

APPENDIX 6.

Title 15A. CORPORATIONS, NONPROFIT.

Chapter 1. GENERAL PROVISIONS.

Section

- 15A:1-1 Short title; purposes; rules of construction; variation.
15A:1-2 Definitions.
15A:1-3 Application of act.
15A:1-4 Certain corporations organized under other acts; reincorporation or conversion.
15A:1-5 Authorization to corporations which could be or are organized under Title 16 of the Revised Statutes to adopt provisions of this act without reincorporation.
15A:1-6 Reservation of power.
15A:1-7 Execution, filing and recording of documents.
15A:1-8 Repeal of prior acts.
15A:1-9 Notices; computation of time; effect of postage class used.
15A:1-10 Certificates and certified copies.

15A:1-1. Short title; purposes; rules of construction; variation. a. This title shall be known and may be cited as the “New Jersey Nonprofit Corporation Act.”

b. This title shall be liberally construed and applied to promote its underlying purposes and policies.

c. Underlying purposes and policies of this title are, among others:

(1) to simplify, clarify and modernize the law governing nonprofit corporations;

(2) to provide a general corporate form for the conduct of lawful, nonprofit activities with such variations and modifications from the form so provided as the interested parties in any nonprofit corporation may agree upon, subject only to overriding interests of this State and of third parties; and

(3) to make the law governing nonprofit corporations as nearly compatible with the New Jersey Business Corporation Act (N.J.S. 14A:1-1 et seq.) as may be practicable, subject to the particular requirements of nonprofit corporations.

d. The presence in certain provisions of this title of the words “unless otherwise provided in the certificate of incorporation” or “unless otherwise provided in the certificate of incorporation or bylaws,” or words of similar import, does not imply that the effect of other provisions may not be varied by provisions in the certificate of incorporation or bylaws.

Source: N.J.S. 14A:1-1.

15A:1-2. Definitions. As used in this title:

a. “Act” means the “New Jersey Nonprofit Corporation Act”;

b. “Board” means the board of trustees or the group of persons vested with management of the business and affairs of the corporation irrespective of the name by which the group is designated; “entire board” means all the trustees then in office;

c. “Bylaws” means the code of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name by which these rules are designated;

d. “Certificate of incorporation” includes:

(1) the original certificate of incorporation or any other instrument filed or issued under any statute to form a domestic or foreign corporation, as amended, supplemented or restated by certificates of amendment, merger or consolidation or by other certificates or instruments filed or issued under any statute, and

APPENDIX 6

(2) a special act or charter creating a domestic or foreign corporation, as amended, supplemented or restated;

e. "Corporation" or "domestic corporation" means a nonprofit corporation incorporated under this act, or existing on its effective date and organized under any law of this State (other than laws contained in Title 16 of the Revised Statutes) for purposes for which a corporation may be organized under this act;

f. "Corporate business entity" means an organization organized under any other statute of this State or any statute of any jurisdiction other than this State pursuant to which business corporate entities may be organized;

g. "Foreign corporation" means a nonprofit corporation organized under the laws of a jurisdiction other than this State for the purposes for which a corporation may be organized under this act;

h. "Member" means a participant in a corporation having such rights or obligations therein as provided in this act;

i. "Trustee" means any member of the board of a corporation, whether designated as a trustee, director, manager, governor, or by any other title.

Source: N.J.S. 14A:1-2; R.S. 15:1-8.

15A:1-3. Application of act. a. This act shall apply to:

(1) every corporation which is organized under this act;

(2) every corporation without capital stock which was organized under or became subject to any heretofore enacted law of this State with respect to which power to amend or repeal was reserved to the Legislature, and which provided for the organization of a corporation or corporations for a purpose or purposes for which a corporation may be organized under this act;

(3) every corporation which reincorporates under this act pursuant to section 15A:1-4; and

(4) foreign corporations to the extent provided in this act.

b. Chapters 12 (dissolution) and 14 (insolvency, receivers, and reorganization) of this act shall apply to any corporation organized under any provision of Title 16 of the Revised Statutes except as otherwise provided by any law of this State.

Source: N.J.S. 14A:1-3; R.S. 15:1-22; 15:14-1 amended 1953, c. 15, §8.

15A:1-4. Certain corporations organized under other acts; reincorporation or conversion. a. Any corporation not having capital stock which has been organized by any special act of the Legislature for any of the purposes for which a corporation may be organized under this act, and to which this act does not apply pursuant to section 15A:1-3, may come under and be subject to the provisions of this act, and continue in existence and operation as if organized hereunder, by amending its certificate of incorporation pursuant to the provisions of this act and filing an original and a copy of a certificate of the amendment in the office of the Secretary of State, together with a certificate waiving any right of exemption from taxation and from privileges and advantages arising under that special act of incorporation. The Secretary of State shall forward the copy to the Attorney General. Upon filing a certificate of the amendment, the corporation shall be deemed to be incorporated under this act and to be free from the liabilities and provisions of the act under which it was formerly incorporated. Nothing in this section shall be held to affect transactions, liabilities or debts of the corporation, occurring before the filing of the certificate.

b. Any corporate business entity or corporation having capital stock formed for purposes for which corporations may be formed under this act, may, in the manner hereinafter provided, be converted into a corporation under this act as follows:

(1) A plan of conversion shall be prepared, setting forth:

(a) the terms and conditions of the conversion,

(b) the manner of carrying the conversion into effect,

NONPROFIT CORPORATIONS

(c) a restatement of the certificate of incorporation which complies with this act, and

(d) such other details and provisions as are deemed desirable.

(2) The plan of conversion shall be adopted by the unanimous vote of all of the shareholders of the corporate entity or corporation.

(3) Upon adoption of a plan of conversion by the corporate entity or corporation, a certificate of conversion shall be executed under its name by the president or any vice president, and shall set forth:

(a) the name of the corporate entity or corporation and the address including street and number, if any, of its registered office;

(b) the statute under which the corporate entity or corporation was incorporated and the date of incorporation;

(c) if the plan is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date;

(d) the manner in which the plan was adopted by the corporate entity or corporation.

The original and a copy of the certificate of conversion shall be filed in the office of the Secretary of State, and upon the filing, or upon the effective date, not to exceed 30 days, specified in the plan of conversion, whichever is later, the conversion shall become effective.

Upon the conversion becoming effective, the corporate entity or corporation shall be deemed to be a corporation without capital stock organized under this act for all purposes. The corporate entity or corporation shall remain liable for all existing obligations, public or private, and for all taxes due the State of New Jersey or any other taxing authority for periods prior to the effective date of the conversion, and as a nonprofit corporation, it shall continue to be entitled to all assets it held as a corporate entity or corporation. The capital stock of the corporation theretofore outstanding shall be cancelled.

Source: N.J.S. 14A:1-4; R.S. 15:1-12; 15:1-13; 15:1-13.1; 15:6-1.

15A:1-5. Authorization to corporations which could be or are organized under Title 16 of the Revised Statutes to adopt provisions of this act without reincorporation. a. Any corporation organized for any purpose for which corporations may be incorporated under Title 16 of the Revised Statutes which is not organized under this act and which has not reincorporated under this act pursuant to section 15A:1-4 may amend its certificate of incorporation or its bylaws to include provisions incorporating by reference any sections of this act to which the corporation wishes to be subject.

b. Without limiting the foregoing, any corporation which amends its certificate of incorporation or bylaws to include a provision which sets forth "This corporation shall be subject to the administrative provisions of the New Jersey Nonprofit Corporation Act" shall, without a recitation of the specific sections thereof, be subject to the following sections of this act as if the certificate of incorporation or bylaws of the corporation has been amended to recite the applicability of the text thereof: sections 15A:2-10; 15A:2-11; 15A:3-1 through 15A:3-5; 15A:5-1 through 15A:5-24; 15A:6-1 through 15A:6-17; and 15A:8-1 through 15A:8-5.

Source: R.S. 15:1-21.

15A:1-6. Reservation of power. This act may be supplemented, altered, amended or repealed by the Legislature and every corporation, domestic or foreign, to which this act applies shall be bound thereby.

Source: N.J.S. 14A:1-5.

APPENDIX 6

15A:1-7. Execution, filing and recording of documents. a. If a document relating to a domestic or foreign corporation is required or permitted to be filed in the office of the Secretary of State under this act:

(1) The document shall be in the English language, except that the corporate name need not be in the English language if written in English letters or Arabic or Roman numerals, and except that this requirement shall not apply to a certificate of good standing under paragraph (2) of subsection b. of section 15A:2-5, section 15A:2-6 or subsection b. of section 15A:13-4;

(2) The filing shall be accomplished by delivering the document to the office of the Secretary of State, together with the fees and any accompanying documents required by law.

The Secretary of State shall endorse upon it the word "Filed" with the Secretary's official title and the date of filing thereof, and shall file it in the office of the Secretary of State. If so requested at the time of the delivery of the document, the Secretary of State shall include the time of filing in the endorsement thereon;

(3) The transaction in connection with which the document has been filed shall be effective at the time of filing, unless a subsequent effective time is set forth in the document pursuant to any other provisions of this act, in which case the transaction shall be effective at the time specified, which shall not be later than 30 days after the date of filing.

b. If a document relating to a domestic corporation or a foreign corporation is required or permitted to be filed under this act and is also required by this act to be executed on behalf of the corporation, the document shall be signed by the chairman of the board, or the president or a vice-president. The name of any person so signing the document, and the capacity in which signed, shall be stated beneath or opposite the signature. The document may contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary of the corporation;
or

(3) An acknowledgment or proof.

If the corporation is in the hands of a court-appointed officer, the document shall be signed by that officer or the majority of them, if there are more than one.

c. If a document relating to a domestic or foreign corporation was required or permitted to be filed in the office of the Secretary of State under the law in force prior to the effective date of this act and was or is duly executed before or after the effective date of this act, in accordance with that law, to reflect any vote, consent, certification, or action by trustees, officers, or members of a corporation or by any of these persons on behalf of the corporation, duly taken, given or made before the effective date of this act, the document and any annual report by a corporation, so executed, may be filed in the office of the Secretary of State on the effective date of this act, and within 6 months thereafter.

d. The Secretary of State shall record all documents, except annual reports, which relate to or in any way affect corporations, and which are required or permitted by law to be filed in the office of the Secretary of State. The recording may be effected by typewritten copy, or by photographic, microphotographic or microfilming process, or in other manner as may be provided by law. The recorded documents shall be kept in a place different from the place where the originals are filed.

e. If any instrument filed with the Secretary of State under any provision of this act is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, the instrument may be corrected by filing with the Secretary of State a certificate of correction executed on behalf of the

NONPROFIT CORPORATIONS

corporation. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the correction. The instrument as corrected shall be deemed to have been effective in its corrected form as of its original filing date, but as to persons who relied upon the inaccurate portion of the certificate and who are adversely affected by the correction, the correction shall be effective as of the effective date of filing the certificate of correction.

Source: N.J.S. 14A:1-6 amended 1973, c. 366, §1.

15A:1-8. Repeal of prior acts. The repeal by this act of the whole or any part of any act under which there was organized any corporation in existence on the effective date of this act shall not dissolve the corporation, and the corporation, its officers, trustees and members shall have the same rights, and shall be subject to the same limitations, restrictions, liabilities and penalties as those prescribed by this act for corporations organized under this act, their officers, trustees and members.

Source: N.J.S. 14A:1-7.

15A:1-9. Notices; computation of time; effect of postage class used. a. In computing the period of time for the giving of any notice required or permitted by this act, or by a certificate of incorporation or bylaws or any resolution of trustees or members, the day on which the notice is given shall be excluded, and the day on which the matter noticed is to occur shall be included.

b. If notice is given by mail, the notice shall be deemed to be given when deposited in the mail addressed to the person to whom it is directed at the last address of the person as it appears on the records of the corporation, with first class postage prepaid thereon, or 10 days thereafter if the notice is mailed by any postage class other than first class.

Source: N.J.S. 14A:1-8.

15A:1-10. Certificates and certified copies. a. Upon request of any person, the Secretary of State shall furnish certified copies of documents filed in the office of the Secretary of State in accordance with the provisions of this act.

b. Upon the request of any person, the Secretary of State shall certify to the existence or non-existence of any facts on record in the office of the Secretary of State pertaining to domestic or foreign corporations.

Source: N.J.S. 14A:1-9.

Chapter 2. FORMATION.

Section

- 15A:2-1 Purposes.
- 15A:2-2 Corporate name of domestic or foreign corporation.
- 15A:2-3 Use of name other than actual corporate name.
- 15A:2-4 Reserved name.
- 15A:2-5 Registered name.
- 15A:2-6 Renewal of registered name.
- 15A:2-7 Incorporators.
- 15A:2-8 Certificate of incorporation.
- 15A:2-9 Organization meeting of board of trustees.
- 15A:2-10 Bylaws; making and altering.
- 15A:2-11 Bylaws and other powers in emergency.
- 15A:2-12 Chapter organizations.

15A:2-1. Purposes. a. A corporation may be organized under this act for any lawful purpose other than for pecuniary profit including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; cemetery; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry;

APPENDIX 6

volunteer fire company; ambulance, first aid or rescue; professional, commercial, industrial or trade association; and labor union and cooperative purposes.

b. A corporation for which organization is permitted under any other statute of this State may not be organized under this act unless that statute permits organization under this act.

c. A corporation may be organized under this act for any purpose or purposes for which corporations may be incorporated under Title 16 of the Revised Statutes.

d. No corporation organized under this act shall have or issue capital stock or shares. No dividend shall be paid and no part of the income or profit of a corporation organized under this act shall be distributed to its members, trustees or officers, but a corporation may pay compensation in a reasonable amount to its members, trustees and officers, for services rendered, may pay interest on loans or other credit advances by members, trustees and officers, may confer benefits on its members in conformity with its purposes, and, upon dissolution, may make distributions to its members as permitted by this act; except the payment, benefit, or distribution shall not be deemed to be a dividend or distribution of income or profit.

Source: N.J.S. 14A:2-1; R.S. 15:1-1; 15:1-21; 15:1-22; 15:7-1; 15:8-1; 15:11-9; 15:13-1; 15:15-2 (added) 1944, c. 237.

15A:2-2. Corporate name of domestic or foreign corporation. a. The corporate name of a domestic corporation or of a foreign corporation authorized to transact business in this State:

(1) Shall not contain any word or phrase, or abbreviation or derivative thereof, which indicates or implies that it is organized for any purpose other than one or more of the purposes permitted by its certificate of incorporation;

(2) Shall not be the same as, or confusingly similar to, the corporate name of any domestic corporation, including a corporate name set forth in a certificate of incorporation filed in the office of the Secretary of State for which the effective date is subsequent to the date of filing, as authorized by subsection b. of section 15A:2-8 or of any foreign corporation authorized to conduct activities in this State or any corporate name reserved or registered under this act, or any corporate name in use, reserved or registered under the New Jersey Business Corporation Act, unless the written consent of the other domestic, foreign corporation or corporate entity, or holder of a reserved or registered name to the adoption of its name, or a confusingly similar name, is filed in the office of the Secretary of State with the certificate of incorporation or with the application for an original or amended certificate of authority to conduct activities in this State; or, in lieu of that consent, there is filed a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this State;

(3) Shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of this State, unless the restrictions have been complied with; and

(4) Shall contain one of the following: “a New Jersey nonprofit corporation,” “incorporated,” “corporation,” “inc.,” or “corp.” unless it is a corporation which could organize pursuant to the provisions of Title 16 of the Revised Statutes.

b. (1) This section shall not require any domestic corporation organized prior to the effective date of this act or any foreign corporation authorized to conduct activities in this State prior to the effective date of this act to change its corporate name in order to comply with this section, if the name is otherwise lawful on the effective date of this act. The corporation shall not change its corporate name on or after the effective date of this act to a name which is not available for corporate use under this section.

NONPROFIT CORPORATIONS

(2) This section shall not prevent a domestic corporation (a) with which another corporation, domestic or foreign, is merged, or (b) which is formed by the reorganization or consolidation of one or more domestic or foreign corporations, or (c) which receives upon a sale, lease or other disposition from, or exchange with, another corporation, domestic or foreign, all or substantially all the assets of the other corporation including its name, from having the same corporate name as any of those corporations if, at the time, the other corporation was organized under the laws of, or is authorized to conduct activities in, this State.

c. If the name of a foreign corporation is not available for use in this State because of subsection a. of this section, the corporation may be authorized to conduct activities in this State under an alternate name which is available for corporate use under this section. The corporation shall file in the office of the Secretary of State with its application for an original or amended certificate of authority an original and a copy of a resolution of its board adopting the alternate name for use in conducting activities in this State. The Secretary of State shall forward the copy to the Attorney General.

d. The corporate name of a domestic corporation which has been dissolved and any name confusingly similar to the name of a domestic corporation which has been dissolved shall not be available for corporate use for 2 years after the effective time of dissolution, unless, within that 2-year period, the written consent of the dissolved corporation to the adoption of its name, or a confusingly similar name, is filed in the office of the Secretary of State with the certificate of incorporation of another domestic corporation or with the application of a foreign corporation for an original or amended certificate of authority to conduct activities in this State.

e. The filing in the office of the Secretary of State of the certificate of incorporation of a domestic corporation or the issuance by the Secretary of State of a certificate to a foreign corporation authorizing it to conduct activities in this State shall not preclude an action by this State to enjoin a violation of this section or an action by any person adversely affected to enjoin the violation or the use of a corporate name in violation of the rights of that person, whether on principles of unfair competition or otherwise. The court may grant any other appropriate relief. **Source:** N.J.S. 14A:2-2 amended 1973, c. 366, §2; C. 14A:2-2a (1977, c. 59, §1 amended 1979, c. 141); C. 14A:2-2b (1977, c. 59, §2).

15A:2-3. Use of name other than actual corporate name. a. No domestic corporation, or foreign corporation which conducts activities in this State within the meaning of section 15A:13-3 shall conduct any activities in this State using an alternate name including an abbreviation of its corporate name or an acronym unless:

(1) It also uses its actual corporate name in the transaction of any of its activities in a manner as not to be deceptive as to its actual identity; or

(2) It has been authorized to conduct activities in this State using the alternate name as provided in subsection c. of section 15A:2-2; or

(3) It has first registered the alternate name as provided in this section.

b. Any corporation may adopt and use any alternate name, including any which would be unavailable as the name of a domestic or foreign corporation because of the prohibitions of paragraph (2) of subsection a. of section 15A:2-2, but not including any name prohibited as a corporate name by paragraph (3) or (4) of subsection a. of section 15A:2-2, by filing an original and a copy of a certificate of registration of alternate name with the Secretary of State executed on behalf of the corporation. The Secretary of State shall forward the copy to the Attorney General. The certificate shall set forth:

(1) The name, jurisdiction and date of incorporation of the corporation;

APPENDIX 6

(2) The alternate name;

(3) A brief statement of the character or nature of the particular activities to be conducted using the alternate name;

(4) That the corporation intends to use the alternate name in this State;

(5) That the corporation has not previously used the alternate name in this State in violation of this section or, if it has, the month and year in which it commenced the use.

c. The registration shall be effective for 5 years from the date of filing and may be renewed successively for additional 5-year periods by filing an original and a copy of a certificate of renewal executed on behalf of the corporation at any time within 90 days prior to, but not later than, the date of expiration of the registration. The certificate of renewal shall be effective as of the date of expiration of the earlier registration. The certificate of renewal shall set forth the information required in paragraphs (1) through (4) of subsection b. of this section, the date of filing of the certificate of registration then in effect, and that the corporation is continuing to use the alternate name. The Secretary of State shall forward the copy to the Attorney General.

d. This section shall not:

(1) Grant to the registrant of an alternate name any right in the name as against any prior or subsequent user of the name, regardless of whether used as a trademark, trade name, business name, or corporate name; or

(2) Interfere with the power of any court to enjoin the use of the name on the basis of the law of unfair competition or on any other basis except the identity or similarity of the alternate name to any other corporate name.

e. A corporation which has used an alternate name in this State contrary to the provisions of this section shall, upon filing a certificate of registration of alternate name or an untimely certificate of renewal, pay to the Secretary of State the filing fee prescribed for the certificate plus an additional filing fee equal to the full amount of the regular filing fee multiplied by the number of years it has been using the alternate name in violation of this section after the operative date of the prohibitions of this section specified in subsection h. of this section. For the purpose of this subsection, any part of a year shall be considered a full year.

f. The failure of a corporation to file a certificate of registration or renewal of an alternate name shall not impair the validity of any contract or act of the corporation and shall not prevent the corporation from defending any action or proceeding in any court of this State, but the corporation shall not maintain any action or proceeding in any court of this State arising out of a contract or act in which it used the alternate name until it has filed the certificate.

g. (1) A corporation which files a certificate of registration of alternate name which contains a false statement or omission regarding the date it first used an alternate name in this State shall, if the false statement or omission reduces the amount of the additional fee it paid or should have paid as provided in subsection e. of this section, forfeit to the State a penalty of not less than \$200.00 nor more than \$500.00.

(2) A corporation which ought to have filed a certificate of registration or renewal of alternate name and fails to do so within 60 days after being notified of its obligation to do so by certified or registered mail by the Secretary of State, by any other governmental officer, or by any person aggrieved by its failure to do so, shall forfeit to the State a penalty of not less than \$200.00 nor more than \$500.00.

(3) The penalty shall be recovered with costs in an action prosecuted by the Attorney General. The court may proceed in the action in a summary manner or otherwise.

NONPROFIT CORPORATIONS

h. The prohibitions of this section shall not be operative until 90 days after the effective date of this act. Any certificate of registration filed during that 90-day period need not include the information required by paragraph (5) of subsection b. of this section.

Source: N.J.S. 14A:2-2.1 (added) 1973, c. 366, §3.

15A:2-4. Reserved name. a. The exclusive right to the use of a corporate name may be reserved upon compliance with the provisions of this section.

b. The reservation shall be made by filing in the office of the Secretary of State an application to reserve a specified corporate name, or the first name available for corporate use among not more than three specified names, executed by or on behalf of the applicant and setting forth the name and address of the applicant. If the Secretary of State finds that the name complies with the provisions of section 15A:2-2, the Secretary of State shall reserve it for the exclusive use of the applicant for a period of 120 days from date of filing of the application and shall issue a certificate of reservation.

c. The right to the exclusive use of a specified corporate name so reserved may be transferred by filing in the office of the Secretary of State a notice of the transfer, executed by or on behalf of the applicant for whom the name was reserved, and specifying the name and address of the transferee.

Source: N.J.S. 14A:2-3 amended 1973, c. 366, §4.

15A:2-5. Registered name. a. Any foreign corporation may register its corporate name under this act, provided its corporate name is available for use under section 15A:2-2.

b. The registration shall be made by filing in the office of the Secretary of State:

(1) An application for registration executed on behalf of the corporation, setting forth the name and address of the headquarters or main office of the corporation, the jurisdiction of its incorporation, the date of its incorporation, a statement that it is conducting activities, and a brief statement of the activities in which it is engaged; and

(2) A certificate setting forth that the corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the official of that jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days prior to the filing of the application.

c. The registration shall be effective until the close of the calendar year in which the application for registration is filed.

Source: N.J.S. 14A:2-4.

15A:2-6. Renewal of registered name. A corporation which has a registration of its corporate name in effect may renew the registration by annually filing in the office of the Secretary of State an application for renewal setting forth the facts required to be set forth in an original application for registration, together with a certificate of good standing as required for the original registration. A renewal application may be filed between October 1 and December 31 in each year, and shall extend the registration for the following calendar year.

Source: N.J.S. 14A:2-5.

15A:2-7. Incorporators. a. Subject to the provisions of subsection d. of this section, one or more individuals, corporations, foreign corporations or corporate entities may act as incorporators of a corporation by signing and filing in the office of the Secretary of State a certificate of incorporation for the corporation. Individuals acting as incorporators shall be at least 18 years of age. Incorporators need not be United States citizens or residents of this State.

b. Except as otherwise provided in the certificate of incorporation, any action required or permitted by this act to be taken by incorporators may be taken without a meeting.

APPENDIX 6

c. If any incorporator dies or is for any reason unable to act, the others may act. If there is no incorporator able to act, any person for whom an incorporator was acting as agent may act in that incorporator's stead, or if the other person also dies or is for any reason unable to act, the legal representative of the person may act.

d. Ten or more individuals shall act as incorporators for any corporation having as a purpose the establishment of a volunteer fire company or an exempt firemen's association.

Source: N.J.S. 14A:2-6 amended 1973, c. 366, §5; R.S. 15:1-1; 15:7-1; 15:8-1; 15:8-3.

15A:2-8. Certificate of incorporation. a. The certificate of incorporation shall set forth:

- (1) The name of the corporation;
- (2) The purpose or purposes for which the corporation is organized;
- (3) If the corporation is to have members, the qualifications for members or that the qualifications shall be as set forth in the bylaws of the corporation;
- (4) If the members are to be divided into classes, the relative rights and limitations of the different classes of members to the extent those rights and limitations have been determined or that the rights and limitations shall be as set forth in the bylaws of the corporation;
- (5) If the corporation is to have no members, that there shall be no members;
- (6) The method of electing trustees or that the method shall be as set forth in the bylaws of the corporation;
- (7) Any provision not inconsistent with this act or any other statute of this State, which the incorporators elect to set forth for the management and conduct of the affairs of the corporation, or creating, defining, limiting or regulating the powers of the corporation, its trustees and members or any class of members, including any provision which under this act is required or permitted to be set forth in the bylaws;
- (8) The address, including actual location as well as postal designation, if different, of the corporation's initial registered office, and the name of the corporation's initial registered agent at that address;
- (9) The number of trustees, not less than three, constituting the first board and the names and addresses of the persons who are to serve as trustees, which addresses shall be either the residence address of the person or other address where the person regularly receives mail and which is not the address of the corporation;
- (10) The names and addresses of the incorporators, which addresses shall be either the residence address of the person or other address where the person regularly receives mail and which is not the address of the corporation;
- (11) The duration of the corporation if other than perpetual;
- (12) The method of distribution of assets of the corporation upon dissolution or that the distribution shall be as set forth in the bylaws of the corporation;
- (13) If, pursuant to subsection b. of this section, the certificate of incorporation is to be effective on a date subsequent to the date of filing, the effective date of the certificate;
- (14) If, pursuant to the exception in paragraph (4) of subsection a. of section 15A:2-2, the name of the corporation does not include a term required thereby, a statement that the corporation could be organized pursuant to the provisions of Title 16 of the Revised Statutes, the applicable section of Title 16 of the Revised Statutes permitting that organization, and an undertaking to add the required term if the corporation ceases to be so organized.

b. An original and one copy of the certificate of incorporation shall be filed in the office of the Secretary of State. The corporate existence shall begin upon the effective date of the certificate, which shall be the date of the filing, or such later

time, not to exceed 30 days from the date of filing, as may be set forth in the certificate. The filing shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and, after the corporate existence has begun, that the corporation has been incorporated under this act, except as against this State in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation. The Secretary of State shall forward the copy of the certificate of incorporation to the Attorney General.

c. The certificate of incorporation may provide that a trustee or officer shall not be personally liable, or shall be liable only to the extent therein provided, to the corporation or its members for damages for breach of any duty owed to the corporation or its members, except that such provision shall not relieve a trustee or officer from liability for any breach of duty based upon an act or omission (1) in breach of such person's duty of loyalty to the corporation or its members, (2) not in good faith or involving a knowing violation of law or (3) resulting in receipt by such person of an improper personal benefit.

d. Notwithstanding the provisions of subsection c. of this section, the immunities provided for in this 1989 amendatory act shall apply to any corporation organized under Title 15A of the New Jersey Statutes which is established for the purposes provided for in P.L. 1959, c. 90 (C. 2A:53A-7 et seq.), whether or not the certificate of incorporation has been amended, and nothing in this section shall operate to diminish or affect any limitation of liability or limitation on liability which is conferred upon nonprofit corporations, societies or associations by the provisions of section 1 of P.L. 1987, c. 87 (C. 2A:53A-7.1).

Source: N.J.S. 14A:2-7; R.S. 15:1-1; 15:1-2 amended 1946, c. 288, §1; 15:1-7 amended 1946, c. 288, §3. **Amended.** L. 1989, c. 260, §1, effective January 4, 1990.

15A:2-9. Organization meeting of board of trustees. On or after the effective date of the certificate of incorporation, an organization meeting of the board named in the certificate of incorporation shall be held, at the call of a majority of the board named, to adopt bylaws, elect officers, provide for initial members if there are to be members, and transact all other business as may come before the meeting. The board members calling the meeting shall give at least 5 days' notice thereof by mail to each trustee named in the certificate of incorporation, which notice shall state the time and place of the meeting.

Source: N.J.S. 14A:2-8 amended 1973, c. 366, §6.

15A:2-10. Bylaws; making and altering. a. The initial bylaws of a corporation shall be adopted by the board at its organization meeting. Thereafter, the board shall have the power to make, alter and repeal bylaws unless that power is reserved to the members in the certificate of incorporation or the bylaws, but bylaws made by the board may be altered or repealed, and new bylaws may be made, by the members. The members may prescribe in the bylaws that any bylaw made by them shall not be altered or repealed by the board.

b. For purposes of this act, the initial bylaws of a corporation adopted by the board at its organization meeting shall be deemed to have been adopted by the members, if the certificate of incorporation provides for members.

c. Any provision which this act requires or permits to be set forth in the bylaws may be set forth in the certificate of incorporation.

Source: N.J.S. 14A:2-9.

15A:2-11. Bylaws and other powers in emergency. a. The board of a corporation may adopt emergency bylaws, subject to repeal or change by action of the members, which shall, notwithstanding any different provision elsewhere in this act or in the certificate of incorporation or bylaws, be operative during any emergency in the conduct of the business of the corporation resulting from an

APPENDIX 6

attack on the United States or any nuclear or atomic disaster. The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

(1) A meeting of the board may be called by any officer or trustee in the manner and under the conditions as shall be prescribed in the emergency bylaws;

(2) The trustees in attendance at the meeting, or any greater number fixed by the emergency bylaws, shall constitute a quorum; and

(3) The officers or other persons designated in a list approved by the board before the emergency, all in the order of priority and subject to the conditions and for a period of time, not longer than reasonably necessary after the termination of the emergency, as may be provided in the emergency bylaws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board, be deemed trustees for that meeting.

b. Before or during the emergency, the board may provide, and from time to time modify, lines of succession in the event that during the emergency any officers or agents of the corporation shall be rendered incapable of discharging their duties.

c. Before or during the emergency, the board may change the head office or designate several alternative head offices or regional offices, or authorize the officers to do so, the change or designation to be effective during the emergency.

d. To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during the emergency and upon its termination the emergency bylaws shall be inoperative.

e. Unless otherwise provided in emergency bylaws, notice of any meeting of the board during the emergency need be given only to those of the trustees as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication, or other means of mass communication.

f. To the extent required to constitute a quorum at any meeting of the board during the emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, trustees for that meeting.

g. No officer, trustee or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct. No officer, trustee or employee shall be liable for any action taken by that person in good faith in the emergency in furtherance of the ordinary activities of the corporation even though not authorized by the bylaws then in effect.

Source: N.J.S. 14A:2-10.

15A:2-12. Chapter organizations. a. Any corporation to which this act is applicable pursuant to paragraph (1), (2) or (3) of subsection a. of section 15A:1-3 may provide in its certificate of incorporation that it is to be a "chapter organization" which is a corporation having subordinate or local chapters, however designated, located within or without this State and that it shall exercise the powers granted in this section.

b. Any chapter organization, as set forth in subsection a. of this section, in addition to the other powers granted pursuant to this act, may:

(1) Grant charters to subordinate or local chapters;

(2) Make, amend, and change bylaws for the government of its chapters and the use of its name; and

(3) Revoke or cancel the charter of a chapter for the violation of its bylaws or for other cause as it may determine.

c. Any chapter of a chapter organization which includes in its certificate of incorporation a provision that it is a chapter of a chapter organization shall, upon revocation of its charter by the chapter organization, continue to be a corporation

until dissolved in accordance with chapter 12 of this act. It shall not conduct any activities as a chapter of the chapter organization and, if the certificate of incorporation or bylaws of the chapter organization so provide, its assets may be taken and conserved by the chapter organization and be distributed in accordance with the certificate of incorporation or bylaws of the chapter organization. The chapter organization or any other interested person may apply to the Superior Court for the appointment of a receiver or custodian or for any other relief to enforce the provisions of this section. The court may proceed in a summary manner or otherwise.

d. No corporation shall adopt or use a name or symbol indicating that it is affiliated in any way with a chapter organization unless it is a chapter of the chapter organization or does so with the consent of the chapter organization.

e. Any corporation in existence prior to the effective date of this act which was, on that date, a state organization pursuant to R.S. 15:16-1, shall, on the effective date of this act be deemed a chapter organization under this section.

Source: R.S. 15:16-1; 15:16-2; 15:16-3; 15:16-4; 15:16-5 amended 1953, c. 15, §17; 15:16-6.

Chapter 3. POWERS.

Section

15A:3-1 General powers.

15A:3-2 Ultra vires transactions.

15A:3-3 Contributions by corporations.

15A:3-4 Indemnification of trustees, officers and employees.

15A:3-5 Provisions relating to actions in the right of a corporation.

15A:3-1. General powers. a. Each corporation, subject to any limitations provided in this act or other statute of this State, or in its certificate of incorporation or bylaws, may:

(1) have perpetual duration unless a limited period is stated in its certificate of incorporation;

(2) sue and be sued, complain and defend and participate as a party or otherwise in any judicial, administrative, arbitrate or other proceeding, in its corporate name;

(3) have a corporate seal which may be altered at pleasure, and to use the seal by causing it, or a facsimile to be impressed or affixed or in any other manner reproduced;

(4) take and hold by lease, gift, purchase, grant, devise or bequest any property, real or personal, necessary or desirable for attaining the objects and carrying into effect the purposes of the corporation and to purchase, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated, subject, however, to any alteration or modification made by general law as to the amount of real and personal property to be held by the corporation;

(5) sell, convey, mortgage, create a security interest in, lease, exchange, transfer and otherwise dispose of its property and assets;

(6) purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporate entities, associations, partnerships or individuals, or direct or indirect obligations of any domestic or foreign government or instrumentality thereof;

(7) make contracts and guarantees and incur liabilities, borrow money, issue its bonds, and secure any of its obligations by mortgage of or creation of a security interest in its property, franchises and income;

APPENDIX 6

(8) lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(9) conduct its activities, carry on its operations, and have offices and exercise the powers granted by this act anywhere in the universe;

(10) elect or appoint officers, employees and agents of the corporation, and define their duties and fix their compensation;

(11) make and alter bylaws for the administration and regulation of the affairs of the corporation;

(12) levy dues and assessments on its members in accordance with its certificate of incorporation or bylaws which may provide for reasonable regulations for enforcement and collection thereof and for different dues and assessments for different classes of members;

(13) pay pensions and establish pension and deferred compensation plans, and plans of similar nature for, and to furnish medical services, life, sickness, accident, disability or unemployment insurance and benefits, education, housing, social and recreational services and other similar aids and services to its officers, employees, and agents including any of the foregoing who may be trustees, their families, dependents or beneficiaries;

(14) participate with others in any corporate entity, partnership, limited partnership, joint venture, or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not that participation involves sharing or delegation of control with or to others;

(15) at the request of the United States Government or of any of its agencies, transact any lawful activity in time of war or other national emergency, notwithstanding the purposes set forth in its certificate of incorporation;

(16) have and exercise all other powers necessary or convenient to effect any of the purposes for which the corporation is organized.

b. It shall not be necessary to set forth in the certificate of incorporation any corporate powers enumerated in this act.

Source: N.J.S. 14A:3-1 amended 1969, c. 102, §1; R.S. 15:1-4.

15A:3-2. Ultra vires transactions. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid because the corporation was without capacity or power to do that act or to make or receive the conveyance or transfer, but the lack of capacity or power may be asserted:

a. In a proceeding by a member or trustee against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is or is to be performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

b. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustees of the corporation;

c. In a proceeding by the Attorney General, as provided in this act, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized activities.

Source: N.J.S. 14A:3-2.

15A:3-3. Contributions by corporations. a. Any corporation, unless otherwise provided in its certificate of incorporation or bylaws, and subject to the purposes specified in its certificate of incorporation, may, irrespective of corporate benefit, aid, singly or in cooperation with other corporate entities and with natural persons, in the creation or maintenance of institutions or organizations engaged in activities for the purpose of which a corporation may be organized under this act; including institutions or organizations engaged in community fund, hospital, charitable, philanthropic, educational, scientific or benevolent activities or patriotic or civic activities conducive to the betterment of social and economic conditions. The trustees may appropriate, spend or contribute for the purposes reasonable sums as they may determine.

b. The provisions of this section shall not be construed as directly or indirectly minimizing or interpreting the rights and powers of corporations, provided for prior to the effective date of this act, with reference to appropriations, expenditures or contributions of the nature set forth in subsection a. of this section.

Source: N.J.S. 14A:3-4.

15A:3-4. Indemnification of trustees, officers and employees. a. As used in this section:

(1) "Corporate agent" means any person who is or was a trustee, officer, employee or agent of the indemnifying corporation or of any constituent corporation absorbed by the indemnifying corporation in a consolidation or merger and any person who is or was a trustee, officer, employee or agent of any other enterprise, serving as such at the request of the indemnifying corporation, or of the constituent corporation, or the legal representative of the trustee, officer, employee or agent;

(2) "Other enterprise" means any domestic corporation, foreign corporation, or corporate business entity, other than the indemnifying corporation or any employee benefit plan or trust;

(3) "Expenses" means reasonable costs, disbursements and counsel fees;

(4) "Liabilities" means amounts paid or incurred in satisfaction of settlements, judgments, fines and penalties; and

(5) "Proceeding" means any pending, threatened or completed civil, criminal, administrative or arbitral action, suit or proceeding, and any appeal therein and any inquiry or investigation which could lead to the action, suit or proceeding.

b. Any corporation may indemnify a corporate agent against the agent's expenses and liabilities in connection with any proceeding involving the corporate agent because the agent is or was a corporate agent, other than a proceeding by or in the right of the corporation, if:

(1) the corporate agent acted in good faith and in a manner which the agent reasonably believed to be in or not opposed to the best interests of the corporation; and

(2) with respect to any criminal proceeding, the corporate agent had no reasonable cause to believe the conduct was unlawful.

The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the corporate agent did not meet the applicable standards of conduct set forth in paragraphs (1) and (2) of subsection b. of this section.

c. Any corporation may indemnify a corporate agent against the agent's expenses in connection with any proceeding by or in the right of the corporation

APPENDIX 6

to procure a judgment in its favor which involves the corporate agent by reason of being or having been the corporate agent, if the agent acted in good faith and in a manner which the agent reasonably believed to be in or not opposed to the best interests of the corporation. However, in the proceeding no indemnification shall be provided in respect of any claim, issue or matter as to which the corporate agent was liable to the corporation, unless and only to the extent that the Superior Court or the court in which the proceeding was brought shall determine upon application that despite the adjudication of liability, but in view of all circumstances of the case, the corporate agent is fairly and reasonably entitled to indemnity for those expenses as the Superior Court or the other court shall deem proper.

d. Any corporation shall indemnify a corporate agent against expenses to the extent that the corporate agent has been successful on the merits or otherwise in any proceeding referred to in subsections b. and c. of this section or in defense of any claim, issue or matter therein.

e. Any indemnification under subsection b. of this section and, unless ordered by a court, under subsection c. of this section, may be made by the corporation only as authorized in a specific case upon a determination that indemnification is proper in the circumstances because the corporate agent met the applicable standard of conduct set forth in subsection b. or c. Unless otherwise provided in the certificate of incorporation or bylaws, the determination shall be made:

(1) By the board of trustees or a committee thereof at a meeting at which is present a quorum determined without including trustees who were parties to or otherwise involved in the proceeding, acting by a majority vote of trustees who were not parties to or otherwise involved in the proceeding;

(2) If the quorum is not obtainable, or, even if obtainable and the quorum of the board of trustees or committee by a majority vote of the disinterested trustees directs, by independent legal counsel, in a written opinion, the counsel to be designated by the board of trustees; or

(3) By the members, if the corporation has members and if the certificate of incorporation or bylaws or a resolution of the board of trustees directs.

f. Expenses incurred by a corporate agent in connection with a proceeding may be paid by the corporation in advance of the final disposition of the proceeding as authorized by the board of trustees upon receipt of an undertaking by or on behalf of the corporate agent to repay the amount unless it shall ultimately be determined that the agent is entitled to be indemnified as provided in this section.

g. (1) If a corporation upon application of a corporate agent has failed or refused to provide indemnification as required under subsection d. of this section or permitted under subsections b., c. and f. of this section, a corporate agent may apply to a court for an award of indemnification by the corporation, and the court:

(a) may award indemnification to the extent authorized under subsections b. and c. of this section and shall award indemnification to the extent required under subsection d. of this section, notwithstanding any contrary determination which may have been made under subsection e. of this section; and

(b) may allow reasonable expenses to the extent authorized by, and subject to the provisions of, subsection f. of this section, if the court shall find that the corporate agent has by the agent's pleadings or during the course of the proceeding raised genuine issues of fact or law.

(2) Application for indemnification may be made:

(a) in the civil action in which the expenses were or are to be incurred or other amounts were or are to be paid; or

(b) to the Superior Court in a separate proceeding.

NONPROFIT CORPORATIONS

(3) If the application is for indemnification arising out of a civil action, it shall set forth reasonable cause for the failure to make application for the relief in the action or proceeding in which the expenses were or are to be incurred or other amounts were or are to be paid.

The application shall set forth the disposition of any previous application for indemnification and shall be made in the manner and form as may be required by the applicable rules of court or, in the absence thereof, by direction of the court to which it is made. The application shall be upon notice to the corporation. The court may also direct that notice shall be given at the expense of the corporation to the members, if any, and all other persons as it may designate in the manner as it may require.

h. The indemnification and advancement of expenses provided by or granted pursuant to the other subsections of this section shall not exclude any other rights to which a corporate agent may be entitled under a certificate of incorporation, bylaw, agreement, or otherwise; provided that no indemnification shall be made to or on behalf of a corporate agent if a judgment or other final adjudication adverse to the corporate agent establishes that his acts or omissions (1) were in breach of his duty of loyalty to the corporation or its members, (2) were not in good faith or involved a knowing violation of law or (3) resulted in receipt by the corporate agent of an improper personal benefit.

i. Any corporation shall have the power to purchase and maintain insurance on behalf of any corporate agent against any expenses incurred in any proceeding and any liabilities asserted by reason of the agent's being or having been a corporate agent, whether or not the corporation would have the power to indemnify the agent against those expenses and liabilities under the provisions of this section.

j. The powers granted by this section may be exercised by the corporation notwithstanding the absence of any provision in its certificate of incorporation or bylaws authorizing the exercise of these powers.

k. Except as required by subsection d. of this section, no indemnification shall be made or expenses advanced by a corporation under this section, and none shall be ordered by a court, if that action would be inconsistent with a provision of the certificate of incorporation, a bylaw, a resolution of the board or of the members, an agreement or other proper corporate action in effect at the time of the accrual of the alleged cause of action asserted in the proceeding, which prohibits, limits or otherwise conditions the exercise of indemnification powers by the corporation or the rights of indemnification to which a corporate agent may be entitled.

l. This section does not limit a corporation's power to pay or reimburse expense incurred by a corporate agent in connection with the corporate agent's appearance as a witness in a proceeding at a time when the corporate agent has not been made a party [to] the proceeding.

Source: N.J.S. 14A:3-5 amended 1973, c. 366, §8. **Amended.** L. 1989, c. 260, §2, effective January 4, 1990.

15A:3-5. Provisions relating to actions in the right of a corporation. a. No action shall be brought in this State by a member in the right of a domestic or foreign corporation unless the plaintiff was a member at the time of the transaction of which the plaintiff complains.

b. In any action hereafter instituted in the right of the corporation by a member, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of the action.

c. In any action now pending or hereafter instituted or maintained in the right of the corporation by less than 5% of the members or any class of members, the

APPENDIX 6

corporation in whose right the action is brought shall be entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with the action or may be incurred by other parties named as defendant for which it may become legally liable. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or excessive. The corporation shall have recourse to the security in an amount as the court having jurisdiction shall determine upon the termination of the action.

d. This section shall not impair, restrict, or impose a condition on any right of a trustee of a corporation with or without members, to bring an action in this State in the right of a domestic or foreign corporation.

Source: N.J.S. 14A:3-6 amended 1973, c. 366, §9.

Chapter 4. REGISTERED OFFICE AND REGISTERED AGENT; ANNUAL REPORT.

Section

- 15A:4-1 Registered office and registered agent.
- 15A:4-2 Function of registered agent and office; service of process, notice or demand.
- 15A:4-3 Change of registered office or registered agent.
- 15A:4-4 Resignation of registered agent.
- 15A:4-5 Annual report to State Treasurer.
- 15A:4-6 Certain veterans' organizations exempt from annual report filing fee.

15A:4-1. Registered office and registered agent. a. Every corporation organized under this title and every foreign corporation authorized to conduct activities in this State shall continuously maintain a registered office in this State, and a registered agent having an address identical with the registered office.

b. The registered office may be, but need not be, the same as a place where the corporation which it serves conducts activities.

c. The registered agent may be a natural person of the age of 18 years or more, or a domestic corporate entity or a foreign corporate entity authorized to conduct activities or transact business in this State, whether or not the agent corporation is organized for purposes for which a corporation may be organized under this title.

d. The designation of a resident office in this State and of a resident agent in charge thereof by any corporation as in force on the effective date of this act, shall be deemed to be the registered office or registered agent, respectively, with like effect as if made hereunder until changed pursuant to this act.

Source: N.J.S. 14A:4-1 amended 1973, c. 366, §10; R.S. 15:1-5 amended 1946, c. 288, §2; 1971, c. 343, §1.

15A:4-2. Function of registered agent and office; service of process, notice or demand. a. Every registered agent shall be an agent of the corporation which has appointed the agent, upon whom process against the corporation may be served and who shall deliver to the corporation all process, notices or demands received by the agent as agent for the corporation.

b. Whenever any law of this State requires or permits any notice or demand to be given to or made upon a domestic corporation or a foreign corporation authorized to conduct activities in this State, its officers or trustees, the notice or demand may be sent by mail or otherwise, as the law may require, to the registered office of the corporation in this State, and the notice given or demand made shall be sufficient notice or demand.

c. The provisions of this section shall not exclude any other method provided by law for service or process upon a corporation, domestic or foreign, or for service of a notice or demand upon the corporation, its officers or trustees.

NONPROFIT CORPORATIONS

d. Whenever the law of this State requires that any certificate, report or statement made, published, filed or recorded by any corporation, domestic or foreign, state the residence address of any incorporator, trustee or officer, there must be furnished in the document the residence address of that person or other address, other than a postal designation, where the person regularly receives mail and which is not the address of the corporation.

Source: N.J.S. 14A:4-2 amended 1969, c. 102, §2; R.S. 15:1-5 amended 1946, c. 288, §2; 1971, c. 343, §1.

15A:4-3. Change of registered office or registered agent. a. A domestic corporation or a foreign corporation authorized to conduct activities in this State may change its registered office or its registered agent, or both. When the registered office is changed, or when the registered agent is changed, or dies, resigns or becomes disqualified, the corporation shall, by resolution of the board, forthwith fix the address of the new registered office or designate the successor registered agent or both, as the case may be.

b. The corporation shall forthwith file in the office of the Secretary of State a certificate executed on behalf of the corporation setting forth:

- (1) The name of the corporation;
- (2) If the registered agent is not being changed, the name of the registered agent;
- (3) If the registered agent is being changed, the names of the registered agent being succeeded and of the successor registered agent;
- (4) If the registered office is not being changed, the address of the then registered office;
- (5) If the registered office is being changed, the address of the registered office immediately prior to the change, and the address of the new registered office;
- (6) That the address of its registered office and the address of its registered agent will be identical after the change; and
- (7) That the change in registered office, or registered agent, or both, is made pursuant to resolution of the board.

c. The registered agent of one or more domestic or foreign corporations may change the registered office of the corporation or corporations to another address in this State by filing in the office of the Secretary of State a certificate executed by the agent and setting forth:

- (1) The names of all the corporations whose registered offices are being changed and for which it is the registered agent, listed in alphabetical order;
- (2) The address of the registered office of each corporation immediately prior to the change, and the address of the new registered office;
- (3) That the address of the registered office of each corporation and the address of its registered agent will be identical after the change; and
- (4) A statement that at least 20 days' prior notice of the change has been given to each corporation in writing.

The change of the registered office of each of the corporations named in the certificate shall become effective upon the date of the filing or at a later time, not to exceed 30 days after the date of filing, as may be set forth in the certificate.

d. Deleted by amendment, P.L.1997c.138.

Source: N.J.S. 14A:4-3 amended 1969, c. 102, §3; 1971, c. 253, §1; 1977, c. 34, §1; R.S. 15:1-5 amended 1946, c. 288, §2; 1971, c. 343, §1. **Amended** L. 1997, c. 138, §1, effective June 27, 1997.

15A:4-4. Resignation of registered agent. a. The registered agent of a domestic corporation or a foreign corporation authorized to conduct activities in this State may resign by complying with the provisions of this section.

b. The registered agent shall serve a notice of resignation by certified mail, return receipt requested, upon the president, or any vice-president, or the secretary or treasurer of the corporation at the address last known to the agent, and shall

APPENDIX 6

make an affidavit of the service. If service cannot be made, the affidavit shall so state, and shall state briefly why the service cannot be made. The affidavit, together with a copy of the notice of resignation, shall be filed in the office of the Secretary of State.

c. The resignation shall become effective upon the expiration of 30 days after the filing in the office of the Secretary of State of the affidavit under this section or upon the designation by the corporation of a new registered agent pursuant to this act, whichever is earlier. If the corporation fails to designate a new registered agent within the 30-day period, the corporation shall thereafter be deemed to have no registered agent or registered office in this State.

Source: N.J.S. 14A:4-4.

15A:4-5. Annual report to State Treasurer. a. Every domestic corporation and every foreign corporation authorized to conduct activities in this State shall file in the office of the State Treasurer, within the time prescribed by this section, an annual report, executed on behalf of the corporation, setting forth:

(1) the name of the corporation and, in the case of a foreign corporation, the jurisdiction of its incorporation;

(2) the address, including the actual location as well as postal designation, if different, of the registered office of the corporation in this State, and the name of its registered agent in this State at that address, and, if a foreign corporation, the address of its main or headquarters office; and

(3) the names and addresses of the trustees and the officers of the corporation, which addresses shall be either the residence address of that person or other address where that person regularly receives mail and which is not the address of the corporation.

b. The State Treasurer shall designate a date for filing annual reports for each corporation required to submit a report pursuant to this section and shall annually notify the corporation of the date so designated not less than 60 days prior to that date. The corporation shall file the report within 30 days before or within 30 days after the date so designated. If the date so designated is not more than six months after the date on which an annual report pursuant to the provisions of prior law was filed or on which the certificate of incorporation became effective, the corporation shall not be required to file an annual report until one year after the first occurrence of the date so designated.

c. If the report is not filed for two consecutive years, the certificate of incorporation of the corporation or the certificate of authority of a foreign corporation shall, after written demand for the reports by the State Treasurer by certified mail addressed to the corporation at the last address appearing of record in the office of the State Treasurer, be revoked for the failure to file reports. No corporation shall be subject to the revocation of its certificate of incorporation or its certificate of authority if it shall, within 60 days after the written demand, file the reports required by law and pay to the State Treasurer the fee provided by law for the filing of each report. Any corporation having its certificate of incorporation or its certificate of authority revoked may cause a reinstatement of the certificate upon payment to the State Treasurer of: the fee then payable upon the filing of the certificate of incorporation; a current annual report fee; and payment of a reinstatement filing assessment as set forth in N.J.S. 15A:15-1. The reinstatement relates back to the date of issuance of the proclamation revoking the certificate of incorporation or the certificate of authority and shall validate all actions taken in the interim. In the event that in the interim the corporate name has become unavailable, the State Treasurer shall issue the certificate upon, in the case of a domestic corporation, the filing of an amendment to its certificate of incorporation to change the corporate name to an available name, and, in the case of a foreign corporation, the filing of an amended certificate of authority adopting an alternate name. The State Treasurer shall provide the forms necessary to effect annual report reinstatements.

NONPROFIT CORPORATIONS

d. The State Treasurer shall furnish annual report forms, shall keep all the reports and shall prepare an alphabetical index thereof. The reports and index shall be open to public inspection at proper hours.

e. The State Treasurer shall allow any annual report that is designated to be filed while Executive Order 103 of 2020 remains in effect, or up to 180 days after its conclusion, to be filed up to 180 days after the conclusion of that executive order, without requiring the corporation to pay any penalty or additional fee other than the annual filing fee. The State Treasurer shall not require any corporation to pay its filing fee in advance of the date the annual report is filed pursuant to this subsection. **Source:** N.J.S. 14A:4-5 amended 1971, c. 253, §3; 1973, c. 366, §11; C. 15:1-11.1 (1947, c. 100 amended 1971, c. 343, §2). **Amended.** L. 1997, c. 138, §2, effective June 27, 1997; L. 2019, c. 149, §4, effective June 30, 2019; L. 2021, c. 381, §2, effective January 18, 2022

15A:4-6. Certain veterans' organizations exempt from annual report filing fee. A veterans' organization which organizes as a corporation under the "New Jersey Nonprofit Corporation Act," N.J.S.15A:1-1 et seq., shall be exempt from paying the annual report filing fee required pursuant to subsection f. of N.J.S.15A:15-1, when filing the annual report required pursuant to N.J.S.15A:4-5.

As used in this section, "veterans' organization" means the American Legion, Veterans of Foreign Wars, or other veterans' organizations chartered under federal law, or any service foundation of such an organization recognized in its bylaws. **Adopted.** L. 2016, c. 39, §1, effective February 27, 2017.

Chapter 5. MEETINGS OF MEMBERS, ELECTIONS OF TRUSTEES, AND RIGHTS AND LIABILITIES OF MEMBERS IN CERTAIN CASES.

Section

15A:5-1	Meetings of members of corporation.
15A:5-2	Annual or biennial meeting of members.
15A:5-3	Special meetings of members.
15A:5-4	Notice of members' meetings.
15A:5-5	Waiver of notice or of lapse of time.
15A:5-6	Action by members without a meeting.
15A:5-7	Fixing record date.
15A:5-8	Voting list.
15A:5-9	Quorum of members.
15A:5-10	Voting by members.
15A:5-11	Votes required.
15A:5-12	Greater or lesser voting requirements.
15A:5-13	Memberships held or controlled by the corporation not voted or counted.
15A:5-14	Memberships held by another corporation.
15A:5-15	Memberships held by fiduciaries.
15A:5-16	Memberships held jointly or as tenants in common.
15A:5-17	Voting of pledged memberships.
15A:5-18	Proxy voting.
15A:5-19	Agreements as to voting; provision in certificate of incorporation as to control of trustees.
15A:5-20	Elections of trustees; cumulative voting.
15A:5-21	Selection of inspectors.
15A:5-22	Duties of inspectors.
15A:5-23	Review of elections by Superior Court.
15A:5-24	Books and records; right of inspection.
15A:5-25	Liabilities of members.

15A:5-1. Meetings of members of corporation. a. Meetings of members of every corporation organized under this title may, unless otherwise provided by law, be held at a place, within or without this State, as may be provided in the bylaws or as may be fixed by the board pursuant to authority granted by the bylaws. In the absence of such a provision, all meetings of members shall be held at the registered office of the corporation. A meeting of members may be held by means of remote

APPENDIX 6

communication to the extent the board authorizes and adopts guidelines and procedures governing such a meeting.

b. One or more members may participate in a meeting by means of remote communication to the extent the board authorizes that participation. Meetings conducted in part or solely by means of remote communication and any member's remote participation in those meetings shall be subject to those guidelines and procedures as the board adopts, and shall be in conformity with subsection c. of this section.

c. A member participating in a meeting of members by means of remote communication shall be deemed present in person and shall be entitled to vote at the meeting regardless of whether that meeting is held at a designated place or solely by means of remote communication. In any meeting conducted in part or solely by means of remote communication in reliance upon subsection a. of this section, the corporation shall implement reasonable measures to:

(1) verify that each person participating remotely is a member or a proxy of a member;

(2) provide each member participating remotely with a reasonable opportunity to participate in the meeting, including an opportunity to vote on matters submitted to the members, and to read or hear the proceedings of the meeting substantially concurrently with those proceedings; and

(3) record and maintain a record of any votes or other actions taken by remote communication at the meeting.

Source: N.J.S. 14A:5-1. **Amended.** L. 2020, c. 20, §1, effective April 14, 2020, c. 362, §1, effective January 10, 2022.

15A:5-2. Annual or biennial meeting of members. a. If the certificate of incorporation or bylaws or other applicable law provides that some or all of the trustees shall be elected by the members, the certificate of incorporation or bylaws may provide that a meeting of the members of the corporation shall be held at least once every 2 years. If no provision for a required meeting of members is set forth in the certificate of incorporation or bylaws, then the meeting to elect the trustees shall be held annually.

b. An annual or biennial meeting of the members shall be held at a time as may be provided in the bylaws, or as may be fixed by the board pursuant to authority granted in the bylaws, and, in the absence of such a provision, at noon on the first Tuesday of April. Failure to hold the annual or biennial meeting at the designated time, or to elect a sufficient number of trustees at that meeting or any adjournment thereof, shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation. If the annual or biennial meeting for election of trustees is not held on the date designated, the trustees shall cause the meeting to be held as soon thereafter as convenient. If there is a failure to hold an annual or biennial meeting for a period of 30 days after the date designated, or if no date has been designated for a period of 13 months after the organization of the corporation or after its last annual meeting, or 25 months after its last biennial meeting, as the case may be, the Superior Court may, upon the application of a member, summarily order the meeting or the election, or both, to be held at a time and place, upon notice and for the transaction of business as may be designated in the order. At any meeting ordered by the court called pursuant to this section, the members present in person or by proxy and having voting powers shall constitute a quorum for the transaction of the business designated in the order.

Source: N.J.S. 14A:5-2 amended 1969, c. 104, §4.

15A:5-3. Special meetings of members. Special meetings of the members may be called by the president or the board, or by any other officers, trustees or members as may be provided in the bylaws. Notwithstanding any provision in the bylaws, upon the application of not less than 10% of all the members entitled to vote at a meeting, the Superior Court, in an action in which the court may proceed in a

summary manner, for good cause shown, may order a special meeting of the members to be called and held at a time and place, upon notice and for the transaction of such business as may be designated in the order. At any meeting ordered to be called pursuant to this section, the members present in person or by proxy and having voting powers shall constitute a quorum for the transaction of the business designated in such order.

Source: N.J.S. 14A:5-3.

15A:5-4. Notice of members' meetings. a. Except as otherwise provided in this act, written notice of the time, place and purposes of every meeting of members shall be given not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, to each member of record entitled to vote at the meeting. If the board has authorized participation by members by means of remote communication pursuant to N.J.S.15A:5-1, the notice to members shall describe the means of remote communication to be used.

b. When a meeting is adjourned to another time or place, it shall not be necessary, unless the bylaws otherwise provide, to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only business shall be transacted as might have been transacted at the original meeting. If after the adjournment, the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record on the new record date entitled to notice under subsection a. of this section.

Source: N.J.S. 14A:5-4. **Amended.** L. 2020, c. 20, §2, effective April 14, 2020.

15A:5-5. Waiver of notice or of lapse of time. a. Notice of a meeting need not be given to any member who signs a waiver of the notice, in person or by proxy, whether before or after the meeting. The attendance of any member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of the meeting, shall constitute a waiver of notice by that member.

b. Whenever members are authorized to take any action after the lapse of a prescribed period of time, the action may be taken without the lapse if the requirement is waived in writing, in person or by proxy, before or after the taking of that action, by every member entitled to vote thereon as of the date of the taking of the action.

Source: N.J.S. 14A:5-5.

15A:5-6. Action by members without a meeting. a. Except as otherwise provided in the certificate of incorporation or bylaws, any action required or permitted to be taken at a meeting of members by this act or the certificate of incorporation or bylaws of a corporation, may be taken without a meeting if all the members entitled to vote thereon consent thereto in writing, except that in the case of any action to be taken pursuant to chapter 10 of this act (merger, consolidation and sale of assets), the action may be taken without a meeting only (1) if all members consent thereto in writing; or (2) if (a) all members entitled to vote thereon consent thereto in writing, (b) the corporation provides to all other members advance notification setting forth the proposed action consented to, (c) the proposed action is not consummated before the expiration of 10 days after the giving of the notice, and (d) the notice sets forth the existence of the 10-day period.

b. Except as otherwise provided in the certificate of incorporation or bylaws and subject to the provisions of this subsection, any action required or permitted to be taken at a meeting of members by this act, the certificate of incorporation, or bylaws, other than the annual or biennial election of trustees, may be taken without a meeting upon the written consent of members who would have been entitled to cast the minimum number of votes which would be necessary to authorize the action at a meeting at which all members entitled to vote thereon were present and voting, if (1)

APPENDIX 6

the corporation provides to all other members advance notification setting forth the proposed action consented to, (2) the proposed action is not consummated before the expiration of 10 days from the giving of the notice and 20 days from the giving of the notice in the case of any action taken pursuant to chapter 10 of this act, and (3) the notice sets forth the existence of such 10-day period.

c. Whenever action is taken pursuant to subsection a. or b. of this section, the written consents of the members consenting thereto or the written report of inspectors appointed to tabulate the consents shall be filed with the minutes of proceedings of members.

d. Any action taken pursuant to subsection a. or b. of this section shall have the same effect for all purposes as if the action had been taken at a meeting of the members.

e. If any other provision of this act requires the filing of a certificate upon the taking of an action by members, and the action is taken in the manner authorized by subsection a. or b. of this section, the certificate shall state that the action was taken without a meeting pursuant to the written consents of the members and shall set forth the number of votes represented by the consents.

Source: N.J.S. 14A:5-6 amended 1969, c. 102, §5; 1973, c. 366, §12.

15A:5-7. Fixing record date. a. The bylaws may provide for fixing, or in the absence of such a provision, the board may fix, in advance, a date as the record date for determining the corporation's members with regard to any corporate action or event and, in particular, for determining the members entitled to:

- (1) Notice of or to vote at any meeting of members or any adjournment thereof;
- (2) Give a written consent to any action without a meeting; or
- (3) Receive or enjoy any benefit or right.

The record date may in no case be more than 60 days prior to the members' meeting or other corporate action or event to which it relates. The record date for a members' meeting may not be less than 10 days before the date of the meeting. The record date to determine members entitled to give a written consent may not be more than 60 days before the date fixed for tabulation of the consents or, if no date has been fixed for tabulation, more than 60 days before the last day on which consents received may be counted.

b. If no record date is fixed:

(1) The record date for a members' meeting shall be the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day next preceding the day on which the meeting is held; and

(2) The record date for determining members for any purpose other than that specified in paragraph 1 of subsection b. of this section shall be at the cessation of activities on the day on which the resolution of the board relating thereto is adopted.

c. When a determination of members of record for a members' meeting has been made as provided in this section, the determination shall apply to any adjournment thereof, unless the board fixes a new record date under this section for the adjourned meeting.

Source: N.J.S. 14A:5-7 amended 1973, c. 366, §13.

15A:5-8. Voting list. a. The officer or agent having charge of the membership record books for a corporation shall make and certify a complete list of the members entitled to vote at a members' meeting or any adjournment thereof. A list required by this subsection may consist of cards arranged alphabetically. The list shall:

- (1) Be arranged alphabetically within each class, series, or group of members maintained by the corporation for convenience of reference, with the address of each member;
- (2) Be produced at the time and place of the meeting;

(3) Be subject to the inspection of any members during the whole time of the meeting; and

(4) Be prima facie evidence as to who are the members entitled to examine the list or to vote at any meeting.

b. If the requirements of this section have not been complied with, the meeting shall, on the demand of any member in person or by proxy, be adjourned until the requirements are complied with. Failure to comply with the requirements of this section shall not affect the validity of any action taken at the meeting prior to the making of any such demand.

Source: N.J.S. 14A:5-8 amended 1973, c. 366, §14.

15A:5-9. Quorum of members. a. Unless otherwise provided in the certificate of incorporation, the bylaws, or this act, the members entitled to cast a majority of the votes at a meeting shall constitute a quorum at the meeting. The members present in person or by proxy at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. Less than a quorum may adjourn.

b. Whenever any class of members is entitled to vote separately on a specified item, the provisions of this section shall apply in determining the presence of a quorum of that class for the transaction of the specified item.

Source: N.J.S. 14A:5-9.

15A:5-10. Voting by members. The right of the members or any class or classes of members to vote may be limited, enlarged or denied to the extent specified in the certificate of incorporation or bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

Source: N.J.S. 14A:5-10; R.S. 15:1-9.

15A:5-11. Votes required. a. Whenever any action, other than the election of trustees is to be taken by vote of the members, it shall be authorized by a majority of the votes cast at a meeting of members by the members entitled to vote thereon, unless a greater plurality is required by the certificate of incorporation or bylaws or another section of this act.

b. The certificate of incorporation or bylaws may provide that any class or classes of members shall vote as a class to authorize any action, including amendments to the certificate of incorporation or bylaws. Voting as a class shall be in addition to any other vote required by this act. Where voting as a class is provided in the certificate of incorporation or bylaws it shall be by the proportionate vote so provided for or, if no proportionate vote is provided, then for any action other than the election of trustees, by a majority of the votes cast at the meeting by the members of the class entitled to vote thereon.

c. Where voting as a class is required by this act to authorize any action, the action shall be authorized by a majority of the votes cast at the meeting by the members of each class entitled to vote thereon, unless a greater vote is required by the certificate of incorporation, the bylaws, or another section of this act. Voting as a class shall be in addition to any other vote required by this act.

Source: N.J.S. 14A:5-11.

15A:5-12. Greater or lesser voting requirements. a. Whenever any action is to be authorized by the members of a corporation and the certificate of incorporation or the bylaws require the affirmative vote of a greater proportion of the votes cast by the members entitled to vote thereon, or by the members of any class or series thereof than is required by this act with respect to the action, the provisions of the certificate of incorporation or bylaws shall control.

APPENDIX 6

b. Whenever any action is to be authorized by two-thirds of the votes cast by members of a corporation pursuant to this act, and the certificate of incorporation provides for the affirmative vote of a lesser proportion of the votes cast by the members entitled to vote thereon, or by the members of any class of members, but not less than a majority thereof than is required by this act with respect to the action, the provisions of the certificate of incorporation shall control. Any provision for lesser voting requirements may be set forth in the bylaws, and the requirements shall control, if the certificate of incorporation provides that the lesser voting requirements may be set forth in the bylaws.

c. An amendment of the certificate of incorporation or bylaws which changes or deletes greater or lesser voting provisions shall be authorized by the same vote as would be required to take action under that provision.

d. Any action required to be authorized by a vote of the members greater than a majority shall be rescinded or modified only by a like vote.

Source: N.J.S. 14A:5-12.

15A:5-13. Memberships held or controlled by the corporation not voted or counted. If the corporation holds interests or memberships which entitle it to cast the plurality of the votes required for the election of directors of a domestic or foreign corporate entity or the election of trustees of a domestic or foreign corporation, any of which are herein referred to as a “controlled entity,” any memberships in the corporation held by the controlled entity shall not be voted at any meeting or counted in determining the total number of members at any given time. A “plurality” means the minimum number of interests or memberships necessary to elect a majority of directors or trustees based upon the total number of interests or memberships which may be voted in that election.

Source: N.J.S. 14A:5-13.

15A:5-14. Memberships held by another corporation. Memberships standing in the name of another domestic or foreign corporation may be voted by any officer or agent, or by proxy appointed by any of them, unless some other person, by resolution of its board or pursuant to its bylaws, shall be appointed to vote the shares.

Source: N.J.S. 14A:5-14.

15A:5-15. Memberships held by fiduciaries. Memberships held by any person in any representative or fiduciary capacity may be voted by that person without a transfer of the membership into the name of that person. Where memberships are held jointly by any number of fiduciaries, and the instrument or order appointing the fiduciaries does not otherwise direct, the membership shall be voted as the majority of the fiduciaries shall determine. If the fiduciaries are equally divided as to how the membership shall be voted, a court having jurisdiction may, in an action brought by any of the fiduciaries or by a beneficiary, appoint an additional person to act with the fiduciaries in the matter. The membership shall be voted by the majority of the fiduciaries and the additional person. The court may proceed in the action in a summary manner or otherwise.

Source: N.J.S. 14A:5-15.

15A:5-16. Memberships held jointly or as tenants in common. Membership held by two or more persons as joint tenants or as in common may be voted at any meeting of the members by any one of the persons, unless another joint tenant or tenant seeks to vote the membership in person or by proxy. In the latter event, the written agreement, if any, which governs the manner in which the membership shall be voted, shall control if presented at the meeting. If there is no such agreement presented at the meeting, the majority in number of the joint tenants or tenants in common present shall control the manner of voting. If there is no majority, or if there are two or more joint tenants, or tenants in common, who seek

to vote the membership, the membership shall, for the purpose of voting, be divided equally among the joint tenants or tenants in common present.

Source: N.J.S. 14A:5-16.

15A:5-17. Voting of pledged memberships. A member whose membership interest is pledged shall be entitled to vote the membership until the membership has been transferred into the name of the pledgee, or a nominee of the pledgee.

Source: N.J.S. 14A:5-17.

15A:5-18. Proxy voting. a. Unless otherwise provided in the certificate of incorporation or bylaws, every member entitled to vote at a meeting of members or to express consent without a meeting may authorize another person or persons to act for the member by proxy. Every proxy shall be executed in writing by the member or the member's agent, except that a proxy may be given by a member or the agent by telegram or cable or its equivalent. A proxy shall not be valid for more than 11 months unless a longer time is expressly provided therein, but in no event shall a proxy be valid after 3 years from the date of execution. Unless it is coupled with an interest, a proxy shall be revocable at will. A proxy shall not be revoked by the death or incapacity of the member but the proxy shall continue in force until revoked by the personal representative or guardian of the member. The presence at any meeting of any member who has given a proxy shall not revoke the proxy unless the member shall file written notice of revocation with the secretary of the meeting prior to the voting of the proxy.

b. A person named in a proxy as the attorney or agent of a member may, if the proxy so provides, substitute another person to act in that person's place, including any other person named as an attorney or agent in the same proxy. The substitution shall not be effective until an instrument effecting it is filed with the secretary of the corporation.

Source: N.J.S. 14A:5-19 amended 1973, c. 366, §15; R.S. 15:1-4.

15A:5-19. Agreements as to voting; provision in certificate of incorporation as to control of trustees. a. An agreement between two or more members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the members shall vote as therein provided, or as they may agree, or as determined in accordance with the procedure agreed upon by them.

b. A provision in the certificate of incorporation otherwise prohibited by law because it improperly restricts the board in its management of the activities of the corporation, or improperly transfers or provides for the transfer to one or more members or trustees named in the certificate of incorporation or to be selected from time to time by members or, if none, the trustees, all or any part of the management otherwise within the authority of the board, shall nevertheless be valid if all the incorporators have authorized the provision in the certificate of incorporation or all the members, whether or not having voting power, or, if there are no members, the trustees have authorized the provision in an amendment to the certificate of incorporation.

c. A provision authorized by subsection b. of this section shall become invalid if, to the knowledge of the board, or of the members or trustees having the management authority otherwise in the board, subsequent to the adoption of the provision, memberships are transferred or issued to any person who becomes a member without notice thereof, unless that person consents in writing to the provision.

d. If a provision authorized by subsection b. of this section becomes invalid as provided in subsection c. of this section, the board, or the person or persons having the management authority otherwise in the board, shall amend the certificate of incorporation to delete the provision by filing a certificate of amendment in the

APPENDIX 6

office of the Secretary of State. The certificate shall be executed on behalf of the corporation and shall set forth:

- (1) the name of the corporation;
- (2) the date of the adoption of the amendment;
- (3) the deleted provision; and
- (4) the event set forth in subsection c. of this section by reason of which the provision has become invalid.

e. The effect of any provision authorized by subsection b. of this section shall be to grant to and impose upon the members or trustees vested with management authority otherwise in the board the rights, powers, privileges, and liabilities, including liability for managerial acts or omissions, that are granted to and imposed upon trustees by law to the extent that, and so long as, the discretion and powers which otherwise would be in the trustees in their management of corporate affairs are vested in the members or trustees by any provision. The members or trustees shall be deemed to be trustees for purposes of applying the provisions of this act and shall be deemed to be corporate agents for the purposes of section 15A:3-5.

f. If the certificate of incorporation contains a provision authorized by subsection b. of this section, the existence of the provision shall be disclosed in writing in advance of issuance or transfer of membership certificates, if any, and shall be noted conspicuously on the face of the certificates; and, if noted, upon receipt of the certificate a member shall conclusively be deemed to have become a member with notice of the provision. A corporation may provide in its certificate of incorporation or bylaws that memberships are not transferable until the transferor evidences proof that the proposed transferee has notice of the provision.

Source: N.J.S. 14A:5-21 amended 1973, c. 366, §16.

15A:5-20. Elections of trustees; cumulative voting. a. Elections of trustees need not be by ballot unless a member demands election by ballot at the election and before the voting begins. If the bylaws require election by ballot at any meeting, the requirement is waived unless compliance therewith is requested by a member entitled to vote at the meeting. Where trustees are to be elected by members, the bylaws may provide that the elections may be conducted by mail.

b. At each election of trustees every member entitled to vote at the election shall have the right to cast the number of votes to which the membership entitles the member for as many persons as there are trustees to be elected and for whose election the member has a right to vote.

c. The certificate of incorporation or bylaws may provide that each member shall be entitled to as many votes as shall equal the number of votes to which he is entitled by law or under the provisions of the certificate of incorporation or bylaws multiplied by the number of trustees to be elected, and that he may cast all the votes for a single trustee, or may distribute them among the number to be elected or any two or more of them as he may see fit.

d. Except as otherwise provided by the certificate of incorporation or the bylaws, trustees shall be elected by a plurality of the votes cast at an election.

e. If a bylaw adopted by the members provides a fair and reasonable procedure for the nomination of candidates for any office (including election of a trustee), only candidates who have been duly nominated in accordance therewith shall be eligible for election.

Source: N.J.S. 14A:5-24 amended 1973, c. 366, §17; R.S. 15:1-7 amended 1946, c. 288, §3; 15:1-9; 15:1-10.

15A:5-21. Selection of inspectors. a. Unless the bylaws otherwise provide, the board may, in advance of a members' meeting, appoint one or more inspectors to act at the meeting or any adjournment thereof.

b. If inspectors are not so appointed by the board or as otherwise provided in the bylaws or shall fail to qualify, the person presiding at a members' meeting may, and on the request of any member entitled to vote thereat, shall, make the appointment.

c. If any person appointed as inspector fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding at the meeting.

d. If the bylaws require inspectors at any members' meeting, the requirement is waived unless compliance therewith is requested by a member entitled to vote at the meeting.

e. Each inspector, before entering upon a discharge of duties, shall take and sign an oath faithfully to execute the duties of inspector at the meeting with strict impartiality and according to the best of that person's ability.

f. A person shall not be elected a trustee at a meeting at which that person has served as an inspector.

Source: N.J.S. 14A:5-25 amended 1973, c. 366, §18.

15A:5-22. Duties of inspectors. The inspectors shall determine the number of memberships outstanding and the voting power of each, the members represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes or consents, determine the result, and do all acts as are proper to conduct the election or vote with fairness to all members. If there are three or more inspectors, the act of a majority shall govern. On request of the person presiding at the meeting or any member entitled to vote at the meeting, the inspectors shall make a report in writing of any challenge, question or matter determined by them. Any report made by them shall be prima facie evidence of the facts therein stated, and the report shall be filed with the minutes of the meeting.

Source: N.J.S. 14A:5-26.

15A:5-23. Review of elections by Superior Court. Any election by members may be reviewed by the Superior Court in a summary manner, or otherwise, in an action brought by a member entitled to vote at the election upon notice to the persons elected, the corporation and all other persons as the court may direct. The court may confirm the election, order a new election or provide all other relief as justice may require.

Source: N.J.S. 14A:5-27.

15A:5-24. Books and records; right of inspection. a. Each corporation shall keep books and records of account and minutes of the proceedings of its members and board and executive committee, if any. Unless otherwise provided in the bylaws, the books, records and minutes may be kept outside this State. The corporation shall make available for inspection at its registered office, in this State, or at its principal office if it is in this State, records containing the names and addresses of all members, the number, class and series of memberships held by each and the dates when they respectively became members of record thereof, within 10 days after demand by a member entitled to inspect them, as defined in subsection c. of this section. The foregoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time. A corporation shall convert into written form without charge any records not in that form, upon the written request of any person entitled to inspect them.

b. Upon the written request of any member, the corporation shall mail to that member its balance sheet as at the end of the preceding fiscal year, and its statement of income and expenses for that fiscal year.

APPENDIX 6

c. Any person who shall have been a member of record of a corporation for at least 6 months immediately preceding that person's demand, or any person holding, or so authorized in writing by the members holding, at least 5% of the memberships of any class or series, upon at least 5 days' written demand, shall have the right for any proper purpose to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its members and record of members and to make extracts therefrom, at the places where the same are kept pursuant to subsection a. of this section.

d. This section shall not impair the right of any court, upon proof of a member of proper purpose, irrespective of the period of time during which the member shall have been a member of record, and irrespective of the total number of memberships held by that person, to compel the production for examination by the member of the books and records of account, minutes and record of members of a corporation.

Source: N.J.S. 14A:5-28 amended 1973, c. 366, §19.

15A:5-25. Liabilities of members. a. The members of a nonprofit corporation shall not be personally liable for the debts, liabilities or obligations of the corporation.

b. A member shall be liable to the corporation only to the extent of any unpaid portion of membership dues or assessments which the corporation may have lawfully imposed, or for any other indebtedness owed by the member to the corporation. No action shall be brought by any creditor of the corporation to reach and apply any liability to any debt of the corporation until after final judgment shall have been rendered against the corporation in favor of the creditor and execution thereon returned unsatisfied, or the corporation shall have been adjudged bankrupt, or a receiver shall have been appointed with power to collect debts, and the receiver, on demand of a creditor to bring an action thereon, has refused to sue for the unpaid amount, or the corporation shall have been dissolved or ceased its activities leaving debts unpaid. No such action shall be brought more than 3 years after the happening of any one of the events.

Source: New.

Chapter 6. TRUSTEES AND OFFICERS.

Section

- 15A:6-1 Board of trustees.
- 15A:6-2 Number of trustees.
- 15A:6-3 Term of trustees.
- 15A:6-4 Classification of trustees; restriction of right to choose trustees.
- 15A:6-5 Vacancies and newly created trusteeships.
- 15A:6-6 Removal of trustees.
- 15A:6-7 Quorum of board of trustees and committees; vote required; action of trustees without a meeting.
- 15A:6-8 Effect of common trusteeships and trustees' personal interest.
- 15A:6-9 Executive committee; other committees.
- 15A:6-10 Place and notice of trustees' meetings.
- 15A:6-11 Loans to officers or employees.
- 15A:6-12 Liability of trustees in certain cases.
- 15A:6-13 Liability of trustees; presumption of assent to action taken at a meeting.
- 15A:6-14 Standard of care; liability of trustees; reliance on corporate records.
- 15A:6-15 Officers.
- 15A:6-16 Removal and resignation of officers; filling of vacancies.
- 15A:6-17 Bonds; facsimile signatures and seals.

15A:6-1. Board of trustees. The activities of a corporation shall be managed by its board, except as in this act or in its certificate of incorporation otherwise

NONPROFIT CORPORATIONS

provided. Trustees shall be at least 18 years of age and need not be United States citizens or residents of this State or members of the corporation unless the certificate of incorporation or bylaws so require. The certificate of incorporation or bylaws may prescribe other qualifications for trustees.

Source: N.J.S. 14A:6-1 amended 1973, c. 366, §21; R.S. 15:1-7 amended 1946, c. 288, §3.

15A:6-2. Number of trustees. The number of trustees of a corporation shall be not less than three. Subject to any provisions contained in the certificate of incorporation, the bylaws shall specify the number of trustees or that the number of trustees shall not be less than a stated minimum or more than a stated maximum, with the actual number to be determined in the manner prescribed in the bylaws, except as to the number constituting the first board.

Source: N.J.S. 14A:6-2 amended 1969, c. 102, §6; 1973, c. 366, §22.

15A:6-3. Term of trustees. a. If the certificate of incorporation or the bylaws or any other applicable law provides that the trustee shall be elected by the members, the trustees named in the certificate of incorporation shall hold office until the first annual or biennial meeting of the members and until their successors are elected and qualified. If the certificate of incorporation or the bylaws or any other applicable law provides that the trustees shall be elected by the board, the trustees named in the certificate of incorporation shall hold office until the first annual or biennial meeting of the board of trustees and until their successors shall have been elected and qualified. The certificate of incorporation or the bylaws may provide that a meeting of the board to elect trustees shall be held at least once every 2 years. If a provision for a required meeting of the board is not set forth in the certificate of incorporation or bylaws, then the meeting shall be held annually.

b. If the certificate of incorporation or the bylaws provide that some of or all the trustees shall be elected or selected other than by the members of the board, the trustees named in the certificate of incorporation shall hold office for the term specified in the certificate of incorporation or bylaws and until their successors are elected and qualified.

c. At the first annual or biennial meeting of the members or of the board of trustees and at each annual or biennial meeting thereafter, the members or the board of trustees, as the certificate of incorporation or the bylaws or any other applicable law may provide, shall elect trustees to be elected by them to hold office until the next annual or biennial meeting, except as to the classification of trustees as permitted by subsection b. of section 15A:6-4. Each trustee shall hold office for the term for which the trustee is elected and qualified and until a successor is elected and qualified.

d. A trustee may resign by written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at a subsequent time as shall be specified in the notice of resignation.

Source: N.J.S. 14A:6-3; R.S. 15:1-7 amended 1946, c. 288, §3.

15A:6-4. Classification of trustees; restriction of right to choose trustees.

a. As to trustees to be elected by the members or by the board of trustees, a corporation may provide in its certificate of incorporation or its bylaws for the classification of its trustees in respect to the time for which they shall severally hold office, but a class of trustees shall not hold office for a term shorter than 1 year or longer than 6 years. The term of office of at least one class shall expire every 2 years. A classification of trustees shall not be effective prior to the first annual or biennial meeting of members or the board of trustees.

b. Any corporation having more than one class of members may provide in its certificate of incorporation or its bylaws for the election of one or more trustees by the members of any class to the exclusion of members of other classes of members.

Source: N.J.S. 14A:6-4.

APPENDIX 6

15A:6-5. Vacancies and newly created trusteeships. a. Unless otherwise provided in the certificate of incorporation or the bylaws, any trusteeship not filled at the annual or biennial meeting and any vacancy, however caused, occurring in the board may be filled by the affirmative vote of a majority of the remaining trustees even though less than a quorum of the board, or by a sole remaining trustee. A trustee so elected by the board shall hold office until the next succeeding annual or biennial meeting and until a successor is elected and qualified.

b. Unless otherwise provided in the certificate of incorporation or bylaws, when one or more trustees shall resign from the board effective at a future date, a majority of the trustees then in office, including those who have so resigned, may fill the vacancy or vacancies, the vote thereon to take effect when the resignation or resignations become effective. Each trustee so chosen shall hold office as herein provided in the filling of other vacancies.

c. Any trusteeship to be filled by reason of an increase in the number of trustees shall be filled by election at an annual or biennial meeting or at a special meeting called for that purpose of the members, or of the board if the certificate of incorporation, the bylaws or any other applicable law provides for the election of trustees by the board. A trustee elected by the board to fill the trusteeship shall hold office until the next succeeding annual or biennial meeting and until a successor is elected and qualified.

d. If by reason of death, resignation or other cause, a corporation has no trustees in office, any member or the executor or administrator of a deceased member may call a special meeting of members for the election of trustees and, over the signature of that person, shall give notice of the meeting in accordance with section 15A:5-4, except to the extent that the notice is waived pursuant to section 15A:5-5.

Source: N.J.S. 14A:6-5.

15A:6-6. Removal of trustees. a. If the certificate of incorporation or the bylaws or any other applicable law provides for the election of trustees by the members, one or more or all the trustees may be removed for cause by the affirmative vote of the majority of the votes cast by the members entitled to vote for the election of trustees. The certificate of incorporation or bylaws may provide that the board may remove trustees for cause and to suspend trustees pending a final determination that cause exists for removal. If the certificate of incorporation or the bylaws so provide, one or more or all the trustees may be removed without cause by the affirmative vote of the majority of the votes cast by the members entitled to vote for the election of trustees.

b. If the certificate of incorporation or bylaws or any other applicable law provides that trustees may be elected by the board of trustees, one or more, but not all, of the trustees of the corporation may be removed for cause by the board by the affirmative vote of a majority of all the trustees.

c. The removal of trustees, with or without cause, by vote of the members as provided in subsection a. of this section is subject to the following qualifications:

(1) In any case where cumulative voting is authorized, if less than the total number of trustees then serving on the board is to be removed by the members, no one of the trustees may be so removed if the votes cast against that trustee's removal would be sufficient to elect the trustee if then voted cumulatively at an election of the entire board; or, if there are classes of trustees, at an election of the class of trustees of which such trustee is a part; and

(2) A trustee elected by a class vote, as authorized by subsection b. of section 15A:6-4, may be removed only by a class vote of the members entitled to vote for the election of that trustee.

d. The Superior Court, in an action in which the court may proceed in a summary manner or otherwise, may review the removal or suspension of a trustee for cause.

e. No act of the board done during the period when a trustee has been suspended or removed for cause shall be impugned or invalidated if the suspension or removal is thereafter rescinded or invalidated.

Source: N.J.S. 14A:6-6.

15A:6-7. Quorum of board of trustees and committees; vote required; action of trustees without a meeting.

a. A majority of the entire board, or of any committee thereof, shall constitute a quorum for the transaction of business, unless the certificate of incorporation or the bylaws shall provide that a greater or lesser number constitutes a quorum, which in no case shall be less than the greater of two persons or one-third of the entire board or committee, except that when a committee of the board consists of one trustee, then one trustee shall constitute a quorum.

b. The act of the majority present at a meeting at which a quorum is present shall be the act of the board or the committee, unless the act of a greater number is required by this act, the certificate of incorporation or the bylaws. Any action required to be authorized by a vote of the trustees greater than a majority shall be rescinded or modified only by a like vote.

c. Unless otherwise provided by the certificate of incorporation or bylaws, any action required or permitted to be taken pursuant to authorization voted at a meeting of the board or any committee thereof may be taken without a meeting if, prior or subsequent to the action, all members of the board or of the committee, as the case may be, consent thereto in writing and the written consents are filed with the minutes of the proceedings of the board or committee. The consents shall have the same effect as a unanimous vote of the board or committee for all purposes, and may be stated as such in any certificate or other document filed with the Secretary of State.

Source: N.J.S. 14A:6-7 amended 1973, c. 366, §23.

15A:6-8. Effect of common trusteeships and trustees' personal interest.

a. No contract or other transaction between a corporation and one or more of its trustees, or between a corporation and any domestic or foreign corporation, firm, corporate business entity or association of any type or kind in which one or more of its trustees are trustees or directors or are otherwise interested, shall be void or voidable solely by reason of the common trusteeship or interest, or solely because the trustee or trustees are present at the meeting of the board or a committee thereof which authorizes or approves the contract or transaction, or solely because the trustee's or trustees' votes are counted for that purpose, if the contract or other transaction is fair and reasonable as to the corporation at the time it is authorized, approved or ratified and either:

(1) the fact of the common trusteeship or interest is disclosed or known to the board or committee and the board or committee authorizes, approves, or ratifies the contract or transaction by unanimous written consent, provided at least one trustee so consenting is disinterested, or by affirmative vote of a majority of the disinterested trustees, even though the disinterested trustees be less than a quorum; or

(2) the fact of the common trusteeship or interest is disclosed or known to the members, if any, and they authorize, approve or ratify the contract or transaction.

b. Common or interested trustees may be counted in determining the presence of a quorum at a board or committee meeting at which a contract or transaction described in subsection a. of this section is authorized, approved or ratified.

APPENDIX 6

c. The board, by the affirmative vote of a majority of trustees in office and irrespective of any personal interest of any of them, shall have authority to establish reasonable compensation of trustees for services rendered to the corporation as trustees, officers, or otherwise. The approval of the members shall be required if the bylaws so provide.

Source: N.J.S. 14A:6-8 amended 1973, c. 366, §24.

15A:6-9. Executive committee; other committees. a. If the certificate of incorporation or the bylaws so provide, the board, by resolution adopted by a majority of the entire board, may appoint from among the trustees an executive committee and one or more other committees, each of which shall have at least one or more members. To the extent provided in the resolution, or in the certificate of incorporation or in the bylaws, each committee shall have and may exercise all the authority of the board, except that no committee shall:

- (1) Make, alter or repeal any bylaw of the corporation;
- (2) Elect or appoint any trustee, or remove any officer or trustee;
- (3) Submit to members any action that requires members' approval; or
- (4) Amend or repeal any resolution previously adopted by the board.

b. The board, by resolution adopted by a majority of the entire board, may:

- (1) Fill any vacancy in any committee;
- (2) Appoint one or more trustees to serve as alternate members of any committee, to act in the absence or disability of members of any committee with all the powers of the absent or disabled members;
- (3) Abolish any committee at its pleasure; and
- (4) Remove any trustee from membership on a committee at any time, with or without cause.

c. Actions taken at a meeting of any committee shall be reported to the board at its next meeting following the committee meeting; except that, when the meeting of the board is held within 2 days after the committee meeting, the report shall, if not made at the first meeting, be made to the board at its second meeting following the committee meeting.

d. The designation of any committee and the delegation thereto of authority shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law.

Source: N.J.S. 14A:6-9.

15A:6-10. Place and notice of trustees' meetings. a. Meetings of the board may be held either within or without this State, unless otherwise provided by the certificate of incorporation or the bylaws.

b. Regular meetings of the board may be held with or without notice as prescribed in the bylaws. Special meetings of the board shall be held upon notice as prescribed in the bylaws. Notice of any meeting need not be given to any trustee who signs a waiver of notice, whether before or after the meeting. The attendance of any trustee at a meeting without protesting prior to the conclusion of the meeting the lack of notice of the meeting shall constitute a waiver of notice by that trustee. Neither the business to be transacted at, nor the purpose of, any meeting of the board need be specified in the notice or waiver of notice of the meeting unless required by the bylaws. Notice of an adjourned meeting need not be given if the time and place are fixed at the meeting adjourning and if the period of adjournment does not exceed 10 days in any one adjournment.

c. Any or all trustees may participate in a meeting of the board or a committee of the board by means of conference telephone or any means of communication by which all persons participating in the meeting are able to hear each other, unless otherwise provided in the certificate of incorporation or the bylaws.

Source: N.J.S. 14A:6-10 amended 1969, c. 102, §7.

NONPROFIT CORPORATIONS

15A:6-11. Loans to officers or employees. A corporation may lend money to, or guarantee any obligation of, or otherwise assist, any officer or other employee of the corporation or of any subsidiary, whenever, in the judgment of the board, the loan, guarantee or assistance may reasonably be expected to benefit the corporation, except that a corporation shall not lend money to, guarantee any obligation of, or otherwise assist, any officer or other employee who is also a trustee of the corporation unless the loan, guarantee or assistance is authorized by the certificate of incorporation or bylaws and then only when authorized by at least two-thirds of the entire board, with the vote of the interested trustee not counted. The loan, guarantee or other assistance may be made with or without interest, and may be unsecured or secured in a manner as the board shall approve, and may be made upon other terms and conditions as the board may determine.

Source: N.J.S. 14A:6-11 amended 1973, c. 366, §26.

15A:6-12. Liability of trustees in certain cases. a. In addition to any other liabilities imposed by law upon trustees of a corporation, trustees who vote for, or concur in, any of the following corporate actions:

(1) The distribution or disposition of any asset in violation of this act, the certificate of incorporation, the bylaws, or the terms, conditions, or restrictions, express or implied, imposed upon the corporation upon acceptance of the asset by the corporation;

(2) The distribution of assets to members during or after dissolution of the corporation without paying, or adequately providing for, all known debts, obligations, and liabilities of the corporation, except that the trustees shall be liable only to the extent of the value of assets so distributed and to the extent that the debts, obligations and liabilities of the corporation are not thereafter paid, discharged, or barred by statute or otherwise;

(3) The complete liquidation of the corporation and distribution of all of its assets and cessation of the activities for which it was formed without dissolving or providing for the dissolution of the corporation and the payment of all fees, taxes and other expenses incidental thereto, except that the trustees shall be liable only to the extent of the value of assets so distributed and to the extent that the fees, taxes, and other expenses incidental thereto are not thereafter paid, discharged, or barred by statute or otherwise;

(4) The making of any loan to an officer, trustee or employee of the corporation contrary to the provisions of this act;

shall be jointly and severally liable to the corporation for the benefit of the corporation and its creditors, members or other interested persons to the extent of any injury suffered by those persons, respectively, as a result of the action.

b. Any trustee against whom a claim is successfully asserted under this section shall be entitled to contribution from the other trustees who voted for or concurred in the action upon which the claim is asserted.

c. Trustees against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amounts paid by them to the corporation as a result of the claim upon payment to the corporation of the value of any assets wrongfully distributed or disposed of, or upon payment to the corporation of the amount of any loan made improperly, to be subrogated to the rights of the corporation against the person who received the asset or the improper loan.

d. A trustee shall not be liable under this section if, in the circumstances the trustee discharged the duty owed by the trustee to the corporation under section 15A:6-14.

e. Every action against a trustee for recovery upon a liability imposed by subsection a. of this section shall be commenced within 6 years next after the cause of action shall have accrued.

Source: N.J.S. 14A:6-12 amended 1973, c. 366, §27.

APPENDIX 6

15A:6-13. Liability of trustees; presumption of assent to action taken at a meeting. A trustee who is present at a meeting of the board, or any committee thereof of which the trustee is a member, at which action on any corporate matter referred to in section 15A:6-12 is taken shall be presumed to have concurred in the action taken unless the dissent of the trustee shall be entered in the minutes of the meeting or unless the trustee shall file a written dissent to the action with the person acting as the secretary of the meeting before or promptly after the adjournment of the meeting. The right to dissent shall not apply to a trustee who voted in favor of the action. A trustee who is absent from a meeting of the board, or any committee thereof of which the trustee is a member, at which any action is taken shall be presumed to have concurred in the action unless the trustee shall file a dissent with the secretary of the corporation within a reasonable time after learning of the action.

Source: N.J.S. 14A:6-13 amended 1973, c. 366, §28.

15A:6-14. Standard of care; liability of trustees; reliance on corporate records. Trustees and members of any committee designated by the board shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinary prudent persons would exercise under similar circumstances in like positions. In discharging their duties, trustees and members of any committee designated by the board shall not be liable if, acting in good faith, they rely on the opinion of counsel for the corporation or upon written reports setting forth financial data concerning the corporation and prepared by an independent public accountant or certified public accountant or firm of accountants or upon financial statements, books of account or reports of the corporation represented to them to be correct by the president, the officer of the corporation having charge of its books of account, or the person presiding at a meeting of the board. A trustee shall not be personally liable to the corporation or its members for damages for breach of duty as a trustee if and to the extent that such liability has been eliminated or limited by a provision in the certificate of incorporation authorized by subsection c. of N.J.S. 15A:2-8, except that, in the case of a trustee of a corporation which is established for the purposes provided for in P.L. 1959, c. 90 (C. 2A:53A-7 et seq.) who serves without compensation, other than reimbursement for actual expenses, the trustee shall not be personally liable to the corporation or its members for damages for breach of duty as a trustee, whether or not such liability has been eliminated or limited by a provision in the certificate of incorporation authorized by subsection c. of N.J.S. 15A:2-8.

Source: N.J.S. 14A:6-14. **Amended.** L. 1989, c. 260, §3, effective January 4, 1990.

15A:6-15. Officers. a. The officers of a corporation shall consist of a president, a secretary, a treasurer, and, if desired, a chairman of the board, an executive director, one or more vice presidents, and all other officers as may be prescribed by the bylaws. Unless otherwise provided in the bylaws, the officers shall be elected or appointed by the board. A corporation may provide alternative titles for those officers; provided that the certificate of incorporation or the bylaws specify which other officer titles correspond to the president, secretary and treasurer and that the alternative titles not be used in completing the annual report filed pursuant to section 15A:4-5.

b. Any two or more offices may be held by the same person, but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if the instrument is required by law or by the bylaws to be executed, acknowledged, or verified by two or more officers.

c. Any officer elected or appointed as herein provided shall hold office for the term for which that officer is so elected or appointed and until a successor is elected or appointed and has qualified, subject to earlier termination by removal or resignation.

NONPROFIT CORPORATIONS

d. All officers of the corporation, as between themselves and the corporation, shall have the authority and perform the duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board not inconsistent with the bylaws.

Source: N.J.S. 14A:6-15 amended 1973, c. 366, §29; R.S. 15:1-11.

15A:6-16. Removal and resignation of officers; filling of vacancies. a. Any officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the members may be removed, with or without cause, only by vote of the members, but the authority to act as an officer may be suspended by the board for cause. The removal of an officer without cause shall be without prejudice to that officer's contract rights, if any. Election or appointment of an officer shall not of itself create contract rights.

b. An officer may resign by written notice to the corporation. The resignation shall be effective upon receipt thereof by the corporation or at a subsequent time as shall be specified in the notice of resignation.

c. Any vacancy occurring among the officers, however caused, shall be filled in the manner provided in the bylaws. In the absence of such a provision, any vacancy shall be filled by the board.

Source: N.J.S. 14A:6-16.

15A:6-17. Bonds; facsimile signatures and seals. The seal of the corporation, if any, and any or all signatures of the officers or other agents of the corporation upon a bond and any coupon attached thereto may be facsimiles if the bond is countersigned by an officer or other agent or a trustee or other certifying or authenticating authority. In case any officer or other agent who has signed or whose facsimile signature has been placed upon the bond or coupon shall have ceased to be an officer or agent before the bond is issued, it may be issued by the corporation with the same effect as if that officer or agent were an officer or agent at the date of its issue.

Source: N.J.S. 14A:6-17.

Chapter 7. MEMBERSHIPS.

Section

15A:7-1 Certificates or other written evidence of membership.

15A:7-2 Restrictions on transfer of memberships.

15A:7-1. Certificates or other written evidence of membership. a. Memberships in a corporation may be, but need not be, represented by certificates or other written evidence of membership. Unless the certificate of incorporation or bylaws otherwise provide, the certificates or written evidences shall be signed by, or in the name of the corporation by, the chairman of the board, or the president or a vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof.

b. Each certificate or other written evidence representing membership delivered after the effective date of this act shall state upon the face thereof:

- (1) That the corporation is organized under the laws of this State;
- (2) The name of the person to whom it is issued; and
- (3) The class of membership, if any, which such certificate represents.

c. Every certificate or other written evidence of membership delivered after the effective date of this act by a corporation having more than one class of members shall set forth upon the face or back of the certificate or the written evidence, either a full statement of the designations and relative rights of each class of membership to be issued or a statement that the corporation will furnish to any member, upon request and without charge, a full statement.

Source: N.J.S. 14A:7-11.

APPENDIX 6

15A:7-2. Restrictions on transfer of memberships. a. Memberships of a corporation shall be personal property and, unless otherwise provided in the certificate of incorporation or bylaws, are not transferable and terminate upon the death of the member.

b. If memberships are transferable, any reasonable restriction on the transfer of memberships may be enforced against the members. The restrictions shall be valid only if imposed by the certificate of incorporation or bylaws or by a written agreement among any number of members. Unless noted conspicuously on the certificate or other written evidence representing memberships, a restriction shall not be valid against a person who becomes a member without actual knowledge of the restriction.

c. In particular and without limitation of the generality of the power granted by subsection b. of this section to impose restrictions, a restriction on the transfer of memberships may be enforced, if it:

(1) Obligates the member to offer to the corporation or to any other members a prior opportunity to acquire the membership;

(2) Obligates the corporation to purchase the membership;

(3) Requires the corporation to consent to any proposed transfer of the membership or to approve the proposed transferee; or

(4) Prohibits the transfer of the membership to designated persons or classes of persons, and the designation is not manifestly unreasonable.

d. If a restriction on transfer of memberships is held not to be authorized by the law of this State, the corporation shall nevertheless have an option for a period of 30 days after the judgment setting aside the restriction becomes final, to acquire the membership at a price to be agreed upon by the parties, or if an agreement is not reached as to price, then at its fair value as determined by any court having jurisdiction. In order to determine fair value, the court may appoint an appraiser to receive evidence and report to the court the findings and recommendations as to fair value.

Source: N.J.S. 14A:7-12.

Chapter 8. BENEFICIAL PROVISIONS FOR EMPLOYEES.

Section

15A:8-1 Employee benefit plans.

15A:8-2 Formulation of plans.

15A:8-3 Amendment or termination of plans.

15A:8-4 Trust funds for employees; creation; maintenance and administration.

15A:8-5 Continuation of trust; law against perpetuities inapplicable.

15A:8-1. Employee benefit plans. a. A corporation may, in the manner prescribed in section 15A:8-2, establish and carry out wholly or partly at its expense, any one or more of the following plans for the benefit of some or all employees, as hereinafter defined, and their families, dependents or beneficiaries:

(1) Plans providing for payments solely in cash or property including salary, bonus, savings, pension, retirement, deferred compensation and other plans of similar nature; and

(2) Plans for the furnishing of medical services, life, sickness, accident, disability or unemployment insurance or benefits, education, housing, social and recreational services, and other similar aids and services.

b. The term “employees” as used in this chapter means employees, officers, and agents including any of the foregoing who may also be trustees of the corporation, or other persons who are or have been actively engaged in the conduct of the activities of the corporation, including any who have retired, become disabled or died prior to the establishment of any plan heretofore or hereafter adopted.

Source: N.J.S. 14A:8-1 amended 1969, c. 102, §11; 1973, c. 366, §42.

15A:8-2. Formulation of plans. The board alone, by affirmative vote of a majority of the entire board, may adopt any plan described in section 15A:8-1 and may include provisions therein as the board may deem advisable.

Source: N.J.S. 14A:8-2 amended 1973, c. 366, §44; 1977, c. 334.

15A:8-3. Amendment or termination of plans. Unless otherwise provided in the plan, the board may amend or terminate any plan described in section 15A:8-1. An amendment or termination of any plan shall not impair any rights which have accrued under the plan or deprive any employee or beneficiary of the employee of the equivalent in cash or other benefits of the contributions of the employee under the plan.

Source: N.J.S. 14A:8-4 amended 1973, c. 366, §46.

15A:8-4. Trust funds for employees; creation; maintenance and administration. Any domestic or foreign corporation which adopts a plan described in section 15A:8-1 may establish one or more trust funds of the property contributed or held by the corporation or any subsidiary thereof for the purposes of the plan. The trust fund may be held and administered by the corporation adopting the plan or by any trustee or trustees, within or without this State, appointed by the corporation for that purpose.

Source: N.J.S. 14A:8-5.

15A:8-5. Continuation of trust; law against perpetuities inapplicable. The period for which any trust may be created and maintained may be as long as may be desirable for the complete administration of any plan as originally adopted or thereafter amended, and a trust fund shall not be subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation or perpetual accumulations of trusts.

Source: N.J.S. 14A:8-6.

Chapter 9. AMENDMENTS, CHANGES OR ALTERATIONS.

Section

- 15A:9-1 Amendment of certificate of incorporation.
- 15A:9-2 Procedure to amend certificate of incorporation.
- 15A:9-3 Class voting on amendments.
- 15A:9-4 Certificate of amendment.
- 15A:9-5 Restated certificate of incorporation.
- 15A:9-6 Abandonment of amendment or restated certificate.

15A:9-1. Amendment of certificate of incorporation. a. A corporation may amend its certificate of incorporation from time to time in any and as many respects as may be desired as long as the amendment contains only those provisions as might lawfully be contained in an original certificate of incorporation filed at the time of making the amendment.

b. In particular, and without limitation upon the general power of amendment granted by subsection a. of this section, a corporation may amend its certificate of incorporation:

- (1) To change its corporate name;
- (2) To enlarge, limit or otherwise change its corporate purposes or powers;
- (3) To provide for expansion or limitation on eligibility requirements for membership;
- (4) To increase or decrease the number of trustees or their powers;
- (5) To create new classes of members, to divide any class of members into one or more classes of members, and to transfer members from one class to another;
- (6) To become a corporation with members or without members;
- (7) To extend its period of duration; or

APPENDIX 6

(8) To strike out, change or add any provision not inconsistent with law for the management and conduct of the affairs of the corporation, or creating, defining, limiting and regulating the powers of the corporation, its trustees and members or any class of members, including any provision which under this act is required or permitted to be set forth in the bylaws.

Source: N.J.S. 14A:9-1; R.S. 15:1-14 amended 1955, c. 206; 15:1-14.1.

15A:9-2. Procedure to amend certificate of incorporation. a. Before the organization meeting of the board of trustees, the incorporators may amend the certificate of incorporation by complying with subsection a. of section 15A:9-4.

b. An amendment of the certificate of incorporation pursuant to a plan of merger may be made in the manner provided in chapter 10 of this act.

c. An amendment of the certificate of incorporation of a corporation not having any members entitled to vote thereon shall be approved upon receipt of the affirmative vote of two-thirds of those trustees present at a meeting called for the purpose of considering and voting upon the proposed amendment unless the vote of a greater number is required by the certificate of incorporation or bylaws. Upon adoption, a certificate of amendment shall be filed in the office of the Secretary of State as provided in section 15A:9-4.

d. All other amendments of the certificate of incorporation shall be made in the following manner:

(1) The board of trustees shall approve the proposed amendment and direct that it be submitted to a vote at a meeting of the members;

(2) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member of record entitled to vote thereon within the time and in the manner provided in this act for the giving of notice of meetings of members;

(3) At the meeting, a vote of members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of two-thirds of the votes cast by the members entitled to vote thereon and, in addition, if any class of members is entitled to vote thereon as a class, the affirmative vote of two-thirds of the votes cast in each class vote. The voting requirements of this subsection shall be subject to the greater or lesser requirements as are adopted pursuant to section 15A:5-12;

(4) Any number of amendments may be acted upon at one meeting;

(5) Upon adoption, a certificate of amendment shall be filed in the office of the Secretary of State as provided in section 15A:9-4.

Source: N.J.S. 14A:9-2 amended 1973, c. 366, §47; R.S. 15:1-14 amended 1955, c. 206; 15:1-14.1; 15:2-1 amended 1950, c. 18.

15A:9-3. Class voting on amendments. Notwithstanding any provision in the certificate of incorporation, the members of a class, with or without voting rights, whose voting or other rights or preferences or privileges would be subordinated or otherwise adversely affected by a proposed amendment, shall be entitled to vote as a class thereon.

Source: N.J.S. 14A:9-3.

15A:9-4. Certificate of amendment. a. If the amendment is made as provided by subsection a. of section 15A:9-2, a certificate of amendment shall, subject to subsection c. of section 15A:2-7, be signed by all incorporators, shall set forth the name of the corporation and the amendment so adopted, and shall recite that the amendment is made by the unanimous consent of the incorporators before the organization meeting of the board of trustees.

b. If the amendment is made as provided by subsection c. or d. of section 15A:9-2, a certificate of amendment shall be executed on behalf of the corporation and shall set forth:

(1) the name of the corporation;

(2) the amendment so adopted;

(3) whether the corporation has or does not have members;

(4) the date of the adoption of the amendment by the trustees if the corporation has no members entitled to vote thereon, or by the members, whichever is applicable;

(5) if the corporation has no members entitled to vote thereon, the number of trustees of the corporation and either the number of trustees voting for and against the amendment, respectively, and the number of trustees present at the meeting or that the amendment was adopted by the unanimous written consent of the trustees without a meeting;

(6) if applicable, the number of members entitled to vote thereon and either the number of members voting for and against the amendment, respectively, if any class or classes of members are entitled to vote thereon as a class, the number of members in each class, the votes of each class voted for and against the amendment, respectively, and the number of members present at the meeting; or that the amendment was adopted by the unanimous written consent of the members without a meeting; and

(7) if, pursuant to subsection c. of this section, the amendment is to become effective at a time subsequent to the time of filing, the date when the amendment is to become effective.

c. An original and one copy of each certificate of amendment of the certificate of incorporation shall be filed in the office of the Secretary of State and the amendment shall become effective upon the date of filing or at a later time, not to exceed 30 days from the date of filing, as may be set forth in the certificate. The Secretary of State shall forward the copy to the Attorney General.

Source: N.J.S. 14A:9-4 amended 1973, c. 366, §48; R.S. 15:1-14 amended 1955, c. 206; 15:1-14.1; 15:2-1 amended 1950, c. 18.

15A:9-5. Restated certificate of incorporation. a. A corporation may restate and integrate in a single certificate the provisions of its certificate of incorporation as theretofore amended, including any provision effected by a merger or consolidation and any further amendments which may be adopted concurrently with the restated certificate.

b. If the proposed restated certificate merely restates and integrates, but does not substantively amend the certificate of incorporation as theretofore amended, it may be adopted by the board.

c. If the proposed restated certificate restates and integrates and also substantively amends the certificate of incorporation as theretofore amended, such restated certificate shall be adopted pursuant to the procedure set forth in section 15A:9-2.

d. The restated certificate shall recite that it is a restated certificate and shall contain all provisions as are required in an original certificate of incorporation filed at the time the restated certificate is filed except that:

(1) It shall state the address of the corporation's then current registered office, and the name of its then current registered agent, and it shall state the number, names and addresses of the trustees constituting its then current board of trustees;

(2) It need not include statements as to the incorporator or incorporators or as to the first board of trustees or the first registered office and registered agent;

(3) If pursuant to subsection f. of this section, the restated certificate is to become effective subsequent to the time of its filing, it shall state the date when it is to become effective.

e. A restated certificate shall be executed on behalf of the corporation, and an original and a copy thereof shall be filed in the office of the Secretary of State. There shall be attached to it and filed therewith a certificate executed on behalf of the corporation and setting forth:

APPENDIX 6

- (1) The name of the corporation;
- (2) Whether the corporation has or does not have members;
- (3) If the restated certificate was adopted by the board and no amendment to the certificate of incorporation is made thereby, the date of adoption by the board;
- (4) If the restated certificate was adopted by the board and an amendment to the certificate of incorporation is made by the restated certificate, the date of adoption by the board and either the number of trustees of the corporation, the number of trustees voting for and against the restated certificate, respectively, and the number of trustees present at the meeting; or that the amendment was adopted by the unanimous written consent of the trustees without a meeting; or
- (5) If the restated certificate was adopted by the members, the date of adoption by the members and either the number of members entitled to vote thereon, the number of members voting for and against the adoption, respectively, if any class or classes of members are entitled to vote thereon as a class, the number of members in each class, the votes of each class voted for and against the adoption respectively and the number of members present at the meeting or that the amendment was adopted by the unanimous written consent of the members without a meeting.

f. The restated certificate shall become effective upon the date of filing with the Secretary of State or at a later time, not to exceed 30 days from the date of filing, as may be set forth therein. The Secretary of State shall forward the copy to the Attorney General. A restated certificate adopted in the manner prescribed herein, whether by action of the board or by action of the board and the members, shall supersede for all purposes the original certificate of incorporation and all amendments made prior to the adoption of the restated certificate, and the restated certificate may be separately certified as the certificate of incorporation.

Source: N.J.S. 14A:9-5 amended 1969, c. 102, §13; 1973, c. 366, §49.

15A:9-6. Abandonment of amendment or restated certificate. Prior to the effective date of an amendment of a certificate of incorporation or of a restated certificate for which the approval of members is required by this act, the amendment or the restated certificate may be abandoned pursuant to provisions therefor, if any, set forth in the resolution of the members approving the amendment or the restated certificate or in any resolution subsequently adopted by the members. Prior to the effective date of an amendment of a certificate of incorporation or of a restated certificate for which the approval of members is not required by this act, the amendment or restated certificate may be abandoned pursuant to provisions therefor, if any, set forth in the resolution of the trustees approving the amendment or the restated certificate, or in any resolution subsequently adopted by the board. If a certificate of amendment or a restated certificate has been filed in the office of the Secretary of State prior to the abandonment, an original and a copy of a certificate of abandonment shall be filed in the office of the Secretary of State. The certificate shall state that the amendment or the restated certificate has been abandoned in accordance with the provisions set forth in the resolution therefor and shall specify whether the resolution was adopted by the board or the members and the date of adoption of the resolution. The Secretary of State shall forward the copy to the Attorney General.

Source: N.J.S. 14A:9-6 amended 1973, c. 366, §50.