# CHAPTER 316

# CORPORATIONS; ACTIONS RESPECTING


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## 316.01 MODE OF PROSECUTION.

Foreign corporations may prosecute in the courts of this state in the same manner as domestic corporations and neither shall maintain an action upon an obligation or liability arising out of, or in consideration of, an act which is contrary to law or public policy or forbidden to the other. Except as otherwise expressly provided by law, actions against them shall be commenced by summons, and proceed in the same manner as civil actions against natural persons.

**History:** *(8009) RL s 3169*

## 316.02 MANDATORY AND RESTRAINING ORDERS.

Upon complaint filed under the direction of the attorney general in any district court, such court may restrain by injunction any corporation from assuming or exercising any franchise, liberty, or privilege, or transacting any business not authorized by its act of incorporation; and may restrain any individuals from exercising any corporate rights, privileges, or franchises not granted them by law. Such injunction may be issued before answer upon satisfactory proof that the defendant has usurped, exercised, or claimed any franchise, privilege, liberty, or corporate right not granted to it.

**History:** *(8010) RL s 3170*

## 316.03 POWER OF COURT OVER CORPORATION OFFICERS.

In any case affecting a corporation the district court may:

(1) require any officer thereof to account for official conduct in the management and disposition of any funds or property of the corporation at any time in the officer's charge or possession;

(2) compel any such officer to pay to such corporation or to its representative all funds, and the value of all property acquired and held, or transferred to others, or lost, wasted, or damaged in violation of official duty;

(3) suspend any such officer whenever it appears that a violation of the officer's trust has occurred;

(4) remove any such officer upon conviction or satisfactory proof of gross misconduct;

(5) cause an election to be held to fill any vacancy created by such removal, when deemed necessary, in which case it shall appoint a disinterested person to conduct the same under its direction, and, in case of suspension or removal of a majority of the managing board, it may appoint a temporary receiver to act until such suspension shall terminate, in the one case, and, in the other, until the vacancies shall have been filled by new officers duly elected and qualifying;

(6) set aside any unauthorized or unlawful alienation of property made by any officer thereof whenever satisfied that the alienee knew or had reasonable cause to believe that such conveyance was unauthorized or illegal;

(7) restrain and prevent any such alienation, threatened or intended; and

(8) cause a meeting of its managing board, stockholders, or members to be held when deemed necessary for the preservation of its property or protection of its interests.

Nothing in this section contained shall be construed to impair any visitorial power or authority over any corporation vested by law in any corporate body or public officer.

**History:** *(8011) RL s 3171; 1986 c 444*

**316.04 APPEAL, EFFECT.**

An appeal from an order or judgment removing an officer or trustee, under section 316.03, shall not operate to stay its effect or any proceeding under it; but the term of office of any officer, director, or trustee elected thereunder to fill a vacancy, or of any receiver appointed, shall be terminated by a reversal or vacation of such order of judgment.

**History:** *(8012) RL s 3172*

**316.05 SEQUESTRATION; RECEIVER; DISTRIBUTION.**

Upon complaint of a person obtaining judgment against a corporation, or the person's representatives, made after the return unsatisfied of an execution issued thereon, the court may sequestrate the stock, property, things in action, and effects of such corporation and appoint a receiver of the same; and, upon final judgment upon any such complaint, the court shall order the property remaining, or the proceeds thereof, to be disposed of under its direction, proportionately, in the following order:

(1) in payment of the costs and expenses of the receivership;

(2) debts due the United States and the state of Minnesota, if any;

(3) taxes and assessments, if any;

(4) claims duly proved and allowed of employees sustaining injury in the course of their employment and entitled to compensation under the provisions of the Workers' Compensation Act; provided, that claims under this clause shall not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(5) claims, including cash value of all compensation paid in any medium other than cash, duly proved and allowed of clerks, servants or laborers for services performed within three months preceding the appointment of the receiver, if any; and

(6) other claims duly proved and allowed.

After payment of the expenses of receivership and claims of creditors duly proved, the remainder, if any there be, shall be distributed pro rata among the stockholders proving themselves entitled thereto.

**History:** *(8013) RL s 3173; 1925 c 224; 1971 c 741 s 1; 1975 c 359 s 23; 1986 c 444*

**316.06 FORFEITURE OF RIGHTS; DISSOLUTION.**

When any railway company doing business in this state shall charge, demand, or receive unreasonable rates for the transportation of freight or passengers, or when any corporation remains insolvent, neglects or refuses to discharge its notes or other evidences of debt, or suspends its lawful business for one year, or fails to dispose of all its property with or without payment of all its debts, within the time allowed by law for the liquidation of its affairs, or whenever any corporation shall violate any provision of its articles or certificate of incorporation or any law obligatory upon it, such corporation shall forfeit all its rights, privileges, and franchises, and be adjudged to be dissolved. The attorney general shall make complaint against any corporation which shall in any manner violate any provision of this section or commit any act herein recited; and, if upon trial it is found to have committed any such acts, the court shall render judgment of forfeiture and dissolution of the corporation. Upon the trial of any action against a railway company for charging, demanding, or receiving unreasonable rates for transportation of freight or passengers, the court or jury shall find specially as to the truth of such allegations.

**History:** *(8014) RL s 3174*

**316.07 DISSOLUTION ON PETITION OF CORPORATION.**

A majority in number or interest of the members of a corporation, desiring to close their concerns and dissolve the corporation, may present a petition to the district court in the county of its principal place of business, setting forth the name of the corporation; when and by or under what law it was incorporated; the names and addresses of the bondholders, stockholders, or members; the amount of the authorized capital stock, and the amount of capital stock actually paid in; and if not then transacting business, when it ceased so to do; the amount of its indebtedness; the amount and character of its personal property; and the amount and description of its real estate. It shall also state the grounds upon which dissolution is sought and the interest of the petitioner, and pray for proper relief; provided, however, that when any corporation now or hereafter organized under any law of this state having capital stock actually paid in exceeding the sum of $40,000, and has heretofore or shall hereafter continue in the business for which it was incorporated for more than three years, and in the carrying out of such business has sustained losses whereby the capital stock so paid in has become impaired so as to be worth at least 25 percent less than its par value, then, and in any such case, the district court shall have power, and is hereby given power, to dissolve any such corporation upon petition of stockholders owning not less than 40 percent of such capital stock so paid in; provided, that such stockholders so petitioning shall have paid the full value of their stock.

**History:** *(8015) RL s 3175; 1909 c 276 s 1*

**316.08 HEARING; NOTICE.**

Upon the presentation of such petition, the court shall fix a time and place for hearing thereon, and order three weeks' published notice thereof to be given, and such other notice to parties interested as it may deem

proper. At the time and place so fixed the court shall hear the allegations and evidence of all parties interested; and, if any of the grounds specified in the petition is sustained, shall adjudge the corporation dissolved, and appoint a receiver to close its affairs.

**History:** *(8016) RL s 3176*

**316.09 CERTIFIED COPY OF ORDER FILED.**

A certified copy of the order or judgment of dissolution shall be filed for record with the secretary of state and thereafter recorded with the county recorder of the county of the principal place of business of the corporation, and the dissolution of the corporation shall not be deemed complete until such copy is so filed and recorded.

**History:** *(8017) RL s 3176; 1917 c 383 s 1; 1976 c 181 s 2; 2005 c 4 s 54*

**316.10 STATE INTERESTED, PROCEEDINGS.**

Whenever, in any action or proceeding to dissolve a corporation, it shall appear at any stage of the proceedings that the state is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the manner of serving a summons in a civil action; and the attorney general shall intervene in any such proceeding when in the attorney general's opinion the public interest requires it, whether so notified or not.

**History:** *(8018) RL s 3177; 1986 c 444*

**316.11 RECEIVER, APPOINTMENT, DUTIES.**

In any action or proceeding to dissolve a corporation, the court, at any time before judgment, or within three years after judgment, of dissolution, may appoint a receiver to take charge of its estate and effects and to collect the debts and property due and belonging to it, with, in addition to the powers set forth in chapter 576, power to prosecute and defend actions in its name or otherwise, to appoint agents, and do all other acts necessary to the final settlement of the unfinished business of the corporation which it might do if in being. The power of such receiver shall continue so long as the court deems necessary for such purposes. The receiver shall pay all debts due from the corporation, if the funds in hand are sufficient therefor; and, if not, the assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the order of priority set forth in section 576.51. After payment of the expenses of the receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders in accordance with section 302A.551, subdivision 4. Every receiver appointed under the provisions of this section shall give bond as required by section 576.27 in such amount as the court shall require, with sureties approved by it.

**History:** *(8019) RL s 3178; 1986 c 444; 2012 c 143 art 3 s 16*

**316.12 INSOLVENT BANKS AND INSURANCE COMPANIES.**

When any insurance company or any corporation having banking powers, or the power to make loans on pledges or deposits, becomes insolvent or unable to pay its debts, or neglects or refuses to pay its notes or evidences of debt on demand, or violates any provision of the act under which it was incorporated, or of any other law obligatory upon it, the court may, by injunction, restrain it and its officers from exercising any of its corporate rights, privileges, and franchises, and from collecting or receiving any debts or demands,

and from paying out or in any way transferring or delivering to any person any of its moneys, property, or effects, until otherwise ordered by the court.

**History:** *(8020) RL s 3179*

### 316.13 FORFEITURE OF CHARTER; RECEIVER; SUIT BY CREDITOR.

Such injunction may be issued on the complaint of the attorney general in behalf of the state, or of any creditor or stockholder of the corporation. When it issues against a bank for any violation of its charter, on complaint of a creditor, the court shall proceed to final judgment, and, if the proof be sufficient, adjudge a forfeiture, notwithstanding such creditor may settle with the corporation and relinquish a claim against it. In such cases the attorney general or a creditor may appear and prosecute the action, which shall not be discontinued if either of them so appears and prosecutes the same. At any stage of the proceedings the court may appoint one or more receivers to take charge of the property and effects of such corporation. If the injunction be upon application of a creditor of a corporation whose directors or stockholders are liable by law for the payment of such debts in any event or contingency, such directors or stockholders, or any of them, may be made parties to the action, either at the time of filing the complaint or at any subsequent time when it becomes necessary to enforce such liability.

**History:** *(8021) RL s 3180; 1986 c 444*

### 316.14 UNPAID STOCK SUBSCRIPTION.

When the property of any corporation is insufficient to pay its debts, upon application of a creditor the court shall order the payment by each stockholder of the amount, if any, unpaid on the shares held, or such portion thereof as may be necessary to satisfy the corporate debts, and when necessary may direct the receiver to enforce such order by appropriate proceedings; and, on application of a stockholder, the court may make such order as will equalize the payments made by stockholders for their stock, and in like manner the court may enforce any liability of directors and officers.

**History:** *(8022) RL s 3181; 1986 c 444*

### 316.15 ORDER LIMITING TIME TO PRESENT CLAIMS; EXTENSION.

The court, upon adjudication of dissolution, shall therein limit the time in which creditors may present claims against the corporation, which shall not be less than six months, nor more than one year, from its date, and fix the time and place when and where it will examine and adjust the same. No claim or demand shall be received or allowed after the expiration of the time so limited, except by permission of the court for good cause shown and upon notice to the receiver, but in no case unless presented within 18 months from the date of adjudication and before final settlement.

**History:** *(8023) RL s 3182*

### 316.16 NOTICE OF HEARING.

Three weeks' published notice of such order of hearing shall be given, which shall require all creditors to present their claims, duly verified, within the time limited, or be precluded from participation in any distribution of corporate property thereafter made.

**History:** *(8024) RL s 3183*

**316.17 ENFORCEMENT OF STOCKHOLDERS' LIABILITY; HEARING; NOTICE OF.**

When it shall be made to appear by the petition of a receiver or assignee of a corporation, or of any creditor thereof whose claim has been filed, that any constitutional, statutory, or other liability of stockholders or directors, or both, exists, and that it is necessary to resort to the same, the court shall appoint a time for hearing, not less than 30 nor more than 60 days thereafter, and order such notice thereof to be served on each person against whom such liability is claimed in the same manner a summons is served in a civil action, and said notice shall also be published as the court shall order. Such notice shall specify, in a general way, the nature of the liability claimed in the petition and the amount thereof against the person upon whom it is so served. When the receiver is not the petitioner, personal notice shall be given to the receiver.

**History:** *(8025) RL s 3184; 1925 c 273 s 1; 1986 c 444*

**316.18 HEARING; EVIDENCE; ORDER FOR ASSESSMENT.**

Upon such hearing, after proof of due service of notice, the court shall receive and consider such evidence, by affidavit or otherwise, as may be presented by the receiver, or by any creditor, officer, or stockholder, appearing in person or by attorney, but such evidence shall be the best available under the circumstances of each case, upon the following points:

(1) the nature and probable extent of the indebtedness of the corporation;

(2) the probable expense of the receivership;

(3) the probable amount of available assets; and

(4) the parties liable as stockholders, the nature and extent of the liability of each, and their probable solvency or responsibility.

If it appears that the available assets, or such amount as may be realized therefrom within a reasonable time, will be insufficient to pay such expenses and indebtedness in full and without delay, the court shall order a ratable assessment upon all parties liable as stockholders, or upon account of any stock of such corporation, for such amount, proportion, or percentage of such liability upon or on account of each share of such stock as it shall deem proper, considering the probable solvency and responsibility of the stockholders and the probable expense of collecting such assessment, and shall direct payment of the amount so assessed against each share of such stock to the assignee or receiver, within the time specified in such order. No assessment shall be made against any stockholder for any liability of any corporation incurred outside of the scope of the powers of such corporation, or of the officers thereof incurring the same, unless such stockholder shall have been found by the court to have consented thereto.

**History:** *(8026) RL s 3185; 1925 c 272 s 1*

**316.19 ENFORCEMENT OF STOCKHOLDERS' LIABILITY; HEARING; ORDER.**

Such order shall authorize and direct the assignee or receiver to collect the amount so assessed, and, on failure of any one liable to such assessment to pay the same within the time prescribed, to prosecute an action against the nonpayer, whether resident or nonresident, and wherever found. Such order shall be conclusive as to all matters relating to the amount, propriety, and necessity of the assessment, against such parties as shall have been served with notice of the receiver's petition for assessment, as provided in section 316.17, except that the defense of ultra vires set forth in section 316.18 may be interposed by any stockholder

in any suit for any such assessment and if maintained shall diminish the liability of such stockholder in the proportion that the liabilities determined to be ultra vires shall bear to the total liabilities of such corporation.

**History:** *(8027) RL s 3186; 1925 c 272; 1931 c 205 s 1; 1986 c 444*

**316.20 ACTION FOR ASSESSMENTS.**

Upon expiration of the time specified in the order for the payment of assessments, the assignee or receiver shall commence action against every party so assessed and failing to pay, wherever the nonpayer or any property subject to process in such action is found, unless the assignee or receiver shall report to the court a belief that such stockholder be insolvent, or that the expenses of the prosecution will probably exceed the amount likely to be collected, in which case the court, unless satisfied to the contrary, shall order action suspended as to such party; provided, that no action shall be commenced to collect the amount of any such assessment unless commenced within two years after the insolvency of the corporation and the appointment of a receiver or assignee.

**History:** *(8028) RL s 3187; 1931 c 205 s 2; 1986 c 444*

**316.21 ADDITIONAL ASSESSMENTS, HOW LEVIED; JOINDER OF CAUSES.**

When, at any time after an assessment for an amount less than the maximum stockholder's liability has been levied, it shall appear, by petition or otherwise, and after hearing, as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary, or for the interest of creditors, that a further assessment be levied, the court shall order the same for such amount, proportion or percentage as it may deem proper; and, in the same manner and with like effect, at any time thereafter may levy additional assessments, not exceeding in the aggregate the maximum stockholder's liability. When two or more assessments shall have been levied, the assignee or receiver may recover therefor in a single action, or, unless otherwise directed, may maintain a separate action against each stockholder for each successive assessment.

**History:** *(8029) RL s 3188*

**316.22 PROCEEDINGS ON FAILURE OF ASSIGNEE OR RECEIVER TO PROSECUTE.**

If the assignee or receiver shall neglect to begin an action against any stockholder who has failed to pay an assessment, and is not excepted from the present operation of such order, or to diligently prosecute the same, any stockholder who has paid an assessment in full, or any creditor, may petition the court to order such assignee or receiver to prosecute such action against such delinquent stockholder, or to permit such petitioner to begin and maintain or to continue any such action already begun, in the name of such assignee or receiver, for the benefit of such estate; and, if the petitioner shall furnish such security for costs and expenses as the court may direct, it shall either require the assignee or receiver to prosecute such action forthwith, or permit the petitioner to begin and prosecute, or continue the prosecution of the same.

**History:** *(8030) RL s 3189; 1986 c 444*

**316.23 SURPLUS TO BE DIVIDED AMONG STOCKHOLDERS.**

When, after the payment of all expenses of such assignment or receivership and all indebtedness of and claims allowed against such corporation, any surplus money or property remains in the hands of the assignee or receiver, the same shall be equitably distributed, under the direction of the court, among the stockholders who have paid their assessments. Any stockholder who has paid assessments, in addition to any remedy herein provided, shall be entitled to enforce contribution from any stockholder who has not paid such

assessments, and, for that purpose, shall be subrogated to the rights of the creditors or assignee or receiver of such corporation against every such delinquent stockholder, in such manner and to such extent as may be just and equitable.

**History:** *(8031) RL s 3190; 1986 c 444*

**316.24 SCOPE; CHAPTER NOT APPLICABLE.**

Sections 316.01 to 316.23 do not apply to a corporation incorporated under or governed by chapter 302A.

**History:** *1981 c 270 s 131*