not, at the instance of stockholders or otherwise, interfere with or regulate the conduct of the directors in the reasonable and honest exercise of their judgment and duties. Rywalt v. Writer Corp., 34 Colo. App. 334, 526 P.2d 316 (1974).

Thus courts will accept business judgments unless unlawful. Since management, backed by majority stock control, has a wide discretion in making business judgments, a court will hospitably accept those business judgments when made with an eye single to the interest of the corporation unless manifestly unlawful. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

The good faith acts of directors which are within the powers of the corporation and within the exercise of an honest business judgment are valid. Rywalt v. Writer Corp., 34 Colo. App. 334, 526 P.2d 316 (1974).

But when self-interest or improper motives are indicated inconsistent with legitimate corporate purposes or basic principles on which corporations must operate, the court has a duty to carefully scrutinize action by the directors to determine whether it was within the perimeter of permissible action. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Thus a contract employing director to secure a particular corporate action violates this section. A contract of employment which obligates a director to assist one to control the corporate action of the company in securing a particular lease, regardless of his duty as a director to represent and act for all the stockholders alike is against the policy of the law under this section. Singers-Bigger v. Young, 166 F. 82 (8th Cir. 1908).

For a contract of this character would tend to deprive the stockholders of the benefit of defendant's independent and impartial judgment, subordinate the interests

of the corporation, which his duty required him to serve, to the individual interests of his employer, and would be contrary to public policy and void. Singers-Bigger v. Young, 166 F. 82 (8th Cir. 1908).

Remedy of stockholders dissatisfied with corporate management is electing new directors. The officers and directors of a corporation are presumed to represent the will of a majority of the stockholders; thus, when stockholders simply become dissatisfied with corporate management, ordinarily the remedy is to install new management by the election of new directors. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965); Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

This section gives directors express authority to fix compensation and the fixing of salaries by directors falls within the "business judgment" rule. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Applied in Masinton v. Dean, 659 P.2d 50 (Colo. App. 1982).

7-108-102. Qualifications of directors.

A director shall be an individual who is eighteen years of age or older. The bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a shareholder unless the bylaws so prescribe.

Source: L. 93: Entire article added, p. 778, § 1, effective July 1, 1994. **L. 2004:** Entire section amended, p. 1497, § 251, effective July 1.

ANNOTATION

Law reviews. For article, "Corporate Organization: A Manual of Colorado Procedure", see 1 Rocky Mt. L. Rev. 3 (1928). For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For article, "Liabilities of Directors of Closely Held Corporations", see 36 U. Colo. L. Rev. 95 (1963). For article, "Conflict of Interest Transactions: Fiduciary Duties of Corporate Directors Who Are Also Controlling Shareholders", see 57 Den. L. J. 609 (1980). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "Colorado Expands Protections For Corporate Directors", see 16 Colo. Law. 1387 (1987).

Annotator's note. Since § 7-108-101 is similar to § 7-5-102 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

This section vests in the board of directors of a corporation all corporate powers. People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke, 72 Colo. 486, 212 P. 837 (1923); Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

Power to issue series of stock. Directors, acting for the corporation, as they are empowered to do by the articles, have the power to issue series of stock as authorized by the articles. Paulek v. Isgar, 38 Colo. App. 29, 551 P.2d 213 (1976).

Where power to transact corporate business is lodged in the directors, stockholders cannot contract either individually or while acting together at stockholders' meetings unless all of the stockholders are in attendance at such meetings. Colo. Springs Co. v. Am. Publ'g Co., 97 F. 843 (D. Colo. 1899).

Or exercise statutory waivers. It does not lie within the power of stockholders to exercise a statutory waiver in a matter concerning the corporation; rather the discretion to waive the protection afforded by such a statute can only be exercised by the governing officials of the corporation, namely the officers or the board of directors. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

In bankruptcy the trustee acts for the directors. Since the United States bankruptcy act confers broad powers upon a trustee in bankruptcy, such a trustee takes the place and exercises the office of the directors of a corporation in bankruptcy. Weck v. District Court, 161 Colo. 384, 422 P.2d 46 (1967).

Directors occupy quasi-fiduciary relation to corporation. In addition to their statutory powers and duties, directors of a corporation are in a broad sense agents of the corporation in that they occupy a quasi-fiduciary relation to the corporation and to its stockholders. Hence they must manage the corporate affairs in good faith within the limits of the law applicable and give the corporate entity the benefit of their best judgment and care. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Fiduciary duty to minority stockholder was not breached when the directors interfered with shareholder's management contract with the corporation since the shareholder was acting in his capacity as an independent contractor under the management contract with the corporation rather than as a stockholder. Bithell v. W. Care Corp., 762 P.2d 708 (Colo. App. 1988).

Discretionary powers, if honestly exercised, are not subject to control. Within the limits of their legal authority, directors of a corporation possess by necessity a large amount of discretionary power, and that power, if exercised honestly and with reason, is not subject to control by either the stockholders or the courts. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Courts will not, at the instance of stockholders or otherwise, interfere with or regulate the conduct of the directors in the reasonable and honest exercise of their judgment and duties. Rywalt v. Writer Corp., 34 Colo. App. 334, 526 P.2d 316 (1974).

Thus courts will accept business judgments unless unlawful. Since management, backed by majority stock control, has a wide discretion in making business judgments, a court will hospitably accept those business judgments when made with an eye single to the interest of the corporation unless manifestly unlawful. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

The good faith acts of directors which are within the powers of the corporation and within the exercise of an honest business judgment are valid. Rywalt v. Writer Corp., 34 Colo. App. 334, 526 P.2d 316 (1974).

But when self-interest or improper motives are indicated inconsistent with legitimate corporate purposes or basic principles on which corporations must operate, the court has a duty to carefully scrutinize action by the directors to determine whether it was within the perimeter of permissible action. Herald Co. v. Bonfils, 315 F. Supp. 497 (D. Colo. 1970), rev'd on other grounds sub nom. Herald v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Thus a contract employing director to secure a particular corporate action violates this section. A contract of employment which obligates a director to assist one to control the corporate action of the company in securing a particular lease, regardless of his duty as a director to represent and act for all the stockholders alike is against the policy of the law under this section. Singers-Bigger v. Young, 166 F. 82 (8th Cir. 1908).

For a contract of this character would tend to deprive the stockholders of the benefit of defendant's independent and impartial judgment, subordinate the interests of the corporation, which his duty required him to serve, to the individual interests of his employer, and would be contrary to public policy and void. Singers-Bigger v. Young, 166 F. 82 (8th Cir. 1908).

Remedy of stockholders dissatisfied with corporate management is electing new directors. The officers and directors of a corporation are presumed to represent the will of a majority of the stockholders; thus, when stockholders simply become dissatisfied with corporate management, ordinarily the remedy is to install new management by the election of new directors. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965); Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

This section gives directors express authority to fix compensation and the fixing of salaries by directors falls within the "business judgment" rule. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Applied in Masinton v. Dean, 659 P.2d 50 (Colo. App. 1982).

7-108-103. Number and election of directors.

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

(2) The bylaws may 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 shareholders or the board of directors.

(3) Directors are elected at each annual meeting of the shareholders except as provided in section 7-108-106.

Source: L. 93: Entire article added, p. 778, § 1, effective July 1, 1994. **L. 2003:** (1) amended, p. 2319, § 239, effective July 1, 2004.

ANNOTATION

Law reviews. For article, "Legislative Update", see 11 Colo. Law. 2142 (1982). For article, "Colorado Expands Protections For Corporate Directors", see 16 Colo. Law. 1387 (1987).

Annotator's note. Since § 7-108-103 is similar to § 7-5-102 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Directors named by incorporators are directors by operation of law. The persons who are named by the incorporators in the articles of incorporation as directors for the first year are created such directors by operation of law and not by election of the stockholders after the corporation is formed. Humphreys v. Mooney, 5 Colo. 282 (1880).

Otherwise selection of the directors of a corporation belongs to the stockholders. It is in a sense an individual right in them, as distinguished from a power of the corporation in its single aggregate capacity. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Fort Lyon Canal Co., 173 F. 601 (8th Cir. 1909); People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke, 72 Colo. 486, 212 P. 837 (1923).

Their right to vote for directors is specifically prescribed by this section and does not proceed from any act, contract, or bylaw of the corporation. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Fort Lyon Canal Co., 173 F. 601 (8th Cir. 1909).

However, denial of voting rights to one class of common stock in an election for directors of a corporation does not violate public policy. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

The statute plainly permits shareholders to set the number of directors, and a bylaw that removes that right is contrary to law. Harding v. Heritage Health Prods. Co., 98 P.3d 945 (Colo. App. 2004).

This section operates as a restriction upon the jurisdiction of a court to control corporate elections; a court has no jurisdiction, under the guise of either supervision or regulation, to direct the stockholders to proceed in electing directors in any other way than that which this section has provided. People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke, 72 Colo. 486, 212 P. 837 (1923).

And so stockholders who refuse to obey the provision of a decree rendered by a district court requiring them in nominating and voting for directors to observe the provisions of that decree, which is contrary to the way which this section provides, are not guilty of contempt. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Lubers, 72 Colo. 513, 212 P. 848 (1923).

Fiduciary duty to minority stockholder was not breached when the directors interfered with shareholder's management contract with the corporation since the shareholder was acting in his capacity as an independent contractor under the management contract with the corporation rather than as a stockholder. Bithell v. Western Care Corp., 762 P.2d 708 (Colo. App. 1988).

7-108-104. Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares of the corporation into classes or series, the articles of incorporation may authorize the election of all or a stated number or portion of directors by the holders of one or more authorized classes or series of shares. A class or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Source: L. 93: Entire article added, p. 779, § 1, effective July 1, 1994. **L. 2003:** Entire section amended, p. 2319, § 240, effective July 1, 2004.

7-108-105. Terms of directors generally.

(1) Except as provided in section 7-108-106, the terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) Except as provided in section 7-108-106, the terms of all other directors expire at the next annual shareholders' meeting following their election.

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

(4) The term of a director elected to fill a vacancy pursuant to section 7-108-110 (1)(b) or 7-108-110 (1)(c) expires at the next annual shareholders' meeting at which directors are elected. The term of a director elected to fill a vacancy pursuant to section 7-108-110 (1)(a) shall be the

unexpired term of the director's predecessor in office; except that, if the director's predecessor had been elected to fill a vacancy pursuant to section 7-108-110 (1)(b) or 7-108-110 (1)(c), the term of a director elected pursuant to section 7-108-110 (1)(a) shall be the unexpired term of the last predecessor elected by the shareholders.

(5) Despite the expiration of the director's term, a director continues to serve until the director's successor is elected and qualifies.

(6) (Deleted by amendment, L. 2004, p. 1497, § 252, effective July 1, 2004.)

Source: L. 93: Entire article added, p. 779, § 1, effective July 1, 1994. **L. 2000:** (6) amended, p. 978, § 55, effective July 1. **L. 2002:** (6) amended, p. 1848, § 110, effective July 1; (6) amended, p. 1712, § 110, effective October 1. **L. 2004:** (4), (5), and (6) amended, p. 1497, § 252, effective July 1.

ANNOTATION

Law reviews. For article, "Legislative Update", see 11 Colo. Law. 2142 (1982).

Annotator's note. Since § 7-108-105 is similar to § 7-5-102 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Directors named by incorporators are directors by operation of law. The persons who are named by the incorporators in the articles of incorporation as directors for the first year are created such directors by operation of law and not by election of the stockholders after the corporation is formed. Humphreys v. Mooney, 5 Colo. 282 (1880).

Otherwise selection of the directors of a corporation belongs to the stockholders. It is in a sense an individual right in them, as distinguished from a power of the corporation in its single aggregate capacity. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Fort Lyon Canal Co., 173 F. 601 (8th Cir. 1909); People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke, 72 Colo. 486, 212 P. 837 (1923).

Their right to vote for directors is specifically prescribed by this section and does not proceed from any act, contract, or bylaw of the corporation. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Fort Lyon Canal Co., 173 F. 601 (8th Cir. 1909).

However, denial of voting rights to one class of common stock in an election for directors of a corporation does not violate public policy. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

This section operates as a restriction upon the jurisdiction of a court to control corporate elections; a court has no

jurisdiction, under the guise of either supervision or regulation, to direct the stockholders to proceed in electing directors in any other way than that which this section has provided. People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke, 72 Colo. 486, 212 P. 837 (1923).

And so stockholders who refuse to obey the provision of a decree rendered by a district court requiring them in nominating and voting for directors to observe the provisions of that decree, which is contrary to the way which this section provides, are not guilty of contempt. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Lubers, 72 Colo. 513, 212 P. 848 (1923).

7-108-106. Staggered terms for directors.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of directors in the second group expire at the second annual shareholders' meeting after their election, and the terms of directors in the third group, if any, expire at the third annual shareholders' meeting after their election. Upon the expiration of the initial staggered terms, directors shall be elected for terms of two years or three years, as the case may be, to succeed those whose terms expire.

Source: L. 93: Entire article added, p. 779, § 1, effective July 1, 1994.

7-108-107. Resignation of directors.

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

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

(3) Repealed.

Source: L. 93: Entire article added, p. 780, § 1, effective July 1, 1994. **L. 2000:** (3) amended, p. 978, § 56, effective July 1. **L. 2002:** (3) amended, p. 1848, § 111, effective July 1; (3) amended, p. 1713, § 111, effective October 1. **L. 2003:** (2) amended, p. 2319, § 241, effective July 1, 2004. **L. 2004:** (3) repealed, p. 1498, § 253, effective July 1. **L. 2021:** (1) amended, (HB 21-1124), ch. 41, p. 169, § 17, effective April 19.

7-108-108. Removal of directors by shareholders.

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

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

(3) A director may be removed only if the number of votes cast in favor of removal exceeds the number of votes cast against removal; except that, if cumulative voting is in effect, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against such removal.

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

(5) (Deleted by amendment, L. 2004, p. 1498, § 254, effective July 1, 2004.)

Source: L. 93: Entire article added, p. 780, § 1, effective July 1, 1994. **L. 2000:** (5) amended, p. 978, § 57, effective July 1. **L. 2002:** (5) amended, p. 1848, § 112, effective July 1; (5) amended, p. 1713, § 112, effective October 1. **L. 2004:** (4) and (5) amended, p. 1498, § 254, effective July 1.

7-108-109. 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 street address of the corporation's principal office is located or, if the 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 corporation has no registered agent, by the district court for the city and county of Denver, in a proceeding commenced either by the corporation or by shareholders holding at least ten percent of the outstanding shares of any class, if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation and that removal is in the best interests of the corporation.

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

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

(4) Repealed.

Source: L. 93: Entire article added, p. 780, § 1, effective July 1, 1994. **L. 96:** (1) amended, p. 1318, § 21, effective June 1. **L. 2000:** (4) amended, p. 978, § 58, effective July 1. **L. 2002:** (4) amended, p. 1848, § 113, effective July 1; (4) amended, p. 1713, § 113, effective October 1. **L. 2003:** (1) amended, p. 2319, § 242, effective July 1, 2004. **L. 2004:** (4) repealed, p. 1498, § 255, effective July 1.

7-108-110. Vacancy on board.

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

(a) The shareholders 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, 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 articles of incorporation, if the vacant office was held by a director elected by a voting group of shareholders:

(a) If one or more of the remaining directors were elected by the same voting group, 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 the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 7-108-107 (2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Source: L. 93: Entire article added, p. 781, § 1, effective July 1, 1994.

7-108-111. Compensation of directors.

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

Source: L. 93: Entire article added, p. 781, § 1, effective July 1, 1994.

PART 2

MEETINGS AND ACTION OF THE DIRECTORS

Law reviews: For article, "Contractually Binding Colorado Entities", see 28 Colo. Law. 33 (Dec. 1999).

7-108-201. Meetings.

(1) The board of directors may hold regular or special meetings in or out of this state and may hold the meetings by means of remote communication without designating a place.

(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. 93: Entire article added, p. 782, § 1, effective July 1, 1994. **L. 2021:** (1) amended, (HB 21-1124), ch. 41, p. 169, § 18, effective April 19.

7-108-202. Action without meeting.

(1) Unless the bylaws require that the action be taken at a meeting, any action required or permitted by articles 101 to 117 of this title to be taken at a board of directors' meeting may be taken without a meeting if all members of the board consent to such action in writing.

(2) Action is taken under this section at the time the last director signs a writing describing the action taken, unless, before such time, any director has revoked the director's consent by a writing signed by the director and received by the secretary or any other person authorized by the bylaws or the board of directors to receive such a revocation.

(3) Action under this section is effective at the time it is taken as provided by subsection (2) of this section, unless the directors establish a different effective date.

(4) 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.

Source: L. 93: Entire article added, p. 782, § 1, effective July 1, 1994. **L. 2004:** (2) amended, p. 1498, § 256, effective July 1.

7-108-203. Notice of meeting.

(1) Unless otherwise provided in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, if any place is designated, or purpose of the meeting.

(2) Unless the bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place, if any, or access by remote communication of the meeting. The notice need not describe the purpose of the special meeting unless required by the bylaws.

Source: L. 93: Entire article added, p. 782, § 1, effective July 1, 1994. **L. 2021:** Entire section amended, (HB 21-1124), ch. 41, p. 169, § 19, effective April 19.

7-108-204. 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 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 the 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 7-108-203 (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. 93: Entire article added, p. 782, § 1, effective July 1, 1994. **L. 2004:** IP(2) and (2)(a) amended, p. 1498, § 257, effective July 1.

7-108-205. Quorum and voting.

(1) Unless a greater number is required by the bylaws, a quorum of a board of directors consists of:

(a) A majority of the number of directors fixed if the corporation has a fixed board size; or

(b) A majority 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 7-108-103 (2).

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

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

(b) No fewer than a majority 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 7-108-103 (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 101 to 117 of this title or the bylaws.

(4) 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 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 corporation promptly after adjournment of the meeting.

(5) The right of dissent or abstention pursuant to subsection (4) of this section as to a specific action is not available to a director who votes in favor of the action taken.

Source: L. 93: Entire article added, p. 783, § 1, effective July 1, 1994. **L. 96:** (1) amended, p. 1318, § 22, effective June 1. **L. 2004:** (4) amended, p. 1498, § 258, effective July 1. **L. 2021:** (4)(c) amended, (HB 21-1124), ch. 41, p. 169, § 20, effective April 19.

7-108-206. Committees.

(1) Except as otherwise provided in the bylaws and subject to the provisions of section 7-109-106, the board of directors may create one or more committees and appoint one or more members of the board of directors to serve on them.

(2) The creation of a committee and appointment of members 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 7-108-205.

(3) Sections 7-108-201 to 7-108-205, which govern meetings, action without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent stated in the bylaws or by the board of directors, each committee shall have the authority of the board of directors under section 7-108-101; except that a committee shall not:

(a) Authorize distributions;

(b) Approve or propose to shareholders action that articles 101 to 117 of this title require to be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to section 7-110-102;

(e) Adopt, amend, or repeal bylaws;

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

(g) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(h) Authorize or approve the issuance or sale of shares, or a contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares; except that the board of directors may authorize a committee or an officer to do so within limits specifically prescribed by the board of directors.

(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 7-108-401.

Source: L. 93: Entire article added, p. 784, § 1, effective July 1, 1994. **L. 96:** IP(4) amended, p. 1318, § 23, effective June 1. **L. 2003:** IP(4) amended, p. 2320, § 243, effective July 1, 2004. **L. 2007:** (4)(f) amended, p. 245, § 42, effective May 29.

PART 3

OFFICERS

7-108-301. Officers.

(1) A corporation shall have the officers designated in its bylaws or by the board of directors. An officer shall be an individual who is eighteen years of age or older.

(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 one or more of the officers responsibility for the preparation and maintenance of minutes of the directors' and shareholders' meetings and other records and information required to be kept by the corporation under section 7-116-101 and for authenticating records of the corporation.

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

Source: L. 93: Entire article added, p. 785, § 1, effective July 1, 1994. **L. 2004:** (1) amended, p. 1499, § 259, effective July 1.

ANNOTATION

Law reviews. For article, "Signatures on Documents Affecting Title to Colorado Real Property — Part III", see 12 Colo. Law. 447 (1983).

Annotator's note. Since § 7-108-301 is similar to § 7-5-115 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Contract which gives individual power to elect officers is void. A contract executed by a corporation which surrenders to an individual the power and duty of stockholders or directors to elect officers and select employees is against public policy and void. Borland v. Sass Printing Co., 95

Colo. 53, 32 P.2d 827 (1934) (decided under repealed C.L. 21, §§ 2243, 2250, 2251, and 2263).

Officers may be held personally liable. Under certain circumstances the corporate form may be disregarded where justice requires such action, and personal liability will then be imposed upon those officers of a corporation who stand behind the corporate form as a shield. Contractors Heating & Supply Co. v. Scherb, 163 Colo. 584, 432 P.2d 237 (1967).

The corporate form, however, will not be disregarded to hold an officer of a corporation personally liable unless a clear showing is made that it was used to perpetuate a fraud or defeat a rightful claim. Contractors Heating & Supply Co. v. Scherb, 163 Colo. 584, 432 P.2d 237 (1967).

Informal conduct of business not enough to hold officer personally liable. Standing alone, informalities in the conduct of a corporate business by one of its officers does not form a basis for piercing the corporate form to hold an officer personally liable for debts incurred by the corporation. Contractors Heating & Supply Co. v. Scherb, 163 Colo. 584, 432 P.2d 237 (1967).

Treasurer's intentional misrepresentations sufficient to sustain punitive damages against corporation. A finding that the treasurer of a corporation, acting within the scope of his employment, intentionally made material misrepresentations is sufficient, in and of itself, to sustain an award of punitive damages against the corporation. Fitzgerald v. Edelen, 623 P.2d 418 (Colo. App. 1980).

Where the president of a corporation acts in a representative capacity for the corporation and the plaintiff knows that he is dealing with an entity other than the president acting in his individual capacity, the president cannot be held personally liable. Bidwell v. Jolly, 716 P.2d 481 (Colo. App. 1986).

Applied in Masinton v. Dean, 659 P.2d 50 (Colo. App. 1982).

7-108-302. Duties of officers.

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

Source: L. 93: Entire article added, p. 785, § 1, effective July 1, 1994. **L. 2003:** Entire section amended, p. 2320, § 244, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1499, § 260, effective July 1.

ANNOTATION

Law reviews. For article, "Signatures on Documents Affecting Title to Colorado Real Property — Part III", see 12 Colo. Law. 447 (1983).

Annotator's note. Since § 7-108-302 is similar to § 7-5-115 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Contract which gives individual power to elect officers is void. A contract executed by a corporation which surrenders to an individual the power and duty of stockholders or directors to elect officers and select employees is against public policy and void. Borland v. Sass Printing Co., 95 Colo. 53, 32 P.2d 827 (1934) (decided under repealed C.L. 21, §§ 2243, 2250, 2251, and 2263).

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Informal conduct of business not enough to hold officer personally liable. Standing alone, informalities in the conduct of a corporate business by one of its officers does not form a basis for piercing the corporate form to hold an officer personally liable for debts incurred by the corporation. Contractors Heating & Supply Co. v. Scherb, 163 Colo. 584, 432 P.2d 237 (1967).

Treasurer's intentional misrepresentations sufficient to sustain punitive damages against corporation. A finding that the treasurer of a corporation, acting within the scope of his employment, intentionally made material misrepresentations is sufficient, in and of itself, to sustain an award of punitive damages against the corporation. Fitzgerald v. Edelen, 623 P.2d 418 (Colo. App. 1980).

Where the president of a corporation acts in a representative capacity for the corporation and the plaintiff knows that he is dealing with an entity other than the president acting in his individual capacity, the president cannot be held personally liable. Bidwell v. Jolly, 716 P.2d 481 (Colo. App. 1986).

Applied in Masinton v. Dean, 659 P.2d 50 (Colo. App. 1982).

7-108-303. Resignation and removal of officers.

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

(2) A resignation of an officer is effective when the notice is received by the 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 if the board of directors provides 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 provision for the removal of officers by other officers or by the shareholders.

(5) Repealed.

Source: L. 93: Entire article added, p. 785, § 1, effective July 1, 1994. **L. 2000:** (5) amended, p. 978, § 59, effective July 1. **L. 2002:** (5) amended, p. 1848, § 114, effective July 1; (5) amended, p. 1713, § 114, effective October 1. **L. 2003:** (2) amended, p. 2320, § 245, effective July 1, 2004. **L. 2004:** (5) repealed, p. 1499, § 261, effective July 1. **L. 2021:** (1) amended, (HB 21-1124), ch. 41, p. 170, § 21, effective April 19.

7-108-304. 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 corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Source: L. 93: Entire article added, p. 786, § 1, effective July 1, 1994.

PART 4

STANDARDS OF CONDUCT

Editor's note: This part 4 was added in 1994. It was amended with relocations in 2020, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 4 prior to 2020, consult the 2019 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Law reviews: For article, "The Long and Winding Road to Public Benefit Corporations in Colorado", see 43 Colo. Law. 39 (Jan. 2014).

7-108-401. 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, and each officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) With care; and

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

(2) In discharging duties under this section, 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 corporation whom the director or officer reasonably believes to be reliable and competent with respect to the information, opinions, reports, or statements;

(b) One or more legal counsel, accountants, or other persons retained by the corporation as to matters involving expertise or skills the director or officer reasonably believes are within the person's professional or expert competence;

(c) 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; or

(d) In the case of an officer, the board of directors or any committee of the board of directors.

(3) A director or officer may not rely on information, opinion, reports, or statements as permitted by subsection (2) of this section if the director or officer has knowledge concerning the matter in question that makes the reliance unwarranted.

(4) A director or officer of a corporation, in the performance of duties in that capacity, does not have any fiduciary duty to any creditor of the corporation arising only from the status as a creditor, whether the corporation is solvent or insolvent.

Source: L. 2019: Entire part amended with relocations, (SB 19-086), ch. 166, p. 1930, § 35, effective July 1, 2020.

Editor's note: This section is similar to former § 7-108-401 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "2019 Colorado Business Law Updates: Revising the Colorado Business Corporation Act and the Colorado Corporations and Associations Act", see 48 Colo. Law. 26 (Nov. 2019). For article, "The Business Judgment Rule and Common Interest Communities", see 53 Colo. Law. 34 (June 2024).

To prevail under the safe harbor affirmative defense, a defendant is required to prove each element of the defense. Paratransit Risk Retention Group Ins. Co. v. Kamins, 160 P.3d 307 (Colo. App. 2007).

Effect of corporation's insolvency on directors' and officers' duty to creditors is not clear under the 2006 amendment to subsection (5), but where plaintiff showed only that corporation was "never successful financially", insolvency was not proven and an action for individual liability on corporate debt could not be sustained. McCallum Family L.L.C. v. Winger, 221 P.3d 69 (Colo. App. 2009).

7-108-402. Standards of liabilities for directors.

(1) A director is liable, as a director, to the corporation or to its shareholders for money damages or other money payment for any act, omission to act, or decision only if the party asserting liability establishes in a proceeding that the challenged act, omission, or decision:

(a) Was not in good faith;

(b) Was one that the director did not rationally believe to be in the best interests of the corporation;

(c) Was one as to which the director was at least grossly negligent, unless the articles of incorporation change the standard of liability to knowing misconduct, knowing violation of law, or negligence;

(d) Was one as to which the director failed to make or cause to be made appropriate inquiry, when particular facts or circumstances of significant concern came to the attention of the director that would have alerted a reasonably attentive director to the need for inquiry;

(e) Consisted of or resulted from a sustained or systematic failure by the director to exercise oversight of the business and affairs of the corporation;

(f) Subject to section 7-108-501, was a breach of the director's duty of loyalty to the corporation, including by directly or indirectly receiving an improper personal benefit; or

(g) Consisted of or resulted from a vote or assent specified in section 7-108-405.

(2) In addition to the requirements of subsection (1) of this section, the party seeking to hold the director liable has:

(a) With respect to money damages, the burden of establishing that the money damages were:

(I) Suffered by the corporation or its shareholders; and

(II) Caused by the director's challenged conduct;

(b) With respect to other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, whatever persuasion burden may be called for to establish that the money payment sought is appropriate in the circumstances; or

(c) With respect to other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(3) A director liable under this section for money damages or for other money payment may offset against the liability any gain to the corporation that the director establishes arose out of the same transaction, unless the offset is against public policy.

Source: L. 2019: Entire part amended with relocations, (SB 19-086), ch. 166, p. 1931, § 35, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "2019 Colorado Business Law Updates: Revising the Colorado Business Corporation Act and the Colorado Corporations and Associations Act", see 48 Colo. Law. 26 (Nov. 2019). For article, "Holding Closely Held Business Assets in Trust", see 49 Colo. Law. 49 (Mar. 2020). For article, "Owner Association Board Member Duties and Liabilities — Part 1", see 50 Colo. Law. 20 (June 2021). For article, "The Business Judgment Rule and Common Interest Communities", see 53 Colo. Law. 34 (June 2024).

7-108-403. Limitation of certain liabilities of directors and officers.

A director or officer is not personally liable for any injury to person or property arising out of a tort committed by an employee unless the director or officer was personally involved in the situation giving rise to the litigation or unless the director or officer committed a criminal offense in connection with the situation. The protection afforded in this section does not restrict other common-law protections and rights that a director or officer may have.

Source: L. 2019: Entire part amended with relocations, (SB 19-086), ch. 166, p. 1932, § 35, effective July 1, 2020.

Editor's note: This section is similar to former § 7-108-402 as it existed prior to 2020, and the former § 7-108-403 was relocated to § 7-108-405.

7-108-404. Limitation of certain remedies - definition.

(1) An action by the corporation or by the board of directors is not void or voidable, and shall not be enjoined or set aside in a proceeding by a shareholder or by or in the right of the corporation, because one or more precluded directors was present at or participated in the meeting of the board of directors at which the action was authorized, approved, or ratified, or executed a consent for the action in the manner provided in section 7-108-202, if the action was authorized, approved, or ratified:

(a) At a meeting, by the affirmative vote of the number of directors present at the meeting that would be sufficient to take action at the meeting under articles 101 to 117 of this title 7 or the bylaws; except that, in determining how many votes would be sufficient, the vote of a precluded director is not counted for purposes of authorizing the action but the director is considered present for purposes of determining a quorum; or

(b) Without a meeting by written consent pursuant to section 7-108-202 and executed by all of the directors, if the number of directors, not including any precluded director, constitutes not less than a majority of all of the directors or such greater number of directors as is required by articles 101 to 117 of this title 7 or the bylaws.

(2) In this section, "precluded director" means a director who violated one or more of the standards of liability set forth in section 7-108-402 (1) with respect to an action described in subsection (1) of this section.

Source: L. 2019: Entire part amended with relocations, (SB 19-086), ch. 166, p. 1932, § 35, effective July 1, 2020.

7-108-405. Liability of directors for unlawful distributions.

(1) A director who votes for or assents to a distribution made in violation of section 7-106-401 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 7-106-401 or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 7-108-401. In any proceeding commenced under this section, a director has 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 shareholder who accepted the distribution knowing the distribution was made in violation of section 7-106-401 or the articles of incorporation, the amount of the contribution from the shareholder being the amount of the distribution to that shareholder that exceeds what could have been distributed to that shareholder without violating section 7-106-401 or the articles of incorporation.

Source: L. 2019: Entire part amended with relocations, (SB 19-086), ch. 166, p. 1933, § 35, effective July 1, 2020.

Editor's note: This section is similar to former § 7-108-403 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Phases of the Revenue Act of 1936", see 12 Dicta 29 (1936). For article, "Corporate Dividend Limitations", see 27 Dicta 99 (1950). For article, "One Year Review of Agency, Partnerships, and Corporations", see 39 Dicta 61 (1962). For article, "Continuing Liability for Unpaid Corporate Debts After a Corporation Ceases Business", see 14 Colo. Law. 40 (1985). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988). For article, "Conflicts of Interest and the Director's Duty of Loyalty", see 17 Colo.

Law. 1969 (1988). For article, "The Business Judgment Rule and Common Interest Communities", see 53 Colo. Law. 34 (June 2024).

Annotator's note. Since § 7-108-403 is similar to § 7-5-114 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Purpose behind subsection (1)(c) is the protection of creditors. Ficor, Inc. v. McHugh, 639 P.2d 385 (Colo. 1982).

Since the corporate existence is terminated, the only reason to permit recovery by the corporation is so that it may utilize the moneys to satisfy the unpaid creditors. Ficor, Inc. v. McHugh, 639 P.2d 385 (Colo. 1982).

Subsections (1) and (2) (now subsections (1)(a) and (1)(b)) are not penal in nature, and the one-year statute of limitations imposed by § 13-80-104 does not apply thereto. Sec. Nat'l Bank v. Peters, & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Where liability is created under this section, any creditor within its terms has a cause of action against the enumerated individuals. Fitzgerald v. Marshall, 161 F. Supp. 470 (D. Colo. 1958).

And the liability so created under this section is personal to the creditors and cannot be invoked by the corporation, does not become an asset of its estate in bankruptcy, and is not enforceable by its trustee. Fitzgerald v. Marshall, 161 F. Supp. 470 (D. Colo. 1958).

Stockholder's liability for breach of duty to corporation. Although it is generally the corporate officers and directors, and not the shareholders, who are charged with the duty of exercising the powers of a corporation and, thus, are the ones who usually incur personal liability for breach of that duty, a stockholder may subject himself to similar liability if, because of his actions as an individual, made possible by reason of his being a stockholder, the corporation acts improperly. McHugh v. Ficor, Inc., 43 Colo. App. 409, 611 P.2d 578 (1979), aff'd, 639 P.2d 385 (Colo. 1982).

Stockholder liability does not arise from mere knowledge of and acquiescence in corporate wrongdoing by a stockholder, but must be accompanied by an overt exercise of power, authority, or influence in directing, controlling, or managing the company. McHugh v. Ficor, Inc., 43 Colo. App. 409, 611 P.2d 578 (1979), aff'd, 639 P.2d 385 (Colo. 1982).

This section imposes civil liability on directors for payment of a dividend while insolvent. Guarantee Reserve Life Ins. Co. v. Holzwarth, 148 Colo. 366, 366 P.2d 377 (1961).

Section not inconsistent with provisions governing insurance companies. The provision of this section that directors who declare a dividend while corporation is insolvent shall be liable for debts of corporation and § 10-3-204 making it unlawful for directors of an insurance

company to declare dividends except from surplus or profits and providing penalties therefor are not inconsistent; rather § 10-3-204 does not purport to afford any relief from the burdens imposed by this section but declares similar acts of directors of insurance companies to be "unlawful" and fixes the punishment of one "found guilty". Guarantee Reserve Life Ins. Co. v. Holzwarth, 148 Colo. 366, 366 P.2d 377 (1961).

Thus insurance company directors are also answerable under this section. The fact that a director of a corporation might be tried and punished for unlawful acts under § 10-3-204, providing for punishment for unlawful issuance of dividends by insurance companies, does not preclude his being answerable in a civil action under this section for the same acts though not designated as "unlawful". Guarantee Reserve Life Ins. Co. v. Holzwarth, 148 Colo. 366, 366 P.2d 377 (1961).

Corporation's directors cannot be assessed the interest paid by the corporation upon money borrowed to purchase its own stock where such purchase is not illegal. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Circumstances at time of wrongful dissolution determine directors' obligations. Where corporate assets are distributed following a dissolution in violation of the law, circumstances at the time the cause of action accrued determine the obligations of corporation's directors. McHugh v. Ficor, Inc., 43 Colo. App. 409, 611 P.2d 578 (1979), aff'd, 639 P.2d 385 (Colo. 1982).

Directors of liquidated corporation are trustees for creditors. The directors of a corporation which is being liquidated are trustees for the creditors of the corporation, and are personally liable to those creditors if they take corporate property for their own benefit rather than making provision for the payment of creditors. Ficor, Inc. v. McHugh, 639 P.2d 385 (Colo. 1982).

Directors are jointly and severally liable following wrongful dissolution. Where the directors of a corporation distributed the corporation's assets without making adequate provision for the satisfaction of corporate obligations, and where creditors were able to assert the rights that the corporation had even though the corporation was dissolved, directors of corporation were jointly and severally liable. McHugh v. Ficor, Inc., 43 Colo. App. 409, 611 P.2d 578 (1979), aff'd, 639 P.2d 385 (Colo. 1982); 1629 Joint Venture v. Dahlquist, 770 P.2d 1352 (Colo. App. 1989).

No recovery allowed against directors for attorney fees properly authorized in behalf of corporation. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Acceptance of indemnifying note not making of "loan". Where the corporation had settled a claim on which it was primarily liable, and, pursuant to company policy, the corporate officer had indemnified the corporation, part of which indemnification was in the form of a note, this acceptance of the note did not constitute the making of a "loan" within the meaning of the statute. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Accommodation loan to corporation officer found to be proper. Herald Co. v. Seawell, 472 F.2d 1081 (10th Cir. 1972).

Damages are based directly upon injuries suffered by the corporation, as opposed to a liquidated measure without regard to injury. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Value of assets to be considered in determining amount of judgment against corporate directors for wrongfully distributing corporate assets upon dissolution is the market value of the assets less the amount of the liens against them. McHugh v. Ficor, Inc., 43 Colo. App. 409, 611 P.2d 578 (1979), aff'd, 639 P.2d 385 (Colo. 1982).

When claim against directors must be commenced. Under § 13-80-114, a claim under this section must be commenced within five years of the improper purchase. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Any claim against directors based upon an improper dividend payment must be commenced within five years of such payment. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Only the corporation may sue under subsection (3) (now subsection (1)(c)). Rosebud Corp. v. Boggio, 39 Colo. App. 84, 561 P.2d 367 (1977).

But remedy may be asserted by creditors as a group. All creditors of a corporation, as a group, may assert the remedy in subsection (1)(c) on behalf of the corporation for their own benefit. Ficor, Inc. v. McHugh, 639 P.2d 385 (Colo. 1982).

Creditors may not sue directors personally under subsection (1)(c). By the express terms of subsection (3)(now subsection (1)(c)) the directors' liability runs only to the corporation itself. It therefore follows that creditors may not sue directors personally under the statute. Rosebud Corp. v. Boggio, 39 Colo. App. 84, 561 P.2d 367 (1977).

But may sue them personally in appropriate cases. Creditors are not precluded from suing directors and having them held personally liable for corporation obligations in appropriate cases. Former subsection (9) stated that the liabilities imposed on directors by virtue of this section were in addition to "any other liabilities imposed by law on directors of a corporation", and it follows that if a creditor establishes the breach of a common-law duty owed to him, for which directors may be held personally liable, dismissal of the claim would be improper. Rosebud Corp. v. Boggio, 39 Colo. App. 84, 561 P.2d 367 (1977).

Corporate entity may be disregarded and directors held personally liable if equity so requires, i.e. adherence to the corporate fiction would promote injustice, protect fraud, defeat a legitimate claim, or defend crime. La Fond v. Basham, 683 P.2d 367 (Colo. App. 1984); Ward v. Cooper, 685 P.2d 1382 (Colo. App. 1984); Micciche v. Billings, 727 P.2d 367 (Colo. 1986).

Since directors of an insolvent corporation are deemed to be trustees for it and its creditors, they owe a duty to the corporate creditors not to divest corporate property for their own benefit and thus defeat a creditor's claim. If the duty is breached, the creditors may sue the directors and hold them personally liable. Collie v. Becknell, 762 P.2d 727 (Colo. App. 1988).

A director is personally liable to the corporation only for that portion of the distribution that makes the corporation insolvent. Paratransit Risk Retention Group Ins. Co. v. Kamins, 160 P.3d 307 (Colo. App. 2007).

Judgment creditors may enforce any cause of action belonging to corporation. Although only the damaged corporation has a cause of action under subsection (3)(now subsection (1)(c)), judgment creditors of a corporation are entitled to enforce their judgments by enforcing any cause of action belonging to the corporation notwithstanding the fact that the corporation has been dissolved. McHugh v. Ficor, Inc., 43 Colo. App. 409, 611 P.2d 578 (1979), aff'd, 639 P.2d 385 (Colo. 1982).

Liability imposed by subsection (1)(d). Subsection (4)(now subsection (1)(d)) and §§ 7-3-102 and 7-5-110 expressly make directors personally liable to the corporation. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Such liability is absolute. Liability under subsection (4)(now subsection (1)(d)) and §§ 7-3-102 and 7-5-110 is absolute save for the statutory defenses set forth in subsection (6)(now § 7-5-101 (2)). Sec. Nat'l Bank v. Peters, & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

A showing of fraud is not required to impose liability under subsection (4)(now subsection (1)(d)) and §§ 7-3-102 and 7-5-110. Sec. Nat'l Bank v. Peters, Writer & Christensen, Inc., 39 Colo. App. 344, 569 P.2d 875 (1977).

Subsection (1)(c) does not impose a fiduciary duty within the meaning of 11 U.S.C.A. § 523 (a)(4) of the bankruptcy code. In re Anzman, 73 B.R. 156 (Bankr. D. Colo. 1986).

Although a director owes no general duty to use or pledge his personal funds to enable the corporation to take advantage of a business opportunity, he owes a duty to refrain from intentional activity aimed at allowing the corporation to become insolvent and thereby usurp a corporate opportunity for his own benefit. Collie v. Becknell, 762 P.2d 727 (Colo. App. 1988).

If a director usurps a corporate opportunity, he will be deemed to hold the usurped property in constructive trust for the corporation and he will be required to account to the corporation for any profit made on the transaction. Collie v. Becknell, 762 P.2d 727 (Colo. App. 1988).

Satisfaction by one releases all. Where obligation is joint and several, payment by one obligor discharges obligations of others who might have been jointly liable on the same claim. 1629 Joint Venture v. Dahlquist, 770 P.2d 1352 (Colo. App. 1989).

A cause of action under this section runs to the corporation itself for its own benefit or for the benefit of creditors. Thus, a garnishment is an appropriate proceeding in which to litigate issues arising under this section. Walk-In Med. Ctrs., Inc. v. Breuer Capital Corp., 778 F. Supp. 1116 (D. Colo. 1991).

PART 5

DIRECTOR - CONFLICTS OF INTEREST

7-108-501. Conflicting interest transaction - definition.

(1) (a) As used in this section, "conflicting interest transaction" means, with respect to a director of the corporation, any of the following:

(I) A loan or other assistance by a corporation to a director of the corporation or to an entity in which the director is a director or officer or has a financial interest that is known to, and material to, the director;

(II) A guaranty by a corporation of an obligation of the director or of an obligation of an entity in which the director is a director or officer or has a financial interest that is known to, and material to, the director;

(III) A contract or transaction between the corporation and the director or between the corporation and an entity in which the director is a director or officer or has a financial interest that is known to, and material to, the director; or

(IV) The director's taking a corporate opportunity, except to the extent permitted pursuant to a provision of the articles of incorporation adopted under section 7-102-102 (2)(e).

(b) "Conflicting interest transaction" does not include any transaction between:

(I) A corporation and another entity if the other entity owns, directly or indirectly, all of the outstanding shares of the corporation; or

(II) The corporation and another entity if the corporation owns, directly or indirectly, all of the outstanding shares or other equity interests of the other entity.

(2) A conflicting interest transaction is not void or voidable, shall not be enjoined or set aside, and does not give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation, solely because it is a conflicting interest transaction or because the director is present at or participates in the meeting of the corporation's board of directors or of the committee of the board of directors that authorizes, approves, or ratifies the conflicting interest transaction or because the director's vote is counted for that 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 shareholders entitled to vote on the conflicting interest transaction, and:

(I) The conflicting interest transaction is specifically authorized, approved, or ratified by a vote of the disinterested shareholders in which the votes cast in favor of authorizing, approving, or ratifying the conflicting interest transaction exceed the votes cast in opposition; or

(II) If the articles of incorporation provide for voting on the matter by the disinterested shareholders in two or more voting groups, the conflicting interest transaction is specifically authorized, approved, or ratified by a vote of each voting group in which the votes cast within the voting group in favor of authorizing, approving, or ratifying the conflicting interest transaction exceed the votes cast within the voting group in opposition; or

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

(3) A director's taking advantage, directly or indirectly, of a corporate opportunity shall not be enjoined or set aside and does not give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation, because the director took such advantage, if:

(a) The material facts as to the director's relationship or interest and as to the corporate opportunity are disclosed to or are known to the board of directors or the committee, and the board of directors or committee authorizes, approves, or ratifies the taking of the corporate opportunity 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 corporate opportunity are disclosed to or are known to the shareholders entitled to vote on the corporate opportunity, and either:

(I) The taking of the corporate opportunity is specifically authorized, approved, or ratified by a vote of the disinterested shareholders in which the votes cast in favor of authorizing, approving, or ratifying the taking of the corporate opportunity exceed the votes cast in opposition; or

(II) If the articles of incorporation provide for voting on the matter by the disinterested shareholders in two or more voting groups, the taking of the corporate opportunity is specifically authorized, approved, or ratified by a vote of each such voting group in which the votes cast

within the voting group in favor of authorizing, approving, or ratifying the taking of the corporate opportunity exceed the votes cast within the voting group in opposition.

(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 that authorizes, approves, or ratifies a conflicting interest transaction or the taking of a corporate opportunity.

(5) Unless otherwise provided in the articles of incorporation, a majority of the votes of disinterested shareholders entitled to be cast on the matter of authorizing, approving, or ratifying a conflicting interest transaction pursuant to subsection (2)(b) of this section or a taking of a corporate opportunity pursuant to subsection (3)(b) of this section constitutes a quorum of that voting group for action on that matter, but a quorum must not consist of fewer than one-third of the votes of disinterested shareholders entitled to be cast on the matter by the voting group.

Source: L. 93: Entire article added, p. 788, § 1, effective July 1, 1994. **L. 96:** (1) and (2)(c) amended, p. 1319, § 24, effective June 1. **L. 2003:** (4) amended, p. 2527, § 1, effective August 6. **L. 2004:** (4)(a) amended, p. 1500, § 263, effective July 1. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1933, § 36, effective July 1, 2020. **L. 2020:** (1)(a)(IV) amended, (HB 20-1402), ch. 216, p. 1041, § 8, effective June 30.

ANNOTATION

Law reviews. For article, "Conflict of Interest Transactions: Fiduciary Duties of Corporate Directors Who Are Also Controlling Shareholders", see 57 Den. L.J. 609 (1980). For article, "The Dual Role of Corporate Counsel Serving on the Board of Directors", see 13 Colo. Law. 792 (1984). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "Corporate Director Liability", see 65 Den. U. L. Rev. 59 (1988). For article, "2019 Colorado Business Law Updates: Revising the Colorado Business Corporation Act and the Colorado Corporations and Associations Act", see 48 Colo. Law. 26 (Nov. 2019). For article, "The Business Judgment Rule and Common Interest Communities", see 53 Colo. Law. 34 (June 2024).

Annotator's note. Since § 7-108-501 is similar to § 7-5-114.5 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

The test for whether a transaction is fair is whether under all the circumstances it carries the earmarks of an arm's length bargain. Kim v. Grover C. Coors Trust, 179 P.3d 86 (Colo. App. 2007).

Applied in O'Malley v. Casey, 42 Colo. App. 85, 589 P.2d 1388 (1979).

ARTICLE 109

Indemnification

7-109-101. Definitions.
7-109-102. Authority to indemnify directors.
7-109-103. Mandatory indemnification of directors.
7-109-104. Advance of expenses to directors.
7-109-105. Court-ordered indemnification - advance of expenses.
7-109-106. Determination and authorization of indemnification of directors.
7-109-107. Indemnification of officers, employees, fiduciaries, and agents.
7-109-108. Insurance.
7-109-109. Variation by corporate action.
7-109-110. Notice to shareholders of indemnification of director.
7-109-111. Exclusivity.

7-109-101. Definitions.

As used in this article 109:

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

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, an officer, an agent, an associate, an employee, a fiduciary, a manager, a member, a partner, a promoter, or a trustee of, or in any other capacity with, another person or an employee benefit plan. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the 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.

(3) "Expenses" includes counsel fees.

(4) "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.

(5) "Official capacity" means, when used with respect to a director, the office of director in a corporation and, when used with respect to a person other than a director as contemplated in section 7-109-107, the office in a corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the employee, fiduciary, or agent on behalf of the corporation. "Official capacity" does not include service for any other domestic or foreign 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, arbitrative, or investigative and whether formal or informal.

Source: L. 93: Entire article added, p. 789, § 1, effective July 1, 1994. **L. 96:** (2) amended, p. 1319, § 25, effective June 1. **L. 2003:** (2) amended, p. 2320, § 246, effective July 1, 2004. **L. 2004:** (2) amended, p. 1500, § 264, effective July 1. **L. 2019:** IP, (2), and (7) amended, (SB 19-086), ch. 166, p. 1937, § 37, effective July 1, 2020.

Cross references: For additional definitions applicable to this article, see §§ 7-90-102 and 7-101-401.

ANNOTATION

A defense is "wholly successful" if an entire proceeding is disposed of on a basis that does not involve a finding of "liability"; thus, indemnification is mandated when jury found former director, officer, and employee breached a duty to the corporation but refused to award the corporation damages due to lack of causation. Waskel v. Guaranty Nat'l Corp., 23 P.3d 1214 (Colo. App. 2000) (declining to follow Quark, Inc. v. Harley, 141 F.3d 1185 (10th Cir. 1998)).

7-109-102. Authority to indemnify directors.

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

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

(b) The individual reasonably believed:

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

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

(c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's 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 does not, of itself, create a presumption that the director did not meet the relevant standard of conduct described in this section.

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

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1) of this section; 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 corporation is limited to reasonable expenses incurred in connection with the proceeding.

Source: L. 93: Entire article added, p. 790, § 1, effective July 1, 1994. **L. 2004:** (1) and (4) amended, p. 1500, § 265, effective July 1. **L. 2019:** (1), (3), and (4)(a) amended, (SB 19-086), ch. 166, p. 1937, § 38, effective July 1, 2020.

ANNOTATION

Directors qualify for corporate indemnification if they are sued at least in part because, or by reason of the fact that, they are or were directors of a corporation. Weisbart v. Agri Tech, Inc., 22 P.3d 954 (Colo. App. 2001).

Corporation is prohibited from indemnifying a director only when the director has been found "liable" to the corporation; when jury found former director breached a duty to the corporation but refused to award the corporation damages because of a lack of causation, indemnification was not prohibited. Waskel v. Guaranty Nat'l Corp., 23 P.3d 1214 (Colo. App. 2000) (declining to follow Quark, Inc. v. Harley, 141 F.3d 1185 (10th Cir. 1998)).

7-109-103. Mandatory indemnification of directors.

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

Source: L. 93: Entire article added, p. 791, § 1, effective July 1, 1994. **L. 2004:** Entire section amended, p. 1501, § 266, effective July 1. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1938, § 39, effective July 1, 2020.

ANNOTATION

Indemnification not mandated where former director was not "wholly successful" since the jury found him liable for breaching his fiduciary duty to the corporation and the mere fact that the jury refused to award the corporation damages does not negate that finding. Quark, Inc. v. Harley, 141 F.3d 1185 (10th Cir. 1998).

Indemnification is mandated when jury found former director breached a duty to the corporation but refused to award the corporation damages because of a lack of causation, since the defense was "wholly successful". Waskel v. Guaranty Nat'l Corp., 23 P.3d 1214 (Colo. App. 2000) (declining to follow Quark, Inc. v. Harley, 141 F.3d 1185 (10th Cir. 1998)).

7-109-104. Advance of expenses to directors.

(1) A corporation may, before final disposition of a proceeding, pay for or reimburse the reasonable expenses incurred by an individual who is a party to a proceeding because that person is a director if:

(a) The director delivers to the corporation a written affirmation of the director's good faith belief that:

(I) The director has met the relevant standard of conduct described in section 7-109-102; or

(II) The proceeding involves conduct for which liability has been eliminated under a provision in the articles of incorporation as authorized by section 7-102-102 (2)(d); and

(b) The director delivers to the corporation a written undertaking, executed personally or on the director's behalf, to repay any funds advanced if the director is not entitled to mandatory indemnification under section 7-109-103 and it is ultimately determined under section 7-109-105 or 7-109-106 that the director has not met the relevant standard of conduct described in section 7-109-102.

(2) The undertaking required by subsection (1)(b) of this section is 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) Authorizations of payments under this section shall be made in the manner specified in section 7-109-106.

Source: L. 93: Entire article added, p. 791, § 1, effective July 1, 1994. **L. 2004:** (1) amended, p. 1501, § 267, effective July 1. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1938, § 40, effective July 1, 2020.

7-109-105. Court-ordered indemnification - advance of expenses.

(1) Unless otherwise provided in the articles of incorporation, a director who is or was a party to a proceeding may apply for indemnification or an advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice the court considers necessary, the court may order indemnification or an advance of expenses in the following manner:

(a) If it determines that the director is entitled to mandatory indemnification under section 7-109-103, the court shall order indemnification, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(b) If it determines that the director is entitled to indemnification or an advance of expenses under section 7-109-109 (1), the court shall order indemnification or an advance of expenses, as applicable, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification or advance of expenses.

(c) If it determines that the director is fairly and reasonably entitled to indemnification or an advance of expenses in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 7-109-102 (1), failed to comply with section 7-109-104, or was adjudged liable in the circumstances described in section 7-109-102 (4), the court may order such indemnification or advance of expenses as the court deems proper; except that the indemnification with respect to any proceeding in which liability has been adjudged in the circumstances described in section 7-109-102 (4) is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

Source: L. 93: Entire article added, p. 792, § 1, effective July 1, 1994. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1939, § 41, effective July 1, 2020.

7-109-106. Determination and authorization of indemnification of directors.

(1) A corporation may not indemnify a director under section 7-109-102 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 7-109-102. A corporation shall not advance expenses to a director under section 7-109-104 unless authorized in the specific case after the written affirmation and undertaking required by section 7-109-104 (1)(a) and (1)(b) are received.

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

(a) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom constitute a quorum for this purpose, or by a majority vote of a committee of the board of directors appointed by such a vote, which committee consists of two or more disinterested directors;

(b) By independent legal counsel selected in the manner specified in subsection (2)(a) of this section or, if there are fewer than two disinterested directors, by independent legal counsel selected by a majority vote of the full board of directors; or

(c) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a disinterested director may not be voted on the determination.

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

Source: L. 93: Entire article added, p. 792, § 1, effective July 1, 1994. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1939, § 42, effective July 1, 2020.

7-109-107. Indemnification of officers, employees, fiduciaries, and agents.

(1) An officer is entitled to mandatory indemnification or an advance of expenses under section 7-109-103, and is entitled to apply for court-ordered indemnification or an advance of expenses under section 7-109-105, in each case to the same extent as a director.

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

(3) A corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to such further extent as may be provided for by its articles of incorporation, bylaws, general or specific action of its board of directors or shareholders, or contract. This subsection (3) applies to an officer who is also a director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

Source: L. 93: Entire article added, p. 793, § 1, effective July 1, 1994. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1940, § 43, effective July 1, 2020.

ANNOTATION

Officers qualify for corporate indemnification if they are sued at least in part because, or by reason of the fact that, they are or were officers of a corporation. Weisbart v. Agri Tech, Inc., 22 P.3d 954 (Colo. App. 2001).

Indemnification is mandated when jury found former officers and employees breached a duty to the corporation but refused to award the corporation damages because of a lack of causation, since the defense was "wholly successful" and corporate bylaws indemnified employees to the same extent as directors. Waskel v. Guaranty Nat'l Corp., 23 P.3d 1214 (Colo. App. 2000) (declining to follow Quark, Inc. v. Harley, 141 F.3d 1185 (10th Cir. 1998)).

7-109-108. Insurance.

A corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while a director,

officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, agent, associate, employee, fiduciary, manager, member, partner, promoter, or trustee of, or in any other capacity with, another person or an 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 corporation would have power to indemnify the person against the same liability under section 7-109-102, 7-109-103, or 7-109-107. Any such insurance may be procured from any insurance company designated by the board of directors, whether the insurance company is formed under the law of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the corporation has an equity or any other interest through stock ownership or otherwise.

Source: L. 93: Entire article added, p. 793, § 1, effective July 1, 1994. **L. 2003:** Entire section amended, p. 2320, § 247, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1501, § 268, effective July 1. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1941, § 44, effective July 1, 2020.

7-109-109. Variation by corporate action.

(1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 7-109-102 or advance funds to pay for or reimburse expenses in accordance with section 7-109-104. Such an obligatory provision:

(a) Satisfies the requirements for authorization, but not determination, referred to in section 7-109-106.

(b) That obligates the corporation to provide indemnification to the fullest extent permitted by law obligates the corporation to advance funds to pay for or reimburse expenses in accordance with section 7-109-104 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(2) A right of indemnification or to advances of expenses created by this article 109 or under subsection (1) of this section and in effect at the time of an act or omission must not be eliminated or impaired with respect to the act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders, adopted after the occurrence of the act or omission, unless, in the case of a right created under subsection (1) of this section, the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

(3) A provision specified in subsection (1) of this section does not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. A provision for indemnification or an advance of expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, is governed by section 7-90-204 (1).

(4) Subject to subsection (2) of this section, a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or an advance of expenses created by or pursuant to this article 109.

(5) Sections 7-109-101 to 7-109-108 do not limit a 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. 93: Entire article added, p. 794, § 1, effective July 1, 1994. **L. 2004:** (2) amended, p. 1502, § 269, effective July 1. **L. 2019:** Entire section R&RE, (SB 19-086), ch. 166, p. 1941, § 45, effective July 1, 2020.

7-109-110. Notice to shareholders of indemnification of director.

If a corporation indemnifies or advances expenses to a director under this article 109 in connection with a proceeding by or in the right of the corporation, the corporation shall give notice of the indemnification or advance to the shareholders with or before the notice of the next shareholders' meeting. If the next shareholder action is taken without a meeting at the instigation of the board of directors, the corporation shall give the notice to the shareholders at or before the time the first shareholder signs a document consenting to the action.

Source: L. 93: Entire article added, p. 794, § 1, effective July 1, 1994. **L. 2021:** Entire section amended, (HB 21-1124), ch. 41, p. 170, § 22, effective April 19.

7-109-111. Exclusivity.

A corporation may provide indemnification or an advance of expenses to a director or an officer only as permitted by this article 109.

Source: L. 2019: Entire section added, (SB 19-086), ch. 166, p. 1942, § 46, effective July 1, 2020.

ARTICLE 110

Amendment of Articles of Incorporation and Bylaws

PART 1
AMENDMENT OF ARTICLES OF INCORPORATION

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7-110-102. Amendment of articles of incorporation by board of directors.

7-110-103. Amendment of articles of incorporation by board of directors and shareholders.

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7-110-105. Amendment of articles of incorporation before issuance of shares.

7-110-106. Articles of amendment to articles of incorporation.

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PART 2
AMENDMENT OF BYLAWS

7-110-201. Amendment of bylaws by board of directors or shareholders.

7-110-202. Bylaw changing quorum or voting requirement for shareholders.

7-110-203. Bylaws - changing quorum or voting requirement for directors - requiring a meeting place.

PART 1

AMENDMENT OF ARTICLES OF INCORPORATION

7-110-101. Authority to amend articles of incorporation.

(1) A 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 shareholder does not have a vested property right resulting from any provision in the articles of incorporation, including any provision relating to management, control, capital structure, dividend entitlement, purpose, or duration of the corporation.

Source: L. 93: Entire article added, p. 794, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "Corporate Organization: A Manual of Colorado Procedure", see 1 Rocky Mt. L. Rev. 3 (1928). For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950). For note, "Elimination of Preferred Dividend Arrearages", see 23 Rocky Mt. L. Rev. 317 (1951).

Annotator's note. Since § 7-110-101 is similar to § 7-2-106 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Any corporation organized under the laws of Colorado may amend its articles of incorporation by complying with the provisions of this section. Clough v. Rocky Mt. Oil Co., 25 Colo. 520, 55 P. 809 (1898).

However, no corporation, by amendment, shall change its articles as to work a change in the object or purpose for which it was originally organized. Clough v. Rocky Mt. Oil Co., 25 Colo. 520, 55 P. 809 (1898).

A corporation may change its name only in the manner provided by this section. Bullion Milling Co. v. Gates Iron Works, 18 Colo. App. 472, 72 P. 603 (1903).

7-110-102. Amendment of articles of incorporation by board of directors.

(1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt, without shareholder action, 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.3) 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) Repealed.

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

(e) Make any other change expressly permitted by articles 101 to 117 of this title to be made without shareholder action.

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

Source: L. 93: Entire article added, p. 795, § 1, effective July 1, 1994. **L. 96:** (1)(c) repealed, p. 1320, § 26, effective June 1. **L. 2000:** (1)(d) and (2) amended, p. 978, § 60, effective July 1. **L. 2003:** (1)(a), (1)(b), (1)(d), and (2) amended and (1)(b.5) added, p. 2321, § 248, effective July 1, 2004. **L. 2004:** (1)(b) and (1)(d) amended and (1)(b.3) added, p. 1502, § 270, effective July 1.

7-110-103. Amendment of articles of incorporation by board of directors and shareholders.

(1) The board of directors or the holders of shares 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 shareholders.

(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 shareholders unless the amendment is proposed by shareholders 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 shareholders with the amendment; and

(b) The shareholders 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 shareholders may condition the effectiveness of the amendment on any basis.

(4) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the amendment of the shareholders' 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.

(5) Unless articles 101 to 117 of this title (including the provisions of section 7-117-101 (7)), the articles of incorporation, bylaws adopted by the shareholders, or the proposing board of directors or the proposing shareholders acting pursuant to subsection (3) of this section require a greater vote, the amendment shall be approved by the votes required by sections 7-107-206 and 7-107-207 by the voting groups entitled to vote on the amendment.

Source: L. 93: Entire article added, p. 795, § 1, effective July 1, 1994. **L. 96:** (5) amended, p. 1320, § 27, effective June 1.

ANNOTATION

Law reviews. For article, "Conversion of Entities in Colorado", see 33 Colo. Law. 11 (Nov. 2004).

7-110-104. Voting on amendments of articles of incorporation by voting groups.

(1) If shareholder voting is otherwise required by articles 101 to 117 of this title, the holders of the shares of a class are entitled to vote as a separate voting group on an amendment if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(d) Change the designation, preferences, limitations, or relative rights of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of the class.

(2) If an amendment would affect a series of a class of shares in one or more of the ways described in subsection (1) of this section, the shares of that series are entitled to vote as a separate voting group on the amendment.

(3) If an amendment that entitles two or more series of a class of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected shall, instead, vote together as a single voting group on the amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section notwithstanding any provision in the articles of incorporation that the shares are nonvoting shares.

Source: L. 93: Entire article added, p. 796, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985).

Annotator's note. Since § 7-110-104 is similar to § 7-2-108 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

This section prescribes one of those instances where it is mandatory that all stockholders vote despite restrictions contained in the articles of incorporation. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

7-110-105. Amendment of articles of incorporation before issuance of shares.

If a corporation has not yet issued shares, its board of directors or, if no directors have been elected, its incorporators may adopt one or more amendments to the articles of incorporation.

Source: L. 93: Entire article added, p. 797, § 1, effective July 1, 1994.

7-110-106. Articles of amendment to articles of incorporation.

(1) A 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 corporation;

(b) The text of each amendment adopted; and

(c) If the amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.

(d) to (f) Repealed.

Source: L. 93: Entire article added, p. 797, § 1, effective July 1, 1994. **L. 2002:** IP(1) amended, p. 1848, § 115, effective July 1; IP(1) amended, p. 1713, § 115, effective October 1. **L. 2003:** IP(1) and (1)(a) amended, p. 2321, § 249, effective July 1, 2004. **L. 2004:** (1)(d), (1)(e), and (1)(f) repealed, p. 1502, § 271, effective July 1.

7-110-107. Restated articles of incorporation.

(1) The board of directors may restate the articles of incorporation at any time with or without shareholder action. If the corporation has not yet issued shares 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 shareholder approval, it shall be adopted as provided in section 7-110-103.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the restatement of the shareholders' 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 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 corporation;

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

(c) Repealed.

(d) If the restatement was adopted by the board of directors or incorporators without shareholder action, a statement to that effect and that shareholder 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. 93: Entire article added, p. 798, § 1, effective July 1, 1994. **L. 2002:** IP(4) and (5) amended, p. 1848, § 116, effective July 1; IP(4) and (5) amended, p. 1713, § 116, effective October 1. **L. 2003:** IP(4) and (4)(a) amended, p. 2322, § 250, effective July 1, 2004. **L. 2004:** (4)(c) repealed, p. 1503, § 272, effective July 1.

7-110-108. Amendment of articles of incorporation pursuant to reorganization.

(1) Articles of incorporation may be amended, without action by the board of directors or shareholders, to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under a statute of the United States if the articles of incorporation after amendment contain only provisions required or permitted by section 7-102-102.

(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 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 the United States.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as provided in the reorganization plan.

(4) 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. 93: Entire article added, p. 799, § 1, effective July 1, 1994. **L. 2002:** IP(2) amended, p. 1849, § 117, effective July 1; IP(2) amended, p. 1713, § 117, effective October 1. **L. 2003:** IP(2) and (2)(a) amended, p. 2322, § 251, effective July 1, 2004.

7-110-109. Effect of amendment of articles of incorporation.

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

Source: L. 93: Entire article added, p. 799, § 1, effective July 1, 1994. **L. 2000:** Entire section amended, p. 979, § 61, effective July 1. **L. 2003:** Entire section amended, p. 2322, § 252, effective July 1, 2004.

PART 2

AMENDMENT OF BYLAWS

7-110-201. Amendment of bylaws by board of directors or shareholders.

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

(a) Articles 101 to 117 of this title or the articles of incorporation reserve such power exclusively to the shareholders in whole or part; or

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

(2) The shareholders may amend the bylaws even though the bylaws may also be amended by the board of directors.

Source: L. 93: Entire article added, p. 800, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "Organizational Problems of the Small Business Corporation", see 27 Dicta 79 (1950).

Annotator's note. Since § 7-110-201 is similar to § 7-5-109 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Directors may make bylaws if certificate so provides. This section expressly authorizes the directors, if the certificate of incorporation so provides, to make such prudential bylaws as they deem proper for the management of the affairs of the company not inconsistent with the laws of the state. Mitchell v. Colo. Fuel & Iron Co., 117 F. 723 (D. Colo. 1902).

And courts will interfere only in case of abuse. The matter of adopting bylaws for the government of corporations, and the manner in which their business shall be transacted, is a matter so much of discretion that a court should interfere only in a plain case of abuse. Mitchell v. Colo. Fuel & Iron Co., 117 F. 723 (D. Colo. 1902).

Where bylaws conflict with the articles of incorporation, the articles of incorporation control and the bylaws in conflict are void. Paulek v. Isgar, 38 Colo. App. 29, 551 P.2d 213 (1976).

7-110-202. Bylaw changing quorum or voting requirement for shareholders.

(1) If authorized by the articles of incorporation, the shareholders may amend the bylaws to fix a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by articles 101 to 117 of this title. An amendment to the bylaws to add, change, or delete a greater quorum or voting requirement for shareholders 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 are greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) of this section shall not be amended by the board of directors.

Source: L. 93: Entire article added, p. 800, § 1, effective July 1, 1994.

ANNOTATION

An amendment to the bylaws to increase a shareholder voting requirement is invalid unless authorized by the articles of incorporation irrespective of the fact that the amendment was adopted unanimously by both the shareholders and the board of directors. Harding v. Heritage Health Prods. Co., 98 P.3d 945 (Colo. App. 2004).

7-110-203. Bylaws - changing quorum or voting requirement for directors - requiring a meeting place.

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors or that requires a meeting of shareholders to be held at a place may be amended or repealed:

(a) If adopted by the shareholders, only by the shareholders unless the bylaws otherwise provide; or

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

(2) A bylaw adopted or amended by the shareholders 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 shareholders 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. 93: Entire article added, p. 800, § 1, effective July 1, 1994. **L. 2003:** (2) amended, p. 2322, § 253, effective July 1, 2004. **L. 2021:** IP(1) and (1)(a) amended, (HB 21-1124), ch. 41, p. 170, § 23, effective April 19.

ARTICLE 111

Merger, Share Exchange, and Redomestication

7-111-101. Merger of domestic corporation.

7-111-101.5. Conversion of domestic corporation.

7-111-102. Owner's interest exchange involving domestic corporation.

7-111-103. Action on plan - merger, conversion, or exchange - definitions.

7-111-104. Merger of parent and subsidiary.

7-111-104.5. Statement of merger or conversion - repeal. (Repealed)

7-111-105. Statement of share exchange - repeal. (Repealed)

7-111-106. Effect of merger, conversion, or share exchange - repeal. (Repealed)

7-111-106.5. Merger with foreign entity.

7-111-107. Share exchange with foreign corporation - repeal. (Repealed)

7-111-108. Redomestication as a domestic insurer.

7-111-101. Merger of domestic corporation.

One or more domestic corporations may merge with any other entity pursuant to section 7-90-203.

Source: L. 93: Entire article added, p. 801, § 1, effective July 1, 1994. **L. 2003:** IP(2), (2)(a), (2)(b), (2)(c), and (3) amended, p. 2322, § 254, effective July 1, 2004. **L. 2007:** Entire section amended, p. 245, § 43, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1942, § 47, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985).

Annotator's note. Since § 7-111-101 is similar to § 7-7-101 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

A corporate merger may be proved by one who of his own knowledge is acquainted with the facts. Martinez v. People, 177 Colo. 272, 493 P.2d 1350 (1972).

7-111-101.5. Conversion of domestic corporation.

A domestic corporation may convert into any form of entity pursuant to section 7-90-201.

Source: L. 2007: Entire section added, p. 245, § 44, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1943, § 48, effective July 1, 2020.

7-111-102. Owner's interest exchange involving domestic corporation.

A domestic corporation may be party to an exchange of owner's interests with any other entity pursuant to section 7-90-203.1.

Source: L. 93: Entire article added, p. 801, § 1, effective July 1, 1994. **L. 2003:** IP(2), (2)(a), and (3) amended, p. 2323, § 255, effective July 1, 2004. **L. 2004:** (1) amended, p. 1503, § 273, effective July 1. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1943, § 49, effective July 1, 2020. **L. 2022:** Entire section amended, (HB 22-1250), ch. 80, p. 398, § 7, effective August 10.

7-111-103. Action on plan - merger, conversion, or exchange - definitions.

(1) After adopting a plan of conversion complying with section 7-90-201.3, a plan of merger complying with section 7-90-203.3, or a plan of exchange complying with section 7-90-203.3, the board of directors of the converting corporation, the board of directors of each corporation party to the merger, or the board of directors of each corporation party to the exchange shall submit the plan of conversion, plan of merger, or plan of exchange to its shareholders for approval, except as provided in subsection (7) of this section or in section 7-111-104.

(2) For a plan of conversion, a plan of merger, or a plan of exchange to be approved by the shareholders:

(a) The board of directors must recommend the plan of conversion, plan of merger, or plan of exchange to the shareholders 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 shareholders with the plan; and

(b) The shareholders entitled to vote on the plan of conversion, plan of merger, or plan of exchange must approve the plan as provided in subsection (5) of this section.

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

(4) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the plan of conversion, plan of merger, or plan of exchange of the shareholders' meeting at which the plan will be voted upon. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion, plan of merger, or plan of exchange, and the notice must contain or be accompanied by a copy of the plan or a summary of the plan.

(5) Unless articles 101 to 117 of this title 7, including the provisions of section 7-117-101 (8), the articles of incorporation, bylaws adopted by the shareholders, or the board of directors acting pursuant to subsection (3) of this section require a greater vote, the plan of conversion, plan of merger, or plan of exchange must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required:

(a) On a plan of merger or a plan of conversion 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 under section 7-110-104;

(b) On a plan of exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger or by the shareholders of the acquiring corporation in a plan of exchange is not required if:

(a) The articles of incorporation of the surviving or acquiring corporation will not differ, except for amendments enumerated in section 7-110-102, from its articles of incorporation before the transaction;

(b) Each shareholder of the surviving or acquiring corporation whose shares were outstanding immediately before the transaction will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the transaction;

(c) The number of voting shares outstanding immediately after the transaction, plus the number of voting shares issuable as a result of the transaction either by the conversion of securities issued pursuant to the transaction or by the exercise of rights and warrants issued pursuant to the transaction, will not exceed by more than twenty percent the total number of

voting shares of the surviving or acquiring corporation outstanding immediately before the transaction; and

(d) The number of participating shares outstanding immediately after the transaction, plus the number of participating shares issuable as a result of the transaction either by the conversion of securities issued pursuant to the transaction or by the exercise of rights and warrants issued pursuant to the transaction, will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the transaction.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

Source: L. 93: Entire article added, p. 802, § 1, effective July 1, 1994. **L. 2002:** (9) amended, p. 1849, § 118, effective July 1; (9) amended, p. 1714, § 118, effective October 1. **L. 2003:** (9) amended, p. 2323, § 256, effective July 1, 2004. **L. 2006:** (9) amended, p. 880, § 72, effective July 1. **L. 2007:** (1) to (5), (6)(a), and (9) amended, p. 246, § 45, effective May 29. **L. 2019:** Entire section amended, (SB 19-086), ch. 166, p. 1943, § 50, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985). For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

Annotator's note. Since § 7-111-103 is similar to § 7-7-103 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

This section prescribes one of those instances where it is mandatory that all stockholders vote despite restrictions contained in the articles of incorporation. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

7-111-104. Merger of parent and subsidiary.

(1) By complying with the provisions of this section, a parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may either merge such subsidiary into itself or merge itself into such subsidiary.

(2) The board of directors of such parent corporation shall adopt, and its shareholders, if required by subsection (3) of this section, shall approve, a plan of merger that states:

(a) The entity names of such parent corporation and subsidiary and the entity name of the surviving corporation;

(b) The terms and conditions of the merger;

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into money or other property in whole or part;

(d) Any amendments to the articles of incorporation of the surviving corporation to be effected by the merger; and

(e) Any other provisions relating to the merger as are deemed necessary or desirable.

(3) No vote of the shareholders of such subsidiary shall be required with respect to the merger. If the subsidiary will be the surviving corporation, the approval of the shareholders of the parent corporation shall be sought in the manner provided in section 7-111-103 (1) to (6). If the parent will be the surviving corporation, no vote of its shareholders shall be required if all of the provisions of section 7-111-103 (7) are met with respect to the merger. If all of such provisions are not met, the approval of the shareholders of the parent shall be sought in the manner provided in subsections (1) to (6) of section 7-111-103.

(4) The parent corporation shall deliver a copy or summary of the plan of merger to each shareholder of the subsidiary, other than the parent corporation, that does not waive this delivery requirement in writing.

(5) The effective date of the merger is no earlier than:

(a) The date on which all shareholders of the subsidiary waived the delivery requirement of subsection (4) of this section; or

(b) Ten days after the date the parent delivered a copy or summary of the plan of merger to each shareholder of the subsidiary that did not waive the delivery requirement.

Source: L. 93: Entire article added, p. 804, § 1, effective July 1, 1994. **L. 2003:** IP(2) and (2)(a) amended, p. 2323, § 257, effective July 1, 2004. **L. 2021:** (4) and (5) amended, (HB 21-1124), ch. 41, p. 170, § 24, effective April 19.

ANNOTATION

Asserted noncompliance with this section in a merger plan does not preclude an action under § 7-4-124 for valuation of dissenters' shares. Santa's Workshop v. A.B. Hirschfeld Press, Inc., 851 P.2d 264 (Colo. App. 1993) (decided under former §§ 7-4-124 and 7-7-106 as they existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7).

7-111-104.5. Statement of merger or conversion - repeal. (Repealed)

Source: L. 2004: Entire section added, p. 1503, § 274, effective July 1. **L. 2007:** Entire section amended, p. 247, § 46, effective May 29. **L. 2019:** (3) added by revision, (SB 19-086), ch. 166, pp. 1945, 1966, §§ 51, 72.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2020. (See L. 2019, pp. 1945, 1966.)

7-111-105. Statement of share exchange - repeal. (Repealed)

Source: L. 93: Entire article added, p. 805, § 1, effective July 1, 1994. **L. 2002:** IP(1) amended, p. 1849, § 119, effective July 1; IP(1) amended, p. 1714, § 119, effective October 1. **L. 2003:** (1), (2), and (3) amended, p. 2324, § 258, effective July 1, 2004. **L. 2004:** (1) amended, p. 1503, § 275, effective July 1. **L. 2006:** (1)(b) amended, p. 880, § 73, effective July 1. **L. 2019:** (4) added by revision, (SB 19-086), ch. 166, pp. 1946, 1966, §§ 52, 72.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 2020. (See L. 2019, pp. 1946, 1966.)

7-111-106. Effect of merger, conversion, or share exchange - repeal. (Repealed)

Source: L. 93: Entire article added, p. 805, § 1, effective July 1, 1994. **L. 2004:** (1) amended, p. 1504, § 276, effective July 1. **L. 2007:** (1) amended and (1.5) added, p. 247, § 47, effective May 29. **L. 2019:** (3) added by revision, (SB 19-086), ch. 166, pp. 1946, 1966, §§ 53, 72.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2020. (See L. 2019, pp. 1946, 1966.)

7-111-106.5. Merger with foreign entity.

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

(a) The merger is permitted by section 7-90-203 (2);

(b) The foreign entity complies with section 7-90-203.7 if it is the surviving entity of the merger; and

(c) Each domestic corporation complies with the applicable provisions of sections 7-111-101 to 7-111-104 and, if it is the surviving corporation of the merger, with section 7-90-203.7.

(2) Upon the merger taking effect, the surviving foreign entity of a merger shall comply with section 7-90-204.5.

Source: L. 2007: Entire section added, p. 247, § 48, effective May 29. **L. 2019:** (1)(c) amended, (SB 19-086), ch. 166, p. 1946, § 54, effective July 1, 2020.

7-111-107. Share exchange with foreign corporation - repeal. (Repealed)

Source: L. 93: Entire article added, p. 806, § 1, effective July 1, 1994. **L. 96:** (2)(a)(I) amended, p. 1320, § 28, effective June 1. **L. 2003:** (1)(a), (1)(b), (2)(a), and (2)(c) amended, p. 2324, § 259, effective July 1, 2004. **L. 2004:** (1)(c), (1)(d), IP(2), (2)(a), (2)(b), (3), and (4) amended and (1.5) added, p. 1505, § 277, effective July 1. **L. 2007:** IP(1), (1)(a), (1)(c), (1)(d), (1.5), and (2)(a)(I) amended, p. 248, § 49, effective May 29. **L. 2019:** (6) added by revision, (SB 19-086), ch. 166, pp. 1947, 1966, §§ 55, 72.

Editor's note: Subsection (6) provided for the repeal of this section, effective July 1, 2020. (See L. 2019, pp. 1947, 1966.)

7-111-108. Redomestication as a domestic insurer.

(1) A foreign or alien insurer which seeks to change its domicile under section 10-3-125 or 10-3-126, C.R.S., shall submit articles of redomestication in triplicate to the commissioner of insurance and the attorney general for examination. After being approved by them, the articles of redomestication shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title. A copy of such articles, certified by the secretary of state, shall be filed with the commissioner of insurance.

(2) The articles of redomestication shall state:

(a) The domestic entity name for the corporation, which domestic entity name shall comply with the requirements of sections 7-90-601 and 10-3-103, C.R.S.;

(b) The state in which the corporation was originally incorporated, the name under which it was so incorporated, the date of such incorporation, and the date the corporation was authorized to transact business or conduct activities as an insurance company in the state of its original incorporation;

(c) If the state in which the corporation was last incorporated is different from the state in which it was originally incorporated, the state in which the corporation was last incorporated, the entity name under which it was so incorporated, the date of such incorporation, and the date the corporation was authorized to transact business or conduct activities as an insurance company in the state of its last incorporation;

(d) The information regarding shares required by section 7-106-101;

(e) The registered agent name and registered agent address of the corporation's registered agent;

(f) The principal office address of the corporation's principal office;

(g) The names and mailing addresses of the persons serving as the directors and officers of such corporation; and

(h) A statement that, upon redomestication, the corporation accepts and will be subject to the law of this state.

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

(a) Provisions not inconsistent with law regarding:

(I) The current purpose or purposes of the corporation and the purpose or purposes which it intends to pursue after redomestication;

(II) Managing the business of the corporation and regulating its affairs;

(III) Defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(IV) A par value for authorized shares or classes of shares; and

(V) The imposition of personal liability on shareholders for the debts of the corporation to a stated extent and upon stated conditions; and

(b) Any provision that, under articles 101 to 117 of this title, is required or permitted to be stated in the bylaws.

(4) It shall not be necessary to state in the articles of redomestication any of the corporate powers enumerated in articles 101 to 117 of this title.

(5) In its articles of redomestication, the corporation may amend, restate, or revise its articles of incorporation or charter to the same extent, subject to the same limitations, and by the same procedures as those provisions governing the amendment, restatement, and revision of articles of incorporation as provided in articles 101 to 117 of this title.

(6) The corporation shall attach to the articles of redomestication:

(a) Its articles of incorporation or charter, as amended or restated, as in effect immediately before the filing of its articles of redomestication, duly authenticated by the proper officer in the jurisdiction of its last incorporation;

(b) A certificate to the effect that the corporation is in good standing in the jurisdiction of its last incorporation, duly authenticated by the proper officer in the jurisdiction of its last incorporation. The certificate shall be dated within ninety days before the filing of the articles of redomestication.

(c) A resolution, duly certified by the secretary of the corporation, adopted by the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders are entitled to cast thereon, and, if any class of shares is entitled to vote thereon as a class, the affirmative vote of the holders of at least a majority of the outstanding shares in each class of shares entitled to vote as a class thereon, consenting to the filing of the articles of redomestication and the renunciation, conditioned upon its redomestication as a domestic insurer, of its last articles of incorporation or charter.

(7) Upon the issuance by the secretary of state of a certificate of redomestication, a corporation shall be deemed to be domiciled in and incorporated under the law of this state; except that an insurer that has redomesticated in this state pursuant to section 10-3-125 or 10-3-

126, C.R.S., shall be considered to be the same corporation as that corporation that existed under the law of the jurisdiction in which it was formerly domiciled and shall be considered as having been an operating insurer from the date that the corporation was authorized to transact business or conduct activities as an insurer in such jurisdiction.

(8) The certificate of redomestication shall serve the same purpose as articles of incorporation under articles 101 to 117 of this title.

(9) The certificate of redomestication, subject to the provisions of the law of this state relating to insurance, shall entitle the redomesticated corporation to all the powers, rights, and privileges granted to corporations incorporated in this state and shall subject the redomesticated corporation to all of the duties, liabilities, and limitations imposed upon domestic corporations but shall continue the corporation as if it had been originally incorporated under the law of this state. Upon the issuance of the certificate of redomestication by the secretary of state, the articles of redomestication shall constitute the articles of incorporation of the corporation.

(10) Any domestic insurer, subject to and in compliance with section 10-3-125 (2), C.R.S., may change its domicile from this state to any other state in which it is authorized to transact business or conduct activities and, in connection therewith, shall submit to the commissioner of insurance a copy of the articles of redomestication or their equivalent, duly authenticated by the proper officer of its new state of domicile, and a certificate of good standing or its equivalent from that state. Upon approval by the commissioner of insurance, the copy of the articles of redomestication and certificate of good standing, or their equivalents, from the new state of domicile shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title. Upon the filing of such documents by the secretary of state, the domestic insurer shall cease to be a domestic corporation and a domestic insurer and, if otherwise qualified, shall become a foreign corporation and foreign insurer authorized to transact business or conduct activities in this state effective as of the date of its redomestication by the new state of domicile as stated in its articles of redomestication.

(11) All certificates of redomestication issued by the secretary of state shall state the date on which the articles of redomestication were filed and, based upon the information submitted to the secretary of state pursuant to this section, the date from which the corporation existed and operated as an insurer, which shall be the date the insurer was incorporated in the jurisdiction of its original incorporation.

Source: L. 93: Entire article added, p. 808, § 1, effective July 1, 1994. **L. 2000:** (2)(a) amended, p. 979, § 62, effective July 1. **L. 2002:** (2)(a) amended, p. 1012, § 3, effective June 1; (1), (2)(e), and (10) amended, p. 1849, § 120, effective July 1; (1), (2)(e), and (10) amended, p. 1714, § 120, effective October 1. **L. 2003:** IP(2), (2)(a), (2)(b), (2)(c), (2)(e), (2)(f), (2)(h), IP(3), (3)(a)(V), (3)(b), (4), (7), (9), (10), and (11) amended, p. 2325, § 260, effective July 1, 2004. **L.**

2004: (2)(c) and (2)(g) amended, p. 1506, § 278, effective July 1. **L. 2008:** (8) amended, p. 24, § 19, effective August 5.

ARTICLE 112

Sale of Property

7-112-101. Sale or mortgage of property without shareholder approval.

7-112-102. Sale of property requiring shareholder approval.

7-112-101. Sale or mortgage of property without shareholder approval.

(1) A corporation may, as authorized by its bylaws or by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of any or 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 any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to a domestic corporation all the shares of which are owned, directly or indirectly, by the corporation.

(2) Unless otherwise provided in the articles of incorporation, approval by the shareholders of a transaction described in subsection (1) of this section is not required.

Source: L. 93: Entire article added, p. 811, § 1, effective July 1, 1994. **L. 96:** IP(1) amended, p. 1321, § 29, effective June 1.

7-112-102. Sale of property requiring shareholder approval.

(1) A 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 shareholders approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a 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 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 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 shares or other interests held by the corporation in such other entity constitute all, or substantially all, of the property of the corporation, then the corporation shall consent to such transaction only if the board of directors proposes and the shareholders 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 shareholders:

(a) The board of directors shall recommend the transaction or the consent to the shareholders 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 shareholders with the submission of the transaction; and

(b) The shareholders 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 corporation shall give notice, in accordance with section 7-107-105, to each shareholder 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 shareholders' 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 corporation; or

(II) In the case of action pursuant to subsection (2) of this section, the 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), shares or other interests of which are held by the corporation and constitute all, or substantially all, of the property of the 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 101 to 117 of this title (including the provisions of section 7-117-101 (9)), the articles of incorporation, bylaws adopted by the shareholders, 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 each voting group entitled to vote separately on the transaction or consent by a majority of all the votes entitled to be cast on the transaction or the consent by that voting group.

(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 shareholder action.

(8) A transaction that constitutes a distribution is governed by section 7-106-401 and not by this section.

Source: L. 93: Entire article added, p. 811, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For note, "Consolidations, Mergers, Sales of Assets Under the New Colorado Corporation Act", see 31 Rocky Mt. L. Rev. 66 (1958). For comment on shareholder approval of substantial asset sales in the multisubsidiary context, see 45 U. Colo. L. Rev. 339 (1974). For article, "Conflict of Interest Transactions: Fiduciary Duties of Corporate Directors Who Are Also Controlling Shareholders", see 57 Den. L.J. 609 (1980). For article, "Signatures on Documents Affecting Title to Colorado Real Property — Part III", see 12 Colo. Law. 447 (1983). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "Continuing Liability for Unpaid Corporate Debts After a Corporation Ceases Business", see 14 Colo. Law 40 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985). For article, "Sale of Substantially All Corporate Assets", see 16 Colo. Law. 455 (1987). For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

Annotator's note. Since § 7-112-102 is similar to § 7-5-112 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

This section prescribes one of those instances where it is mandatory that all stockholders vote despite restrictions contained in the articles of incorporation. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

Section held not applicable to nonprofit corporations. Morris Alpert & Sons v.

Kahler, 31 Colo. App. 345, 502 P.2d 98 (1972).

To legally effect a change in the two-thirds approval requirement of an asset sale in this section, a provision must be added to the articles of incorporation. Dominick v. Marcove, 809 F. Supp. 805 (D. Colo. 1992) (decided under former § 7-5-112 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7).

Applied in People v. Cameron, 197 Colo. 330, 595 P.2d 677 (1979).

ARTICLE 113

Appraisal Rights

PART 1
RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

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7-113-102. Right to appraisal.

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PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

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OTHER REMEDIES

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PART 1

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

7-113-101. Definitions.

As used in this article 113, unless the context otherwise requires:

(1) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person or is a senior executive of the other person. For purposes of section 7-113-102 (2)(d), a person is deemed to be an affiliate of its senior executives.

(2) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 7-113-203 to 7-113-401, includes the surviving entity in a merger.

(3) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectuation of the corporate action to which the shareholder objects;

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(c) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to section 7-113-102 (1)(e).

(4) "Interest" means interest, from the effective date of the corporate action until the date of payment, at the legal rate as specified in section 5-12-101.

(5) "Interested transaction" means a corporate action described in section 7-113-102 (1), other than a merger pursuant to section 7-111-104, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used only in this subsection (5):

(a) (I) "Beneficial owner" means any person that, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted.

(II) When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed by the agreement is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(b) "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(c) "Interested person" means a person, or an affiliate of a person, that, at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(I) Was the beneficial owner of twenty percent or more of the voting power of the corporation, other than as owner of excluded shares;

(II) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation; or

(III) Was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(A) Employment, consulting, retirement, or similar benefits established separately, and not as part of, or in contemplation of, the corporate action; or

(B) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 7-108-501; or

(C) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of the entity or affiliate.

(6) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(7) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1948, § 56, effective July 1, 2020.

Editor's note: This section is similar to former § 7-113-101 as it existed prior to 2020.

Cross references: For additional definitions applicable to this article, see §§ 7-90-102 and 7-101-401.

ANNOTATION

Law reviews. For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

Annotator's note. Since § 7-113-101 is similar to § 7-4-124 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision have been included in the annotations to this section.

Purpose of dissenters' rights statutes is to protect the property rights of dissenting shareholders from actions by majority shareholders that alter the character of their investment. M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001).

Statutes, not bylaws of corporation, control valuation of shares. However, the unique structure of the corporation, as expressed in its bylaws, is a relevant factor. M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001).

Interpretation of "fair value". Relying on case law interpreting "fair value" within the context of dissenters' rights statutes in other states, a determination of fair value is based on all relevant value factors considering the particular circumstances of the corporation involved. Such a determination is not premised upon any precise mathematical formula. Pioneer Bancorporation, Inc. v. Waters, 765 P.2d 597 (Colo. App. 1988); M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001).

"Fair value" connotes a broader approach to valuation than "fair market value". In determining fair value, the court must consider all relevant value factors, the most important of which are market value, investment or earnings value, and net asset value. M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001).

"Fair value" does not mean "fair market value"; it means a dissenting shareholder's proportionate interest in the corporation valued as a going concern. Pueblo Bancorporation v. Lindoe, Inc., 63 P.3d 353 (Colo. 2003); Crocker v. Greater Colo. Anesthesia, P.C., 2018 COA 33, 463 P.3d 860.

A marketability discount may, in appropriate circumstances, be applied in situations in which a closely held corporation's shares are valued under this section, but such a determination is a factual one that must be made on an ad hoc basis. WCM Indus. v. Trustees of Wilson Trust, 948 P.2d 36 (Colo. App. 1997) (decided under law as it existed prior to the 1994 repeal of § 7-4-124).

Distinction between marketability discount and minority discount. A minority discount adjusts for lack of control over the business entity on the theory that non-controlling shares of stock are not worth their proportionate share of the firm's value

because they lack voting power to control corporate actions. A marketability discount adjusts for a lack of liquidity in one's interest in an entity, on the theory that there is a limited supply of potential buyers for stock in a closely held corporation. M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001).

Finding of fair value is a factual determination. As such, it will not be disturbed on appeal unless clearly erroneous. M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001).

Defendant corporation owed dissenting stockholder the fair value, not the redemption value, for plaintiff's preferred stock. Fair value is akin to fair market value, the value a shareholder would receive in an arms-length transaction, and not necessarily an existent redemptive value if the redemptive value is lower than fair market value. Breniman v. Agricultural Consultants, 829 P.2d 493 (Colo. App. 1992).

Extraordinary actions of the corporation in selling off its property permit the dissenting shareholder to invoke this section to obtain fair value payment for his shares. Breniman v. Agricultural Consultants, 829 P.2d 493 (Colo. App. 1992).

Applied in Walter S. Cheesman Realty Co. v. Moore, 770 P.2d 1308 (Colo. App. 1988).

7-113-102. Right to appraisal.

(1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(a) Consummation of a merger to which the corporation is a party if:

(I) Shareholder approval is required for the merger by section 7-111-103 and the shareholder is entitled to vote on the merger; except that appraisal rights are not available to a shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(II) The corporation is a subsidiary that is merged with its parent corporation under section 7-111-104;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange; except that appraisal rights are not available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to section 7-112-102 (1) if the shareholder is entitled to vote on the disposition;

(d) Consummation of a disposition of assets of an entity controlled by the corporation pursuant to section 7-112-102 (2) if the shareholders of the corporation were entitled to vote on the consent of the corporation to the disposition;

(e) An amendment to the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(f) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or resolution of the board of directors;

(g) Consummation of a conversion of the corporation to nonprofit status pursuant to section 7-90-201;

(h) Consummation of a conversion of the corporation to an unincorporated entity pursuant to section 7-90-206 (2) if the shareholder is entitled to vote on the conversion; or

(i) Consummation of a division, as defined in section 10-3-1701 (4), to which the corporation is a party if the corporation does not survive the division, subject to the limitations set forth in section 10-3-1713.

(2) Notwithstanding subsection (1) of this section, the availability of appraisal rights under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), (1)(h), and (1)(i) of this section are limited in accordance with the following provisions:

(a) Appraisal rights are not available for the holders of shares of any class or series of shares that is:

(I) A covered security under section 18 (b)(1)(A) or 18 (b)(1)(B) of the federal "Securities Act of 1933", 15 U.S.C. 77r (b)(1)(A) and 77r (b)(1)(B); or

(II) Not a covered security but is traded in an organized market and has a market value of at least twenty million dollars, exclusive of the value of the shares held by the corporation's subsidiaries, senior executives, directors, and persons known to the corporation owning more than ten percent of the shares; or

(III) Issued by an open-end management investment company registered with the federal securities and exchange commission under the federal "Investment Company Act of 1940", 15 U.S.C. sec. 80a-1 et seq., and that may be redeemed at the option of the holder at net asset value.

(b) The applicability of subsection (2)(a) of this section is determined as of:

(I) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(II) The day before the effective date of the corporate action if there is no meeting of shareholders.

(c) Subsection (2)(a) of this section does not apply and appraisal rights are available pursuant to subsection (1) of this section for the holders of any class or series of shares that is required by the terms of the corporate action requiring appraisal rights to accept for the shares anything other than:

(I) Cash; or

(II) Shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfy the standards set forth in subsection (2)(a) of this section at the time the corporate action becomes effective.

(d) Subsection (2)(a) of this section does not apply and appraisal rights are available pursuant to subsection (1) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or as amended may limit or eliminate appraisal rights for any class or series of preferred shares; except that an amendment to the articles of incorporation does not apply to any corporate action that becomes effective within one year after the effective date of the amendment if:

(a) That action would otherwise afford appraisal rights; and

(b) The amendment limits or eliminates appraisal rights for shares that:

(I) Are outstanding immediately before the effective date of the amendment; or

(II) The corporation is or may be required to issue or sell after the effective date of the amendment pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1950, § 56, effective July 1, 2020. **L. 2021:** (1)(g), (1)(h), and IP(2) amended and (1)(i) added, (HB 21-1013), ch. 144, p. 855, § 2, effective September 7.

Editor's note: This section is similar to former § 7-113-102 as it existed prior to July 1, 2020.

Cross references: For the federal "Securities Exchange Act of 1934", see 15 U.S.C. § 78a et seq.

ANNOTATION

Law reviews. For article, "Sale of Substantially All Corporate Assets", see 16 Colo. Law. 455 (1987). For article, "Mergers and Acquisitions in Colorado: A Practitioner's Roadmap", see 16 Colo. Law. 769 (1987). For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989). For article, "Dissenters' Rights: Business Valuation Issues Post-Pueblo and Szaloczi", see 35 Colo. Law. 25 (June 2006).

Annotator's note. Since § 7-113-102 is similar to § 7-4-123 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, a case construing that provision has been included in the annotations to this section.

Defendant corporation owed dissenting stockholder the fair value, not the redemption value, for plaintiff's preferred stock. Fair value is akin to fair market value, the value a shareholder would receive in an arms-length transaction, and not necessarily an existent redemptive value if the redemptive value is lower than fair market value. Breniman v. Agricultural Consultants, 829 P.2d 493 (Colo. App. 1992).

Extraordinary actions of the corporation in selling off its property permit the dissenting shareholder to invoke this section to obtain fair value payment for his shares. Breniman v. Agricultural Consultants, 829 P.2d 493 (Colo. App. 1992).

An action by a minority shareholder for compensatory damages based on breach of fiduciary duty and conspiracy is not within the statutory exception to exclusivity, as it is not an action for equitable relief challenging the corporate action that created the right to dissent and obtain payment for the minority owner's shares, and actions against the officers and directors rather than the corporation are subject to the exclusivity requirement. Szaloczi v. Behrmann Revocable Trust, 90 P.3d 835 (Colo. 2004).

A company cannot enforce the liquidated damages term of a noncompete provision in a shareholder-employment agreement against a dissenting shareholder/employee when the dissenting shareholder/employee is forced out of employment by the action of a merger. Crocker v. Greater Colo. Anesthesia, P.C., 2018 COA 33, 463 P.3d 860.

7-113-103. Assertion of rights by nominees and beneficial owners.

(1) A shareholder may assert appraisal rights as to fewer than all the shares registered in the shareholder's name but owned by a beneficial owner other than the shareholder only if the shareholder objects with respect to all shares of the class or series owned by the beneficial owner and notifies the corporation in writing of the name and address and federal taxpayer identification number, if any, of each beneficial owner on whose behalf appraisal rights are being

asserted. The rights of a shareholder who asserts appraisal rights under this subsection (1) for only part of the shares held of record in the shareholder's name are determined as if the shares as to which the shareholder objects and the shareholder's other shares were registered in the names of different shareholders.

(2) A beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the beneficial owner only if the beneficial owner:

(a) Submits to the corporation the shareholder's written consent to the assertion of the rights no later than the date specified in section 7-113-203 (2)(b)(II); and

(b) Does so with respect to all shares of the class or series that are owned by the beneficial owner.

(3) The corporation may require that, when a shareholder objects with respect to the shares of any class or series held by any one or more beneficial owners, each such beneficial owner must certify to the corporation that the beneficial owner and the shareholder or shareholders of all shares of that class or series owned by the beneficial owner have asserted, or will timely assert, the beneficial owner's appraisal rights as to all shares as to which there is no limitation on the ability to exercise appraisal rights. Any such requirement must be stated in the notice given pursuant to section 7-113-202.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1952, § 56, effective July 1, 2020.

Editor's note: This section is similar to former § 7-113-103 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Sale of Substantially All Corporate Assets", see 16 Colo. Law. 455 (1987). For article, "Mergers and Acquisitions in Colorado: A Practitioner's Roadmap", see 16 Colo. Law. 769 (1987). For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

PART 2

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

7-113-201. Notice of appraisal rights.

(1) Where any corporate action specified in section 7-113-102 (1) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under this article 113. If the corporation concludes that appraisal rights are or may be available, a copy of this article 113 must accompany the meeting notice sent to those shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to section 7-111-104, the parent corporation shall notify in writing all shareholders of the subsidiary that are entitled to assert appraisal rights that the corporate action became effective. The notice shall be sent within ten days after the corporate action became effective and must include the materials described in section 7-113-203.

(3) Where any corporate action specified in section 7-113-102 (1) is to be approved by written consent of the shareholders pursuant to section 7-107-104:

(a) Notice that appraisal rights are, are not, or may be available shall be given to each shareholder from whom a consent is solicited at the time consent of the shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article 113; and

(b) Notice that appraisal rights are, are not, or may be available shall be delivered, together with the notice to nonconsenting and nonvoting shareholders required by section 7-107-104 (5.5); may include the materials described in section 7-113-203; and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article 113.

(4) Where corporate action described in section 7-113-102 (1) is proposed or a merger pursuant to section 7-111-104 is effected, the notice required by subsection (1) or (3) of this section, if the corporation concludes that appraisal rights are or may be available and by subsection (2) of this section, must be accompanied by:

(a) The annual financial statements specified in section 7-116-105 of the corporation that issued the shares that may be subject to appraisal, which statements must be as of a date ending not more than sixteen months before the date of the notice and must comply with section 7-116-105; except that, if the annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) The latest available quarterly financial statements of the corporation, if any.

(5) The right to receive the information described in subsection (4) of this section may be waived in writing by a shareholder before or after the corporate action.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1953, § 56, effective July 1, 2020. **L. 2021:** (3) amended, (HB 21-1124), ch. 41, p. 170, § 25, effective April 19.

Editor's note: This section is similar to former § 7-113-201 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989). For article, "Fiduciary Duties of Corporate Directors: Recent Case Law Developments", see 32 Colo. Law. 65 (Dec. 2003).

7-113-202. Notice of intent to demand payment.

(1) If a proposed corporate action specified in section 7-113-102 (1) is submitted to a vote at a shareholders' meeting, a shareholder that wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation, before the vote is taken, notice of the shareholder's intent to demand payment if the proposed corporate action is effectuated; and

(b) Must not vote, or cause or permit to be voted, any shares of the class or series in favor of the proposed corporate action.

(2) If a proposed corporate action specified in section 7-113-102 (1) is to be approved by less than unanimous written consent, a shareholder that wishes to assert appraisal rights with respect to any class or series of shares must not execute a consent in favor of the proposed corporate action with respect to that class or series of shares.

(3) A shareholder that fails to satisfy the requirements of subsection (1) or (2) of this section is not entitled to demand payment under this article 113.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1954, § 56, effective July 1, 2020. **L. 2021:** (1)(a) amended, (HB 21-1124), ch. 41, p. 171, § 26, effective April 19.

Editor's note: This section is similar to former § 7-113-202 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

7-113-203. Appraisal notice and form.

(1) If a proposed corporate action requiring appraisal rights under section 7-113-102 (1) becomes effective, the corporation shall deliver a written appraisal notice and form to all shareholders that may be entitled to assert appraisal rights.

(2) The appraisal notice required by subsection (1) of this section shall be sent no earlier than the date the corporate action specified in section 7-113-102 (1) became effective, and no later than ten days after that date, and must:

(a) Include a form that:

(I) Specifies the first date of any announcement to shareholders, made before the date the corporate action became effective, of the principal terms of the proposed corporate action;

(II) If the announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(III) Requires the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction;

(b) State:

(I) Where the form must be sent, where certificates for certificated shares must be deposited, and the date by which those certificates must be deposited, which date must not be earlier than the date for receiving the required form under subsection (2)(b)(II) of this section;

(II) A date by which the corporation must receive the form, which date must not be fewer than forty nor more than sixty days after the date the appraisal notice and form are required to be sent pursuant to the introductory portion to subsection (2) of this section, and state that the shareholder waives the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(III) The corporation's estimate of the fair value of the shares;

(IV) That, if requested in writing, the corporation will provide to the shareholder so requesting, within ten days after the date specified in subsection (2)(b)(II) of this section, a statement of the number of shareholders that return the forms by the specified date and the total number of shares owned by them; and

(V) The date by which the notice to withdraw under section 7-113-204 must be received, which date must be within twenty days after the date specified in subsection (2)(b)(II) of this section; and

(c) Be accompanied by a copy of this article 113.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1954, § 56, effective July 1, 2020.

Editor's note: This section is similar to former § 7-113-203 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

7-113-204. Perfection of rights - right to withdraw.

(1) A shareholder that receives notice pursuant to section 7-113-203 and that wishes to exercise appraisal rights must sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice given pursuant to section 7-113-203 (2)(b)(II). In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 7-113-203 (2)(a). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 7-113-206. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder unless the shareholder withdraws pursuant to subsection (2) of this section.

(2) A shareholder who has complied with subsection (1) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice given pursuant to section 7-

113-203 (2)(b)(V). A shareholder that fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder that does not sign and return the form and, in the case of certified shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in section 7-113-203 (2), is not entitled to payment under this article 113.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1955, § 56, effective July 1, 2020.

Editor's note: This section is similar to former § 7-113-204 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

Even though a minority shareholder may have an action for compensatory damages as recognized by this section before the effective date of an action giving rise to the dissenter's rights, after the effective date of the action such pre-existing claims must be dismissed unless they fall within the narrow exception to the exclusivity requirement of § 7-113-102 (4). Szaloczi v. Behrmann Revocable Trust, 90 P.3d 835 (Colo. 2004).

7-113-205. Payment.

(1) Except as provided in section 7-113-206, within thirty days after the date specified in section 7-113-203 (2)(b)(II), the corporation shall pay in cash to those shareholders who complied with section 7-113-204 (1) the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) of this section must be accompanied by:

(a) (I) The annual financial statements specified in section 7-116-105 of the corporation that issued the shares to be appraised, which statement must be as of a date ending not more than sixteen months before the date of payment; except that, if the annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(II) The latest available quarterly financial statements of the corporation, if any;

(b) A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to section 7-113-203 (2)(b)(III); and

(c) A statement that shareholders described in subsection (1) of this section have the right to demand further payment under section 7-113-207 and that if any such shareholder does not do so within the period specified in section 7-113-207 (2), the shareholder shall be deemed to have accepted the payment in full satisfaction of the corporation's obligations under this article 113.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1956, § 56, effective July 1, 2020.

Editor's note: This section is similar to former § 7-113-206 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

7-113-206. After-acquired shares.

(1) The corporation may elect to withhold payment otherwise required by section 7-113-205 from any shareholder that was required to certify, but did not certify, that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notices sent pursuant to section 7-113-203 (2)(a).

(2) If the corporation elected to withhold payment under subsection (1) of this section, it must, within thirty days after the date specified in section 7-113-203 (2)(b)(II), notify all shareholders that are described in subsection (1) of this section:

(a) Of the information required by section 7-113-205 (2)(a);

(b) Of the corporation's estimate of fair value pursuant to section 7-113-205 (2)(b);

(c) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 7-113-207;

(d) That those shareholders that wish to accept the offer must notify the corporation of their acceptance of the corporation's offer within thirty days after receiving the offer; and

(e) That those shareholders who do not satisfy the requirements for demanding appraisal under section 7-113-207 shall be deemed to have accepted the corporation's offer.

(3) Within ten days after receiving the shareholder's acceptance pursuant to subsection (2)(d) of this section, the corporation shall pay in cash the amount it offered under section 7-113-206 (2)(b) to each shareholder that agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within forty days after sending the notice described in subsection (2) of this section, the corporation shall pay in cash the amount it offered to pay under subsection (2)(b) of this section to each shareholder described in subsection (3) of this section.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1956, § 56, effective July 1, 2020.

Editor's note: This section is similar to former § 7-113-208 as it existed prior to 2020, and the former § 7-113-206 was relocated to § 7-113-205.

7-113-207. Procedure if shareholder is dissatisfied with payment or offer.

(1) A shareholder that is paid pursuant to section 7-113-205 and is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate, plus interest, less any payment made under section 7-113-205. A shareholder that is offered payment under section 7-113-206 and is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares, plus interest.

(2) A shareholder that fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) of this section within thirty days after receiving the corporation's payment or offer of payment under section 7-113-205 or 7-113-206, respectively, waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those respective sections.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1957, § 56, effective July 1, 2020.

Editor's note: This section is similar to former § 7-113-209 as it existed prior to 2020.

PART 3

JUDICIAL APPRAISAL OF SHARES

7-113-301. Court action.

(1) If a demand for payment under section 7-113-207 remains unresolved, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 7-113-207 plus interest.

(2) The corporation shall commence the proceeding described in subsection (1) of this section in:

(a) The district court for the county in this state in which the street address of the corporation's principal office is located;

(b) The district court for the county in which the street address of its registered agent is located if the corporation has no principal office in this state; or

(c) The district court for the city and county of Denver if the corporation has no registered agent; except that, if the corporation is a foreign corporation without a registered agent, the corporation shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation that merged with the foreign corporation was located at the time of the merger.

(3) (a) The corporation shall:

(I) Make all shareholders whose demands remain unresolved, whether or not residents of this state, parties to the proceeding as in an action against their shares; and

(II) Serve all parties with a copy of the petition.

(b) Service on each shareholder demanding appraisal rights must be by registered or certified mail or by electronic transmission to the address stated in the shareholder's payment demand or, if no such address is stated in the payment demand, to the address shown on the corporation's current record of shareholders for the shareholder holding the shares as to which appraisal rights are demanded, or as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have

the powers described in the order appointing them or in any amendment to the order. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There is no right to a jury trial.

(5) Each shareholder made a party to the proceeding commenced under subsection (2) of this section is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation for the shares; or

(b) For the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 7-113-206.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1958, § 56, effective July 1, 2020. **L. 2021:** (3)(b) amended, (HB 21-1124), ch. 41, p. 171, § 27, effective April 19.

Editor's note: This section is similar to former § 7-113-301 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

Annotator's note. Since § 7-113-301 is similar to § 7-4-124 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision have been included in the annotations to this section.

Interpretation of "fair value". Relying on case law interpreting "fair value" within the context of dissenters' rights statutes in other states, a determination of fair value is based on all relevant value factors considering the particular circumstances of the corporation involved. Such a determination is not premised upon any precise mathematical formula. Pioneer Bancorporation, Inc. v. Waters, 765 P.2d 597 (Colo. App. 1988).

"Shall" as used in former subsection (8)(f) (now subsection (1)) is mandatory. Egret Energy Corp. v. Peierls, 796 P.2d 25 (Colo. App. 1990).

Dissenter entitled to amount demanded with interest. Egret Energy Corp. v. Peierls, 796 P.2d 25 (Colo. App. 1990).

Minority discount should not, as a matter of law, be applied in valuing dissenting shareholder's stock. Pueblo Bancorporation v. Lindoe, Inc., 37 P.3d 492 (Colo. App. 2001), aff'd on other grounds, 63 P.3d 353 (Colo. 2003).

Marketability discount should not be applied absent extraordinary circumstances in valuing dissenting shareholder's stock; the conversion to an S corporation by merger is not such an extraordinary circumstance. Pueblo Bancorporation v. Lindoe, Inc., 37 P.3d 492 (Colo. App. 2001) (declining to follow M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001)) (supreme court in Pueblo Bancorporation v. Lindoe, Inc., 63 P.3d 353 (Colo. 2003), annotated below, disagreed with the reasoning of the court of appeals).

Marketability discount should not be applied; fair value means neither fair market value nor that value determined on a case-by-case approach, but rather the shareholder's proportionate ownership interest in the value of the corporation. Pueblo Bancorporation v. Lindoe, Inc., 63 P.3d 353 (Colo. 2003) (disagreeing with the reasoning of the court of appeals in Pueblo Bancorporation v. Lindoe, Inc., annotated above).

Interest on the judgment that is available does not include interest under § 5-12-102 (1)(a) in an amount that recognizes the gain or benefit realized by the person wrongfully withholding such money. Pueblo Bancorporation v. Lindoe, Inc., 37 P.3d 492 (Colo. App. 2001), aff'd on other grounds, 63 P.3d 353 (Colo. 2003).

7-113-302. Court costs and expenses.

(1) The court in an appraisal proceeding commenced under section 7-113-301 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation; except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article 113.

(2) The court in an appraisal proceeding may also assess the fees and expenses of the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with section 7-113-201, 7-113-203, 7-113-205, or 7-113-206; or

(b) Against either the corporation or one or more shareholders demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article 113.

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that the

expenses should not be assessed against the corporation, the court may direct that the expenses be paid out of the amounts awarded to the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to section 7-113-205, 7-113-206, or 7-113-207, the shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all expenses of the suit, including reasonable attorney fees.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1959, § 56, effective July 1, 2020.

Editor's note: This section is similar to former § 7-113-302 as it existed prior to 2020.

ANNOTATION

Law reviews. For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

Award under this section granting attorney fees, but not determining the amount, is not a final and appealable order. M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001).

Interpretation of "fair value". Relying on case law interpreting "fair value" within the context of dissenters' rights statutes in other states, a determination of fair value is based on all relevant value factors considering the particular circumstances of the corporation involved. Such a determination is not premised upon any precise mathematical formula. Pioneer Bancorporation, Inc. v. Waters, 765 P.2d 597 (Colo. App. 1988); M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc., 40 P.3d 6 (Colo. App. 2001).

Court should not have treated the costs of computer-aided legal research as within the discretionary award of attorney fees; rather, they should have been treated as a mandatory award of costs, to be awarded if: (1) The client was billed for the research expenses separately from the attorney fees; (2) the research was necessary for trial preparation; and (3) the amount requested was reasonable. Pueblo Bancorporation v. Lindoe, Inc., 37 P.3d 492 (Colo. App. 2001), aff'd on other grounds, 63 P.3d 353 (Colo. 2003).

Costs not properly assessed against dissenter. Dissenter's suit was an exercise of statutory rights and not an arbitrary and vexatious action pursued in bad faith. Egret Energy Corp. v. Peierls, 796 P.2d 25 (Colo. App. 1990) (decided under former law).

PART 4

OTHER REMEDIES

7-113-401. Other remedies limited.

(1) The legality of a proposed or completed corporate action described in section 7-113-102 (1) may not be contested, nor may the corporate action be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(2) Subsection (1) of this section does not apply to a corporate action that:

(a) Was not authorized and approved in accordance with the applicable provisions of:

(I) Article 109, 110, 111, or 112 of this title 7;

(II) The articles of incorporation or bylaws; or

(III) The resolution of the board of directors authorizing the corporate action;

(b) Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(c) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 7-108-501 and has been approved by the shareholders, in the same manner as is provided in section 7-108-501, as if the interested transaction were a director's conflicting interest transaction; or

(d) Was approved by less than unanimous consent of the voting shareholders pursuant to section 7-107-104 if:

(I) The challenge to the corporate action is brought by a shareholder that did not consent and as to whom notice of the approval of the corporate action was not effective at least ten days before the corporate action was effected; and

(II) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

Source: L. 2019: Entire article R&RE, (SB 19-086), ch. 166, p. 1960, § 56, effective July 1, 2020.

ARTICLE 114

Dissolution

PART 1
VOLUNTARY DISSOLUTION

7-114-101. Authorization of dissolution before issuance of shares.

7-114-102. Authorization of dissolution after issuance of shares.

7-114-102.5. Dissolution upon expiration of period of duration.

7-114-103. Articles of dissolution.

7-114-103.5. Name of dissolved corporation - repeal. (Repealed)

7-114-104. Revocation of dissolution. (Repealed)

7-114-105. Effect of dissolution.

7-114-106. Disposition of known claims by notification. (Repealed)

7-114-107. Disposition of claims by publication. (Repealed)

7-114-108. Enforcement of claims against dissolved corporation. (Repealed)

7-114-109. Service on dissolved corporation - repeal. (Repealed)

PART 2
ADMINISTRATIVE DISSOLUTION

7-114-201 to 7-114-204. (Repealed)

PART 3
JUDICIAL DISSOLUTION

7-114-301. Grounds for judicial dissolution.

7-114-302. Procedure for judicial dissolution.

7-114-303. Receivership or custodianship.

7-114-304. Decree of dissolution.

7-114-305. Election to purchase in lieu of dissolution.

PART 4
MISCELLANEOUS

7-114-401. Deposit with state treasurer.

PART 1

VOLUNTARY DISSOLUTION

7-114-101. Authorization of dissolution before issuance of shares.

If a corporation has not yet issued shares, a majority of its directors or, if no directors have been elected, a majority of its incorporators may authorize the dissolution of the corporation.

Source: L. 93: Entire article added, p. 822, § 1, effective July 1, 1994.

7-114-102. Authorization of dissolution after issuance of shares.

(1) After shares have been issued, dissolution of a corporation may be authorized in the manner provided in subsection (2) of this section.

(2) For a proposal to dissolve the 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 shareholders 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 shareholders; and

(c) The shareholders 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 on any basis.

(4) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the proposal of the shareholders' meeting at which the proposal to dissolve will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the proposal to dissolve the corporation, and the notice shall contain or be accompanied by a copy of the proposal or a summary thereof.

(5) Unless articles 101 to 117 of this title (including the provisions of section 7-117-101 (10)), the articles of incorporation, bylaws adopted by the shareholders, 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 each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast on the proposal by that voting group.

Source: L. 93: Entire article added, p. 822, § 1, effective July 1, 1994.

ANNOTATION

Law reviews. For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985). For article, "Final Regulations on Substantial Economic Effect of Partnership Allocations", see 15 Colo. Law 1009 (1986).

Annotator's note. Since § 7-114-102 is similar to § 7-8-103 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

This section prescribes one of those instances where it is mandatory that all stockholders vote despite restrictions contained in the articles of incorporation. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

But section held not applicable to nonprofit corporations. Morris Alpert & Sons v. Kahler, 31 Colo. App. 345, 502 P.2d 98 (1972).

7-114-102.5. Dissolution upon expiration of period of duration.

(1) A 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 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, and 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 corporation's period of duration for purposes of this section.

Source: L. 96: Entire section added, p. 1324, § 34, effective June 1. **L. 2003:** (2) amended, p. 2327, § 263, effective July 1, 2004.

7-114-103. Articles of dissolution.

(1) At any time after dissolution is authorized, the 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 corporation;

(b) The principal office address of the corporation's principal office; and

(c) That the corporation is dissolved.

(d) to (f) (Deleted by amendment, L. 2004, p. 1506, § 280, effective July 1, 2004.)

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

(3) Repealed.

(4) Articles of dissolution need not be filed by a corporation that is dissolved pursuant to section 7-114-102.5.

Source: L. 93: Entire article added, p. 823, § 1, effective July 1, 1994. **L. 96:** (3) repealed and (4) added, pp. 1324, 1325, §§ 35, 36, effective June 1. **L. 2002:** IP(1) amended, p. 1850, § 121, effective July 1; IP(1) amended, p. 1715, § 121, effective October 1. **L. 2003:** IP(1), (1)(a), and (1)(b) amended, p. 2328, § 264, effective July 1, 2004. **L. 2004:** (1)(c), (1)(d), (1)(e), and (1)(f) amended, p. 1506, § 280, effective July 1.

7-114-103.5. Name of dissolved corporation - repeal. (Repealed)

Source: L. 96: Entire section added, p. 1324, § 34, effective June 1. **L. 2000:** Entire section amended, p. 979, § 63, effective July 1. **L. 2003:** (2) added by revision, pp. 2356, 2357, §§ 347, 348.

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

7-114-104. Revocation of dissolution. (Repealed)

Source: L. 93: Entire article added, p. 823, § 1, effective July 1, 1994. **L. 2000:** (3)(a) and (5) amended, p. 979, § 64, effective July 1. **L. 2002:** IP(3) and (4) amended, p. 1850, § 122, effective July 1; IP(3) and (4) amended, p. 1715, § 122, effective October 1. **L. 2003:** IP(3), (3)(a), (4), and (5) amended, p. 2328, § 265, effective July 1, 2004. **L. 2004:** Entire section repealed, p. 1507, § 281, effective July 1.

7-114-105. Effect of dissolution.

(1) A dissolved corporation continues its corporate existence but may not carry on any business except as is appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in article 108 of this title;

(d) Change quorum or voting requirements for its board of directors or shareholders; 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;

(e) Prevent commencement of a proceeding by or against the corporation in its name; or

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

(3) A dissolved corporation may dispose of claims against it pursuant to sections 7-90-911 and 7-90-912.

Source: L. 93: Entire article added, p. 824, § 1, effective July 1, 1994. **L. 2004:** (2)(e) amended, p. 1508, § 282, effective July 1. **L. 2006:** (3) added, p. 881, § 75, effective July 1.

ANNOTATION

I. General Consideration.

II. Suits Against a Dissolved Corporation.

III. Suits by a Dissolved Corporation.

I. GENERAL CONSIDERATION.

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959).

Annotator's note. Since § 7-114-105 is similar to § 7-8-122 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Statute of limitations applicable to dissolved foreign corporations. Since this

state has by subsection (1) adopted a two-year statute of limitations applicable to dissolved domestic corporations, it would be both illogical and unconstitutional to apply to a foreign corporation, which has been dissolved pursuant to the laws under which it is governed by its state of incorporation and which has received a certificate of withdrawal from this state, a statute of limitations which would subject it to liability for a period longer than that which this state would apply to a dissolved domestic corporation. Casselman v. Denver Tramway Corp., 39 Colo. App. 306, 568 P.2d 84 (1977), rev'd on other grounds, 195 Colo. 241, 577 P.2d 293 (1978).

Applied in Kuehn v. Kuehn, 642 P.2d 524 (Colo. App. 1981); Graham, Inc. v. Mtn. States Tel. & Tel. Co., 680 P.2d 1334 (Colo. App. 1984).

II. SUITS AGAINST A DISSOLVED CORPORATION.

Dissolution does not affect remedies against a corporation. Dutton Hotel Co. v. Fitzpatrick, 69 Colo. 229, 193 P. 549 (1920); Dick v. Petersen, 90 Colo. 83, 6 P.2d 923 (1931).

And dissolution does not bar an action against a corporation upon a precedent cause of action. Kipp v. Miller, 47 Colo. 598, 108 P. 164 (1910).

However, this section, although conferring capacity to sue and to be sued in certain cases, does not confer the dissolved corporation with federal standing under either the Sherman Act or the Clayton Act. W. Sys., Inc. v. Dynatech Corp., 610 F. Supp. 585 (D. Colo. 1985).

For this section continues the corporate capacity of a company to be sued for liabilities which accrued before its dissolution. Lucifer Coal Co. v. Buster, 64 Colo. 179, 171 P. 61 (1918); Hazard v. Park, 294 F. 40 (8th Cir. 1923).

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 to 9675 (CERCLA), preempts former § 7-8-122, which provided that a corporation could be sued only within two years of its dissolution. The plain language of CERCLA leads to the conclusion that Congress intended to create liability notwithstanding any other law. Because the Colorado statute actually conflicts with CERCLA, CERCLA preempts the statute. The statute stands as an obstacle to the accomplishment and execution of the full purposes of CERCLA and under the supremacy clause must yield to federal law. Burlington N. & Santa Fe Ry. Co. v. Consol. Fibers, Inc., 7 F. Supp. 2d 822 (N.D. Tex. 1998) (decided under law in effect before the 1993 recodification of the Colorado Business Corporation Act).

CERCLA preempts state laws that might limit the liability of dissolved corporations to be sued under CERCLA. CERCLA's preemption extends to "dead" corporations, which have lawfully dissolved under state law, but does not allow suit to be brought against corporations that are "dead and buried", meaning they have dissolved and distributed all of their assets. Burlington N. & Santa Fe Ry. Co. v. Consol. Fibers, Inc., 7 F. Supp. 2d 822 (N.D. Tex. 1998) (decided under law in effect before the 1993

recodification of the Colorado Business Corporation Act).

III. SUITS BY A DISSOLVED CORPORATION.

A corporation, although dissolved, is authorized to prosecute an action in its corporate name by this section. Nw. Dev., Inc. v. Dunn, 29 Colo. App. 364, 483 P.2d 1361 (1971).

A dissolved corporation was authorized to enter into a contract for sale of its corporate assets and sue to collect on a promissory note in connection with such sale. Awanderlust Travel, Inc. v. Kochevar, 21 P.3d 876 (Colo. App. 2001).

And a dissolved corporation may sue out writ of appeal. A dissolved corporation against which a judgment has been obtained pursuant to this section may sue out a writ of appeal to review the judgment even though that is technically the institution of a new suit. Bankers Trust Co. v. Hall, 116 Colo. 566, 183 P.2d 986 (1947).

And a dissolved corporation that obtains a judgment in an action commenced within the survival period may sue outside the two year survival period to enforce that judgment. Domino Media, Inc. v. Kranis, 9 F. Supp. 2d 374 (S.D.N.Y. 1998) (decided under former § 7-8-122).

7-114-106. Disposition of known claims by notification. (Repealed)

Source: L. 93: Entire article added, p. 825, § 1, effective July 1, 1994. **L. 96:** (2) amended, p. 1325, § 37, effective June 1. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-114-107. Disposition of claims by publication. (Repealed)

Source: L. 93: Entire article added, p. 826, § 1, effective July 1, 1994. **L. 2003:** (2)(a) amended, p. 2328, § 266, effective July 1, 2004. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-114-108. Enforcement of claims against dissolved corporation. (Repealed)

Source: L. 93: Entire article added, p. 827, § 1, effective July 1, 1994. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

7-114-109. Service on dissolved corporation - repeal. (Repealed)

Source: L. 93: Entire article added, p. 827, § 1, effective July 1, 1994. **L. 96:** (1)(a) amended, p. 1325, § 38, effective June 1. **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

7-114-201. Grounds for administrative dissolution. (Repealed)

Source: L. 93: Entire article added, p. 828, § 1, effective July 1, 1994. **L. 96:** (1)(c) amended, p. 1325, § 39, effective June 1. **L. 2000:** (1)(b) amended, p. 980, § 65, effective July 1. **L. 2003:** (1)(a), (1)(b), (1)(c), and (1)(d) amended, p. 2328, § 267, effective July 1, 2004. **L. 2004:** (1)(b) amended, p. 1508, § 283, effective July 1. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-114-202. Procedure for and effect of administrative dissolution. (Repealed)

Source: L. 93: Entire article added, p. 828, § 1, effective July 1, 1994. **L. 94:** (1) and (2) amended, p. 75, § 1, effective July 1. **L. 2003:** (2), (3), (4), and (5) amended, p. 2329, § 268, effective July 1, 2004. **L. 2005:** Entire section repealed, p. 1218, § 26, effective October 1.

7-114-203. Reinstatement following administrative dissolution - repeal. (Repealed)

Source: L. 93: Entire article added, p. 829, § 1, effective July 1, 1994. **L. 94:** (3) amended, p. 75, § 2, effective July 1. **L. 96:** (1)(e) amended, p. 1326, § 40, effective June 1. **L. 2000:** (1)(a) and (1)(c) amended, p. 980, § 66, effective July 1. **L. 2002:** IP(1), (2), and (3) amended, p. 1850, § 123, effective July 1; IP(1), (2), and (3) amended, p. 1715, § 123, 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.)

7-114-204. Appeal from denial of reinstatement - repeal. (Repealed)

Source: L. 93: Entire article added, p. 830, § 1, effective July 1, 1994. **L. 94:** (1) and (2) amended, p. 76, § 3, effective July 1. **L. 96:** (2) amended, p. 1326, § 41, effective June 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.)

PART 3

JUDICIAL DISSOLUTION

Law reviews: For article, "2019 Colorado Business Law Updates: Revising the Colorado Business Corporation Act and the Colorado Corporations and Associations Act", see 48 Colo. Law. 26 (Nov. 2019).

7-114-301. Grounds for judicial dissolution.

(1) A corporation may be dissolved in a proceeding by the attorney general if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) A corporation may be dissolved in a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The shareholders 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;

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

(e) The corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(3) A 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 corporation is insolvent; or

(b) The corporation is insolvent and the corporation has admitted in writing that the creditor's claim is due and owing.

(4) (a) If a corporation has been dissolved by voluntary action taken under part 1 of this article 114:

(I) The corporation may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with section 7-114-302; and

(II) The attorney general, a shareholder, or a creditor, as the case may be, may bring a proceeding to wind up and liquidate the business and affairs of the corporation under judicial supervision in accordance with section 7-114-302, upon establishing the grounds set forth for that person, respectively, in subsections (1) to (3) of this section.

(b) As used in sections 7-114-302 to 7-114-304, a "proceeding to dissolve a 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) which directs that the business and affairs of a corporation shall be wound up and liquidated under judicial supervision.

(5) Subsections (2)(a) to (2)(e) of this section do not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares that is:

(a) A covered security under section 18 (b)(1)(A) or 18 (b)(1)(B) of the federal "Securities Act of 1933", 15 U.S.C. sec. 77r (b)(1)(A) and 77r (b)(1)(B);

(b) Not a covered security but is traded in an organized market and has a market value of at least twenty million dollars, exclusive of the value of the shares held by the corporation's subsidiaries, senior executives, directors, and persons known to the corporation owning more than ten percent of the shares; or

(c) Issued by an open-end management investment company registered with the federal securities and exchange commission under the federal "Investment Company Act of 1940", 15 U.S.C. sec. 80a-1 et seq., and that may be redeemed at the option of the holder at net asset value.

Source: L. 93: Entire article added, p. 830, § 1, effective July 1, 1994. **L. 2004:** (4)(b) amended, p. 1508, § 284, effective July 1. **L. 2005:** IP(4)(a) amended, p. 1219, § 29, effective October 1. **L. 2019:** (2)(c), (2)(d), and (4)(e) amended and (2)(e) and (5) added, (SB 19-86), ch. 166, p. 1960, § 57, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "Corporate Insolvency — Liquidation or Rehabilitation", see 36 U. Colo. L. Rev. 117 (1963). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985).

Annotator's note. Since § 7-114-301 is similar to § 7-8-113 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Definition of "oppressive" conduct is intended to be broad and flexible. In the context of a close corporation, oppressive conduct by those in control is closely related to breach of the fiduciary duty owed to minority shareholders. Polk v. Hergert Land & Cattle Co., 5 P.3d 402 (Colo. App. 2000).

Conduct constituting a breach of fiduciary duty can also amount to oppression when there has been a consistent undercurrent of dealing corporate interests without notice to the shareholders and all directors that is sufficient to defeat the reasonable expectations of the shareholders that were central to the decision to join the venture. Colt v. Mt. Princeton Trout Club, Inc., 78 P.3d 1115 (Colo. App. 2003).

After involuntary dissolution of corporation, contract entered into by former officers, directors and stockholders in the name of the defunct corporation held to be an enforceable contract by individuals, and as such, their claims for breach of contract by other parties were not barred. Paulson v. Dakolios, 768 P.2d 750 (Colo. App. 1988).

Section contemplates adversary proceeding. This section, construed by the ordinary rules of interpretation, indicates plainly that an adversary, and not an ex parte, proceeding was contemplated by the general assembly in its enactment. Jones v. Bank of Leadville, 10 Colo. 464, 17 P. 272 (1887) (decided under repealed Gen. Stat. Colo. § 258).

Three-year limitation period applies where action under this section is predicated on breach of fiduciary duty. Polk v. Hergert Land & Cattle Co., 5 P.3d 402 (Colo. App. 2000).

Applied in Breniman v. Agric. Consultants, Inc., 648 P.2d 165 (Colo. App. 1982); In re Loughnane, 28 B.R. 940 (Bankr. D. Colo. 1983); Van Schaack Holdings, Ltd. v. Fulenwider, 768 P.2d 740 (Colo. App. 1988).

7-114-302. Procedure for judicial dissolution.

(1) (a) A proceeding by the attorney general to dissolve a corporation must be brought:

(I) In the district court for the county in this state in which the street address of the corporation's principal office or the street address of its registered agent is located;

(II) If the 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 a party named in section 7-114-301 must be brought:

(I) In the district court for the county in this state in which the street address of the corporation's principal office is located;

(II) If the 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 corporation has no registered agent, in the district court for the city and county of Denver.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a 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 business of the corporation until a full hearing can be held.

(4) Within ten days after the commencement of a proceeding to dissolve a corporation under section 7-114-301 (2), the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 7-114-305 and accompanied by a copy of section 7-114-305.

Source: L. 93: Entire article added, p. 831, § 1, effective July 1, 1994. **L. 96:** (1) amended, p. 1326, § 42, effective June 1. **L. 2003:** (1) amended, p. 2330, § 269, effective July 1, 2004. **L. 2019:** (4) added, (SB 19-086), ch. 166, p. 1961, § 58, effective July 1, 2020. **L. 2026:** (1) amended, (HB 26-1088), ch. 226, p. 1316, § 6, 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.

ANNOTATION

Law reviews. For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For article, "Corporate Insolvency — Liquidation or Rehabilitation", see 36 U. Colo. L. Rev. 117 (1963). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985).

Annotator's note. Since § 7-114-302 is similar to §§ 7-8-113 and 7-8-116 as they existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing those provisions and their predecessors have been included in the annotations to this section.

After involuntary dissolution of corporation, contract entered into by former officers, directors and stockholders in the name of the defunct corporation held to be an enforceable contract by individuals, and as such, their claims for breach of contract by other parties were not barred. Paulson v. Dakolios, 768 P.2d 750 (Colo. App. 1988).

Payment of costs and fees incidental to a receivership ordered upon the involuntary dissolution of a corporation lies within the sound discretion of the trial court. Van Schaack Holdings, Ltd. v. Fulenwider, 768 P.2d 740 (Colo. App. 1988).

Section contemplates adversary proceeding. This section, construed by the ordinary rules of interpretation, indicates plainly that an adversary, and not an ex parte, proceeding was contemplated by the general assembly in its enactment. Jones v. Bank of Leadville, 10 Colo. 464, 17 P. 272 (1887) (decided under repealed Gen. Stat. Colo. § 258).

Applied in Breniman v. Agric. Consultants, Inc., 648 P.2d 165 (Colo. App. 1982); In re Loughnane, 28 B.R. 940 (Bankr. D. Colo. 1983); Van Schaack Holdings, Ltd. v. Fulenwider, 768 P.2d 740 (Colo. App. 1988).

7-114-303. Receivership or custodianship.

(1) Unless an election to purchase has been filed under section 7-114-305, a court in a judicial proceeding to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the 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 jurisdiction over the 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 as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(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:

(a) The receiver:

(I) May dispose of all or any part of the property of the corporation wherever located, at a public or private sale, if authorized by the court; and

(II) May sue and defend in the receiver's own name as receiver of the corporation in all courts; or

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) 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 corporation and its shareholders and creditors.

(5) 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 corporation or proceeds from the sale of the assets.

Source: L. 93: Entire article added, p. 832, § 1, effective July 1, 1994. **L. 2003:** (2) amended, p. 2330, § 270, effective July 1, 2004. **L. 2004:** (1) amended, p. 1508, § 285, effective July 1. **L. 2019:** (1) amended, (SB 19-086), ch. 166, p. 1962, § 59, effective July 1, 2020.

ANNOTATION

Law reviews. For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985).

Annotator's note. Since § 7-114-303 is similar to § 7-8-116 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Once a receiver is appointed, the right to appeal a district court's final order of dissolution is vested in the receiver; therefore, the corporation's shareholders cannot appeal the dissolution order without the receiver's involvement. The shareholders must demand that the receiver appeal either the dissolution order or the receiver's appointment and, if refused, seek relief from the trial court. Francis v. Camel Point Ranch, Inc., 2019 COA 108M, 487 P.3d 1089.

The office of receiver is in the nature of a trustee, and those who have lawful claims against the receivership estate are cestuis que trustent. Rossi v. Colo. Pulp & Paper Co., 88 Colo. 461, 299 P. 19 (1931).

And where creditors have repeatedly dealt with a receiver in his official capacity and asked or obtained court orders that involved recognition of his appointment by the district court, they thereby acquiesced in such appointment and cannot later complain of it on the ground of mere irregularities. Rossi v. Colo. Pulp & Paper Co., 88 Colo. 461, 299 P. 19 (1931).

But a receiver has no power to carry on a corporation's business. This section contemplates only the doing of those things which are necessary to the closing up of the affairs of an insolvent corporation; and consequently, that while by his appointment a receiver, becomes eo instanti vested with the legal title and right of possession of all the property of the corporation, both real and personal, for the purpose of subjecting it to the claims of creditors, he has no power, nor can the court clothe him with the power, to continue or carry on the business of the corporation. Standley v. Hendrie & Boltoff Mfg. Co., 27 Colo. 331, 61 P. 600 (1900).

Rather the court appointing a receiver assumes the administration of the affairs of the corporation for which the receiver was appointed, and it is for that court in its discretion to decide whether it will determine for itself all claims for or against the receiver or will allow them to be litigated elsewhere. However, the receiver is not entitled to the application of this rule where he becomes a party by leave of court. Venner v. Denver Union Water Co., 40 Colo. 212, 90 P. 623 (1907).

And the court itself has no greater authority than is conferred in other receivership cases. While this section confers upon courts power and authority they would not otherwise possess to decree the dissolution of a corporation at the suit of an individual and to that end authorizes the

taking charge of its property through a receiver for the purpose of closing up its affairs, it does not confer upon the court any other or greater powers in the administration of such trust than it can exercise in other cases where, in the exercise of its jurisdiction, it may appoint a receiver to administer the affairs of an insolvent private business corporation during pending litigation. Standley v. Hendrie & Boltoff Mfg. Co., 27 Colo. 331, 61 P. 600 (1900).

Consequently the appointment of a receiver for the property of a corporation only deprives a corporation of the exercise of its powers to the extent that the statute under which such appointment is made or the order of the court making the appointment recites; the corporation is not thereby dissolved but continues as a legal entity and neither are its officers ousted by such action. Hence it follows, that except so far as the control of its affairs is vested in the receiver, it continues to exist for all other purposes, and its officials, except as enjoined by the court appointing the receiver, continue to exercise their functions the same as though no such appointment had been made. Jones v. Bank of Leadville, 10 Colo. 464, 17 P. 272 (1887); Paddack v. Staley, 13 Colo. App. 363, 58 P. 363 (1899); Venner v. Denver Union Water Co., 40 Colo. 212, 90 P. 623 (1907).

Such prohibiting suits by corporate officers. Where a corporation has been adjudged insolvent and placed in the hands of a receiver with full powers to control and manage its affairs, an officer of the corporation cannot use its name to prosecute a writ of appeal against the objection of the receiver. Am. Water Works Co. v. Farmers' Loan & Trust Co., 20 Colo. 203, 37 P. 269 (1894).

Receiver may be discharged. By the payment of its debts, by an arrangement with its creditors, or in some other way, the receiver may be discharged, and the corporation may resume business. Steinhauer v. Colmar, 11 Colo. App. 494, 55 P. 291 (1898).

This section contains no regulations as to how a receiver's sale shall be conducted, but such is a judicial sale, and must be fairly and impartially conducted by the officer who makes it as a representative of the court, and since there are no statutory restrictions as to time, manner, terms, and notice of sale, such matters are to be determined by the court. Rossi v. Colo. Pulp & Paper Co., 88 Colo. 461, 299 P. 19 (1931).

But the rights of claimants are to be determined in accordance with their relative priorities after a receivership has commenced. Rossi v. Colo. Pulp & Paper Co., 88 Colo. 461, 299 P. 19 (1931).

And there is no right of redemption from sales made under this "winding-up" statute. Rossi v. Colo. Pulp & Paper Co., 88 Colo. 461, 299 P. 19 (1931).

Payment of costs and fees incidental to a receivership ordered upon the involuntary dissolution of a corporation lies within the sound discretion of the trial court. Van Schaack Holdings, Ltd. v. Fulenwider, 768 P.2d 740 (Colo. App. 1988).

Applied in Hendrie Mfg. Co. v. Parry, 37 Colo. 359, 86 P. 113 (1906).

7-114-304. Decree of dissolution.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 7-114-301 exist, it may enter a decree dissolving the 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 corporation's business and affairs in accordance with section 7-114-105 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. 93: Entire article added, p. 833, § 1, effective July 1, 1994. **L. 2003:** (1) and (2) amended, p. 2330, § 271, effective July 1, 2004. **L. 2004:** (2) amended, p. 1508, § 286, effective July 1. **L. 2006:** (2) amended, p. 881, § 76, effective July 1.

7-114-305. Election to purchase in lieu of dissolution.

(1) In a proceeding under section 7-114-301 (2) to dissolve a corporation, unless otherwise provided in the articles of incorporation or bylaws of the corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect, to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) (a) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under section 7-114-301 (2) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days after the filing, give notice to all shareholders other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section.

(b) Shareholders that wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase become parties to the proceeding and participate in the purchase in proportion to their ownership

of shares as of the date the first election was filed unless they otherwise agree or the court otherwise directs.

(c) After an election has been filed by the corporation or one or more shareholders, the proceeding under section 7-114-302 (2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the shareholder's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit the discontinuance, settlement, sale, or other disposition.

(3) If, within sixty days after the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3) of this section, the court, upon application of any party, shall stay the proceedings held pursuant to section 7-114-302 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under section 7-114-302 was filed or as of such other date as the court deems appropriate under the circumstances.

(5) (a) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among the shareholders. In allocating the petitioner's shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes not participate in the purchase.

(b) Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed.

(c) If the court finds that the petitioning shareholder had probable grounds for relief under section 7-114-301 (2)(b) or (2)(d), it may award expenses to the petitioning shareholder.

(6) Upon entry of an order under subsection (3) or (5) of this section, the court shall dismiss the petition to dissolve the corporation under section 7-114-302 and the petitioning shareholder no longer has any rights or status as a shareholder of the corporation other than the right to receive the amounts awarded by the order of the court, which is enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) of this section must be made within ten days after the date the order becomes final unless, before that time, the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 7-114-102 and 7-114-103, which articles must then be adopted and filed within fifty days after the filing of the notice. Upon filing of the articles of dissolution, the corporation is dissolved in accordance with sections 7-90-910 to 7-90-914 and the order entered pursuant to subsection (5) of this section is no longer of any force or effect; except that the court may award the petitioning shareholder expenses in accordance with subsection (5)(c) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5) of this section, other than an award of expenses pursuant to subsection (5) of this section, is subject to section 7-106-401.

Source: L. 2019: Entire section added, (SB 19-086), ch. 166, p. 1962, § 60, effective July 1, 2020. **L. 2021:** (2)(a) amended, (HB 21-1124), ch. 41, p. 171, § 28, effective April 19.

PART 4

MISCELLANEOUS

7-114-401. Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the 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. 93: Entire article added, p. 833, § 1, effective July 1, 1994.

ARTICLE 115

Foreign Corporations

7-115-101. Authority to transact business or conduct activities required.

7-115-101. Authority to transact business or 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 corporations.

Source: L. 2003: Entire article R&RE, p. 2330, § 272, effective July 1, 2004.

ARTICLE 116

Records, Information, and Reports

7-116-101. Corporate records.
7-116-102. Inspection of corporate records by shareholder - definitions.
7-116-103. Scope of shareholder's inspection right.
7-116-104. Court-ordered inspection of corporate records.
7-116-105. Financial statements.
7-116-106. Information respecting shares.
7-116-107. Periodic report to secretary of state.
7-116-108. Statement of person named as director or officer. (Repealed)
7-116-109. Interrogatories by secretary of state. (Repealed)

7-116-101. Corporate records.

(1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders 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 corporation, and a record of all waivers of notices of meetings of shareholders and of the board of directors or any committee of the board of directors.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of the names and addresses of its shareholders, in a form that permits preparation of a list of shareholders that is arranged by voting group and within each voting group by class or series of shares, that is alphabetical within each class or series, and that shows the address of, and the number of shares of each class and series held by, each shareholder.

(4) A corporation shall maintain its records in written form.

(5) A corporation shall keep a copy of each of the following records at its principal office:

(a) Its articles of incorporation;

(b) Its bylaws;

(c) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(d) All written communications within the past three years to shareholders as a group or to the holders of any class or series of shares as a group;

(e) A list of the names and business addresses of its current directors and officers;

(f) A copy of its most recent periodic report pursuant to part 5 of article 90 of this title; and

(g) All financial statements prepared for periods ending during the last three years that a shareholder could have requested under section 7-116-105.

Source: L. 93: Entire article added, p. 843, § 1, effective July 1, 1994. **L. 2000:** (5)(f) amended, p. 981, § 72, effective July 1. **L. 2003:** (5)(f) amended, p. 2331, § 273, effective July 1, 2004. **L. 2010:** (5)(f) amended, (HB 10-1403), ch. 404, p. 2000, § 25, effective August 11. **L. 2021:** (4) amended, (HB 21-1124), ch. 41, p. 172, § 29, effective April 19.

ANNOTATION

I. General Consideration.

II. Shareholders' Right to Inspect Corporate Records.

III. Penalties.

I. GENERAL CONSIDERATION.

Law reviews. For note, "The Right to Inspect Corporate Books", see 4 Rocky Mt. L. Rev. 64 (1931).

Annotator's note. Since § 7-116-101 is similar to § 7-5-117 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Legislature intended to require officers and directors to act responsibly. This statute elucidates the intent of the general assembly that officers and directors of corporations be required to act responsibly toward shareholders. Beebe v. Star-Stop, Inc., 32 Colo. App. 345, 513 P.2d 743 (1973), aff'd in part, rev'd in part sub nom. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974).

Shareholder should not be burdened by corporation's failure to produce records. Although it is true that the burden of proving

the value of stock is upon the shareholder [now shareholder or holder of voting trust certificates therefor], it is not reasonable that the general assembly intended that a shareholder [now shareholder or holder of voting trust certificates therefor] suing under this statute to compel production of records should be further burdened by the corporation's failure to produce the records. Beebe v. Star-Stop, Inc., 32 Colo. App. 345, 513 P.2d 743 (1973), aff'd in part, rev'd in part sub nom. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974).

II. SHAREHOLDERS' RIGHT TO INSPECT CORPORATE RECORDS.

This section gives stockholders a statutory right to inspect corporate records. Rulon v. Silverman, 79 Colo. 525, 246 P. 788 (1926); D.F. Blackmer Furn. & Carpet Co. v. Blackmer, 92 Colo. 419, 21 P.2d 181 (1933); Bell v. Arnold, 175 Colo. 277, 487 P.2d 545 (1971).

Which right was afford by prior statutes. This section was adopted in the year 1929, and for many years prior thereto, there were statutory provisions authorizing the examination of corporate books and records by stockholders. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

This section is complete in itself, and a party seeking to inspect corporate books was not obliged to conform to, or to seek relief, under any other statute. Rulon v. Silverman, 79 Colo. 525, 246 P. 788 (1926).

And it should be liberally construed in favor of stockholders, and their rights should be zealously guarded. Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

But inspection is limited to "complete books and records". In 1958 significant changes were made in this section. Prior thereto it provided for examination by stockholders of "all the books, accounts and papers" of a corporation. The amendment of 1958, however, restricted the right of inspection to "complete books and records of account". Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

And a court may refuse inspection of corporate books when the person is not acting in good faith. Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

For the indiscriminate examination by stockholders of corporate records is not favored. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

Burden of proving bad faith. Mere allegations of improper motives or bad faith on the part of one seeking to inspect the corporate books are not enough, and the burden of proof is on those who desire to deny inspection. Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

Shareholders lists are a part of corporate books and records. Bell v. Arnold, 175 Colo. 277, 487 P.2d 545 (1971).

And federal securities laws do not preempt access to shareholders lists. The federal securities laws and proxy rules, which provide that management must mail the proxy materials of an opposing security holder or provide a shareholders list when making a solicitation, do not preempt the field of access to shareholders lists, and this section is properly available to shareholders to allow their inspection and copying of the

shareholders list of equity; they are not required to elect one of the procedures. Wood, Walker & Co. v. Evans, 300 F. Supp. 171 (D. Colo. 1969), aff'd, 461 F.2d 852 (10th Cir. 1972).

But this section does not nullify statute protecting privileged communications. The fact that this section provides that a corporation shall keep complete books and records of account, shall keep minutes of the proceedings of its shareholders and board of directors, shall keep a record of its shareholders, and the further fact that a qualified shareholder shall have the right to examine its books and records of account, minutes and record of shareholders, and make extracts therefrom does not operate to nullify the provisions of § 13-90-107, the witness statute, which protects privileged communications. Rather a waiver of the protection of the witness statute can only be brought about by those duly constituted officers who are charged with the responsibilities of managing the affairs of the corporate entity. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

Officer, not corporation, is necessary party in mandamus for inspection. In order to enforce the right of inspection by mandamus, it is not necessary to make the corporation a party respondent, but merely its officer upon whom the statutory duty is devolved. Merrill v. Suffa, 42 Colo. 195, 93 P. 1099 (1908).

III. PENALTIES.

The main purpose of this section is to emphasize that the right to the list of shareholders is clear and unequivocal. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

However, as an aid in the enforcement of this section a penalty is authorized, but this is a secondary and not a primary aspect and purpose. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

Officers denying shareholder access to records properly held liable with corporation. Under this statute enumerating those liable for refusing to allow a shareholder [now shareholder or holder of voting trust certificates therefor] to examine corporate records, and upon evidence showing that corporate officers acted independently, as well as jointly, in denying access to the records, officers who concurred in the denial of the statutory rights of the shareholder [now shareholder or holder of voting trust certificates therefor] could properly be held liable as well as the corporation even though written demand for the examination had been made only upon the corporation. Beebe v. Star-Stop, Inc., 32 Colo. App. 345, 513 P.2d 743 (1973), aff'd in part, rev'd in part sub nom. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974).

"Shall" means only that liability, not amount, is mandatory. Although this section declares that the corporation and/or its officers "shall" be liable for the penalty, the courts which have directly considered the issue have held that use of the word "shall" in this context does not mean that the amount is mandatory, but rather means that the corporation and its officers are thereby mandatorily subjected to liability. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

Thus court does not have to automatically award full penalty. Upon making a finding of the existence of the basic conditions required for corporate liability under this section, the court does not have to proceed automatically and mechanically to award the full penalty, for the courts have always been guarded about imposing liability based on failure to comply with a duty imposed by a statute such as this section where the amount of the damage is fixed on a somewhat liquidated measure without regard to injury suffered and, consequently, to construe this section so that the full amount of the prescribed penalty is to be granted on a kind of push button basis would be irrational and inequitable. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

A court is at liberty to withhold the award of the penalty if in view of all the circumstances the award of such damages would not serve the ends of justice. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

Applicability of section to foreign corporations. Since nothing in the language of this section indicates an intent by the general assembly to limit its effect to domestic corporations, this section also applies to foreign corporations as provided by § 7-9-104. Jefferson Indus. Bank v. First Golden Bancorp., 762 P.2d 768 (Colo. App. 1988).

7-116-102. Inspection of corporate records by shareholder - definitions.

(1) A shareholder is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 7-116-101 (5) if the shareholder gives the corporation written demand at least five business days before the date on which the shareholder wishes to inspect and copy such records.

(2) In addition to the rights set forth in subsection (1) of this section, a shareholder is entitled to inspect and copy, during regular business hours at a reasonable location stated by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written demand at least five business days before the date on which the shareholder wishes to inspect and copy such records:

(a) Excerpts from minutes of any meeting of the board of directors or from records of any action taken by the board of directors without a meeting, minutes of any meeting of the shareholders or records of any action taken by the shareholders without a meeting, excerpts of records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, and waivers of notices of any meeting of the shareholders or the board of directors or any committee of the board of directors;

(b) Accounting records of the corporation; and

(c) The record of shareholders described in section 7-116-101 (3).

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder has been a shareholder for at least three months immediately preceding the demand to inspect or copy or is a shareholder of at least five percent of all of the outstanding shares of any class of shares of the corporation as of the date the demand is made;

(b) The demand is made in good faith and for a proper purpose;

(c) The shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect; and

(d) The records are directly connected with the described purpose.

(4) For purposes of this section:

(a) "Proper purpose" means a purpose reasonably related to the demanding shareholder's interest as a shareholder; and

(b) "Shareholder" includes a beneficial owner.

(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 shareholder to inspect records under section 7-107-201;

(b) The right of a shareholder to inspect records to the same extent as any other litigant if the shareholder is in litigation with the corporation; or

(c) The power of a court, independent of articles 101 to 117 of this title, to compel the production of corporate records for examination.

Source: L. 93: Entire article added, p. 844, § 1, effective July 1, 1994. **L. 2003:** IP(2) amended, p. 2331, § 274, effective July 1, 2004. **L. 2019:** (4)(b) amended, (SB 19-086), ch. 166, p. 1964, § 61, effective July 1, 2020.

7-116-103. Scope of shareholder's inspection right.

(1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder.

(2) The right to copy records under section 7-116-102 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) Except as provided in section 7-116-106, the corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production and reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 7-116-102 (2)(c) by furnishing to the shareholder a list of shareholders that complies with section 7-116-101 (3) and was compiled no earlier than the date of the shareholder's demand.

Source: L. 93: Entire article added, p. 846, § 1, effective July 1, 1994.

ANNOTATION

I. General Consideration.

II. Shareholders' Right to Inspect Corporate Records.

III. Penalties.

I. GENERAL CONSIDERATION.

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Legislature intended to require officers and directors to act responsibly. This statute elucidates the intent of the general assembly that officers and directors of corporations be required to act responsibly toward shareholders. Beebe v. Star-Stop, Inc., 32 Colo. App. 345, 513 P.2d 743 (1973), aff'd in part, rev'd in part sub nom. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974).

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A mutual ditch company should not be treated differently from any other type of corporation in matters of general corporate governance. Hill v. Behrmann, 911 P.2d 679 (Colo. App. 1995), aff'd on other grounds, 933 P.2d 1 (Colo. 1997).

II. SHAREHOLDERS' RIGHT TO INSPECT CORPORATE RECORDS.

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And federal securities laws do not preempt access to shareholders lists. The federal securities laws and proxy rules, which provide that management must mail the proxy materials of an opposing security holder or provide a shareholders list when making a solicitation, do not preempt the

field of access to shareholders lists, and this section is properly available to shareholders to allow their inspection and copying of the shareholders list of equity; they are not required to elect one of the procedures. Wood, Walker & Co. v. Evans, 300 F. Supp. 171 (D. Colo. 1969), aff'd, 461 F.2d 852 (10th Cir. 1972).

But this section does not nullify statute protecting privileged communications. The fact that this section provides that a corporation shall keep complete books and records of account, shall keep minutes of the proceedings of its shareholders and board of directors, shall keep a record of its shareholders, and the further fact that a qualified shareholder shall have the right to examine its books and records of account, minutes and record of shareholders, and make extracts therefrom does not operate to nullify the provisions of § 13-90-107, the witness statute, which protects privileged communications. Rather a waiver of the protection of the witness statute can only be brought about by those duly constituted officers who are charged with the responsibilities of managing the affairs of the corporate entity. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

Officer, not corporation, is necessary party in mandamus for inspection. In order to enforce the right of inspection by mandamus, it is not necessary to make the corporation a party respondent, but merely its officer upon whom the statutory duty is devolved. Merrill v. Suffa, 42 Colo. 195, 93 P. 1099 (1908).

III. PENALTIES.

The main purpose of this section is to emphasize that the right to the list of shareholders is clear and unequivocal. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

However, as an aid in the enforcement of this section a penalty is authorized, but this is a secondary and not a primary aspect and purpose. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

Officers denying shareholder access to records properly held liable with corporation. Under this statute enumerating those liable for refusing to allow a shareholder [now shareholder or holder of voting trust certificates therefor] to examine corporate records, and upon evidence showing that corporate officers acted independently, as well as jointly, in denying access to the records, officers who concurred in the denial of the statutory rights of the shareholder [now shareholder or holder of voting trust certificates therefor] could properly be held liable as well as the corporation even though written demand for the examination had been made only upon the corporation. Beebe v. Star-Stop, Inc., 32 Colo. App. 345, 513 P.2d 743 (1973), aff'd in part, rev'd in part sub nom. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974).

"Shall" means only that liability, not amount, is mandatory. Although this section declares that the corporation and/or its officers "shall" be liable for the penalty, the courts which have directly considered the issue have held that use of the word "shall" in this context does not mean that the

amount is mandatory, but rather means that the corporation and its officers are thereby mandatorily subjected to liability. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

Thus court does not have to automatically award full penalty. Upon making a finding of the existence of the basic conditions required for corporate liability under this section, the court does not have to proceed automatically and mechanically to award the full penalty, for the courts have always been guarded about imposing liability based on failure to comply with a duty imposed by a statute such as this section where the amount of the damage is fixed on a somewhat liquidated measure without regard to injury suffered and, consequently, to construe this section so that the full amount of the prescribed penalty is to be granted on a kind of push button basis would be irrational and inequitable. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

A court is at liberty to withhold the award of the penalty if in view of all the circumstances the award of such damages would not serve the ends of justice. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

7-116-104. Court-ordered inspection of corporate records.

(1) If a corporation refuses to allow a shareholder, or the shareholder's agent or attorney, who complies with section 7-116-102 (1) to inspect or copy any records that the shareholder 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 corporation's principal office is located or, if the 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 corporation has no registered agent, the district court for the city and county of Denver may, on application of the shareholder, summarily order the inspection or copying of the records demanded at the corporation's expense.

(2) If a corporation refuses to allow a shareholder, or the shareholder's agent or attorney, who complies with section 7-116-102 (2) and (3) to inspect or copy any records that the shareholder is entitled to inspect or copy by section 7-116-102 (2) and (3) within a reasonable time following the shareholder's demand, the district court for the county in this state in which the street address of the corporation's principal office is located or, if the 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 corporation has no registered agent, the district court for the city and county of Denver may, on application of the shareholder, summarily order the inspection or copying of the records demanded.

(3) If a court orders inspection or copying of the records demanded, unless the corporation proves that it refused inspection or copying in good faith because it had a reasonable basis for

doubt about the right of the shareholder or the shareholder's agent or attorney to inspect or copy the records demanded:

(a) The court shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order;

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

(c) If inspection or copying is ordered pursuant to subsection (2) of this section, the court may order the corporation to pay the shareholder's inspection and copying expenses; and

(d) The court may grant the shareholder 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 shareholder.

Source: L. 93: Entire article added, p. 846, § 1, effective July 1, 1994. **L. 96:** (1) and (2) amended, p. 1327, § 48, effective June 1. **L. 2003:** (1) and (2) amended, p. 2331, § 275, effective July 1, 2004.

ANNOTATION

Annotator's note. Since § 7-116-104 is similar to § 7-5-117 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

A court may refuse inspection of corporate books when the person is not acting in good faith. Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

For the indiscriminate examination by stockholders of corporate records is not favored. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

Burden of proving bad faith. Mere allegations of improper motives or bad faith on the part of one seeking to inspect the corporate books are not enough, and the burden of proof is on those who desire to deny inspection. Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

Officer, not corporation, is necessary party in mandamus for inspection. In order to enforce the right of inspection by mandamus, it is not necessary to make the corporation a party respondent, but merely its officer upon whom the statutory duty is devolved. Merrill v. Suffa, 42 Colo. 195, 93 P. 1099 (1908).

Applicability of section to foreign corporations. Since nothing in the language of this section indicates an intent by the general assembly to limit its effect to

domestic corporations, this section also applies to foreign corporations as provided by § 7-9-104. Jefferson Indus. Bank v. First Golden Bancorp., 762 P.2d 768 (Colo. App. 1988).

7-116-105. Financial statements.

Upon the written request of any shareholder, a corporation shall deliver to the shareholder 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. 93: Entire article added, p. 847, § 1, effective July 1, 1994. **L. 2021:** Entire section amended, (HB 21-1124), ch. 41, p. 172, § 30, effective April 19.

ANNOTATION

I. General Consideration.

II. Shareholders' Right to Inspect Corporate Records.

III. Penalties.

I. GENERAL CONSIDERATION.

Law reviews. For note, "The Right to Inspect Corporate Books", see 4 Rocky Mt. L. Rev. 64 (1931).

Annotator's note. Since § 7-116-105 is similar to § 7-5-117 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Legislature intended to require officers and directors to act responsibly. This statute elucidates the intent of the general assembly that officers and directors of corporations be required to act responsibly toward shareholders. Beebe v. Star-Stop, Inc., 32 Colo. App. 345, 513 P.2d 743 (1973), aff'd in part, rev'd in part sub nom. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974).

Shareholder should not be burdened by corporation's failure to produce records. Although it is true that the burden of proving the value of stock is upon the shareholder [now shareholder or holder of voting trust certificates therefor], it is not reasonable that the general assembly intended that a shareholder [now shareholder or holder of voting trust certificates therefor] suing under this statute to compel production of records should be further burdened by the corporation's failure to produce the records. Beebe v. Star-Stop, Inc., 32 Colo. App. 345, 513 P.2d 743 (1973), aff'd in part, rev'd in part sub nom. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974).

II. SHAREHOLDERS' RIGHT TO INSPECT CORPORATE RECORDS.

This section gives stockholders a statutory right to inspect corporate records. Rulon v. Silverman, 79 Colo. 525, 246 P. 788 (1926); D.F. Blackmer Furn. & Carpet Co. v. Blackmer, 92 Colo. 419, 21 P.2d 181 (1933); Bell v. Arnold, 175 Colo. 277, 487 P.2d 545 (1971).

Which right was afford by prior statutes. This section was adopted in the year 1929, and for many years prior thereto, there were statutory provisions authorizing the examination of corporate books and records by stockholders. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

This section is complete in itself, and a party seeking to inspect corporate books was not obliged to conform to, or to seek relief, under any other statute. Rulon v. Silverman, 79 Colo. 525, 246 P. 788 (1926).

And it should be liberally construed in favor of stockholders, and their rights should be zealously guarded. Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

But inspection is limited to "complete books and records". In 1958 significant changes were made in this section. Prior thereto it provided for examination by stockholders of "all the books, accounts and papers" of a corporation. The amendment of 1958, however, restricted the right of inspection to "complete books and records of account". Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

And a court may refuse inspection of corporate books when the person is not acting in good faith. Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

For the indiscriminate examination by stockholders of corporate records is not favored. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

Burden of proving bad faith. Mere allegations of improper motives or bad faith on the part of one seeking to inspect the corporate books are not enough, and the burden of proof is on those who desire to deny inspection. Dines v. Harris, 88 Colo. 22, 291 P. 1024 (1930).

Shareholders lists are a part of corporate books and records. Bell v. Arnold, 175 Colo. 277, 487 P.2d 545 (1971).

And federal securities laws do not preempt access to shareholders lists. The federal securities laws and proxy rules, which provide that management must mail the proxy materials of an opposing security holder or provide a shareholders list when making a solicitation, do not preempt the field of access to shareholders lists, and this section is properly available to shareholders to allow their inspection and copying of the shareholders list of equity; they are not required to elect one of the procedures. Wood, Walker & Co. v. Evans, 300 F. Supp. 171 (D. Colo. 1969), aff'd, 461 F.2d 852 (10th Cir. 1972).

But this section does not nullify statute protecting privileged communications. The fact that this section provides that a corporation shall keep complete books and records of account, shall keep minutes of the proceedings of its shareholders and board of directors, shall keep a record of its

shareholders, and the further fact that a qualified shareholder shall have the right to examine its books and records of account, minutes and record of shareholders, and make extracts therefrom does not operate to nullify the provisions of § 13-90-107, the witness statute, which protects privileged communications. Rather a waiver of the protection of the witness statute can only be brought about by those duly constituted officers who are charged with the responsibilities of managing the affairs of the corporate entity. Weck v. District Court, 158 Colo. 521, 408 P.2d 987 (1965).

Officer, not corporation, is necessary party in mandamus for inspection. In order to enforce the right of inspection by mandamus, it is not necessary to make the corporation a party respondent, but merely its officer upon whom the statutory duty is devolved. Merrill v. Suffa, 42 Colo. 195, 93 P. 1099 (1908).

III. PENALTIES.

The main purpose of this section is to emphasize that the right to the list of shareholders is clear and unequivocal. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

However, as an aid in the enforcement of this section a penalty is authorized, but this is a secondary and not a primary aspect and purpose. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

Officers denying shareholder access to records properly held liable with corporation. Under this statute enumerating those liable for refusing to allow a shareholder [now shareholder or holder of voting trust certificates therefor] to examine corporate records, and upon evidence showing that corporate officers acted independently, as well as jointly, in denying access to the records, officers who concurred in the denial of the statutory rights of the shareholder [now shareholder or holder of voting trust certificates therefor] could properly be held liable as well as the corporation even though written demand for the examination had been made only upon the corporation. Beebe v. Star-Stop, Inc., 32 Colo. App. 345, 513 P.2d 743 (1973), aff'd in part, rev'd in part sub nom. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974).

"Shall" means only that liability, not amount, is mandatory. Although this section declares that the corporation and/or its officers "shall" be liable for the penalty, the courts which have directly considered the issue have held that use of the word "shall" in this context does not mean that the amount is mandatory, but rather means that the corporation and its officers are thereby mandatorily subjected to liability. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

Thus court does not have to automatically award full penalty. Upon making a finding of the existence of the basic conditions required for corporate liability under this section, the court does not have to proceed automatically and mechanically to award the full penalty, for the courts have always been guarded about imposing liability based on failure to comply with a duty imposed by a statute such as this section where the amount of the damage is fixed on a somewhat liquidated measure

without regard to injury suffered and, consequently, to construe this section so that the full amount of the prescribed penalty is to be granted on a kind of push button basis would be irrational and inequitable. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

A court is at liberty to withhold the award of the penalty if in view of all the circumstances the award of such damages would not serve the ends of justice. Wood, Walker & Co. v. Evans, 461 F.2d 852 (10th Cir. 1972).

Applicability of section to foreign corporations. Since nothing in the language of this section indicates an intent by the general assembly to limit its effect to domestic corporations, this section also applies to foreign corporations as provided by § 7-9-104. Jefferson Indus. Bank v. First Golden Bancorp., 762 P.2d 768 (Colo. App. 1988).

7-116-106. Information respecting shares.

Upon the written request of any shareholder, a corporation shall deliver to the shareholder, at the corporation's expense, the information specified by section 7-106-206 (4), whether or not the information is also contained or summarized on any share certificate of the shareholder.

Source: L. 93: Entire article added, p. 847, § 1, effective July 1, 1994. **L. 2021:** Entire section amended, (HB 21-1124), ch. 41, p. 172, § 31, effective April 19.

ANNOTATION

I. General Consideration.

II. Signatures of Officers.

III. Notice of Restrictions and Variations in Shares.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Discount, Bonus and Watered Stock in Colorado", see 33 Rocky Mt. L. Rev. 197 (1961). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985).

Annotator's note. Since § 7-116-106 is similar to § 7-4-108 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

II. SIGNATURES OF OFFICERS.

Stock certificates which have been issued without authority and are not manually signed are nonetheless genuine, and the statutory requirement of a transfer agent's countersignature on stock certificates bearing facsimile signatures does not render

them invalid or preclude bona fide purchase. Dempsey-Tegeler & Co. v. Otis Oil & Gas Corp., 293 F. Supp. 1383 (D. Colo. 1968).

For noncompliance with this section does not render certificates nongenuine or constitute an absolute defense effective against a purchaser for value and without notice under § 4-8-202 (3) of the commercial code, as certificates signed in facsimile are genuine under the uniform commercial code, "genuine" meaning free of forgery or counterfeiting. Thus even though certificates are issued without authority, it cannot be said that the signatures are either forged or counterfeit, and so in this sense they are effective against the issuer. Dempsey-Tegeler & Co. v. Otis Oil & Gas Corp., 293 F. Supp. 1383 (D. Colo. 1968).

III. NOTICE OF RESTRICTIONS AND VARIATIONS IN SHARES.

The purpose of this section is to ensure that a purchaser of stock has notice of voting restrictions at the time of purchase. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

The requirement of subsection (2) is aimed at avoiding shareholder misunderstandings. Hackbart v. Holmes, 675 F.2d 1114 (10th Cir. 1982).

However, this section does not require that the certificate carry the exact restrictions on the certificate, but only that the shareholder be informed by the certificate that upon request the corporation will furnish him with information as to classes of stock and their various restrictions. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

Yet this section makes no provision as to the consequences of a violation. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

But the stock contract is voidable. Absent a showing of actual knowledge at the time of purchase, failure to follow the statute renders the stock contract voidable on the part of the stockholder. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

And rescission is the most appropriate remedy. Where notice has not been given pursuant to the statute and where actual knowledge cannot be shown by the corporation, then, in the absence of fraud, rescission is the most appropriate remedy. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

7-116-107. Periodic report to secretary of state.

Part 5 of article 90 of this title, providing for periodic reports from reporting entities, applies to domestic corporations and applies to foreign corporations that are authorized to transact business or conduct activities in this state.

Source: L. 93: Entire article added, p. 847, § 1, effective July 1, 1994. **L. 96:** (1)(c) amended, p. 1328, § 49, effective June 1. **L. 2000:** Entire section R&RE, p. 981, § 73, effective July 1. **L. 2003:** Entire section amended, p. 2331, § 276, effective July 1, 2004. **L. 2004:** Entire section amended, p. 1508, § 287, effective July 1. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 2000, § 26, effective August 11.

ANNOTATION

Law reviews. For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985).

Annotator's note. Since § 7-116-107 is similar to § 7-116-107 as it existed prior its 2000 repeal and reenactment and former § 7-116-107 is similar to § 7-10-101 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, relevant cases construing those provisions have been included in the annotations to this section.

This section is mandatory. Colo. Fuel Co. v. Lenhart, 6 Colo. App. 511, 41 P. 834 (1895).

Thus a corporation whether it did any business during the year or not, must make the annual report required by this section. Bradford v. Gulley, 10 Colo. App. 146, 50 P. 314 (1897).

Report failing to give company's condition is insufficient. The annual report of a corporation which fails to give the financial and other conditions of the company at the date of filing the report, as required by subsection (1), is wholly insufficient. Bergren v. Valentine Hdwe. Co, 88 Colo. 52, 291 P. 1038 (1930).

Which invalidates the report. The failure to state in the report the amount of the indebtedness of the corporation at the date of the report and whether or not it was engaged in the active operation of its business within the state invalidates the report. Int'l State Bank v. McGlashan, 71 Colo. 72, 204 P. 480 (1922).

And makes it a mere nullity. The annual report of a corporation making no reference to the condition of its properties or finances as required by this section is a mere nullity. Moody v. Rhodes Ranch Egg Co., 61 Colo. 368, 157 P. 1167 (1916); Bergren v. Valentine Hdwe. Co., 88 Colo. 52, 291 P. 1038 (1930).

7-116-108. Statement of person named as director or officer. (Repealed)

Source: L. 93: Entire article added, p. 849, § 1, effective July 1, 1994. **L. 2000:** Entire section repealed, p. 990, § 109, effective July 1.

7-116-109. Interrogatories by secretary of state. (Repealed)

Source: L. 93: Entire article added, p. 849, § 1, effective July 1, 1994. **L. 96:** (5) amended, p. 1328, § 50, effective June 1. **L. 2002:** (4) amended, p. 1852, § 130, effective July 1; (4) amended, p. 1717, § 130, effective October 1. **L. 2003:** (4) and (5) amended, p. 2332, § 277, effective July 1, 2004. **L. 2004:** (1) amended, p. 1509, § 288, effective July 1. **L. 2006:** Entire section repealed, p. 884, § 87, effective July 1.

ARTICLE 117

Transition Provisions

7-117-100.3. Definitions.
7-117-101. Application to existing corporations.
7-117-102. Application to foreign corporations.
7-117-103. Saving provisions.
7-117-104. Severability.
7-117-105. Effective date.

7-117-100.3. Definitions.

As used in this article 117, unless the context otherwise requires:

(1) "Existing corporation" means any domestic corporation that was in existence on June 30, 1994, and that was incorporated under any general statute of this state providing for incorporation of corporations for profit if the power to amend or repeal the statute under which the corporation was incorporated was reserved.

Source: L. 2025: Entire section added with relocations, (SB 25-275), ch. 377, p. 2033, § 26, effective August 6.

Editor's note: This section is similar to former § 7-117-101 (1) as it existed prior to 2025.

7-117-101. Application to existing corporations.

(1) Repealed.

(2) Articles 101 to 117 of this title apply to all existing corporations.

(3) Except to the extent the articles of incorporation of an existing corporation limit or deny preemptive rights, shareholders of such corporation shall have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares; except that, unless otherwise provided in the articles of incorporation, such preemptive rights shall not exist:

(a) To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and not inconsistent with a plan theretofore approved by such a vote of shareholders; or

(b) To acquire any shares sold otherwise than for cash.

(4) Notwithstanding the provisions of subsection (3) of this section, unless the articles of incorporation of an existing corporation provide otherwise:

(a) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right;

(b) Holders of shares of common stock shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations unless such shares are convertible into shares of common stock or carry a right to subscribe to or acquire shares of common stock; and

(c) Holders of common stock without voting powers shall have no preemptive right to shares of common stock with voting power.

(5) To the extent that preemptive rights exist pursuant to subsections (3) and (4) of this section, the preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

(6) Nothing in subsections (3) and (4) of this section shall confer any preemptive right with respect to shares of a corporation incorporated before January 1, 1959, that have been or may be issued and subsequently acquired by such corporation and that have not been canceled or restored to the status of authorized but unissued shares. Any such shares in existence on June 30, 1994, or acquired thereafter by any such corporation shall not be deemed to be restored to the

status of authorized but unissued shares, for purposes of this subsection (6) only, notwithstanding the provisions of section 7-106-302.

(7) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to amend the articles of incorporation, as contemplated in section 7-110-103, such amendment shall be approved by each voting group entitled to vote separately on the amendment by two-thirds of all the votes entitled to be cast on the amendment by that voting group.

(8) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to approve a plan of merger or a plan of exchange, as contemplated in section 7-111-103, the plan must be approved by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. In the case of a corporation incorporated before July 1, 1978, each outstanding share of the corporation, other than a redeemable share that is not entitled to vote by reason of section 7-107-202 (4), shall be entitled to vote on the plan of merger or exchange whether or not such share has voting rights under the provisions of the articles of incorporation, unless the articles of incorporation have been amended after June 30, 1978, by the same vote of shareholders that would have been necessary at the time of the amendment to approve the plan, so as to restrict or eliminate the right of the share to vote on the plan.

(9) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to approve a transaction involving a sale, lease, exchange, or other disposition of all, or substantially all, of its property, with or without its good will, otherwise than in the usual and regular course of business, as contemplated in section 7-112-102 (1), such transaction shall be approved by each voting group entitled to vote separately on the transaction by two-thirds of all the votes entitled to be cast on the transaction by that voting group.

(10) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to approve a proposal to dissolve the corporation as contemplated in section 7-114-102, such proposal shall be approved by each voting group entitled to vote separately on the proposal by two-thirds of all the votes entitled to be cast on the proposal by that voting group. In the case of a corporation incorporated before July 1, 1978, each outstanding share of the corporation, other than a redeemable share that is not entitled to vote by reason of section 7-107-202 (4), shall be entitled to vote on a proposal to dissolve the corporation whether or not such share has voting rights under the provisions of the articles of incorporation, unless the articles of incorporation have been amended after June 30, 1978, by the same vote of shareholders which would have been necessary at the time of the amendment to approve the proposal, so as to restrict or eliminate the right of such share to vote on such proposal.

(11) An amendment to the articles of incorporation of an existing corporation to reduce the vote required to take any action specified in subsections (7) to (10) of this section, which

amendment may not reduce the required vote to less than that which would be required to take the action if the action were to be taken by a corporation formed on or after July 1, 1994, shall be adopted by the same vote and voting groups required to take the action specified in said subsections (7) to (10).

Source: L. 93: Entire article added, p. 850, § 1, effective July 1, 1994. **L. 96:** (11) amended, p. 1328, § 51, effective June 1. **L. 2004:** (10) amended, p. 1509, § 289, effective July 1. **L. 2019:** (8) amended, (SB 19-086), ch. 166, p. 1965, § 67, effective July 1, 2020. **L. 2025:** (1) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

Editor's note: Subsection (1) was relocated to § 7-117-100.3 in 2025.

ANNOTATION

Law reviews. For note, "Consolidations, Mergers, Sales of Assets Under the New Colorado Corporation Act", see 31 Rocky Mt. L. Rev. 66 (1958). For article, "1959 Amendments to the Colorado Corporation Code", see 36 Dicta 489 (1959). For comment on shareholder approval of substantial asset sales in the multisubsidiary context, see 45 U. Colo. L. Rev. 339 (1974). For article, "Conflict of Interest Transactions: Fiduciary Duties of Corporate Directors Who Are Also Controlling Shareholders", see 57 Den. L.J. 609 (1980). For article, "Signatures on Documents Affecting Title to Colorado Real Property — Part III", see 12 Colo. Law. 447 (1983). For article, "The 1985 Proposed Revisions to the Colorado Corporation Code", see 14 Colo. Law. 34 (1985). For article, "Continuing Liability for Unpaid Corporate Debts After a Corporation Ceases Business", see 14 Colo. Law. 40 (1985). For article, "1985 Amendments to the Colorado Corporation Code", see 14 Colo. Law. 2173 (1985). For article, "Final Regulations on Substantial Economic Effect of Partnership Allocations", see 15 Colo. Law. 1009 (1986). For article, "Sale of Substantially All Corporate Assets", see 16 Colo. Law. 455 (1987). For article, "Dissenter's Rights in Colorado", see 18 Colo. Law. 1101 (1989).

Annotator's note. Since § 7-117-101 is similar to §§ 7-5-112, 7-7-103, and 7-8-103 as they existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing those provisions and their predecessors have been included in the annotations to this section.

This section prescribes one of those instances where it is mandatory that all stockholders vote despite restrictions contained in the articles of incorporation. Hampton v. Tri-State Fin. Corp., 30 Colo. App. 420, 495 P.2d 566 (1972).

Section held not applicable to nonprofit corporations. Morris Alpert & Sons v. Kahler, 31 Colo. App. 345, 502 P.2d 98 (1972).

To legally effect a change in the two-thirds approval requirement of an asset sale in this section, a provision must be added to the articles of incorporation. Dominick v. Marcove, 809 F. Supp. 805 (D. Colo. 1992) (decided under former § 7-5-112 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7).

Applied in People v. Cameron, 197 Colo. 330, 595 P.2d 677 (1979).

7-117-102. Application to foreign corporations.

A foreign corporation authorized to transact business or conduct activities in this state on June 30, 1994, is subject to articles 101 to 117 of this title but is not required to obtain new authorization to transact business or conduct activities under said articles.

Source: L. 93: Entire article added, p. 852, § 1, effective July 1, 1994. **L. 2003:** Entire section amended, p. 2332, § 278, effective July 1, 2004.

ANNOTATION

Annotator's note. Since § 7-117-102 is similar to § 7-9-102 as it existed prior to the 1993 recodification of the "Colorado Business Corporation Act", articles 101 to 117 of title 7, cases construing that provision and its predecessors have been included in the annotations to this section.

Applied in McHugh v. Ficor, Inc., 43 Colo. App. 409, 611 P.2d 578 (1979), aff'd, 639 P.2d 385 (Colo. 1982).

7-117-103. Saving provisions.

(1) Except as provided in subsection (2) of this section, the repeal of any provision of the "Colorado Corporation Code", articles 1 to 10 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, reorganization, or dissolution commenced under the provision before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the provision as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of any provision of the "Colorado Corporation Code", articles 1 to 10 of this title, is reduced by articles 101 to 117 of this title, the penalty or punishment, if not already imposed, shall be imposed in accordance with said articles 101 to 117.

Source: L. 93: Entire article added, p. 853, § 1, effective July 1, 1994.

ANNOTATION

Claim for statutory penalty for refusal to permit stockholders to inspect corporate records was properly dismissed. The Colorado Business Corporations Act no longer has such a penalty. Hill v. Behrmann, 911 P.2d 679 (Colo. App. 1995).

7-117-104. Severability.

If any provision of articles 101 to 117 of this title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of said articles that can be given effect without the invalid provision or application, and to this end the provisions of said articles are severable.

Source: L. 93: Entire article added, p. 853, § 1, effective July 1, 1994.

7-117-105. Effective date.

Articles 101 to 117 of this title are effective July 1, 1994.

Source: L. 93: Entire article added, p. 853, § 1, effective July 1, 1994.

Nonprofit Corporations

ARTICLE 121

General Provisions - Nonprofit Corporations

PART 1
SHORT TITLE AND RESERVATION OF POWER

7-121-101. Short title.

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

PART 2
FILING DOCUMENTS

7-121-201. Filing requirements.

PART 3
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7-121-301. (Repealed)

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7-121-402. Notice.

PART 5
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7-121-501. Private foundations.

PART 6
JUDICIAL RELIEF

7-121-601. Judicial relief.

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

PART 1
ADMISSION OF MEMBERS AND LIABILITY TO THIRD PARTIES

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7-126-301. Resignation.

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

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DERIVATIVE SUITS

7-126-401. Derivative suits.

PART 5
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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

7-129-101. Indemnification definitions.
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.
7-129-106. Determination and authorization of indemnification of directors.
7-129-107. Indemnification of officers, employees, fiduciaries, and agents.
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

PART 1
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PART 2
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7-130-201. Amendment of bylaws by board of directors or members.

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PART 3
APPROVAL BY THIRD PERSONS AND TERMINATING MEMBERS OR

REDEEMING OR CANCELING MEMBERSHIPS

7-130-301. Approval by third persons.

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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.

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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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PART 2
ELECTION BY PRE-1968 CORPORATE ENTITIES

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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.