

## CHAPTER 317

## NONPROFIT CORPORATIONS

## ORGANIZATIONAL PROVISIONS

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NOTE: For definitions, see section 300.02.

## ORGANIZATIONAL PROVISIONS

## 317.01 CITATION.

This chapter may be cited as the Minnesota nonprofit corporation act.

History: 1951 c 550 s 1

## 317.02 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of this chapter, unless the context otherwise requires, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. **Corporation.** "Corporation" means a nonprofit corporation formed under this chapter or one that has accepted and come under this chapter.

**Subd. 3. Domestic corporation.** "Domestic corporation" means a nonprofit corporation formed under the laws of this state, whether or not formed or coming under this chapter, for a purpose for which a corporation may be formed under this chapter.

**Subd. 4. Foreign corporation.** "Foreign corporation" includes every nonprofit corporation formed other than under the laws of this state for a purpose for which a corporation may be formed under this chapter.

**Subd. 5. Nonprofit corporation.** "Nonprofit corporation" means a corporation:

(a) Formed for a purpose not involving pecuniary gain to its shareholders or members (other than to shareholders or members which are nonprofit organizations); and

(b) Paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such (other than to shareholders or members which are nonprofit organizations).

**Subd. 6. Notice.** "Notice" means a written notification of a meeting

(a) stating time, place and, in the case of a special meeting, purpose,

(b) properly addressed according to the last available corporate records,

(c) sent or delivered by a duly authorized person to each director or member entitled to vote at the meeting, and

(d) delivered or mailed not less than 5 nor more than 30 days before the meeting, excluding the day of the meeting, or a published notification of a meeting of a corporation having at least 300 members, if its board of directors should elect to give such notification thereof in lieu of written notification, to be made by publication in a newspaper of general circulation published in the county of the principal place of business of the corporation for three successive weeks previous to the date of the meeting stating the time, place, and in the case of a special meeting, its purpose.

**Subd. 7. Written.** "Written" includes printed, handwritten, typewritten, engraved, lithographed, telegraphed, cabled, radiogrammed, photographed, photostated, telephotographed and other forms of recordation.

**Subd. 8. Articles.** "Articles" means the original articles of incorporation, articles of incorporation as amended, articles of merger, or articles of consolidation and incorporation, as the case may be.

**Subd. 9. Directors.** "Directors" means the persons vested with the general management of the affairs of the corporation, regardless of how they are designated.

**Subd. 10. Bylaws.** "Bylaws" means the code adopted for the regulation or management of the internal affairs of the corporation, regardless of how designated.

**Subd. 11. Member.** "Member" means an entity, either corporate or natural, having any membership or shareholder rights in a corporation in accordance with its articles, bylaws, or both.

**Subd. 12. Written action.** "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them upon receipt by the secretary.

**Subd. 13. Address.** "Address" means mailing address. In the case of a registered office, the term means the office address, which shall not be a post office box.

**History:** 1951 c 550 s 2; 1953 c 650 s 1; 1963 c 710 s 1; 1980 c 351 s 2; 1983 c 298 s 1; 1985 c 48 s 1

## 317.03 FOREIGN NONPROFIT CORPORATIONS, SECTIONS APPLICABLE.

(1) Except for this section and sections 317.42 and 317.43 concerning merger or consolidation, this chapter does not apply to foreign corporations.

(2) Except as provided in clauses (3) and (4) a foreign corporation is subject to the

provisions of the Minnesota foreign corporations act, Minnesota Statutes, chapter 303. Unless it complies with that chapter a foreign corporation shall not transact business in this state.

(3) Sections 303.07, 303.14, 303.15, 303.22, 303.02, subdivision 2, and 303.16, subdivision 2, clauses (6) and (7), do not apply to foreign corporations.

(4) A foreign corporation transacting business in this state on April 21, 1951, shall comply with this section within one year.

**History:** 1951 c 550 s 3; 1953 c 650 s 2

#### **317.04 APPLICATION TO DOMESTIC CORPORATIONS.**

**Subdivision 1. Acceptance, rejection.** (1) Except as provided in section 317.06, and subject to clause (2), this chapter applies to all domestic corporations.

(2) Sections 317.01 to 317.25 do not apply to a domestic corporation in existence on April 21, 1951. Every such domestic corporation may accept and come under sections 317.01 to 317.25 by complying with subdivision 3; and, unless it has signified its election to reject these sections in the manner provided in subdivision 2 within 15 months from April 21, 1951, it shall be deemed to accept and come under them.

(3) If the election to reject sections 317.01 to 317.25 becomes effective under subdivision 2, the rejecting corporation, notwithstanding the express and implied repeal of a statute by this chapter, shall continue to exist and to exercise and enjoy all rights, powers, privileges, immunities, and franchises, and to be subject to all duties and liabilities conferred and imposed by the laws under which it exists, or to which it is subject, on April 21, 1951, as amended or supplemented by sections 317.26 to 317.68, 300.025, 300.09, 300.13, 300.14, 300.45, 300.46, 300.58, 300.59, 303.05.

**Subd. 2. Election to reject.** (1) When there are members with voting rights, election by a corporation to reject the provisions of sections 317.01 to 317.25 shall be by a resolution (a) approved by the board of directors at a meeting duly called for the purpose of considering it; and (b) adopted at a subsequent annual, regular, or special meeting, of which a notice stating the purpose has been duly given, by a majority vote of all members of record entitled to vote.

(2) When there are no members with voting rights, election by a corporation to reject the provisions of sections 317.01 to 317.25 shall be by a resolution adopted by a majority vote of all the directors entitled to vote at a special meeting of the board of directors, notice having been duly given.

(3) Within 15 months after April 21, 1951, the corporation shall file a copy of the adopted resolution to reject, certified by the president or vice president and the secretary or assistant secretary, accompanied by a filing fee of \$15, in the office of the secretary of state.

**Subd. 3. Election to accept.** (1) Whether or not a domestic corporation has elected to reject under subdivision 2, it may at any time accept and come under the provisions of sections 317.01 to 317.25 by adopting a resolution of acceptance by a majority vote of all the directors entitled to vote at a special meeting of the board of directors, notice having been duly given, and by certifying and filing the resolution in the manner prescribed by subdivision 2, clause (3), for effecting a rejection. For filing a resolution of acceptance the secretary of state shall collect a fee of \$15.

(2) The election to accept sections 317.01 to 317.25 becomes effective upon the filing for record of a copy of the adopted resolution to accept, together with articles of incorporation and amendments thereto with the secretary of state.

**Subd. 4. Acceptance.** Upon acceptance of sections 317.01 to 317.25, whether by an election to accept and come under, as provided in subdivision 3, or by a failure to reject within the 15-month period prescribed in subdivision 1, this chapter applies to all accepting corporations as fully as though they had been formed under this chapter.

**Subd. 5. Principal place of business.** The principal place of business of the

accepting corporation is its registered office. If its articles or certificate of incorporation do not state the location of the principal place of business, the accepting corporation shall, upon coming under sections 317.01 to 317.25, file with the secretary of state a certificate stating the location by city, town, or other community of its registered office in this state.

**Subd. 6. Duration.** The duration of the accepting corporation is not changed by its coming under sections 317.01 to 317.25. To effect an extension of its duration for a further definite time or perpetually, the corporation shall amend its articles of incorporation as prescribed in section 317.27.

**Subd. 7. Articles and bylaws in force.** All provisions of the articles of incorporation and bylaws of the accepting corporation that may be included in articles of incorporation or in bylaws under this chapter remain in effect. When a provision of the articles of incorporation or of the bylaws of the accepting corporation may not be included in articles of incorporation or in bylaws, as the case may be, under this chapter it becomes inoperative when the corporation comes under sections 317.01 to 317.25. Except as otherwise permitted by subdivisions 5 and 6, when the articles of incorporation fail to include some or all of the provisions required by section 317.08, other than subdivision 2, clauses (6) and (7) thereof relating to incorporators and first directors, the corporation shall, in the manner prescribed by section 317.27, either amend its articles of incorporation or adopt restated articles of incorporation to include such required provisions.

**History:** 1951 c 550 s 4; 1953 c 650 s 3,4; 1959 c 87 s 1; 1973 c 51 s 1,2; 1976 c 181 s 2; 1980 c 541 s 6; 3Sp1981 c 2 art 1 s 52,53

### 317.05 PURPOSES OF INCORPORATION.

A nonprofit corporation may be formed under this chapter for any lawful purpose, including, but not limited to, the following purposes: Agricultural, alleviation of emergencies, athletic, benevolent, charitable, civic, community welfare, education, eleemosynary, fraternal, general welfare, health, horticultural, labor, literary, patriotic, political, professional, recreational, religious, scientific, and social.

**History:** 1951 c 550 s 5; 1963 c 710 s 2

### 317.06 SCOPE OF CHAPTER.

- (1) This chapter does not apply to
  - (a) cooperative associations,
  - (b) public cemetery corporations and associations,
  - (c) private cemeteries.
- (2) Religious corporations authorized by chapter 315, may be formed under that chapter or under this chapter.
- (3) This chapter does not apply to a religious corporation unless it is formed under this chapter or has elected to come under this chapter in the manner prescribed by section 317.04, subdivision 3, but a religious corporation, whether or not formed or electing to come under this chapter, may avail itself, where applicable, of sections 317.26 to 317.69 of this chapter in lieu of chapters 315 and 300 by complying with the provisions of those sections. Such compliance shall not constitute an election to accept the provisions of sections 317.01 to 317.25 as provided in section 317.04 or otherwise.

**History:** 1951 c 550 s 6; 1953 c 650 s 5; 1963 c 710 s 3; 1971 c 568 s 26; 1973 c 51 s 3

### 317.07 INCORPORATORS.

One or more natural persons of full age may form a corporation under this chapter.

**History:** 1951 c 550 s 7; 1980 c 351 s 3

**317.08 ARTICLES OF INCORPORATION.**

Subdivision 1. **Form.** The articles shall be expressed in the English language, signed by each of the incorporators, and acknowledged by at least one of them.

Subd. 2. **Required provisions.** The articles of a corporation organized under this chapter shall state:

- (1) the name of the corporation;
- (2) the purpose of the corporation;
- (3) that the corporation does not afford pecuniary gain, incidentally or otherwise, to its members;
- (4) the period of duration of corporate existence, which may be perpetual;
- (5) the address of its registered office in this state;
- (6) the name and address of each incorporator;
- (7) the number of directors constituting the first board of directors, the name and address of each such director, and the tenure in office of the first directors;
- (8) the extent of personal liability, if any, of members for corporate obligations and the methods of enforcement and collection;
- (9) whether the corporation has capital stock or not, and the aggregate number of shares, if any, which the corporation has authority to issue and the par value, if any, of each share; and
- (10) such other provisions as may be explicitly required for particular purposes by other sections of this chapter.

Subd. 3. **Optional provisions.** The articles of incorporation may contain any other provision, consistent with the law of this state, for regulating the business of the corporation or the conduct of the corporate affairs, including without limitation, and notwithstanding subdivision 2, clause (3), a provision permitting or requiring the corporation to afford pecuniary gain to any member designated in the bylaws which is a nonprofit corporation.

**History:** 1951 c 550 s 8; 1953 c 650 s 6; 1959 c 87 s 2; 1980 c 351 s 4.5; 1985 c 48 s 2

**317.09 CORPORATE NAME.**

Subdivision 1. **English letters.** A corporation formed under this chapter may have a corporate name in any language, but it shall be expressed in English letters or characters.

Subd. 2. **Use of similar name forbidden.** The corporate name shall not be the same as, nor deceptively similar to, the name of any assumed name, trade or service mark, or limited partnership, or domestic corporation, whether profit or nonprofit, or of any foreign corporation or foreign limited partnership, whether profit or nonprofit, authorized or registered to do business in this state or to any name reserved under section 302A.117 or 322A.03, unless there is filed with the articles a written consent, court decree of prior right, or affidavit of nonuse of the kind required by section 302A.115, subdivision 1, paragraph (d).

The secretary of state shall determine whether a name is "deceptively similar" to another name for purposes of this section. This section does not abrogate or limit the law of unfair competition or unfair practices, nor sections 333.001 to 333.54, nor the laws of the United States with respect to the right to acquire and protect copyrights, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or principles of equity.

Subd. 3. **Effect of wrongful use.** Use of a name in violation of this section does not affect or vitiate the corporate existence. Upon the application of the state or of any corporation interested or affected, the district court may enjoin the corporation from doing business under a name assumed in violation of this section, even though a certificate of incorporation has been issued by the secretary of state.

**History:** 1951 c 550 s 9; 1984 c 618 s 30

## 317.10 FILING ARTICLES.

The articles of incorporation shall be filed for record with the secretary of state. If the articles conform to law, and when the fees and charges prescribed by section 317.67 are paid, the secretary of state shall record the articles and issue and record a certificate of incorporation. The certificate shall state the name of the corporation and the fact and date of incorporation.

**History:** 1951 c 550 s 10

**317.11** [Repealed, 3Sp1981 c 2 art 1 s 75]

## 317.12 CERTIFICATE OF INCORPORATION.

Subdivision 1. **Validity.** To be valid a certificate of incorporation shall include the name of the corporation and the fact and date of incorporation.

Subd. 2. **Effect.** When a certificate of incorporation is issued, the corporate existence begins. The certificate is conclusive evidence of the fact of incorporation. This section does not limit rules of law relative to corporations de facto or by estoppel.

**History:** 1951 c 550 s 12

## 317.13 CERTIFICATES, ARTICLES, AMENDMENTS; RECORDING NOT CONSTRUCTIVE NOTICE.

Filing and recording of certificates, articles, and amendments pursuant to this chapter are designed to afford a means of acquiring knowledge of their contents but do not constitute constructive notice of their contents.

**History:** 1951 c 550 s 13

## 317.14 ORGANIZATION MEETINGS.

(1) After commencement of corporate existence, the first meeting of the directors shall be held at the call of the incorporators or of the directors, after notice, for the purpose of adopting the initial bylaws, electing officers, and for any other business that comes before the meeting.

(2) The first meeting of the members shall be held at the call of an officer or of the initial board of directors after notice.

**History:** 1951 c 550 s 14; 1953 c 650 s 7

## 317.15 BYLAWS.

Subdivision 1. **Contents.** (1) Duly adopted or amended bylaws may contain any provision for the purpose of administering and regulating the affairs of the corporation not inconsistent with law or the articles of incorporation.

(2) The articles or bylaws shall state the

(a) qualifications of members, and limitations, if any, upon their number;

(b) different classes of membership, if any;

(c) conditions of membership when membership in a corporation is limited to persons who are members in good standing of another corporation, organization or association;

(d) property, voting and other rights and privileges of members;

(e) manner and time of calling regular meetings of members and elections and who shall call them; and

(f) manner and conditions of termination of membership.

(3) The bylaws shall state such other provisions as may be explicitly required for particular purposes by other sections of this chapter.

Subd. 2. **Adoption, alteration.** Except as provided in section 317.14 for the initial bylaws, and except as provided in clause (4), bylaws shall be adopted or amended in the manner provided in clauses (1) to (3).

**(1) Procedure to amend, by members, where there are members with voting rights.**

The procedure to amend, by members, where there are members with voting rights shall be: (a) the board of directors may propose the amendment to the bylaws by resolution setting forth the proposed amendment and directing that it be submitted for adoption at a meeting of the members; or (b) any five members may set forth a proposed amendment by petition by them subscribed, which petition shall be filed with the secretary of the corporation. Notice of the meeting of the members, stating the purpose including the proposed amendment, shall be given to each member entitled to vote on the proposed amendment, and to each officer and director regardless of voting rights. If notice required by this clause has been given, the proposed amendment may be adopted at any meeting of members. Unless the articles or bylaws require a greater vote, when a majority of the members voting have approved a proposed amendment, it is adopted.

**(2) Procedure to amend, by directors, where members have voting rights.** The procedure to amend by directors where members have voting rights shall be the same as prescribed in section 317.27, subdivision 3, for amendment of articles.

**(3) Procedure to amend, where there are no members with voting rights.** Where there are no members with voting rights, the procedure to amend shall be as prescribed in section 317.27, subdivision 4, for amendment of articles.

**(4) Certain amendments.** An amendment to bylaws of religious, charitable, or educational corporations shall be valid if made in accordance with the laws, usages, and customs of a superior body with which such corporation is affiliated, provided such laws, usages and customs are not less restricted than those provided in clauses (1) to (3).

**History:** 1951 c 550 s 15; 1953 c 650 s 8,9; 1959 c 87 s 3; 1973 c 51 s 4; 1986 c 444

### **317.16 CORPORATE CAPACITY, CORPORATE AUTHORITY; DISTINGUISHED.**

**Subdivision 1. Capacity.** A corporation has the capacity to act possessed by natural persons, but it shall have authority to perform only acts that are necessary or proper to accomplish its purposes and not repugnant to law.

**Subd. 2. Authority.** Without limiting or enlarging the provisions of subdivision 1, and unless the articles prescribe otherwise, a corporation has authority to:

(1) continue as a corporation for the time limited in its articles of incorporation, or, if the time is not limited, perpetually;

(2) sue and be sued;

(3) have, and alter at pleasure, a corporate seal, affixing of which shall not affect the validity or enforceability of any instrument;

(4) take and hold an interest in real or personal property;

(5) lease, encumber, convey or dispose of real and personal property subject to the provisions of section 317.26, subdivision 3;

(6) enter into obligations or contracts and do any act incidental to the transaction of its business or expedient to the purposes stated in its articles of incorporation;

(7) acquire, hold, mortgage, pledge, or dispose of shares, bonds, securities, and other evidences of indebtedness of any domestic or foreign corporation, either profit or nonprofit and either public or private, and, if it is owner thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote;

(8) conduct its affairs within and without this state;

(9) conduct all or part of its business under one or more assumed names as provided in sections 333.001 to 333.06;

(10) make, amend, and repeal bylaws, not inconsistent with its articles or with law, for the administration and regulation of its affairs;

(11) merge and consolidate with other nonprofit corporations, domestic or foreign, organized for related purposes;

(12) make donations to other nonprofit corporations, domestic or foreign, organized for related purposes, and to needy persons;

(13) be a member of another nonprofit corporation, whether foreign or domestic;

(14) dissolve and wind up; and

(15) subject to the provisions of section 317.165, indemnify certain persons against certain expenses and liabilities as provided in section 300.083. In applying section 300.083 for this purpose, the term "members" shall be substituted for the term "shareholders."

**History:** 1951 c 550 s 16; 1959 c 87 s 4; 1973 c 51 s 5; 1982 c 420 s 1; 1983 c 298 s 2

### 317.165 PRIVATE FOUNDATIONS.

Subdivision 1. Any instrument creating a corporation which is a "private foundation" (as defined in section 509(a) of the Internal Revenue Code of 1954) and any instrument governing the use, retention, or disposition by such corporation of any of its income or property shall be deemed to have incorporated within such instrument with the same effect as though such language were set forth verbatim in such instrument the following provisions, and except as the contrary is provided in subdivision 2, such provisions shall govern the corporation as to the use, retention, and disposition of its income and property irrespective of any provisions of any such instrument, statute, or other law of this state to the contrary:

(1) The corporation shall distribute for each of its taxable years amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954;

(2) The corporation shall not engage in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(3) The corporation shall not retain any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(4) The corporation shall not make any investments which would jeopardize the carrying out of any of the exempt purposes of the corporation, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

(5) The corporation shall not make any "taxable expenditure" (as defined in section 4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.

Subd. 2. Subdivision 1 shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of any instrument described in subdivision 1 and that such instrument may not properly be changed to conform to subdivision 1.

Subd. 3. Any reference in subdivision 1 to a particular section of the Internal Revenue Code of 1954 shall mean and include, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section.

Subd. 4. This section applies to all domestic corporations, notwithstanding sections 317.04 and 317.06.

Subd. 5. Nothing in this section shall impair the rights and powers of the attorney general or the courts of this state with respect to any corporation.

**History:** 1971 c 190 s 1

### 317.17 MAY TAKE HOLD, AND INVEST TRUST PROPERTY.

Subdivision 1. **May take and hold trust property.** Subject to any limitations or restrictions contained in its articles, and pursuant to section 501.12, a corporation may



take, receive, and hold real and personal property, including the principal and interest of any money or other fund, that is given, conveyed, bequeathed, devised to or otherwise vested in the corporation in trust for a purpose consistent with the purposes set forth in its articles.

Subd. 2. **May invest trust property.** Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with section 501.125.

**History:** 1951 c 550 s 17

### 317.175 COMMON TRUST FUNDS.

Subdivision 1. **Authorization.** A corporation organized under this chapter may establish, maintain, and operate common trust funds as provided in this section under the appropriate standard of investment applicable to it.

Subd. 2. **Collective investments.** The corporation may combine money and property belonging to trusts or funds in its care for the purposes of facilitating investments, providing diversification, and obtaining a reasonable income.

The participating contributory interest of the trusts or funds must be properly evidenced by appropriate bookkeeping entries showing on an annual basis the capital contribution of and the profit and income allocable to each trust or fund.

Not more than ten percent of the common trust fund may be invested in the obligations of any one corporation or organization, excepting deposits in savings banks, obligations of the United States and of the state of Minnesota and its subdivisions.

Nothing in this subdivision shall be construed to authorize the investment of funds of a trust in any manner not authorized by law.

Subd. 3. **Limitations in trust instrument.** Nothing contained in this section shall be construed to authorize the corporation to invest assets of a trust or fund in a common trust fund contrary to any specific limitation or restriction contained in the trust instrument, nor to limit or restrict the authority conferred upon the corporation with respect to investments by a trust instrument.

Subd. 4. **Effect of good faith mistakes.** No mistake made in good faith and in the exercise of due care, in connection with the administration of a common trust fund, shall be held to exceed any power granted to or violate any duty imposed upon the corporation, if, promptly after the discovery of the mistake, the corporation takes action as may be practicable under the circumstances to remedy the mistake.

Subd. 5. **Determination of interests.** (a) A nonprofit corporation may invest part or all of the assets of a trust or fund in a common trust fund authorized by this section by adding those assets to it, and by apportioning a participation in the common trust fund to the trust or fund in the proportion that the assets of the trust or fund bear to the aggregate value of all the assets of the common trust fund, including the added trust or fund.

(b) The withdrawal of a participation from the common trust fund shall be on the basis of its proportionate interest in the aggregate value of all the assets of the common trust fund at the time of the withdrawal. The participating interest of any trust or fund in the common trust fund may from time to time be withdrawn, in whole or in part, by the corporation. Upon withdrawals, the corporation may make distributions in cash, or ratably in kind, or partly in cash and partly in kind.

(c) Participations in common trust funds shall not be sold by the corporation to any other corporation or person. This paragraph does not prevent a corporate trustee from investing the assets of a common trust fund in any collective investment fund established and maintained by it in accordance with law and to which the assets comprising a common trust fund are eligible contributions.

Subd. 6. **Amortization of premiums on securities held.** If a bond or other obligation for the payment of money is acquired as an investment for any common trust fund at a cost in excess of the par or maturity value of it, the nonprofit corporation may,

during but not beyond the period that the obligation is held as an investment in the fund, amortize the excess cost out of the income on the obligation, by deducting from each payment of income and adding to the principal an amount equal to the sum obtained by dividing the excess cost by the number of periodic payments of income to accrue on the obligation from the date of the acquisition until its maturity date.

Subd. 7. **Records; ownership of assets.** The nonprofit corporation shall designate clearly upon its records the names of the trusts or funds on behalf of which the corporation, as fiduciary or otherwise, owns a participation in any common trust fund and the extent of the interest of the trust or fund. No trust or fund shall be deemed to have individual ownership of any asset in the common trust fund, but shall be deemed to have a proportionate undivided interest in the common trust fund. The ownership of the individual assets comprising any common trust fund shall be solely in the nonprofit corporation as fiduciary or otherwise.

**History:** 1985 c 303 s 1

### 317.18 LOANS TO OFFICERS, DIRECTORS; PROHIBITION.

A corporation shall not lend any of its assets to an officer or director of the corporation. If it does make such a loan, the officers and directors who make the loan, or assent to it, are jointly and severally liable for its repayment.

**History:** 1951 c 550 s 18

### 317.19 REGISTERED OFFICE; PENALTY FOR FAILURE TO FILE PAPERS.

Subdivision 1. **Requirement.** Every corporation shall maintain an office in this state to be known as its registered office.

Subd. 2. **Change of location.** When a corporation desires to change the location of its registered office, the corporation shall file with the secretary of state a certificate of change of location of registered office, stating the new address and effective date of the change, accompanied by the fees prescribed by section 317.67. When the certificate of change of location has been duly filed and the required fees paid, the board of directors may make the change without amending the articles.

Subd. 3. [Repealed, 3Sp1981 c 2 art 1 s 75]

Subd. 4. **Violation, penalty.** A corporation which carries on business in violation of subdivisions 1 or 2 shall forfeit to the state the sum of \$15 per day, the total penalty not to exceed \$300. The attorney general shall enforce this penalty.

**History:** 1951 c 550 s 19; 1953 c 650 s 10; 1976 c 181 s 2; 1985 c 48 s 3

### 317.20 DIRECTORS.

Subdivision 1. **Board.** The business of the corporation shall be managed by a board of directors. The number of directors shall be at least three, except that in cases where the corporation has either one or two shareholders or members, the number of directors may be less than three but not less than the number of shareholders or members.

Subd. 2. **Qualifications.** Unless the articles or bylaws provide otherwise, directors:

- (a) need not be members of the corporation or residents of this state;
- (b) shall be natural persons.

Subd. 3. **Term of office.** A director shall hold office for the term for which the director has been selected and until a successor has been selected and has qualified, or until removed under subdivision 10.

Subd. 4. **Ex officio.** Unless the articles or bylaws specifically provide for them, the corporation shall not have ex officio directors. Ex officio directors have only the rights, privileges, duties, liabilities, and authority specifically conferred upon them in either the articles or bylaws, or both.

Subd. 5. **Compensation.** Directors may be paid for their services to the corporation as authorized by the members, or by either the articles or bylaws or both.

Subd. 6. **Extent of duties.** Directors shall discharge their duties in good faith, and with that diligence and care which an ordinarily prudent person in a like position would exercise under similar circumstances.

Subd. 7. **Provisions in articles or bylaws.** (1) The articles or bylaws may prescribe the number, term of office, powers, authority, and duties of directors, the time and place of their meetings, and other regulations concerning directors.

(2) If the articles so provide, the members may be and constitute the directors of the corporation.

(3) Except where the articles or bylaws prescribe otherwise, the term of office of a director is one year.

(4) Except where the articles or bylaws prescribe otherwise, and subject to subdivision 9 and to section 317.08, subdivision 2, clause (7), the members shall elect the directors.

Subd. 8. **Meetings of board.** Except where the articles or bylaws prescribe otherwise:

(1) a meeting of the board of directors may be held at any place, within or without this state, designated by the board;

(2) notice of every meeting shall be given;

(3) an act of the majority of the directors present at a meeting at which a quorum is present is the act of the board;

(4) (a) A conference among directors, or among members of any committee designated by the board of directors, by any means of communication through which the participants may simultaneously hear each other during the conference, constitutes a meeting of the board, or the committee, if the same notice is given of the conference as would be required for a meeting, and if the number of persons participating in the conference would be sufficient to constitute a quorum at the meeting. Participation in a meeting by that means constitutes personal presence at the meeting;

(b) A director may participate in a meeting of the board, or any committee designated by the board, not described in paragraph (a) by any means of communication through which the director, other persons so participating, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes personal presence at the meeting.

Subd. 9. **Vacancies.** Except where the articles or bylaws prescribe otherwise, the remaining members of the board, though less than a quorum, shall fill any vacancy occurring on the board. A person so selected shall hold office until a successor has been selected.

Subd. 10. **Removal.** (1) The articles or bylaws may provide for the removal of a director or the entire board by a method in addition to, or other than, the method provided in clause (2).

(2) Except where the articles or bylaws prescribe otherwise, and subject to clauses (1) and (3), the members, by a majority vote of those entitled to vote at an election of directors, may, with or without cause, remove a director or the entire board from office. Neither a director nor the entire board shall be removed from office unless the notice of the annual or special meeting at which removal is to be considered states such purpose. When the board or a director has been removed, new directors may be elected at the same meeting.

(3) Where the members vote cumulatively under section 317.22, subdivision 7, clause (1), unless the entire board is removed, a director shall not be removed if the number of votes cast against removal would be sufficient to elect the director if voted cumulatively.

Subd. 11. **Executive committee.** Unless the articles or bylaws provide otherwise, the board of directors may designate two or more of its members to constitute an executive committee. To the extent determined by the board, the executive committee has the authority of the board in the management of the business of the corporation.

The executive committee shall act only in the interval between meetings of the board and at all times is subject to the control and direction of the board.

**Subd. 12. Board action without a meeting.** (a) An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder or membership approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present; provided that all directors must be notified of the text of the written action prior to the signing by any of the directors.

(b) The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

(c) When written action is permitted to be taken by less than all directors, all directors shall be notified immediately of its effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

**Subd. 13. Voting by proxy.** A director shall not appoint a personal proxy or vote by proxy.

**History:** 1951 c 550 s 20; 1953 c 650 s 11-13; 1959 c 87 s 5,6; 1973 c 51 s 6; 1980 c 351 s 6; 1982 c 420 s 2; 1983 c 298 s 3; 1986 c 444

### **317.201 UNPAID DIRECTORS OR TRUSTEES; LIABILITY FOR DAMAGES.**

A director or trustee of a nonprofit corporation or association who is not paid for services to the corporation or association is not individually liable for damages occasioned solely by reason of membership on or participation in board activities.

**History:** 1986 c 455 s 62

### **317.21 OFFICERS.**

**Subdivision 1. Election, appointment.** (1) Except where the articles or bylaws provide otherwise, the board of directors shall elect persons to exercise the functions of the offices of president, secretary, and treasurer, and may elect or appoint any other officers and agents deemed to be necessary.

(2) Unless the articles or bylaws prescribe that only directors may be officers, officers need not be directors.

(3) Any of the offices or functions of the offices may be held or exercised by the same person.

**Subd. 2. Qualifications.** The president, secretary, and treasurer, howsoever named, shall be natural persons of full age. The articles or bylaws may prescribe special qualifications for such offices.

**Subd. 3. Removal.** An officer may be removed, with or without cause, by the persons authorized to elect or appoint the officer. The removal is without prejudice to the officer's contract rights.

**Subd. 4. Authority, duties.** (1) Officers have the authority and duties in the management of the business of the corporation that the articles or bylaws prescribe or, in the absence of such prescription, as the board of directors determines.

(2) An officer shall discharge duties in good faith and with the diligence and care which an ordinarily prudent person, in a like position and under similar circumstances, would exercise.

(3) When authorized by the articles or bylaws, officers may be ex officio members of the board of directors.

**History:** 1951 c 550 s 21; 1980 c 351 s 7; 1986 c 444

### **317.22 MEETINGS OF MEMBERS.**

**Subdivision 1. Meeting place.** Meetings of the members may be held at:

- (1) the registered office of the corporation; or
- (2) any place within or without this state designated
  - (a) in the articles or bylaws, or
  - (b) by the board of directors pursuant to authority in the articles or bylaws, or
  - (c) by the board of directors with the written consent of all the members entitled to vote at the meeting.

Subd. 2. **Annual.** (1) Except where the articles or bylaws provide otherwise, members shall hold an annual meeting for the election of directors and for the transaction of any other business. The notice of such annual meeting shall include any matters concerning which special notice is required.

(2) When the annual meeting has not been held, or directors have not been elected thereat, directors may be elected at a special meeting held for that purpose. Upon demand of any member, the president, vice-president, or secretary shall call the special meeting.

Subd. 3. **Special.** (1) Except where the articles or bylaws provide otherwise, special meetings may be called for any purpose at any time in the manner provided in clause (2), by (a) the president, or (b) the board of directors, or (c) any two or more members.

(2) A person entitled to call a special meeting may make a written request to the president, vice-president, or secretary to call the meeting. Such officer shall give notice of the meeting to be held between ten and 60 days after receiving the request. If the officer fails to give notice of the meeting within seven days from the day on which the request was made, the person who requested the meeting may fix the time and place of meeting, and give notice, in the manner provided by the articles or bylaws.

Subd. 4. **Notice.** Subject to waiver under section 317.24, notice of meetings and elections, as provided in section 317.02, subdivision 6, shall be given to all members entitled to vote at the meeting or election.

Subd. 5. **Quorum.** (1) Subject to clause (3), a quorum is necessary for the transaction of business at a meeting.

(2) When a quorum is not present any meeting may be adjourned from time to time for that reason.

(3) When a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

Subd. 6. **Proxies.** (1) Unless specifically prohibited by the articles or bylaws, proxies are permitted at all meetings.

(2) The appointment of a proxy shall be in writing filed at or before the meeting with the person who has been designated to act as secretary of the meeting.

(3) Except where the instrument of appointment prescribes otherwise:

- (a) the authority of a proxy ceases 11 months from the date of appointment;
- (b) an appointment of a proxy terminates all prior appointments when the appointment has been filed with the secretary of the meeting;

(c) when a member appoints two or more persons to act as proxies, a majority of the member's proxies present at the meeting have the entire authority conferred by the instrument; when such proxies are equally divided upon the manner of voting in a particular case, they share the votes equally; and if only one proxy is present, that proxy has the entire authority conferred by the instrument.

(4) Authority of a proxy is not terminated by the death or incapacity of the maker unless written notice of the fact of death or incapacity is given to the corporation before the vote has been cast or the authority otherwise exercised.

Subd. 7. **Voting.** (1) Unless the articles or bylaws preclude cumulative voting, or provide for cumulative voting under different notice or procedure, when a member gives written notice to the president or secretary, at least 24 hours before the time when

the meeting is actually held, for the election of directors by the members, of an intention to vote cumulatively in that election, each member or shareholder may multiply the number of votes to which the member or shareholder is entitled by the number of directors to be elected, and may cast all such cumulative votes for one candidate or distribute them among any two or more candidates. Upon the convening of the meeting, the presiding officer shall announce that such notice has been given.

(2) Except where otherwise prescribed in the articles or bylaws, and also in the membership certificate, if any, or share certificate, a member of a nonstock corporation has one vote, and a shareholder of a capital stock corporation has one vote for each share of stock standing in the member's or shareholder's name on the books of the corporation.

(3) Members may vote (a) by voice or ballot, or (b) when authorized by the articles or bylaws, by mail or other reasonable means.

(4) Where the articles or bylaws authorize members to vote by mail, the notice shall be given as provided in this chapter. The entire vote on any single issue, including the election of directors, may be by mailed ballots if so stated in the notice. Such a vote shall have all the effects of a vote taken at a regular or special meeting, provided that at least 20 percent of the membership so votes, unless otherwise provided in the articles or bylaws.

Notwithstanding the other provisions of this subdivision, if the articles or bylaws authorize voting by mail and do not preclude cumulative voting, there may be cumulative voting by mail for the election of directors only if either (a) the notice of the meeting at which the election of directors is to occur expressly informs the members that cumulative voting will be permitted at the election, or (b) the articles or bylaws permit cumulative voting by mail only if a member gives written notice to the president or secretary at least 48 hours before the time when the meeting is actually held for the election of directors by the members of an intention to vote cumulatively by mail in that election.

(5) When a corporation is a member or owns shares in another domestic or foreign corporation, it may vote through

(a) its president; or

(b) a proxy appointed by the president; or

(c) when its board of directors has authorized a person to vote, through such person if the person produces a certified copy of the resolution.

**Subd. 8. Adjournment.** Unless the articles or bylaws prescribe otherwise, when a meeting of the members is adjourned to another time or place, notice of the adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

**Subd. 9. Authorization without a meeting.** Any action that may be taken at a meeting of the members, may be taken without a meeting if authorized in writing and signed by all the members who are entitled to notice of the meeting for such purpose. When this chapter requires a certificate concerning any such action to be filed in the office of the secretary of state, the officers signing the certificate shall state therein that the action was effected in this manner.

**Subd. 10. Irregular meetings, validation.** When written consent of all the members who were entitled to notice of the meeting has been obtained, an irregular meeting and any action taken at such meeting is validated.

**Subd. 11. Telephone conference meetings.** (a) A conference among members, or among members of any committee designated by the members, by any means of communication through which the participants may simultaneously hear each other during the conference, constitutes a meeting of the members, or the committee, if the same notice is given of the conference as would be required for a meeting, and if the number of persons participating in the conference would be sufficient to constitute a quorum at the meeting. Participation in a meeting by that means constitutes personal presence at the meeting.

(b) A member may participate in a meeting of the membership, or any committee designated by the membership, not described in paragraph (a) by any means of communication through which the member, other persons so participating, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes personal presence at the meeting.

**History:** 1951 c 550 s 22; 1953 c 650 s 14; 1959 c 87 s 7; 1973 c 51 s 7; 1982 c 420 s 3; 1986 c 444

### 317.23 QUORUMS.

Subdivision 1. **Meetings of members.** Unless the articles or bylaws provide for a different percentage, a quorum for meetings of the members is

- (a) 10 percent of the total voting membership present in person or by proxy, or
- (b) where the meeting is by mail vote, 20 percent of the total voting membership.

Subd. 2. **Meetings of directors, executive committees.** (1) Except where the articles or bylaws provide otherwise, and subject to clause (2), a quorum for meetings of the board of directors or executive committee is a majority of the membership of such board or committee.

(2) Articles or bylaws shall not authorize a quorum of less than one-third of all the directors or members of the executive committee.

**History:** 1951 c 550 s 23; 1953 c 650 s 15

### 317.24 WAIVER OF NOTICE.

A director or member may make written waiver of notice before, at, or after a meeting. The waiver shall be filed with the person who has been designated to act as secretary of the meeting who shall enter it upon the records of the meeting. Appearance at a meeting is deemed a waiver unless it is solely for the purpose of asserting the illegality of the meeting.

**History:** 1951 c 550 s 24

### 317.25 MEMBERSHIP.

Subdivision 1. **Classes of members; rules.** (1) Subject to clauses (2) and (3), membership in all corporations consists of the classes, and is governed by the rules of admission, retention, suspension, and expulsion, that the articles or bylaws prescribe.

(2) All such rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members of the same class.

(3) Except where the articles or bylaws expressly prescribe otherwise, there is one class of members whose voting and other rights and interests are equal.

(4) The articles or bylaws may provide for classes of members without voting rights.

Subd. 2. **Share certificates, membership certificates.** (1) A capital stock corporation shall issue share certificates for shares of stock. The share certificates shall state the:

(a) name of the corporation, that it is organized under the laws of Minnesota and is a nonprofit corporation;

(b) name of the registered holder;

(c) property, voting and other rights and privileges of the holder;

(d) personal liability, if any, of the holder;

(e) length of term of membership of the holder; and

(f) par value, if any, of the stock.

(2) A noncapital stock corporation may issue membership certificates. Except for clause (1)(f), the membership certificate shall state the information prescribed for share certificate by clause (1).

Subd. 3. **Dues, assessments.** (1) When authority to do so is conferred either by the articles or bylaws and subject to any limitations therein, a corporation may levy dues or assessments, or both, upon its members. Such dues, assessments, or both, may be imposed upon all classes of members alike or differently upon different classes of members. Members of one or more classes may be exempted.

(2) Articles or bylaws may:

(a) fix the amount of the levy and the method of collection of dues and assessments; or

(b) authorize the directors to fix the amount from time to time and determine the methods of collection.

(3) Articles or bylaws may provide for:

(a) enforcement of collection of dues and assessments;

(b) cancellation of membership, on reasonable notice, for nonpayment of dues or assessments;

(c) reinstatement of membership.

Subd. 4. **Termination.** (1) Membership in a corporation is terminable in the manner provided in the articles or bylaws.

(2) When membership in a corporation is limited to persons who are members in good standing of another corporation, organization, or association, the articles or bylaws may provide that failure of a member to keep in good standing in the other corporation, organization, or association is sufficient cause for expulsion of the member.

Subd. 5. **Term.** The articles or bylaws may fix the term of membership and, unless the articles or bylaws provide otherwise, all rights of membership cease when the term has elapsed.

Subd. 6. **Rights not transferable.** Except where the articles or bylaws provide otherwise,

(1) the right of a member to vote and the member's interest in the corporation or its property ceases on the termination of membership; and,

(2) a member may not voluntarily or involuntarily transfer membership, certificate of membership, share of stock, or any right arising therefrom.

**History:** 1951 c 550 s 25; 1986 c 444

### 317.26 VOLUNTARY TRANSFER OF CORPORATE ASSETS.

Subdivision 1. **Extent of authority.** Except where the articles provide otherwise, and subject to subdivisions 2 and 3, a domestic corporation has authority to sell, lease, exchange, mortgage, encumber, or dispose of all, or substantially all, of its property and assets, including its good will, upon the terms and conditions and for the consideration, which may be money, shares, bonds, or other instruments for the payment of money or other property, that the board of directors deems expedient.

Subd. 2. **Procedure.** To dispose of property under subdivision 1 the procedure shall be:

(1) When there are members with voting rights, the board of directors shall approve a resolution recommending the sale, lease, exchange mortgage, encumbrance, or other disposition and submit it for adoption at a meeting of the members with voting rights. The meeting of members may be an annual, regular or special meeting. Notice stating the purpose of the meeting shall be given to each member with voting rights. Unless the articles or bylaws require a greater vote, the resolution is adopted upon receiving the affirmative votes of a majority of the members who vote upon the resolution.

(2) When there are no members with voting rights, and unless the articles or bylaws require a greater vote, the sale, lease, exchange mortgage, encumbrance, or other disposition may be authorized, at a meeting of the board of directors duly called for that purpose, by an affirmative vote of a majority of all the directors.



Subd. 3. **Certain property not to be diverted.** Subject to section 501.12, when a domestic corporation holds property in trust for a designated purpose, or subject to a specific use, or subject to a condition subsequent, or upon a special or executory limitation, it shall not divert such property from such trust, use, condition, or limitation.

**History:** 1951 c 550 s 26; 1953 c 650 s 16,17

### 317.27 AMENDMENT OF ARTICLES.

Subdivision 1. **Extent.** A domestic corporation may amend its articles in the manner prescribed by this section to include or omit any provisions which it could lawfully include or omit from the original articles at the time the amendment is made, or to extend its duration for a further definite time or perpetually. Any number of amendments may be submitted and voted upon at a single meeting.

A corporation may by action taken in the same manner as required for amendment of articles of incorporation adopt restated articles of incorporation consisting of the articles of incorporation as amended to date. Restated articles of incorporation may, but need not be, adopted in connection with an amendment to the articles of incorporation. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that: in lieu of setting forth the names and addresses of the first board of directors, the restated articles shall set forth the names and addresses of the directors at the time of the adoption of the restated articles; and no statement need be made with respect to the names and addresses of the incorporators. The certificate filed to accomplish any restated articles shall be entitled "Certificate of Restated Articles of Incorporation of ..... (name of corporation)" and shall contain a statement that the articles supersede and take the place of existing articles of incorporation. When executed, filed and recorded in the manner prescribed in this section for articles of amendment the restated articles shall supersede and take the place of theretofore existing articles of incorporation and amendments thereto. The secretary of state upon request shall certify the articles as restated articles of incorporation.

Subd. 2. **Procedure to amend, by members, where there are members with voting rights.** (1) Where there are members with voting rights, the board of directors shall propose the amendment to the articles by resolution setting forth the proposed amendment and directing that it be submitted for adoption at a meeting of the members. Notice of the meeting of members, stating the purpose, shall be given to each member entitled to vote on the proposed amendment, and to each officer and director regardless of voting rights.

(2) If notice required by clause (1) has been given, the proposed amendment may be adopted at any meeting of the members.

(3) Unless the articles or bylaws require a greater vote, when a majority of the members voting have approved a proposed amendment, it is adopted.

Subd. 3. **Procedure to amend, by directors, where members have voting rights.**

(1) Unless the articles or bylaws require a greater vote, the members may, by a majority vote of the members voting at a meeting duly called for the purpose, authorize the board of directors, subject to clause (3), to exercise from time to time the power of amendment of the articles in the manner prescribed in clause (2).

(2) When the members have authorized the board of directors under clause (1) to amend the articles, the board of directors, by a two-thirds vote, unless the articles or bylaws require a greater vote, of the directors who are present and entitled to vote on the proposed amendment, may amend the articles at any meeting of the board. Notice of the meeting and of the proposed amendment shall be given.

(3) The members, by a majority vote of the members voting at a meeting duly called for the purpose, may prospectively revoke the authority of the board to exercise the power of the members to amend the articles.

Subd. 4. **Procedure to amend, where there are no members with voting rights.**

Where there are no members with voting rights, the amendment shall be adopted at a meeting of the board of directors upon receiving a two-thirds vote, unless the articles or bylaws require a greater vote, of the directors who are present at the meeting and entitled to vote on the proposed amendment. Notice of the meeting and of the proposed amendment shall be given.

**Subd. 5. Amendments; execution, filing.** When an amendment has been adopted, the president or vice-president and the secretary or assistant secretary shall execute and acknowledge articles of amendment which shall set forth the amendment and the manner of its adoption. The articles of amendment shall be filed for record with the secretary of state. If the articles conform to law and the fees prescribed by section 317.67 have been paid, the secretary of state shall record the articles and the amendment becomes effective upon recording or upon such later date, or date and hour, not more than 31 days after recording, as may be specified in the amendment.

Before any amendment to articles of incorporation may be filed under this section, every corporation now subject to this chapter and every religious corporation which has not elected to accept sections 317.01 to 317.25 and which avails itself of sections 317.26 to 317.69 as provided in section 317.06, which is incorporated under a law which required articles of incorporation of the corporation or religious corporation and amendments of articles to be filed with a public office other than the secretary of state, shall file with the secretary of state a copy of all such articles and amendments certified as true, correct and complete by the public officer having custody of the original documents.

**Subd. 6. Certain amendments.** An amendment to articles of incorporation of religious, charitable, or educational corporations shall be valid if made in accordance with the laws, usages, and customs of a superior body with which such corporation is affiliated, provided such laws, usages and customs are not less restricted than those provided for in subdivisions 1 to 4.

**History:** 1951 c 550 s 27; 1953 c 650 s 18,19; 1957 c 619 s 1; 1963 c 710 s 4; 1973 c 51 s 8-10; 1986 c 444

### 317.271 CORPORATE EXISTENCE, RENEWAL.

**Subdivision 1. Domestic corporation.** As used in this section, "domestic corporation" means every nonprofit corporation organized under any law of this state whether or not formed under or subject to the provisions of this chapter.

**Subd. 2. Authority to renew.** If the period of duration of any domestic corporation organized under any law of this state has expired and such domestic corporation has continued to transact its business, or its assets have not been liquidated and distributed, such domestic corporation may renew its corporate existence from the date of its expiration for a further definite time or perpetually from and after the term of its expired period of duration with the same force and effect as if extended prior to the expiration of its term of existence.

**Subd. 3. Manner of renewal.** Such renewal shall be effected by taking the same proceedings and obtaining the same vote of members or directors as are required by section 317.27 for the extension of the period of duration of corporate existence prior to the expiration of such period.

**Subd. 4. Proceedings to relate back.** Such proceedings shall relate back to the date of the expiration of such original corporate period, as fixed by its articles of incorporation or by statutory limitation, and when such period is extended as provided by this section, any and all corporate acts and contracts done and performed, made and entered into after the expiration of said original period, shall be and each is hereby declared to be legal and valid.

**Subd. 5. Application.** This section shall not apply to any domestic corporation, the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction of this state or to any domestic corporation as to which there is pending any action or proceeding in any of the courts of this state for the forfeiture

of its charter, nor shall this section affect any action or proceedings now pending in any of the courts of this state in relation to any domestic corporation described in subdivision 1.

**Subd. 6. Election.** Every domestic corporation renewing its corporate existence pursuant to the provisions of this section which was not formed under sections 317.01 to 317.25, and which has not previously elected to be subject to such sections, by such renewal shall be deemed conclusively to have elected to accept and be bound by the provisions of such sections. This subdivision shall not apply to religious corporations and other domestic corporations excepted from this chapter by section 317.06, paragraph (1).

**Subd. 7. Other amendments.** Any domestic corporation taking action to renew the period of duration of its corporate existence pursuant to the provisions of this section may make such other amendment or amendments to its articles of incorporation as might be permitted to a domestic corporation whose period of duration had not expired, and the articles of amendment setting forth the renewal of the period of duration may also set forth such other amendment or amendments.

**History:** 1967 c 817 s 1

### 317.28 BOOKS AND RECORDS; FINANCIAL STATEMENT.

(1) A domestic corporation shall keep at its registered office correct and complete books of account and minutes of proceedings of meetings of (a) members, (b) board of directors, and (c) committees having any of the authority of the board of directors.

(2) A member, or the member's agent or attorney, may inspect all books and records for any proper purpose at any reasonable time.

(3) Upon request by a member, the domestic corporation shall furnish the member with a statement showing the financial result of all operations and transactions affecting income and surplus during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of such accounting period.

**History:** 1951 c 550 s 28; 1953 c 650 s 20; 1986 c 444

### 317.285 USE OF FACSIMILE SIGNATURES AND SEAL.

A corporation which issues share certificates for shares of capital stock pursuant to section 317.25, subdivision 2, clause (1), or issues membership certificates pursuant to section 317.25, subdivision 2, clause (2), or issues bonds or any other evidences of indebtedness may engrave or print on any such share certificate, membership certificate, bond, or other evidence of indebtedness facsimiles of signatures of its corporate officers and its corporate seal, if any.

**History:** 1973 c 51 s 13

### 317.29 INTERROGATORIES; POWERS OF VISITATION; PENALTY.

(1) The secretary of state, attorney general, commissioner of human services, commissioner of commerce, or commissioner of revenue, or all of them, may require the directors or officers of a domestic or foreign corporation to answer written interrogatories which are reasonably necessary to determine whether the corporation has complied with law.

(2) The corporation shall answer these interrogatories within 30 days after receipt.

(3) The secretary of state, attorney general, commissioner of human services, commissioner of commerce, and commissioner of revenue shall each have free access to any books and records of the corporation when it is reasonably necessary to determine whether the corporation has complied with law.

(4) A person who fails to comply with this section is guilty of a misdemeanor.

**History:** 1951 c 550 s 29; 1953 c 593 s 2; 1973 c 582 s 3; 1983 c 289 s 114 subd 1; 1984 c 654 art 5 s 58; 1984 c 655 art 1 s 92

## MERGER AND CONSOLIDATION

**317.30 DEFINITIONS.**

Subdivision 1. **Terms.** For the purposes of sections 317.30 to 317.43 unless the context otherwise requires, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. **Surviving corporation.** "Surviving corporation" means the constituent corporation remaining after a merger has become effective.

Subd. 3. **New corporation.** "New corporation" means the corporation which is created by consolidation.

Subd. 4. **Single corporation.** "Single corporation" means either a surviving or a new corporation, or both.

**History:** 1951 c 550 s 30

**317.31 AUTHORITY TO MERGE OR CONSOLIDATE.**

Any number of domestic corporations, when organized for related purposes, may merge into one of the constituent corporations or consolidate into a new corporation. The surviving or new corporation is, by virtue of the merger or consolidation, subject to the provisions of this chapter.

**History:** 1951 c 550 s 31

**317.32 PROVISIONS EXCLUSIVE.**

A domestic corporation may merge or consolidate only in the manner provided by sections 317.30 to 317.42.

**History:** 1951 c 550 s 32

**317.33 AGREEMENT, CONTENTS.**

(1) An agreement of merger or consolidation shall contain:

(a) the names of the domestic corporations proposing to merge or consolidate, and the name of the corporation into which they propose to merge or consolidate;

(b) the terms and conditions of the proposed merger or consolidation and the manner in which it will be effected;

(c) in case of merger, the articles of the surviving corporation and any amendments necessary or advisable to accomplish the purpose of the merger; and

(d) in case of consolidation, with respect to the new corporation, the provisions required by section 317.08, subdivision 2, to be set out in the articles of incorporation.

(2) The agreement of merger or consolidation may contain any other provision deemed necessary or desirable.

**History:** 1951 c 550 s 33

**317.34 AGREEMENT, PROCEDURE FOR ADOPTION.**

An agreement of merger or consolidation shall be approved and adopted by each constituent corporation in the following manner:

(1) When there are members of a constituent domestic corporation having voting rights, the board of directors of the corporation shall adopt a resolution by a majority vote of the entire board of directors approving a proposed agreement of merger or consolidation and directing that the agreement be submitted to a vote at a meeting of the members of the corporation. The meeting may be an annual, a regular, or a special meeting of the members. Notice shall be given, accompanied by a copy or summary of the proposed agreement. Unless the articles or bylaws require a greater vote, the agreement of merger or consolidation is adopted upon receiving the affirmative votes of a majority of the members who vote upon the proposed agreement.

(2) When the members of a constituent domestic corporation do not have voting

rights, and unless the articles or bylaws require a greater vote, an agreement of merger or consolidation is adopted at a meeting of the board of directors of the corporation upon receiving the affirmative votes of a majority of all directors. Notice shall be given, accompanied by a copy of the proposed agreement of merger or consolidation.

**History:** 1951 c 550 s 34

### **317.35 AGREEMENT, EXECUTION.**

(1) Upon adoption of an agreement of merger or consolidation, the president or a vice-president, and the secretary or an assistant secretary, of each constituent corporation shall execute and acknowledge the agreement.

(2) The persons who execute the agreement shall certify on the agreement that it was adopted in accordance with the provisions of this chapter and with the articles and bylaws of each constituent corporation and shall certify on the agreement the manner of adoption of such agreement.

(3) Sufficient copies of the agreement, certified as prescribed by clause (2), shall be furnished to enable the secretary of state to comply with the provisions of this chapter with respect to filing the agreement of merger or consolidation.

**History:** 1951 c 550 s 35; 1973 c 51 s 11

### **317.36 AGREEMENT, FILING, RECORDING; CERTIFICATE ISSUED.**

(1) Upon execution of the agreement of merger or consolidation, the agreement and required copies shall be delivered to the secretary of state's office, accompanied by the fees prescribed by section 317.67.

(2) The secretary of state, on finding that the agreement conforms to law, and the prescribed fees have been paid, shall endorse approval upon the agreement and each copy, file and record the original of the agreement in the secretary of state's office, and issue a certificate of merger or a certificate of consolidation and incorporation, as appropriate. The secretary of state shall file and record a copy of the certificate and shall return the remaining copies bearing the endorsement of approval, together with the certificate of merger or the certificate of consolidation and incorporation, to the single corporation.

**History:** 1951 c 550 s 36; 1976 c 181 s 2; 3Sp1981 c 2 art 1 s 54; 1986 c 444

### **317.37 TIME EFFECTIVE.**

Upon the issuance of the certificate of merger or the certificate of consolidation and incorporation by the secretary of state, the merger or consolidation is effective, or shall become effective upon such later date, or date and hour, not more than 31 days after the issuance of the certificate of merger or the certificate of consolidation and incorporation by the secretary of state, as may be specified in the agreement of merger or consolidation.

**History:** 1951 c 550 s 37; 1973 c 51 s 12

### **317.38 CONSEQUENCES.**

The consequences of merger or consolidation are:

(1) The several constituent corporations become a single corporation which (a) in case of merger is a surviving corporation, or (b) in case of consolidation is a new corporation.

(2) Excepting the surviving corporation and subject to clause (3) and to section 317.40, the separate existence of each constituent corporation ceases.

(3) When the agreement of merger or consolidation expressly provides for the continuance of the corporate existence of a constituent corporation and expressly declares the purpose for the continuance, the corporate existence of such constituent corporation continues in the single corporation for the purpose declared in the agreement.

(4) The single corporation has all the rights, privileges, immunities, powers, and franchises, and is subject to all of the duties and liabilities, of a corporation formed under this chapter.

(5) The single corporation has all the rights, privileges, immunities, powers, and franchises, public and private, of each constituent corporation.

(6) All property, real, personal, or mixed, all debts, including debts arising from a subscription for membership, and all interests belonging to each constituent corporation are transferred to the single corporation without further act or deed.

(7) Interest in any real estate possessed by a constituent corporation does not revert to the grantor, or otherwise, nor is it in any way impaired by reason of the merger or consolidation; and the personal property of a constituent corporation does not escheat by reason of the merger or consolidation.

(8) Except where the will or other instrument provides otherwise, and subject to clause (10), a devise, bequest, gift, or grant contained in any will or other instrument, in trust or otherwise, made before or after the merger or consolidation has become effective, to or for any of the constituent corporations, inures to the single corporation.

(9) (a) Except where the will, declaration of trust, or other instrument provides otherwise, the single corporation is, without further act or deed, the successor of the constituent corporations in any and all fiduciary capacities in which a constituent corporation was acting at the time of the merger or consolidation and is liable to all beneficiaries as fully as if the constituent corporation had continued its separate corporate existence.

(b) If a constituent corporation is nominated and appointed, or has been nominated and appointed, in any fiduciary capacity in any will, declaration of trust, or any other instrument, order, or judgment of any court before or after the merger or consolidation, then even if the will or other instrument, order, or judgment does not become operative or effective until after the merger or consolidation becomes effective, every such fiduciary capacity and all of the rights, powers, privileges, duties, discretions, and responsibilities so provided to devolve upon, vest in, or inure to the corporation so nominated or appointed, shall fully and in every respect devolve upon, vest in, inure to, and are to be exercised by, the single corporation, whether there be one or more successive mergers or consolidations.

(c) For purposes of this section, the term "fiduciary capacity" means the capacities of trustee, executor, administrator, personal representative, guardian of estates, conservator, receiver, escrow agent, agent for the investment of money, attorney-in-fact, or any other similar capacity.

(10) Except as provided in section 501.12, property, assets, or income derived therefrom, possessed or received by a constituent corporation, or subsequently received by the single corporation after the merger or consolidation, shall not be diverted from the uses and purposes for which such property, assets, or income have been received and held, or from the uses and purposes expressed or intended by the original donor.

(11) All debts, liabilities, and obligations of each constituent corporation become the debts, liabilities, and obligations of the single corporation, just as if such debts, liabilities, and obligations had been incurred or contracted by the single corporation.

(12) Any existing claims or pending action or proceeding by or against a constituent corporation may be prosecuted to judgment as though the merger or consolidation had not been effected, or the single corporation may be substituted for the constituent corporation.

(13) The liabilities of the members, officers, directors, or similar groups or persons, however denominated, of a constituent corporation are not affected by the merger or consolidation of any constituent corporation.

(14) The rights of creditors or any liens upon the property of a constituent corporation are not impaired by the merger or consolidation, but the liens are limited to the property upon which they were liens immediately prior to the merger or consolidation.

**History:** 1951 c 550 s 38; 1986 c 338 s 1

**317.39 ARTICLES OF INCORPORATION, AMENDMENT BY AGREEMENT OF MERGER.**

(1) In case of merger, the agreement of merger amends the articles of incorporation of the surviving corporation to the extent that the agreement differs from the articles of incorporation. Further proceedings are not necessary to effect the amendment.

(2) In case of consolidation, the agreement of consolidation constitutes the articles of incorporation of the new corporation.

**History:** 1951 c 550 s 39

**317.40 CONTINUANCE OF CORPORATE CAPACITY.**

When any act or instrument is considered necessary or appropriate to evidence the vesting of property or other rights in the single corporation, the persons with authority to do so under the articles or bylaws of each constituent corporation shall do the act or execute and deliver the instrument; and for this purpose the existence of the constituent corporations and the authority of such persons is continued.

**History:** 1951 c 550 s 40

**317.41 SUBORDINATE OR AFFILIATE CORPORATIONS; APPROVAL.**

When a subordinate or affiliate corporation is under the governance of a general organization or entity, and the laws or rules of the general organization or entity preclude the merger or consolidation of a subordinate or affiliate body without prior approval of the general organization or entity, the subordinate or affiliate corporation shall not effect a merger or consolidation unless or until the approval is duly obtained.

**History:** 1951 c 550 s 41

**317.42 DOMESTIC CORPORATION WITH FOREIGN CORPORATION.**

**Subdivision 1. Authority.** Except as provided in subdivisions 2, 3, and 4, when a foreign corporation is authorized by the law of the state or place of incorporation to effect a merger or consolidation with a corporation foreign to that state or place, a merger or consolidation of a domestic corporation with such a foreign corporation may be effected to the same extent and in the same manner as a merger or consolidation of domestic corporations.

**Subd. 2. State of incorporation of new or surviving corporation.** In case of consolidation, the new corporation may be incorporated under the laws of any state or place under which a constituent corporation was incorporated. In case of merger, the surviving corporation may be any constituent corporation. With respect to any constituent corporation, the provisions, forms or manner of execution and acknowledgment of the agreement of merger or consolidation, and the certification of the proceedings for adoption of the agreement may be effected in accordance with the laws of the state or place of incorporation, or proposed incorporation, of the surviving or new corporation.

**Subd. 3. Filing, recording.** When a domestic corporation merges or consolidates with a foreign corporation pursuant to the law of a state or place other than this state, the single corporation shall file for record a copy of the agreement of merger or consolidation, certified by the proper official of the state or place, accompanied by the fees prescribed by section 317.67, in the office of the secretary of state of this state.

**Subd. 4. Application of provisions of act, exception.** Except where they are inconsistent with this section, the provisions of this chapter relative to the merger or consolidation of domestic corporations apply to any domestic corporation which merges or consolidates with a foreign corporation.

**History:** 1951 c 550 s 42; 1976 c 181 s 2; 3Sp1981 c 2 art 1 s 55

**317.43 [Repealed, 3Sp1981 c 2 art 1 s 75]**

## VOLUNTARY DISSOLUTION

**317.44 DOMESTIC CORPORATIONS, AUTHORITY TO DISSOLVE; PROVISIONS EXCLUSIVE.**

(1) A domestic corporation may be dissolved only under this chapter.

(2) When there are no substantial assets distributable upon dissolution and the public interest and welfare are not prejudiced, a domestic corporation may effect a liquidation of the corporate affairs and the voluntary dissolution out of court. In all other cases, the liquidation of the corporate affairs and the voluntary dissolution of the corporation shall be conducted under court supervision.

**History:** 1951 c 550 s 44

**317.45 OUT OF COURT PROCEDURE.**

Subdivision 1. **Application to district court, resolution.** When the proceedings are to be conducted out of court, the resolution authorizing the institution of dissolution proceedings, as provided in section 317.46, subdivisions 2 and 3, shall direct application to the district court for issuance of an order allowing dissolution proceedings to be conducted out of court and shall designate a liquidating receiver to conduct the winding up.

Subd. 2. **Order of court allowing.** A domestic corporation shall apply to the district court of the county in which the registered office of the corporation is located, at a special term, upon due notice to interested persons, for an order allowing the liquidation of the corporate affairs and the dissolution of the corporation out of court. Upon a finding by the court that there are no substantial assets distributable upon dissolution, and that the public interest and welfare are not prejudiced, the court shall issue the order.

Subd. 3. **Liquidating receiver.** Upon the issuance of the order by the court, the appointment of the liquidating receiver becomes operative. Thereupon, the liquidating receiver shall as speedily as practicable conduct the winding up of the corporation in accordance with the provisions of this chapter.

Subd. 4. **Termination of corporate existence.** When the corporation has been completely wound up, the liquidating receiver shall sign and acknowledge a certificate stating that the corporation has been completely wound up. When the liquidating receiver has filed that certificate for record with the secretary of state, the corporate existence terminates.

**History:** 1951 c 550 s 45

**317.46 IN COURT PROCEDURE.**

Subdivision 1. **Application.** Upon application to the district court of the county in which the registered office of the corporation is located, a domestic corporation may be wound up and voluntarily dissolved.

Subd. 2. **Procedure, where members with voting rights.** Where there are members with voting rights, application to the district court may be made only after approval by the directors and members of a resolution recommending the institution of voluntary proceedings for dissolution of the corporation. Such resolution shall be submitted, after approval by the directors, to the members with voting rights at an annual, a regular, or a special meeting of which special notice has been given. The resolution is approved by (a) the directors, upon receiving the affirmative vote of a majority of all directors, and (b) the members, unless the articles or bylaws require a greater vote, upon receiving the affirmative vote of a majority of the members who vote upon the proposed resolution.

Subd. 3. **Procedure, where no members with voting rights.** Where there are no members with voting rights, application to the district court may be made only after a resolution authorizing the institution of voluntary proceedings for the dissolution of the corporation has been approved by the board of directors at a board meeting. Unless



the articles or bylaws require a greater vote, upon receiving the affirmative vote of a majority of all directors, the resolution authorizing the institution of proceedings is approved. Notice of the meeting and of the proposed resolution shall be given to each member of the board of directors.

**History:** 1951 c 550 s 46

### **317.47 APPLICATION TO COURT, PETITION OF CORPORATION.**

The application to the district court shall be made by petition of the corporation, signed and verified by at least two duly authorized officials.

**History:** 1951 c 550 s 47

### **317.48 PETITION, CONTENTS.**

The petition may be under the seal of the corporation and shall state:

- (1) the name and location of the corporation;
- (2) the statute under which the corporation was formed, the date of incorporation and the date and place where the original articles of incorporation or charter were recorded or filed;
- (3) where there are members with voting rights, the time and place of the meeting of members of the corporation at which the resolution authorizing the institution of dissolution proceedings was approved, the kind and period of notice of the meeting given to the members, and the total vote by which the resolution was approved;
- (4) where there are no members with voting rights, that there are no members with voting rights, the time and place of the meeting of the board of directors at which the resolution authorizing the institution of dissolution proceedings was approved, the kind and period of notice of the meeting given to the members of the board of directors, and the total vote by which the resolution was approved;
- (5) an inventory of all the real and personal property of the corporation which shall show separately any real or personal property held in trust, or subject to a condition subsequent, or to a special or executory limitation, or for a special use or purpose;
- (6) all outstanding claims against the corporation;
- (7) all liens and incumbrances upon the corporate property and assets;
- (8) all outstanding claims belonging to the corporation;
- (9) the number of existing members of the corporation to the extent this information is known, and the respective rights of members, if any, to share in the disposition of the corporate property or assets in excess of the debts and liabilities of the corporation; and
- (10) that it prays for the dissolution of the corporation and for the liquidation of the corporate affairs under the supervision of the court.

**History:** 1951 c 550 s 48

### **317.49 PROCEEDINGS, COMMENCEMENT.**

Upon filing the petition with the court administrator, the proceedings commence. Thereafter, the corporation may transact only that business which is necessary for the liquidation of the corporate affairs.

**History:** 1951 c 550 s 49; 1Sp1986 c 3 art 1 s 82

### **317.50 HEARING ON PETITION.**

Upon the filing of the petition for voluntary dissolution the court shall enter an order appointing a time, date, and place for the hearing of the petition and directing all persons interested in the proceedings to show cause at that time, date, and place why the corporation should not be dissolved. The petitioner shall give whatever notice of the hearing the court directs.

**History:** 1951 c 550 s 50

**317.51 TEMPORARY RECEIVER.**

Upon the filing of the petition for voluntary dissolution, the court shall have the ordinary powers of a court of equity to appoint a temporary receiver.

**History:** 1951 c 550 s 51

**317.52 ATTORNEY GENERAL MAY INTERVENE.**

If at any stage of a proceeding to effect the voluntary dissolution of a corporation it appears that the state is, or is likely to be, interested therein, or that it is a matter of general public interest or welfare, the court shall order that a copy of the petition be served upon the attorney general. When of the opinion that the public interest or welfare requires it, the attorney general shall intervene in any such proceeding whether served with a copy of the petition or not.

**History:** 1951 c 550 s 52; 1986 c 444

**317.53 PETITION, APPROVAL; ORDER FOR LIQUIDATION.**

At the time and place of hearing fixed by the order of the court, or as soon thereafter as the matter may be heard, the petitioner shall present to the court proof that notice was given as directed under section 317.50. Thereupon, the court shall consider the petition. The court shall hear the evidence of all parties interested. If the court is satisfied that the prayer of the petition may be granted without prejudice to the public welfare or interest, or to the interests of the members of the corporation, the court shall approve the petition and direct the liquidation of the corporate affairs.

**History:** 1951 c 550 s 53

**317.54 LIQUIDATING RECEIVER.**

When entering the order for liquidation of the corporate affairs, the court shall designate one or more persons as liquidating receiver to wind up the affairs of the corporation under the direction of the court.

**History:** 1951 c 550 s 54

**317.55 LIQUIDATING RECEIVER; POWERS, DUTIES.**

Subdivision 1. **Bond.** After giving whatever bond the court requires, the liquidating receiver shall proceed with the liquidation of the affairs of the corporation in the manner that the court directs.

Subd. 2. **Powers.** Subject to the approval of the court, the liquidating receiver may:

- (1) enforce, within or without the state, all causes of action which the creditors or members have against the officers, directors, members, or anyone else;
- (2) enforce, defend, compromise, compound, or settle claims in favor of or against the corporation upon whatever terms the receiver deems just;
- (3) marshal the assets of the corporation;
- (4) subject to subdivision 4, sell, convey, and dispose of all or part of the property and assets of the corporation, at either a public or a private sale;
- (5) appoint subagents, and do all acts reasonably necessary to effect the final settlement of the unfinished business of the corporation.

Subd. 3. **Continuance of powers and duties.** The authority and duties of the liquidating receiver continue as long as the court deems necessary.

Subd. 4. **Corporate property and assets, distribution.** The liquidating receiver shall apply and distribute the property and assets of the corporation pursuant to section 317.57.

**History:** 1951 c 550 s 55; 1986 c 444

**317.56 CLAIMS; PRESENTATION, FAILURE TO PRESENT.**

Subdivision 1. **Time limitation for presentation.** In entering the order for the liquidation of the corporate affairs, the court shall designate a time and place for hearing the claims of creditors and, subject to subdivision 2, shall fix a maximum time limitation upon the presentation of such claims which (a) when it appears by affidavit that there are no claims, may be three months, and (b) when it does not so appear, shall be not less than six nor more than 12 months.

Subd. 2. **Extension of time.** When the creditor has shown sufficient cause for the delay and has given notice to the liquidating receiver, the court may hear and allow a claim filed prior to the entry of the order of dissolution and within 18 months from the date of the order for the liquidation of the corporate affairs.

Subd. 3. **Order for liquidation, publication.** The liquidating receiver shall publish the order for the liquidation of the corporate affairs in a legal newspaper in the county in which the registered office of the corporation is located once a week for three successive weeks, and shall mail a copy of the order to each creditor of the corporation. Proof of such publication shall be filed with the court within ten days after the final publication.

Subd. 4. **Failure to file claim.** (1) Subject to clause (2), all claims whether due, not due, or contingent, that are not presented within the time fixed by the court are forever barred from participation in the assets of the corporation that are at any time in possession or under the control of the liquidating receiver, whether distributed to the members or not.

(2) Contingent claims which have not become absolute and capable of liquidation before entry of the order of dissolution need not be presented or allowed under clause (1).

Subd. 5. **Contingent claim, not due claim; presentation.** When presenting a contingent or not due claim, a creditor shall state its particulars. The court shall require that adequate provision be made for payment of this contingent or not due claim when it becomes due. Except when this provision is made, when contingent or not due claims have been presented, the liquidating receiver may distribute the assets of the corporation only to the extent permitted by section 317.57, subdivision 1, clauses (1), (2), and (3).

Subd. 6. **Information required in claim.** When presented a claim shall (a) be itemized, (b) if secured, show the security, and (c) be verified by the affidavit of the claimant, or the claimant's agent or attorney, which declares the balance due, that no uncredited payment of the claim has been made, and that there are no offsets to the claim known to the affiant.

Subd. 7. **Setoffs, counterclaims.** Except in an action for the balance due upon a subscription for membership, or a contract to purchase a share of stock or membership certificate, in any action brought by the liquidating receiver against the claimant, the claimant may set off or counterclaim any claim.

**History:** 1951 c 550 s 56; 1986 c 444

**317.57 CORPORATE PROPERTY AND ASSETS, MANNER OF DISTRIBUTION.**

Subdivision 1. **Manner of distribution.** (1) When entering the order approving the petition and directing liquidation of the corporate affairs, the court shall order the application and distribution of the property and assets of the corporation in the order and according to the terms of clauses (2) to (6).

(2) Costs and expenses incident to the proceedings shall be paid.

(3) All liabilities and obligations of the corporation shall be paid, satisfied, discharged, or adequate provision made for them according to their respective priorities.

(4) Property and assets held by the corporation upon condition or subject to an executory or special limitation, if the condition or limitation occurs by reason of the

dissolution of the corporation, shall revert, be returned, transferred, or conveyed in accordance with the condition or limitation.

(5) Subject to subdivision 2, property and assets held for or devoted to a charitable, religious, eleemosynary, benevolent, educational, literary, or other similar use or purpose, but not held upon a condition or subject to an executory or special limitation, shall not be diverted from the use or purpose for which it was granted, donated, devised, or bequeathed, and, pursuant to the direction of the court, shall be transferred or conveyed to one or more persons, societies, organizations, or domestic or foreign corporations engaged in activities which will, as nearly as can, accomplish the general purpose of the dissolving corporation.

(6) Subject to subdivision 2, any remaining property and assets may be distributed, in the discretion of the court, to the persons, societies, organizations, or domestic or foreign corporations, whether profit or nonprofit, designated by the petitioner.

Subd. 2. **Different manner in certain cases.** Subject to a prior compliance with subdivision 1, clauses (2), (3), (4), where the articles or bylaws of the dissolving corporation, or the rules or canons of a superior body or entity by which the dissolving corporation is bound, provide for a particular distribution of the property and assets of the dissolving corporation, the property and assets shall be distributed accordingly.

**History:** 1951 c 550 s 57

### **317.58 REVOCATION OF CHARTER OF SUBORDINATE BODY.**

When the charter or other warrant of authority of a subordinate corporation is surrendered to or revoked by the general organization which has granted it, and the rules and laws of the general organization confer that power upon the general organization, the corporate powers of the subordinate corporation cease, except for those powers necessary to effect a compliance with the provisions of this act for dissolution of the corporation. The subordinate corporation or the general organization may institute proceedings to effect a dissolution of the subordinate corporation under this chapter. Subject to a prior compliance with section 317.57, subdivision 1, clauses (1), (2), (3), (4), the property and assets of the subordinate corporation which have been devoted to the purposes of the general organization shall be delivered or conveyed to the representatives of the general organization to be disposed of in accordance with the laws or rules of the general organization.

**History:** 1951 c 550 s 58

### **317.59 ORDER DISSOLVING CORPORATION.**

When the corporation has been completely wound up and the liquidating receiver has certified that fact to the court, the court shall adjudge the corporation dissolved.

**History:** 1951 c 550 s 59

### **317.60 ORDER DISSOLVING CORPORATION, FILING.**

The liquidating receiver shall file for record with the secretary of state the order of the court adjudging the corporation dissolved. When the order is filed, the corporate existence terminates.

**History:** 1951 c 550 s 60

### **317.61 OMITTED ASSETS, TITLE IN RECEIVER.**

The liquidating receiver has title to property or assets of the corporation omitted from the winding up. The receiver shall hold them for distribution to the persons entitled to them.

**History:** 1951 c 550 s 61; 1986 c 444

## ACTION TO TERMINATE

**317.62 CORPORATE EXISTENCE, ACTION TO TERMINATE.**

Subdivision 1. **Action by attorney general.** The attorney general, on finding that the public interest requires termination of the existence of a domestic corporation or purported domestic corporation and that one or more of the facts described in subdivision 2 exists, shall, upon the attorney general's own information or upon the complaint of a member of the corporation or of any other person, file a petition, in the district court of the county where the registered office of the corporation is located, setting out these findings and requesting an order that the corporate affairs be liquidated and the corporate existence terminated.

Subd. 2. **Necessary prerequisites.** The attorney general may act under subdivision 1 on finding that the corporation:

- (1) has liabilities and obligations exceeding the corporate assets; or
- (2) the period of corporate existence has ended without due extension; or
- (3) franchise was procured through fraud practiced upon the state; or
- (4) should not have been formed under this chapter; or
- (5) was formed without a substantial compliance with the provisions prescribed by this chapter as precedent or essential to incorporation; or
- (6) has continued to exceed or abuse the authority or powers conferred upon it by this chapter or by any other applicable statute; or
- (7) has violated a provision of a statute regulating corporations or any other provision of law; or
- (8) has done, or omitted to do, any act which amounts to a surrender of its corporate franchise; or
- (9) has failed to exercise or has discontinued its corporate privileges; or
- (10) has abandoned the corporate enterprise; or
- (11) has failed for a period of 90 days to pay any fees, charges or penalties prescribed by this chapter; or
- (12) has failed for a period of 30 days after effecting a change of its registered office to file with the secretary of state a statement of such change; or
- (13) has answered falsely or failed to answer any reasonable written interrogatory propounded by the secretary of state, the attorney general, commissioner of human services, commissioner of commerce, or the commissioner of revenue, to the corporation, its officers or directors; or
- (14) has solicited property and has failed to use it for the purpose solicited; or
- (15) has fraudulently used or solicited property.

Subd. 3. **Correction of acts or omissions, time.** If the facts set forth in the petition show an act which the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall afford the corporation 30 days in which to effect the correction before filing the petition.

Subd. 4. **Order directing liquidation.** If the court finds that the findings in the petition are established, it shall order the liquidation of the corporate affairs in the manner provided by sections 317.49 to 317.62.

Subd. 5. **Order terminating corporate existence.** Upon completion of the winding up and certification of such completion to the court, the court shall enter an order terminating the corporate existence.

**History:** 1951 c 550 s 62; 1953 c 593 s 2; 1973 c 582 s 3; 1983 c 289 s 114 subd 1; 1984 c 654 art 5 s 58; 1984 c 655 art 1 s 92; 1986 c 444

**317.63 VIOLATIONS OF SECTION 317.62 CERTIFIED TO ATTORNEY GENERAL.**

When the secretary of state, commissioner of human services, commissioner of commerce, or commissioner of revenue has information that a corporation has violated section 317.62, the official with information shall certify it to the attorney general.

**History:** 1951 c 550 s 63; 1953 c 593 s 2; 1973 c 582 s 3; 1983 c 289 s 114 subd 1; 1984 c 654 art 5 s 58; 1984 c 655 art 1 s 92; 1986 c 444

**SPECIAL PROVISIONS****317.64 CHAMBERS OF COMMERCE, BOARDS OF TRADE, EXCHANGES.**

Subdivision 1. **Special purposes.** A corporation may be formed under this chapter to:

- (1) acquire and disseminate useful business information;
- (2) inculcate equitable principles of trade;
- (3) establish, maintain, and enforce uniformity in the commercial usages, business transactions, and trade relations in the municipality in which it is located.

Subd. 2. **Arbitration of differences.** A domestic corporation, formed for some or all of the purposes set forth in subdivision 1, has authority, through provisions in its articles or bylaws, to arbitrate and adjust differences between (a) the corporation and its members, (b) the members, and (c) a member and a third person who has given written consent. This authority includes the right to take testimony, render awards and enforce an award by a fine or by a forfeiture of the membership of a person or of the person's other rights or privileges.

Subd. 3. **Public markets.** A domestic corporation that is a chamber of commerce, board of trade, or exchange, and that maintains or operates a regular place of business or trading room for members only, in which the members buy, sell, or exchange grain, livestock, or other farm products for themselves or for others, is a public market.

Subd. 4. **Association or corporation defined.** As used in subdivisions 5 and 6, the words "association or corporation" include a cooperative corporation or association authorized to do business in this state.

Subd. 5. **Membership in public market.** Membership in a public market is open to any person, association or corporation (a) having a method of business operation or plan of organization that does not conflict with any reasonable rule of the public market and (b) desiring to deal or trade in the commodities usually dealt in on the public market. Application for membership shall be made in the manner provided in the articles or bylaws of the public market.

Subd. 6. **Rules and bylaws of public markets.** (1) A public market may make reasonable rules, regulations, and bylaws, including provisions for membership fees and uniform reasonable assessments. A rule, regulation or bylaw of a public market is unreasonable when it modifies a provision in the articles, constitution or bylaws of an association or corporation, governing the distribution of profits to the stockholders or members of the association or corporation.

(2) Members of a public market shall comply with reasonable rules, regulations and bylaws established by the market.

Subd. 7. **Monopoly in restraint of trade.** A public market is a monopoly in restraint of trade when it:

- (1) wrongfully or unreasonably refuses to admit or delays the admission of an applicant for membership; or
- (2) discriminates, or causes another to discriminate, among members; or
- (3) violates this section.

Subd. 8. **Prosecution by attorney general.** When a public market is a monopoly in restraint of trade under subdivision 7, all trading or dealing therein is prohibited,

and the attorney general shall bring an action to terminate the existence of the corporation under section 317.62, or sue to enjoin further operation of the market or further violations of this chapter.

**History:** 1951 c 550 s 64; 1986 c 444

### **317.65 CORPORATIONS TO SECURE OR MAINTAIN HOMES FOR DEPENDENT CHILDREN.**

**Subdivision 1. Purposes.** A corporation may be formed for either or both of the following purposes:

(1) securing homes for orphaned, homeless, abandoned, neglected, or grossly ill-treated children;

(2) establishing and maintaining homes for such children.

**Subd. 2. Certificate of trustworthiness.** When it files its articles with the secretary of state, the corporation shall file an accompanying certificate of the commissioner of human services declaring that the corporation:

(1) has complied with the rules established by the commissioner of human services to govern the operation of

(a) child caring agencies if the corporation is formed for the purpose set out in subdivision 1, clause (1); or

(b) child caring institutions if the corporation is formed for the purpose set out in subdivision 1, clause (2); or

(c) child caring agencies and child caring institutions if the corporation is formed for both of the purposes set out in subdivision 1; and

(2) is reputable, trustworthy and entitled to confidence.

**Subd. 3. Comply with rules, open books to public inspection.** A corporation formed for either or both of the purposes set out in subdivision 1 shall:

(1) comply with rules established by the commissioner of human services to govern its operation; and

(2) maintain the financial records of the corporation open to public inspection.

**Subd. 4. Visitorial powers of court.** Upon its own motion, or upon application, a court of equity has visitorial powers over the corporation, its affairs and officers.

**Subd. 5. Legal guardian.** If the commissioner of human services currently certifies that a corporation formed for the purpose set out in subdivision 1, clause (1), is a child caring agency complying with the rules established by the commissioner of human services to govern its operation, the corporation has the power to become the guardian of a child in the manner prescribed for securing the guardianship of dependent and neglected children in sections 260.011 to 260.301.

**Subd. 6. Legal guardian.** Unless a corporation formed to establish and maintain homes for orphaned, homeless, abandoned, neglected, or grossly ill-treated children is licensed as provided by section 257.091, by the commissioner of human services as a child caring agency, it may not become the legal guardian of a child.

**Subd. 7. Expense reimbursement.** (1) Any organization, association or society licensed by the department of human services may receive payment for expenses related to adoption services in an amount that fairly reflects the agency's reasonable and necessary expenses of adoptive counseling, whether or not legal adoption is completed; provision of services to children prior to adoptive placement; and the supervision of children in the home until legal adoption is completed. Only that portion of the expenses may be requested which the person seeking to adopt is financially able to meet. No person shall be barred from receiving a child for adoption because of inability to pay any part of the expenses referred to in this subdivision. In addition to any other reports as may be required, each licensed agency, shall file annually with the commissioner of human services a full accounting of all expense reimbursement received pursuant to this subdivision, together with the record of the services given for which the reimbursement was made. If the person returns the child to the corporation, the

person shall not receive compensation for the care, clothing, or medical attendance of the child.

This provision shall not preclude voluntary contributions by any individual or organization at any time.

(2) No organization, association or society shall be eligible to receive an expense reimbursement from a person who takes a child into the person's home or who adopts a child in any amount whatsoever during the first twelve months that the organization, association or society is licensed by the department of human services.

**Subd. 8. Exemption of property from taxation.** A corporation formed for one or both of the purposes set out in subdivision 1 and all personal and real property owned by it are exempt from taxation.

**History:** 1951 c 550 s 65; 1953 c 593 s 2; 1957 c 336 s 1,2; 1957 c 344 s 1; 1961 c 560 s 29; 1971 c 42 s 1; 1975 c 70 s 1; 1978 c 523 s 1; 1984 c 654 art 5 s 58; 1985 c 248 s 70; 1986 c 444

### 317.66 CORPORATIONS FOR RELIGIOUS PURPOSES.

**Subdivision 1. Benefits for members.** When duly authorized by its members or otherwise, a corporation formed for a religious purpose, may provide directly or through a church benefits board for:

(1) support and payment of benefits to its ministers, teachers, employees, or functionaries and to the ministers, teachers, employees, or functionaries of a nonprofit body affiliated with it or under its jurisdiction;

(2) payment of benefits to the surviving spouses, children, dependents, or other beneficiaries of the persons named in clause (1);

(3) collection of contributions and other payments; and,

(4) creation, maintenance, investment, management, and disbursement of necessary endowment, reserve, and other funds for these purposes, including any trust fund or corporation which funds a "church plan" as defined in section 414(e) of the Internal Revenue Code of 1954, as amended through December 31, 1985.

**Subd. 2. Insurance laws not applicable.** The insurance laws of this state do not apply to the operations of a corporation under subdivision 1.

**Subd. 3. Property exempt from taxation.** Except for property leased or used for profit, all personal and real property that a religious corporation necessarily uses for a religious purpose is exempt from taxation.

**Subd. 4. Peace officers, powers.** The governing board of a religious corporation may appoint peace officers to keep order on its grounds. The peace officers shall be paid by the corporation. When on duty, these officers have the authority of constables.

**Subd. 5. Church benefits board.** A "church benefits board" is an organization described in section 414(c)(3)(A) of the Internal Revenue Code of 1954, as amended through December 31, 1985, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if the organization is controlled by or associated with a church or a convention or association of churches.

**History:** 1951 c 550 s 66; 1986 c 338 s 2,3; 1986 c 444

### MISCELLANEOUS GENERAL PROVISIONS

#### 317.67 FEES; FILING DOCUMENTS.

**Subdivision 1.** [Repealed, 3Sp1981 c 2 art 1 s 75]

**Subd. 2.** The secretary of state shall collect a fee of \$15 for filing any instrument that is required to be filed under this chapter.

**Subd. 3. Filing fee.** The secretary of state shall collect a fee of \$25 from each new nonprofit corporation at the time of incorporation.

**History:** 1951 c 550 s 67; 1953 c 650 s 26; 1969 c 1148 s 51; 1976 c 181 s 2; 1980 c 541 s 7; 3Sp1981 c 2 art 1 s 56; 1983 c 301 s 186



# MINNESOTA STATUTES 1986

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NONPROFIT CORPORATIONS 317.69

## **317.68 LAWS APPLICABLE; LAWS NOT APPLICABLE.**

(1) Minnesota Statutes 1949, Sections 300.60, 300.61 and 300.63 apply to all domestic corporations.

(2) Except as provided in clauses (1) and (3), Minnesota Statutes 1949, chapter 300, does not apply to a domestic corporation.

(3) This section does not affect the applicability of chapter 300, to a corporation that (a) elects to reject sections 317.01 to 317.25 under section 317.04, subdivision 2, or (b) is not subject to this chapter under section 317.06.

**History:** 1951 c 550 s 68

## **317.69 REPEALS, EXCEPTION.**

Except as provided in section 317.04, subdivision 1, clause (3), Minnesota Statutes 1949, sections 300.47, 300.48, 300.50, 301.563, 309.01 to 309.09, 309.18 to 309.20, 311.01 to 311.06, 312.01 to 312.33, 313.01 to 313.11, 314.01 to 314.04, are hereby repealed.

**History:** 1951 c 550 s 78